

OADBY & WIGSTON BOROUGH COUNCIL
ANTISOCIAL BEHAVIOUR (IN COUNCIL
MANAGED HOMES) PROCESS &
PROCEDURE GUIDANCE

VERSION 1

MAY 2021



1. Introduction

This procedure sets out how Oadby and Wigston Borough Council (“The Council”) will manage ASB within the Council’s housing stock and homes managed by the Council, which includes temporary accommodation owned or directly managed by the Council. This procedure should be read in conjunction with the Council’s Antisocial Behaviour Policy (2018)

The Council believes that everyone has the right to live peacefully in their home. Anti-Social Behaviour (ASB) and Neighbour Nuisance includes a broad range of disruptive behaviours, from behaviour of a serious criminal nature, to other activities that have an adverse effect upon the quality of life within a community.

We define ASB in line with the Anti-Social Behaviour, Crime and Policing Act (2014) as;

- Conduct that has caused, or is likely to cause, harassment, alarm or distress to any person
- Conduct capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises, or
- Conduct capable of causing housing-related nuisance or annoyance to any person

Example of ASB include:

- actual or threatened violence against people or property
- excessive noise, particularly late at night
- drunken or rowdy behaviour
- drug dealing or drug use
- insulting or aggressive behaviour and verbal abuse
- vandalism and graffiti
- domestic violence
- garden nuisance (for example: not keeping the garden maintained or dumping stuff in the garden)
- fly-tipping
- misuse of communal areas or public spaces / loitering
- nuisance from vehicles
- pets and animal nuisance
- other criminal behaviour, such as hate crime and harassment

While excessive noise late at night is considered to be antisocial behaviour, "living noise" is not. Examples of living noise include

- babies crying
- doors closing
- children playing

- toilets flushing
- DIY noise that is taking place at reasonable hours (7.00am to 11pm)
- walking across the floor
- Television/radio/music providing the noise does not exceed the permitted noise levels. (Current Government guidance/noise nuisance)

This type of noise may cause annoyance to some residents, but this sort of noise is a part of everyday life and should not be investigated as ASB

Whilst everyday living noise will not be investigated as ASB, steps should still be taken to resolve issues in other ways. For example, the Housing Officer (HO) can visit residents, give advice to neighbours about reducing noise

Other reports relating to behaviour that are not ASB included in this procedure are:

- Clashes of lifestyle, including cultural differences
- Smells from cooking
- Parking in the wrong bay
- Putting rubbish out on the wrong day

It is important that tenants show tolerance and are respectful of differing lifestyles and circumstances.

All Council staff, agents or contractors are entitled to work in an environment that is safe, secure and free from fear of violence, threats of violence or abuse.

Any behaviour of this nature directed at Council staff, agents or contractors is unacceptable and will be handled under the ASB Policy and Procedure.

A Corporate Warning List is kept centrally by the Council and all reports of the above must be recorded.

Officers must maintain a collaborative approach working alongside the Council's ASB Officers and the Police, as well as other relevant agencies depending on the nature of the case.

High risk cases or those which have an effect on the wider community should be referred to the multi-agency Joint Action Group (JAG) where a member of the Council's Housing Team should present the case and agree actions with those relevant agencies.

In addition to the Anti-Social Behaviour, Crime and Policing Act (2014) the Council also has statutory obligations to consider under the following legislation;

- Housing Act (1996)
- Crime and Disorder Act (1998)

- Human Rights Act (1998)
- Data Protection Act (1998)
- Anti-Social Behaviour Act (2003)
- Children Act (2004)
- Police and Justice Act (2006)
- Equality Act (2010)
- Children and Families Act (2014)
- Care Act (2014)
- General Data Protection Regulation (2018).

2. Opening a Case

ASB reports can be made to any Council employee. The initial report is important and brief details of the complaint.

Upon receiving a complaint the Tenancy and Estate Management Team (TEMT) will

- record the detail and open a case
- contact the complainant within 3 working days
- Assign an ASB level (1,2,3) to the case
- Formally acknowledge the complaint in writing

There will be occasions where the ASB reported will involve multiple classifications. In this instance the TEMT's response will be determined on the highest category.

