

Anti Social Behaviour Strategy and Statement of Procedure

Anti Social Behaviour

“Any action that is or is likely to cause harassment, alarm or distress to one or more persons not of the same household as the perpetrator”. (*Crime and Disorder Act 1998-section 1*)

From the point of view of Housing and Property Services, ASB is conduct which:

- Is capable of causing nuisance or annoyance to any person; and
- Directly or indirectly relates to or affects our housing management function; or
- Consists of, or involves using or threatening to use housing accommodation owned or managed by us for an unlawful purpose. (*adapted from section 218A(8) of the Housing Act 1996 inserted by the Anti-Social behaviour Act 2003*).

For a non-exhaustive list of examples of behaviours that may be deemed to be anti-social in nature, see **Annex 2** (<http://thanet.gov.uk/publications/housing/anti-social-behaviour-strategy-and-statement-of-procedure/annex-2/>)

Statement of intent

The Housing and Property Services department is committed to promoting a safe and secure environment in which tenants, leaseholders and visitors can live peacefully and enjoy a good quality of life. The department recognises that the quality of life of a community can be seriously eroded by ASB.

We firmly believe that everyone has the right to enjoy life in their own way providing they do not cause nuisance or annoyance to neighbours.

Purpose of Strategy and Statement of Procedure

Section 218A of the 1996 Housing Act was inserted by Section 12 of the Anti-Social Behaviour Act 2003. It requires landlords that are local housing authorities, Housing Action Trusts (HATS) and registered social landlords (collectively referred to as “social landlords”) to prepare and publish procedures in relation to anti-social behaviour.

The purpose of this strategy is to establish and update the procedures used by the department, taking into account new legislation for tackling ASB; in order to provide a clear and concise document outlining the manner in which reported instances of ASB will be dealt with. By following an agreed set of basic guidelines, the department will ensure that all reported instances of ASB are dealt with in an efficient and co-ordinated manner.

Equality is one of the main principles that guides this procedure statement. It has been designed to ensure that any one experiencing ASB receives the same quality of service.

General Policy Statement

Aims, Attitude and general approach to ASB

One of the department's fundamental aims is the reduction of ASB on its estates. To reinforce this commitment, we recognise the importance of taking effective and early positive steps to reduce the likelihood of legal action being needed and to increase the chances of problems being resolved successfully. The

Department will undertake to:

- Ensure that all disputes and allegations of ASB are dealt with effectively and in a fair manner. Action taken will depend on the nature, type and seriousness of the behaviour. Where necessary, the Department will enforce its Conditions of Tenancy. While mindful of our role as a social housing provider, the Department is not willing to allow a small minority to disturb the peaceful enjoyment of the majority and will therefore use all powers available to it where a problem can be established.
- Establish clear guidelines and procedures and ensure that all staff are adequately trained to effectively put the department's policy into practice.
- Consult, involve and inform tenants and leaseholders in order to form an effective partnership approach.
- Establish targets for monitoring performance, the results of which will be published on a regular basis.
- Address the issue of racial harassment in accordance with Council policy.
- Keep all complaints and investigations confidential, unless legal action becomes necessary and is agreed with residents.
- Recognise that neighbour disputes and ASB may be a result of wider social issues which requires the Department to work in partnership with fellow agencies in taking effective action where necessary.
- Regularly review policy and procedures.

Specific Policy issues

The Department has based its ASB Protocol and Policy on the following principles:

Response to complaints

The Department will respond to complaints quickly and efficiently, and will address all the points at issue. It will keep the complainant regularly informed of developments both verbally and in writing. As some complaints may be unfounded, a non-judgmental approach will be taken at the early stages of investigation.

It will not be necessary for complaints to be made in writing before action is taken, although this will be advised, and help will be given to anyone who requires assistance (for example, someone whose first language is not English).

Anonymous complaints, which may be malicious and in themselves considered a form of harassment, will only be accepted in exceptional circumstances. An example would be where ASB relates to serious problems and there is good reason to believe that there could be fear of reprisals.

Preventive action and prevention measures

Education should begin prior to the commencement of tenancy- Housing Officers will explain in detail the responsibilities of the landlord and tenant (including a tenant's responsibility for guests) as laid down in the Conditions of Tenancy during the initial property view. A Tenants' Information Pack is also issued with

relevant sections on ASB. Additionally, the Community Warden Scheme performs a mix of preventive and prevention roles in respect of ASB and the Council employs an ASB Liaison Officer to aid co-operation with other agencies.

