

Wigan Community Resilience Team

# ASB Resolution Model

5-step framework for tackling anti-social behaviour

### Background

Challenging and tackling anti-social behaviour within the Wigan Borough whilst building community resilience is the primary objective of the Community Resilience Team.

In August 2019 new Statutory guidance was issued by the Home Office to front line professionals:

<https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

The guidance is intended to support the police, local authorities, and social landlords in their use of powers conferred under the Anti-social Behaviour, Crime and Policing Act 2014 to address anti-social behaviour.

The changes in this guidance aim to ensure that there is a greater focus on the impact of anti-social behaviour on victims and on their needs, ensuring that the relevant legal tests are met before the powers are used, underlining the importance of ensuring that the use of the powers are focused on specific behaviour that is anti-social or causing nuisance, and ensuring that the issues of local consultation, accountability and transparency are addressed.

As a service is it essential that we deliver appropriate interventions, with partners, to all reports of anti-social behaviour.

To meet this purpose, we have developed our '**ASB Resolution Model**' This is an incremental staged 'framework' approach designed to build community resilience in attempting to resolve incidents of anti-social behaviour, initially through a restorative approach but subsequently leading to enforcement action if that approach is unsuccessful.

Application of the model will be on a case by case bases and recognises that some serious cases will go straight to urgent enforcement to safeguard individuals, families, and communities.

The model comprises of 5 steps:

1. Self Help
2. Report It and initial response
3. Early and Informal Resolutions
4. Case Investigation / Evidence Gathering
5. More effective powers of Enforcement

### **Step 1 Tactics (Self Help):**

#### **Speak to your Neighbour**

If you become aware of a neighbour complaint, you should first encourage them to talk to their neighbour and try to resolve the matter if it is safe and they feel comfortable doing so. This is often the best way to sort out issues and can stop things getting worse. Reporting it straight away can cause resentment and make resolving the situation more difficult. The neighbour may not realise they are causing problems and may be happy to change their behaviour.

Reinforce that the conversation they have must be a friendly conversation with the other party *See our Good Neighbour guide* for how to advise them to approach this conversation.

If they do not feel able to have the conversation with the other party, why not get them to ask a friend or relative to speak in a friendly manner on your behalf.

Ensure that you advise the complainant to make a note of the time and date they had the conversation.

#### **Write to your Neighbour**

If they are concerned about physically approaching their neighbour, advise them to consider writing them a friendly letter to outline the issues that are affecting them. Remember they may not be aware of the impact they are having.

Alternatively, advise them to send them one of our *Dear Neighbour Card*, to highlight the issues they are concerned about. These can be downloaded from our website.

Ensure that you advise the complainant to make a note of the date that they sent the letter, and ideally retain a copy.

#### **Complete Diary Sheets**

Keeping a record of the times, dates and a description of what has happened is essential to show the type of problem they are having if it is occurring on a regular basis, and ideally should be completed before they consider reporting the matter to us. This will ensure that we have a full appreciation of the problems they are encountering and will assist us in agreeing with them the next and most appropriate course of action.

They can download a nuisance/noise diary from our website ([www.wigan.gov.uk](http://www.wigan.gov.uk)), Please ensure that they are advised to follow the instructions on the diary sheets on how to complete as this may become important evidence for a case in the future.

**Note:** *If a resident is unable to read/write for any reason, including additional vulnerabilities. Dictaphones can be loaned instead of completing Diary Sheets.*

#### **How long should they complete Diary Sheets for before reporting it?**

We would request that you complete Diary Sheets initially for the following periods before reporting it to us:

*7 days – if alleging a daily occurrence*

*14 days – if alleging several times, a week*

*28 days – if alleging several times, a month.*

**Noise Monitoring Apps**

There are many noise monitoring Apps available, which if they have a suitable mobile phone can be downloaded and used to support entries that they make on your noise diary sheet by recording the noise they are experiencing. Wigan Council is registered to receive recordings captured by 'The Noise App'.