3. Managing Cases

When a complaint is received, the TEMT will make an assessment of vulnerability on the complainant, witness and perpetrator as part of the Risk Assessment Matrix (RAM)

RAMs are shared with partnering agencies, where required, to determine the most appropriate cause of action and/or protection.

When a complainant, witness or perpetrator of ASB is identified as being vulnerable, a referral may be made to relevant support agencies.

The TEMT will ensure that all cases are recorded on the team's database and management systems.

All actions and communications will be recorded as file notes with copies of letters and documents also saved as part of the 'case file'.

The TEMT will also record qualifying details on Sentinel, which is an information sharing system that the team use in conjunction with Leicestershire Police and other partners.

ASB cases assigned a category 3 and 2 will be shared on Sentinel

All category 3 cases are notifiable. The case officer will update the line manager on the progress of the case during regular reviews

The TEMT will also update the complainant on a regular basis. This may be set out in the acknowledging communication as specified in 2.3 or through an action plan

The regularity of the contact must be agreed with the complainant, and must be a minimum of every two weeks

4. Interviewing the complainant

The initial interview with the complainant should capture in detail the problems being experienced and actions taken to resolve them

All reports of ASB will be taken seriously and sensitively, and ask a series of questions to gather information about the reported problem to inform decisions on the most appropriate course of action

The interview should set out to establish the facts of the ASB, establish who the perpetrator is, whether there are any witnesses, discuss possible solutions, what further evidence may be required, explain the importance of good record keeping (for example, through recording incidents on diary sheets, confirm what action the complainant might be interested in (mediation, witness in legal proceedings), and agree an action plan together.

The TEMT should identify any support needs at the earliest opportunity, for example:

- Referral to Victim Support
- Security improvements to the home
- Working with partner agencies

Re-housing as a priority will only be considered if the Police confirm that there is a risk to the complainant's life, usually through confirmation of an Osman warning having been issued

5 Agreeing an Action Plan

The TEMT will agree with the complainant an Action Plan. The Action Plan must set out the agreed actions and timescales that both the complainant and the Council will take. Possible action agreed may include the following:

- The complainant might be asked to talk with their neighbour where appropriate and safe to do so order to resolve matters effectively.
- Mediation
- Noise monitoring equipment
- Additional security measures
- Contacting the Police or another specialist support provider
- Safeguarding referral

The TEMT will agree with the complainant arrangements for keeping in contact (both the method and frequency). The Action Plan will include the contact arrangement, and should be reviewed by the HO every four weeks to ensure that the actions agreed have been met and are still relevant.

It may be that the ASB has worsened or lessened in seriousness since the case was first reported, and any such changes should be reflected in the action plan.

- Investigation including interviewing witnesses and alleged perpetrators

Each case must be treated individually and with an open minded approach. Investigations will include gathering evidence, addressing concerns quickly and effectively and aiming to resolve at the earliest opportunity. Evidence can include:

- Reports
- Letters
- Diary sheets
- Witness statements
- Photographs

Where a complainant wishes to remain anonymous this must be respected and upheld by the Council. The HO should however make it clear to complainants that there will be occasions where perpetrators may be able to figure out who has made the complaint based on the nature of the complaint.

In these circumstances the HO must not confirm or deny the perpetrator's beliefs but affirm that the report has come from an anonymous source.

It is important that the complainant feels heard and supported, and can see that their complaint is handled in a professional manner.

The HO will contact the alleged perpetrator and seek their response. The purpose of interviewing the person complained about is to establish their version of the incident(s) that have been reported

If the complainant has requested anonymity this must be respected. The HO will put the allegations clearly, note the response and question any discrepancies or counter allegations. All notes and actions relating to the discussion are to be entered onto Orchard within 5 working days.

Where the alleged perpetrator does not make contact, or attend meetings, the HO will continue to attempt to make contact and if no contact continues, will refer the case to the SHO.

Where necessary the Council will work with the person responsible for causing the ASB to identify support needs which may address the underlying causes of their behaviour. If someone has been offered support but does not engage with it and their ASB continues, the Council will take appropriate action.

Officers should be mindful of vexatious complaints, which are complaints which are pursued, regardless of its merits, solely to harass, annoy or subdue somebody; something that is unreasonable, without foundation, frivolous, repetitive, burdensome or unwarranted.