Prevention measures that the department will use include mediation, interviews, written warnings, injunctions, Acceptable Behaviour Contracts (ABCs) and Anti - Social Behaviour Orders (ASBOs).

We do recognise that ASB is often fuelled by a host of wider social exclusion issues including poverty, drug dependency (including alcohol), school exclusion and general community disorganisation. There are a wide variety of policies, approaches and interventions that Thanet District Council and its partners have adopted in order to address these issues. It is acknowledged that the strength in combating these problems is best undertaken in partnership including the Local Strategic Partnership and the Crime and Disorder Reduction Partnership.

Partnerships and joint working

The department will continue to forge good relations with other local landlords such as Thanet Community Housing Association in mixed-tenure type situations (where there is a mixture of housing association, private and council tenants). We are equally committed to partnership working with key agencies such as the

Police, the Community Safety Department, Social Services, Mental Health Services and Environmental Health.

The department is actively engaged in partnership with other local authorities and statutory agencies in tackling racial harassment. Commitment to a collective response is demonstrated by joint working with Dover, Shepway, Canterbury and Ashford in operating the East Kent Racial Incident Reporting Line (RIRL) and our

membership of the Thanet Community Safety Partnership.

Resident participation

The Department is committed to working with tenants and local residents in order to enforce its intolerance of, and support its aim to resolve ASB and realises that consultation and discussion is invaluable in achieving this. The department recognises that tenant groups offer an excellent opportunity for reducing feelings of helplessness and isolation and aid in building a sense of community and encouraging reporting of ASB. ASB is specifically approached in the action plan of "Working Together", The Tenant Participation Compact for Thanet.

Evidence building

If legal action is to succeed, the evidence we present must be as strong and comprehensive as possible. The legal remedy sought must also be reasonable in the court's opinion.

The more evidence presented the better. Incidents that may seem minor in isolation can be viewed more gravely when considered with many other incidents.

Supporting witnesses

In many cases we will be relying on witness statements from residents and neighbours to help present our case. These witnesses may fear intimidation from the person behaving in an anti-social way. To combat this and to maintain the witnesses' goodwill and confidence, we will support them as much as we can.

We will do this by:

- Liaising with the Police;
- the Housing Officer dealing with the case keeping in regular contact with the witness to prevent them feeling isolated and to check on their well-being. Regular contact will also aid the collection of up to date information on any recent incidents;
- local groups such as Tenants' and Residents' Associations to be involved with supporting individuals and to give corroborating statements where applicable; and
- offering them support in attending court.

Reports of harassment

In clear cases of harassment the Department's approach will be victim centred with investigations and solutions to the complaint sympathetic to the stress and needs of the resident.

Racial harassment

All incidents of racial harassment will be reported, dealt with and monitored in full accord with guidance offered by the Commission for Racial Equality's (CRE's) Rented Housing Code of Practice and the Office of the Deputy Prime Minister's (ODPM's) research document, Tackling Racial Harassment: Code of Practice for

Social Landlords. The department has adopted the following definition of a racial incident, as recommended by the Stephen Lawrence Inquiry: *"any incident which is perceived to be racist by the victim or any other person"*.

Mixed Tenure Estates

The powers and responsibilities that the Council as a whole have to tackle ASB extend beyond their own sector and housing stock. Actions may have to be taken to resolve issues both for and against the department's tenants and residents on cross tenure complaints. Therefore, joint working between the department and other Registered Social Landlords (RSLs) on mixed tenure estates is expected. By agreement, the Department may undertake investigations and use the appointment of professional witnesses and other measures, subject to RSLs making a proportional contribution to the cost.

Review and appeals

The Department has in place a clear review process for monitoring cases and an appeals process for complaints that have not been satisfied.

This Policy and Procedure Guide is to be reviewed on an annual basis, or earlier, to take account of changing government guidance, changes in legislation or amendments found necessary as a result of monitoring procedures.

ASB Procedure

The Housing and Property Services Department follows a four stage process for dealing with ASB.