Please ensure that you advise complainants that if they are making recordings via their mobile phone, that they place their phone down on a suitable surface rather than keeping hold of it and be aware that it will also record noises in their own home, including speech.

**Step 2 Tactics – Initial report and Response:**

Part of this stage may have already been gleaned through the complainant contacting the Council through the Contact Centre or by another third-party contact. This stage should initially commence with reviewing what we already know about the issue, then making direct contact with the complainant to arrange a face to face meeting at a mutually convenient time and location. The stages of this element of the model include:

- Completion of Fact-finding sheet at point of reporting
- Referral back to 'step 1' if not completed and appropriate
- Face to face meeting with complainant:
  - Discuss issue
  - Obtain written consent
  - Victims Voice - Identify and document expectations / manage expectations
  - Identify and agree course of action (Action Plan)
  - Establish if any other issues would require support – facilitate that support if appropriate by liaising/coordinating with services
  - Emphasise importance of mediation
- Face to face meeting with alleged perpetrator
  - Discuss issue, specifically making them aware of what is causing the issue
  - Discuss possible solutions including advice re being a 'good neighbour'
  - Identify and agree course of action (Action Plan), effectively an informal acceptable behaviour agreement.
  - Establish if any other issues would require support – facilitate that support if appropriate by liaising with services.
  - Emphasise importance of mediation
  - Outline potential consequences – informal warning
- Send follow up letter outlining agreements of face to face meetings to both complainant and alleged perpetrator included documented action plan.

### **Step 3 Tactics – Early and Informal Resolution**

If following the initial response complaints continue to be received indicating that the steps already taken have not been successful in resolving the issue, our approach should be to continue attempting to resolve the matter in as informal a manner as appropriate. One or more of the following tactics can be used and there does not necessarily have to be an order in which they are used as every case is different, neither is there a necessity to try all the tactics. Other forms of intervention may just be a further conversation with the other party and trying something different!

Possible informal interventions include:

#### **Try something different!**

Don't be afraid to think outside the box for an innovative solution, remember a solution that may cost us several hundred pounds but resolves the matter is a solution that will save considerable money if you consider the thousands of pounds it will cost to undertake a case involving legal action. Some innovative yet simple solutions that have been used in the past by way of example include: Purchasing wireless headphones for a noise complaint where it was the volume of the TV of one hard of hearing resident disturbing the neighbours. Another was paying to carpet a room to reduce the sound of general movement to the residents living below. A door closing device, where the complaint relates to banging doors. Clearly in each of these cases the ability to pay by the resident should first be considered if they can afford to pay for the remedy themselves.

#### **• A verbal or written warning**

In deciding whether to use a verbal or written warning, you should still be satisfied that there is evidence that anti-social behaviour has occurred or is likely to occur. The warning should be specific about the behaviour in question and why it is not acceptable, the impact that this is having on the victim or community and the consequences of non-compliance.

Where appropriate, local agencies should alert each other when a warning has been given so that it can be effectively monitored and a record should be kept so that it can be used as evidence in court proceedings later, if matters are taken to that stage.

#### **• A community resolution**

Community resolutions are a means of resolving less serious offences or instances of anti-social behaviour through informal agreement between the parties involved as opposed to progression through the criminal justice process. A community resolution may be used with both youth and adult perpetrators and allows the police to deal more proportionately with less serious crime and anti-social behaviour, taking account of the needs of the victim, perpetrator, and wider community.

Community resolutions are primarily aimed at first time perpetrators where genuine remorse has been expressed, and where an out-of-court disposal is more appropriate than taking more formal action. The Community Remedy document discussed in Part 1 of this guidance must be used when dealing with anti- social behaviour or less serious offences out of court through community resolutions.

#### **• Mediation**

In appropriate circumstances, mediation can be an effective way of resolving an issue by bringing all parties together. This can be effective in resolving neighbour disputes, family conflicts, lifestyle differences such as noise nuisance complaints and similar situations. However, mediation is unlikely to work if forced on those involved. All parties must be willing to come to the table and discuss their issues and engage in the process.