Where a complainant makes a vexatious complaint/s the HO should raise this with the SHO and agree the appropriate action, which is likely to include closure of the case and a warning letter to the vexatious complainer in the first instance.

Action in relation to perpetrators

Actions taken will depend upon each individual case and must be proportionate and reasonable.

There is a range of legal and non-legal action. In the majority of cases it is hoped the problem can be resolved through non-legal interventions such as mediation, warning letters, or interviews.

In some cases it will be appropriate to take legal enforcement action (injunctions, possession proceedings, demotions).

ASB Action (non-legal)

As a Borough and County each local authority is committed to the tiered, incremental approach when dealing with ASB. Early intervention through an informal approach can be successful in stopping ASB committed by most perpetrators. These methods should be considered and, where safe to do so, exhausted first to attempt to stop behaviour before it escalates.

On receiving the report the Officer will first assess the type of ASB, the risk of harm to the victim, and any vulnerability to identify how to deal with the complaint.

Early intervention through informal approaches will be considered in the first instance before exploring the more formal enforcement tools. Types of non-legal/early intervention include:

- **Verbal and Written Warnings** - Warnings are issued when there is evidence of ASB occurring or likely to occur. They make it clear to the perpetrator, parent or guardian what behaviour is causing the issue, the effect this is having on the victim or the community, and the consequence of not adhering to the warning
- **Community Resolution** - This is where a resolution is found for a less serious issue of ASB where an informal agreement is reached between the parties involved, as opposed to progression through legal action
- **Mediation** - Mediation can be an effective tool, solving the issues by bringing all parties together to talk through their concerns. HO are able to offer mediation on a confidential, impartial basis that can solve many incidences of misunderstanding or unintentional ASB. An example of when mediation would be used is when two neighbours fall out over a difference, such as the position of a boundary fence
- **Restorative Justice** - Restorative justice gives a victim of ASB an opportunity to communicate with the perpetrator in a controlled environment, to tell them how their behaviour is impacting on them, giving them a voice. It holds the perpetrator to account for what they have done
- **Acceptable Behaviour Contracts (ABC) / Parenting Agreement (PA)** - These are voluntary written agreements between an individual and the Council. The ABC is entered into in conjunction with other agencies including the Police and the Youth Offending Service. They contain pledges to behave in a certain manner or to stop doing certain things. An ABC or PA is not legally enforceable but if they are broken, they can be used to form part of the evidence required to proceed to another level of action, such as Court
- **Support and Counselling** - In many cases there are underlying causes of ASB. Substance misuse or alcohol dependency can drive ASB. We will refer, where possible, to the appropriate agencies that can offer support and counselling depending on the circumstances of the person concerned

in the ASB, including referrals to Supporting Leicestershire Families and the Council's Housing Services

- **Surveillance** - As part of the Council's response to dealing with ASB, it reserves the right to work with partner agencies to carry out both covert and overt surveillance. Surveillance may be visual or audio. Any surveillance will be appropriately authorised, proportionate, and justified. This will include, where necessary, the monitoring of CCTV. At times we will be required to disclose our CCTV images to a third party, such as the Police, where there is a need for the prevention and detection of crime, and for the apprehension of offenders.

In addition, any surveillance undertaken with regards to the investigation will be dealt with in accordance with all relevant legislation.

Extension of an Introductory Tenancy

The Housing Service can, under certain circumstances, extend an Introductory Tenancy for a period of six months by serving a Notice of Extension on the tenant, at least eight weeks before the tenancy would normally have been made secure.

Some complainants may desire a move due to the behaviour they have experienced. Any such requests should be considered by the Housing Options Team under the Allocations Policy, and residents who request a move should be referred to the Council's website to apply to the Choice Based Lettings (CBL) scheme where they can apply to the register and submit any supporting evidence. Should they make reference to ASB in their CBL application the housing options team may contact the HO for information about the case.

Officers should advise complainants and perpetrators that re housing is not an action within the ASB policy, or the TEMT procedures and processes as the aim is to resolve the situation by changing the behaviour.