Stage One- receiving and recording complaint

The first step upon receiving a complaint is to suggest that the complainant discusses the problem with the other party. If the complainant has not done so and if the issue is relatively minor with no risk of violence, the complainant will be asked to talk to the other party with a view to seeking an amicable resolution. If the complaint can be resolved at this stage without further investigation, the relevant action will be taken and a letter will be sent to the complainant detailing this. If not, the process moves on to stage 2.

Stage Two- initial investigation, define and assess complaint

If it is felt that further investigation is required, a Housing Officer will arrange to interview the complainant in order to establish the facts. This will enable the Investigating Officer to begin to define the type of problem and attempt to assess the severity and scope of the issue. This will help to establish whether it is a clash of lifestyles or if the person accused of causing the nuisance is behaving in an anti-social manner.

At this stage immediate support may be arranged if necessary. The Housing Officer will also consider whether the matter should be reported to other responsible agencies such as the Police, Environmental Health etc. If it is an issue for which the department has sole responsibility, the tenant will be advised of the various options available to aid resolution. This will form the foundation for an action plan agreed between the complainant and Housing Officer. Examples of possible actions include the keeping of incident diaries, interviews with perpetrators and referrals to other agencies.

Stage Three- in-depth investigation, collection and evaluation of evidence

At this point in the process, the investigating officer will look to arrange a meeting with the perpetrator/s in order to listen to their views in respect of the complaint. Additionally, during this stage, every effort will be made to collect and evaluate evidence from a variety of sources. Examples include witness statements, reports of other agencies, photographs of injuries or damage to property. All such evidence gathered will form the foundation for future action.

Stage Four- remedial action

All managerial options such as written warnings, negotiation and mediation will be considered before the Department will proceed with the use of legal remedies.

Where managerial options fail the Department is left with no option but to pursue a legal remedy. This may either be on the grounds of nuisance or for breach of tenancy conditions. If the resident fails to comply with written warnings, the Department will issue a Notice of Seeking Possession and/or seek an Interim Injunction. The complainant will be informed at this stage of the legal decision.

Where a Notice of Seeking Possession has been served, a Possession Hearing will be held at Court, which if successful will result in the granting of a Possession Order. This will ultimately grant legal authority for an eviction to go ahead. Where an interim injunction has been granted and the tenant has failed to comply, a final injunction will be sought. Where this is again breached, the matter will return to court and the defendant, if found to be in breach, may face a fine, imprisonment or both. Once again, the Department will ensure that the complainant is kept informed of the legal decision reached.

Annex 1 Obligations of tenants in respect of ASB

Tenants are responsible for the behaviour of every person living in or visiting the property. This includes the tenant's children and the children of any visitors. This responsibility extends to any communal areas (e.g. stairs, lifts, landings, entrance halls, paved areas, garden areas and parking areas) on surrounding land and in the neighbourhood around the property.

- The tenant, other persons living in the property or visitors to the household must not behave in a way that causes or is likely to cause nuisance, annoyance or disturbance to any other person in the locality of the property.
- The tenant, other persons living in the property or visitors to the household must not harass any other person in the locality of the property.
- Harassment includes (but is not limited to):
 - Racist behaviour or language.
 - Using or threatening to use domestic violence.
 - Using abusive or insulting words.
 - Behaving in a threatening or insulting manner.
 - Damaging or threatening to damage another person's home or possessions.
 - Writing threatening or abusive or insulting graffiti.
 - Doing anything that interferes with the peace, comfort or convenience of other people.
- Tenants, other persons living in the property or their visitors must not use the property, any communal area or the locality of the property to carry out any illegal activity.
- Tenants, other persons living in the property or their visitors must not cause any damage or write graffiti on Council property.
- Tenants, other persons living in the property or their visitors must not interfere with any security and safety equipment located in any communal block, for example by jamming open security or fire doors, or by letting in strangers who do not have identification.
- Tenants, other persons living in the property or their visitors must not be violent or threaten violence against any other person, whether they are living with them or in another property. You must not harass, use mental, emotional, physical or sexual abuse to make anyone who lives with you leave the property. If a person leaves the property because of domestic violence perpetrated by the tenant, the Council may take action to end the tenancy.
- Tenants, other persons living in the property or their visitors must not use abusive or threatening language or act in a violent, aggressive or abusive manner towards the elected members, officers or agents of the Council.
- Any pets belonging to tenants, other persons living in the property or their visitors must not cause a nuisance or annoyance to other people or damage to property.
- Tenants, other persons living in the property or their visitors must not encourage vermin to the locality of the property by, for example, feeding or putting out food for pigeons, seagulls or other birds or animals or by leaving out rubbish before the due rubbish collection day.

