

## **Registered Social Landlords Fact Sheet 1**

### **Remedies for Anti Social Behaviour**

The remedies for Anti Social Behaviour are now wide and varied, and this brief fact sheet cannot set out in full all the information you need to choose the correct remedy. It is intended to be a checklist and reminder for the busy housing professional, and an overview for those with less experience in the field. It cannot be a substitute for detailed legal advice, and should be considered in line with your organisation's own policy and procedures.

#### **What is Anti Social Behaviour?**

The Crime and Disorder Act 1998 defines the conduct necessary to obtain an Anti Social Behaviour Order is described as acting "in a manner that caused or was likely to cause harassment, alarm or distress"

The Housing Act 1996 S153A requires conduct capable of causing a nuisance or annoyance to any person, and directly or indirectly relates to or affects the housing management functions of a relevant landlord before an Anti Social Behaviour Injunction can be granted .

#### **Remedies available.**

##### ***Letters/Visits***

Letters and visits recorded on the house file can be valuable pieces of evidence as to the management of the tenancy generally. They serve several functions

- warnings to perpetrators
- file note recording activity
- evidence for later court proceedings
- satisfy reasonableness test by communicating problem to perpetrator and giving him or her an opportunity to reform.

##### ***Solicitors Letter***

As above, but stepped up response which may have impact on some perpetrators as letter warning of pending court action.

##### ***Acceptable Behaviour Contract***

An ABC, often entered into in conjunction with the Police will have the same effect as letters/visits in focussing minds, with the added advantage that the tenant is forced to reflect on his or her behaviour and perhaps admit/accept responsibility for previous failings.

##### ***Injunctions***

An injunction is an Order of the Court prohibiting some form of behaviour.

It is available where a right is to be enforced (for instance the contractual rights of a Landlord under a tenancy agreement), or where statute specifically allows it – such as S153 Housing Act 1996.

RSLs can obtain injunctions against tenants and non tenants alike, where anti social behaviour is affecting their housing management functions, and they can be used to protect anybody living or lawfully being in the area of the RSL's stock.

They are available only against those over the age of eighteen. They can be obtained very quickly – immediately in some situations.

The Judge can add a power of arrest to the injunction, which gives the police extra powers to arrest for breach of an injunction, even if no crime has been committed. This is a powerful incentive for perpetrators to avoid breach.

It is possible to remove a tenant or a non tenant from a particular property and even exclude them from a defined area.

Whilst the burden of proof for an injunction is the same as for a claim for possession (the facts must be proved “on the balance of probabilities”), in practice they are easier to achieve than a possession order, in that what you are asking the court to do (prevent some behaviour that is generally not permissible in any event) is far less draconian than removing an individual from his or her home.

The remedy for breach of an injunction is for the Court to consider committing the perpetrator to prison, for “contempt of court”. The onus is on the RSL to make the application back to the Court, though if a power of arrest is in place, the Police may deliver the Defendant to the Court building.

### ***Demoted Tenancy Applications.***

Introduced by the Anti Social Behaviour Act 2003

Available where tenant/person residing with or visiting tenant:

- a) has engaged/threatened to engage in anti social behaviour (s153A) or
- b) has engaged in threatened to engage in unlawful use of premises (s153B)

The application to obtain the demoted tenancy is similar to an application for possession, in that Notice (28 days) must be served before proceedings can be commenced, and then a court date listed for hearing.

The Court can demote an assured or secure tenancy to a Demoted tenancy, which will last for twelve months. If further anti social behaviour occurs during that period, two months notice can be given and then an application made to the Court to remove the tenant. There would generally be no defence to such an application being made.

The demoted tenancy can be a useful tool where for example the perpetrator has support needs that have not previously been met, and a “carrot and stick” approach is necessary to ensure that the support is accepted, whilst retaining control so that eviction can be straightforward if problems occur.

## ***Possession Proceedings***

Given the plethora of other remedies available, possession proceedings must be considered as something of a last resort, where it is felt that the only opportunity of preventing the anti social behaviour is removal of the tenant altogether.

Notice of Seeking Possession must be served on the tenant prior to the proceedings being issued. Where possession is sought for Anti Social Behaviour (Ground 14 for assured tenants, Ground 2 for secure tenants) there is no minimum notice period, even if other grounds are also cited. Proceedings can start immediately.

If there is already a Suspended Possession Order in place, for instance for rent arrears, it may be possible to convert that order to a Suspended or even Outright possession order based on ASB, if circumstances permit – legal advice should be taken before making such an application to the Court.

Where the Court is satisfied that the case for possession has been proved, the Judge must then find it reasonable to make an order for possession. If so satisfied, the Judge must then consider whether the Order ought to be suspended, upon terms.

## ***Anti Social Behaviour Orders***

An application for an Anti Social Behaviour Order may be made by a Registered Social Landlord against any person aged 10 or over if

- (a) that person has acted in an anti social manner, that caused or was likely to cause harassment alarm or distress to one or more persons not in the same household as himself; and
- (b) that such an order is necessary to protect relevant persons from further anti social acts by him.

The Court may impose prohibitions necessary for purpose of protecting persons from further anti social acts by the Defendant.

If without reasonable cause, the Defendant does anything he is prohibited from doing, he is guilty of an offence and may be liable to imprisonment of up to six months or to a fine not exceeding the statutory maximum, if a summary conviction, or up to five years if on indictment.

The Order may be made in the Magistrates Court in freestanding proceedings, or in the County Court within possession proceedings. ASBOS can also be made post conviction in the Magistrates Court.