In exceptional cases there may be a requirement for an urgent move due to a risk to life of any involved parties residing in a Council managed property. These cases should be referred to the Housing Manager for consideration in line with the Council's allocations policy.

Where the Housing Manager is not immediately available such cases should be referred to the Senior Housing Options Officer for consideration and signed off by the Head of the Built Environment.

Enforcement action (legal action)

If perpetrators are unwilling to change their behaviour following attempts along the informal intervention route, then there are some formal tools that can be used by the Council. Before taking enforcement action the officer must complete the "Enforcement

action request” form which is to be signed off by the Housing Manager. Enforcement action includes:

- **Civil Injunction** - A Civil Injunction is an order made by the court to stop or prevent individuals engaging in ASB. It can resolve any issues before they escalate and can help the perpetrator to address the underlying cause of the ASB. An injunction can be obtained for people causing ASB from the age of 10 years. If the terms of an injunction are not adhered to, it can result in a fine or imprisonment for up to two years for anyone over the age of 18.

For anyone under the age of 18 it could result in a supervision order, or detention for up to three months. In addition to this, the breach of an injunction could mean that a tenant faces a mandatory possession order being granted by the court

- **Criminal Behaviour Order (CBO)** - A CBO can be issued in a criminal court against a person from the age of 10 years upwards. It is used to tackle the most persistent anti-social individuals who are engaged in criminal activity, and have been convicted of an offence.

Breaching a CBO is a criminal offence and for anyone over the age of 18 can result in up to five years imprisonment, a fine, or both. Anyone under the age of 18 could face a two year detention order, with part of that detention served in custody

- **Closure Orders** - This can be used to close a property when it is being used, or likely to be used, to commit serious nuisance or disorder. The initial Closure Notice is valid for either a 24 or 48 hour period followed by the application to the court for a Closure Order. This is a fast and flexible power that can be used to protect victims and communities by quickly closing premises where ASB is prevalent.
- **Community Protection Notices (CPN)** - A CPN is intended to deal with particular, on-going problems or nuisances which negatively affect the community’s quality of life, such as graffiti, rubbish, or noise by targeting those responsible
- **Public Space Protection Orders** - These orders impose conditions which may include multiple restrictions and requirements in an area such as parks, alleyways, or communal areas, where ASB is being detrimental to the local community. They are designed to ensure that the majority of people can enjoy public spaces and feel safe, and the conditions could be around alcohol, dogs, or noise for example

- **Demotion Orders** - Demotion orders allow the Council to apply to the courts to reduce the security of tenure for tenants, and can be a precursor to taking possession of the property. These orders remove a number of rights including the right to buy and the right to exchange.

Demoted tenancies last for a year and may be extended if notice to seek possession of the property is served during this period. The orders are a serious warning to tenants that if the negative behaviour continues, swift action can be taken to seek possession of their home

- **Possession Proceedings** - This is court action that can lead to Council tenants being evicted from their homes. Before this stage is reached the tenants involved will have had several warnings to stop their behaviour. Evicting someone, who may have a family and children, from their home, is a very serious consequence. The Council would have to prove to the court that on the 'balance of probabilities' the tenants have broken the terms of their tenancy agreement, and that it is reasonable for the court to evict the tenant

The *Anti-Social Behaviour, Crime and Policing Act (2014)* has introduced a new absolute ground for possession for secure tenancies where ASB or criminality has already been proven by another court. This means that the Council will no longer need to prove that it is reasonable to grant possession, and the court must grant possession providing set procedures have been followed.

The Officer may seek permission to serve a Notice of Seeking Possession (NOSP), which is the first stage in possession proceedings by using "Permission to serve NOSP" form, which is signed off by Housing Manager. By serving the notice this does not mean that possession action will immediately commence after the notice period has expired, and the HO will need to complete the "Enforcement action request" form before proceeding to court.

Criminal Behaviour

Any criminal offences must be reported to the police for them to investigate and take appropriate action.

If a complainant reports that they have been a victim of a crime then it is their responsibility to report this to the police. An officer may report the crime on behalf of the victim if it is necessary to do so due to safeguarding concerns or due to the vulnerability of the victim.