Annex 2

Examples of Anti-Social Behaviour

Anti-social behaviour may or may not constitute criminal activity. The key factor in deciding whether particular behaviour is anti-social or not should be the impact of the behaviour on others. Where a reported behaviour may be subject to criminal proceedings then appropriate legal advice will be sought before actioning the complaint further.

The following is a non-exhaustive list of behaviours that may be deemed to be anti-social in nature:

- Noise nuisance (for example, loud parties, shouting, noise from TVs, radios, hi-fi's and burglar alarms);
- Intimidation and harassment;
- Local environmental quality issues (for example, litter, dog fouling, graffiti, fly tipping and nuisance vehicles);
- Aggressive and threatening language and behaviour;
- Actual violence against people and property;

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

Annex 3

Context and compatibility with other legislation and internal strategy and policy

The Departments ASB policy and procedure is compatible with obligations imposed on us by existing legislation, including:

- Anti-Social Behaviour Act 2003
- Childrens Act 1989 (in particular S.27)
- Crime and Disorder Act 1998
- Disability Discrimination Act 1995 (in particular S.2)
- Local Government Act 2000
- Homelessness Act 2002
- Race Relations Act 1976 (in particular s71)
- Data Protection Act 1998
- Human Rights Act 1998.

Additionally, this statement and summary have been assessed as compatible with the department's Housing and Homelessness Strategies.

Anti-Social Behaviour Act 2003

The Act brings in a number of new duties and powers for local authorities in their landlord capacity. These are:

- Duty to publish and keep under review policies and procedures for dealing with ASB.
- Amendments to Section 152 and 153 of the 1996 Housing Act relating to injunctions. Injunctions can now be obtained under the amended S153A, S153B and S153D of the 1996 Act to prohibit behaviour capable of causing nuisance and annoyance which directly or indirectly affects their housing management functions. This includes improper use of the premises and breaches of tenancy agreements. It widens the scope of injunctions so that they can be used to protect wider categories of people and can be used where the behaviour occurs at the Council's housing offices. The power of arrest can also be attached where there is actual or threatened violence.
- Demotion Orders are introduced. This enables the Council to apply to Court for an order demoting a tenant from a secure tenancy to a less secure one for a year. Technically, this would make it easier for the Council to obtain possession should the tenant continue to act anti-socially.
- The Courts must give particular consideration to the impact on victims, witnesses and the wider community in all nuisance related possession cases.
- The Council will be able to ask the Court to consider granting an ASBO on other parties involved with a tenant against whom the Council is taking possession proceedings for nuisance.

Children Act 1989

Section 27 of the Children Act requires any authority that is asked to assist by another local authority to protect the interests of a child to comply with the request provided the request is compatible with their own statutory duties and obligations and does not unduly prejudice the discharge of any of their other functions.

This means that a local authority must take in to account, and comply with, any requests concerning the interests of a child from other authorities, such as Social Services or the Education Authority, before deciding on appropriate action to deal with anti-social behaviour.

The forthcoming Children's Bill, which is expected to become law in the next few months, will introduce new measures to safeguard children and replace the existing child protection arrangements.

Disability Discrimination Act 1995

Section 22 (3) (c) of the Disability Discrimination Act states that it is unlawful for a person managing any premises to discriminate against a disabled person occupying those premises by evicting the disabled person, or subjecting him to any other detriment.

The definition of a disabled person includes those who have a mental health or learning disability, as well as those with physical disabilities.

In accordance with case law concerning this Act a landlord must take into account any disability before deciding what action to take. It would be discriminatory under the terms of the Disabilities Discrimination Act 1995 to seek to evict a person for nuisance if that nuisance arose because of the disability unless the nuisance is extreme and the resultant effect on neighbours is deemed to greater than the effect of the loss of the disabled person's home.

This is a developing area of law and it may be necessary to re-evaluate the situation in the light of emerging case law.

Local Government Act 2000

Section 2 of the Local Government Act 2000 gives local authorities the power to do anything which they consider is likely to achieve the promotion or improvement of the social well-being of their area and the promotion or improvement of the environmental well-being of their area.

