

## **Registered Social Landlords Fact Sheet 2**

### **Evidence for Anti Social Behaviour**

#### **Introduction**

The ability to deal effectively with Anti Social Behaviour will depend entirely on whether an RSL can place sufficient evidence before a court to prove that a remedy is necessary. The following remarks will apply regardless of the remedy chosen and will assist RSL's in ensuring that proceedings reach a successful conclusion.

It is obviously critical to be able to present evidence of the matters alleged against a perpetrator whether they are a tenant or not. However you should be wary about acting on the uncorroborated evidence of one individual. If your case is challenged in Court you will be in the vulnerable position of having to put one person's word against another's, and it is often difficult to predict the outcome.

An RSL needs to take a balanced view of a situation. Try to seek out evidence that may support the complainant and make a judgement based on the evidence that is available.

Evidence can be in many different forms but is likely to include:

- Witness statements and testimony
- Nuisance Diary Sheets
- File records or interview reports
- Warning letters
- Conviction Certificates
- Video or CCTV footage
- Photographs

#### **Witness Evidence**

The primary source of evidence will come from residents in the form of a witness statement drawn up from their first hand knowledge of the anti social behaviour. The content of the witness statement will normally be based on nuisance diary sheets but might also be drawn from letters of complaint or telephone complaints providing you have kept a record. The witness will then testify in court as to the content of the statement.

##### *Professional Witnesses*

You should try to obtain evidence from as many sources as possible. The most common professional witness will be the Housing Officer. He or she may have witnessed the anti social behaviour first hand and most likely received the complaints from tenants. Other professional witnesses could include the police, estate wardens, caretakers, maintenance staff or private investigators.

##### *Lead Officer Statement*

With the advent of structured judicial discretion in possession proceedings it is now very important that an appropriate officer on behalf of the landlord make a statement that

addresses a number of key issues. We call this the Lead Officer Statement and it is designed to explain to the court:

- What other means of resolving the problem were employed
- Why legal action was necessary
- The effect of the anti social behaviour on the complainant and other tenants
- The problems that will ensue if the anti social behaviour is allowed to continue
- What order/remedy is being sought

This statement will be used to persuade the court that it is reasonable to make an order for possession having already made out the Grounds.

## **Hearsay Evidence**

The best form of evidence will be first hand oral evidence given by a witness at court. This is known as live evidence. However in civil proceedings hearsay evidence can be used.

Relying solely on hearsay evidence would in most cases be insufficient to enable a landlord to succeed in proceedings. The courts will give less weight to this type of evidence because it is impossible for a defendant to challenge its veracity.

Strict procedural rules must be followed if hearsay evidence is to be relied upon. A Judge will question why a witness feels unable to attend Court and may dismiss his or her evidence entirely if non attendance cannot be justified.

Hearsay evidence can be:

### *Witness statements*

Where a person who gave the statement is either unable or unwilling to attend court the statement can be filed at court and used as evidence of what is alleged.

### *Documents*

A complainant may be willing to keep nuisance diary sheets and for these to be shown to the court but will not give a statement or attend court. These diary sheets would be an example of hearsay evidence and could be exhibited to the Housing Officers statement.

### *Conviction Certificates*

Conviction certificates can be obtained from Magistrates Courts on payment of a fee. The convictions are not in strict legal terms conclusive evidence that the defendant committed the act complained of. But in practical terms, they are useful because the defendant is unlikely to be able to persuade the court that he didn't do it.

### *Police logs*

Housing Associations should by now have well developed Protocols for information exchange with Police Authorities for areas they operate in. The Housing Act 2004 strengthens powers to request information.

## *CCTV , Video and Photographs*

Video evidence can also be powerful. Again, it is necessary to record when it was taken, and who by. Local Authorities taking video evidence are subject to the requirements of the Regulation of Investigatory Powers Act 2000, and must take expert legal advice before starting to gather such evidence.

Photographic evidence can be valuable, particularly as it can be stored digitally and transmitted and printed easily when later required. It is important to record the date the photos were taken, and who took them, in case they are later required as evidence.

## **Supporting your Witnesses**

### *Diary sheets*

Diary sheets should be widely distributed for completion. Explain why they are necessary. Spend some time with people showing them how you would like them to be filled in, and agree when you will collect them up for review.

Ask witnesses to use technology where they have it available. If reports can be filed by e mail, then information can be cut and pasted to compile reports and statements later on.

### *Explain the process*

It is important to remember that your witnesses are likely to find the legal process mystifying, slow and intimidating. At the same time they may be dealing with the effects of the Anti Social Behaviour on daily basis, which may be tiring, stressful and further intimidating.

Your case is likely to depend upon their co-operation and goodwill, and it is essential that they feel some kind of "ownership" of the process. It is often useful to hold regular meetings or at least write to your witnesses to ensure that they are kept up to date, and have as much knowledge as possible of the court process, including it's limitations where necessary. It can be hugely beneficial to hold a meeting between witnesses and the solicitor to talk through the Court process.

A fact sheet for tenants can be a useful tool to avoid them getting frustrated with the process which they may perceive operates slowly and is more supportive of the alleged perpetrator than them.

### *Witness support*

Witness support by a lead officer is essential. The willingness of a witness to attend court may depend on the support that can be offered to them. The following issues may assist:

Direct line of contact at short notice

Early contact with solicitors

Support between issuing proceedings and the hearing

Support at the hearing

Transport to court / fares or loss of earnings

Use of interim orders

Personal protection (CCTV, panic buttons, spyholes, re-housing etc)

## **In summary**

- Identify a lead officer
- Investigate thoroughly
- Comply with policy and procedure
- Keep full records
- Identify all sources of evidence
- Be realistic about what is possible
- Agree an action plan
- Communicate with witnesses and be supportive