In such cases the Officer must ensure that they note the reasons for reporting the crime on behalf of the victim and record the crime reference alongside the note on

Orchard. Where there are safeguarding concerns the Officer must ensure that they report any concerns via the relevant safeguarding pathway.

Safeguarding and domestic abuse

The Council actively participates in multi-agency arrangements to safeguard children, young people, and adults.

The law requires the Council to ensure that its functions are discharged with regard to the need to safeguard and promote the welfare of children. Provisions within the *Care Act (2014)* mean that adult safeguarding has also been placed on a statutory footing.

When dealing with ASB Officers may come into contact with children and adults for who there are safeguarding concerns. Where an Officer has concerns it is their duty to report this via the relevant safeguarding pathway.

These are outlined in the Council's own safeguarding policies. The HO should also notify the line manager and ensure the actions from the safeguarding concern are noted in tenant's notes.

Reports of domestic abuse should be dealt with in accordance with the Council's Domestic Abuse in Council Tenancies Policy, however is recognised that some reports of ASB could be an indicator of potential domestic abuse. Officers must ensure any potential indicators for domestic abuse are actively considered as part of the ASB investigation and appropriate action taken in line with Council policy.

Closing a Case

The HO should proceed to take steps to close the case if:

- The situation has been resolved and an agreement has been reached with complainant;
- Where there is insufficient evidence, or evidence shows that the allegations are unsubstantiated or misplaced; or
- Where the perpetrator of the anti-social behaviour has been evicted or is no longer in the locality of the complainant e.g. they have moved out of the Borough
- Where there has been no contact with the complainant in four weeks, and the HO can evidence that an attempt has been made to contact with the complainant in the last two weeks

To avoid cases being open indefinitely, the Council has a robust process of review with the HO dealing with each case on its own merit. Where the case has been open

for 12 weeks it will be reviewed by the HO, referring onto the line manager for a decision.

All high risk cases will be referred to the JAG who will review all actions in these cases and task the HO if further recommendations are required.

Before closing the case the HO should advise the complainant of the intention to close the case, and the reasons why, and where possible, gain their agreement.

The HO will complete the Case Closure Request form and send this to the line manager for sign off.

If the HO has any concerns about the case closure or the line manager has any questions following the request then this should be discussed with a resolution agreed alongside any necessary actions. The line manager should sign off the case closure request form within 7 days of receiving it.

Once the case closure request has been signed off the HO must then send the standard closure letter to the complainant advising them that the case has been closed. The case should be closed within 7 days of the case closure request approval. The HO will then note the actions on Orchard and the ASB spreadsheet noting the date the case was closed and the reasons.

If after the case is closed the HO becomes aware of further evidence linked to the initial complainant then the case can be re-opened. If there is no substantial link or a period of more than 3 months has passed since the case closure a new case should be opened. The HO should ensure that they note on Orchard where there are relevant links to a previous case.

Review of Cases by Senior Officer

The Senior Housing Officer (SHO) will review a sample of at least 20 per cent of cases of anti-social behaviour every four weeks (open and closed). When carrying out a case review the SHO should use the "case review" form and note the findings of the case review to be reported to the Housing Manager as part of the ASB Performance Report.

The findings of the case review and ongoing caseloads should be discussed with HOs as part of 121s. If during the course of a case review the line manager picks up on a serious issue they should not wait to the 121 to discuss the case with HO but do so immediately, and ensure any corrective action is taken.

Performance Management

The line manager should ensure that they discuss case reviews and ongoing caseloads with HOs as part of 121s. Any individual performance issues should be dealt with in line with the Council's Capability or Disciplinary policies.

The SHO will produce a monthly ASB Performance report which will include:

- Performance in relation to Council Key Performance Indicators (KPI)
- Number of open cases
- % of cases investigated on time
- Number of cases closed (and resolution outcomes)
- ASB actions taken (both formal and informal)
- Outcome of case review
- Complainant satisfaction with the way their case was handled

The Housing Manager will provide quarterly KPI updates to service delivery committee as part of the service delivery report.

Data Protection

All data handled in ASB cases will be done so in accordance with the Council's Data Protection Policy.

Feedback and Complaints

The Council will use feedback and seek to resolve any complaints about the ASB service under the Council's complaints procedure.