This power may be exercised in relation to or for the benefit of all or any persons resident or present in the local authority's area and extends to people living outside the area. It enables a local authority to:

- incur expenditure
- give financial assistance to any person
- enter into arrangements or agreements with any person
- co-operate with, or facilitate or co-ordinate the activities, of any person
- exercise on behalf of any person any functions of that person
- provide staff, goods, services or accommodation to any person

The purpose of the Act is to enable local authorities to apply imaginative solutions to problems such as anti-social behaviour.

Housing Act 1996 (as amended by the Homelessness Act 2002)

The Housing Act 1996 (Part VII) sets out the Council's duties in respect of homelessness. That Act was amended by the Homelessness Act 2002, which required all local authorities to carry out reviews of homelessness in their areas and to develop a strategy for tackling it. Landlords, including the Council, are

expected to make every effort to resolve problems with anti-social and unlawful behaviour, and to explore all options for action, before taking steps to evict a tenant.

Another relevant provision of the Act is the duty placed on local authorities to assist persons where it is not reasonable for a person to continue to occupy accommodation because it is likely to result in violence. This is of particular relevance in considering requests for re-housing from the victims or witnesses of anti-social or criminal behaviour.

The 2002 Act also confirmed The Homelessness (Priority Need for Accommodation) (England) Order 2002 which extended the categories of people whom the local authority has a duty to assist on grounds of vulnerability to include the following:

- a) all 16/17 year olds not currently in Care or covered by the Children Leaving Care Act
- b) a person who is aged 18,19,20 or 21 who is a care leaver
- c) a person who is vulnerable as a result of having been in care (i.e. over 21)
- d) a person who is vulnerable as a result of having been a member of the Armed Forces
- e) a person who is vulnerable as a result of having served a custodial sentence or remanded in custody
- f) a person who is vulnerable as a result of violence or threats of violence from another person (including domestic violence)

These provisions have particular implications when considering applications for housing from the perpetrators of anti-social behaviour or criminal activity. The Act also changed the way in which local authorities may allocate their properties. In particular the Act removed the power for local authorities to implement blanket exclusions of certain categories of applicant. In its place a power was introduced which allows local authorities to decide that individual applicants are unsuitable to be tenants as a result of serious unacceptable behaviour.

Unacceptable behaviour is defined as:

“behaviour that would – if the applicant had been a secure tenant of the housing authority at that time – have entitled the authority to possession under section 84 of the Housing Act 1985 (other than ground 8)”.

This is a complex test but the Code of Guidance published in November 2002 states that, if authorities wish to treat applicants as ineligible on the basis of unacceptable behaviour, they must follow certain steps and satisfy themselves that: -

- a) there must have been unacceptable behaviour AND that such behaviour would constitute reasonable grounds for granting a possession order;
- b) that the behaviour is SERIOUS ENOUGH to make the applicant unsuitable to be a tenant of the housing authority; and
- c) AT THE TIME the application is considered, it is appropriate to take that behaviour into account.

The Guidance makes it clear that it is not appropriate to take into account previous unacceptable behaviour if the behaviour can be shown to have improved.

These provisions are important as they mean that people who have been evicted for anti-social behaviour cannot automatically be excluded from the Housing Needs Register. Each case must be considered on its merits. If an existing applicant or tenant on the Housing Needs Register or Transfer Register is guilty of anti-social behaviour then the same test is applied and, provided the criteria are met, they will receive no preference and will lose all their points for housing until such time as the behaviour has improved or is no longer relevant.

Data Protection Act 1998 and the Human Rights Act 1998

The Data Protection Act deals with the collection, storage and use of data. It is relevant because it places restrictions on the disclosure of data. The Act applies specifically to data that is of a personal nature. The data may be obtained and stored in a number of ways. For example data can be stored in a paper format (for example application forms and letters), on computer or on film or video (obtained for example through the use of CCTV).

Article 8 of the Human Rights Act

is also relevant. This states:

1. Everyone has the right to respect for his private and family life, his home and correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic wellbeing of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of rights and freedoms of others. This is of relevance as it prevents the Council from intruding on an individual's private life by undertaking surveillance or monitoring except in specified circumstances. It also restricts the information that can be shared with other agencies.