It is not for the mediator to establish a solution to the issue as, in most cases, they will have already tried this with each party unsuccessfully. For mediation to deliver long-term solutions, those in dispute should agree a solution. The mediator should facilitate the conversation and draw up any agreement if required for all parties to sign-up to if agreement is reached.

- **Acceptable Behaviour Contracts/Agreements**

An acceptable behaviour contract or agreement is a voluntary written agreement between a perpetrator of anti-social behaviour and the agency or agencies acting locally to prevent that behaviour. It can be an effective way of dealing with anti-social individuals, and particularly young people, to nip the problem behaviour in the bud before it escalates. They provide an opportunity to include positive requirements as well as prohibitions to help support the person tackle any underlying issues which are driving their behaviour.

The terms of an acceptable behaviour contract or agreement should be discussed with the perpetrator before they are drafted and signed to help encourage compliance. However, there is no formal sanction associated with refusing to sign, although in such circumstances, this may suggest that a Civil Injunction or a Criminal Behaviour Order should be considered.

In the event of a refusal to sign we should ensure that we document in writing and send a further warning letter or 'advisory notice' outlining that we have sought agreement through an acceptable behaviour agreement, the fact they have declined to agree to such a contract and the consequences of what may happen should they continue to behave in an anti-social manner.

Similarly, there are no formal sanctions associated with breaching an acceptable behaviour contract or agreement, and where this occurs, consideration can be given to taking further steps, such as seeking a Civil Injunction, if the circumstances warrant this. Where this is the case, the work undertaken as part of drafting the acceptable behaviour contract or agreement can form part of the evidence pack for the court.

- **Parenting contracts**

Where informal interventions are used with a young person under 18, his or her parents or guardians should be contacted in advance of the decision to act. In many cases, they may be able to play an important part in ensuring the individual changes their behaviour. While there are formal routes such as parenting orders, at this stage it will be expected that the parent will have a voluntary role to play in any acceptable behaviour contract. However, where the behaviour of the parent or guardian is part of the issue (either because they are a bad influence or are failing to provide suitable supervision) we could consider a parenting contract. These are like an acceptable behaviour contract but are signed by the parent or guardian. They could also be considered where the child in question is under 10 and where other interventions are not appropriate for the perpetrator themselves. This

could also be a good opportunity to explore any additional support that could be offered to parents that are struggling, including parenting courses.

- **Support and counselling**

The anti-social behaviour powers allow professionals to respond to the underlying causes of anti-social behaviour, for example through positive requirements attached to a Civil Injunction or Criminal Behaviour Order. However, providing positive support does not have to wait for formal court action, and can be given as part of any informal intervention, for example by providing support around overcoming substance misuse or alcohol dependency that may be linked to the person's anti-social behaviour.

### **Conclusion**

In many cases, informal and early intervention can be successful in changing behaviour and protecting communities. Such interventions may be included in local plans to deal with anti-social behaviour but should not replace formal interventions where these are the most effective means of dealing with anti-social behaviour.



#### **Step 4 – Case Investigation / Evidence Gathering**

Clearly all of the aforementioned steps will include an element of evidence gathering and case investigation, so this step is not exclusive but is designed to ensure a focus on evidence gathering with the intention of undertaking more formal enforcement through the Courts. Equally the fact that we are moving towards enforcement action may bring about a voluntary change in behaviour of the alleged perpetrator and if this is the case, then resolution through an informal process may be more appropriate.

Prior to undertaking expensive and time-consuming evidence gathering, especially involving technical deployments, liaison should occur with other agencies and departments to ascertain any work they are already undertaking. This will also ensure that we are not seeking to undertake enforcement action where another arm of the Council is investing heavily in support of the individual or another agency is already seeking a prosecution (for example, police). To that end it will be necessary to hold a multi-agency meeting to discuss the most appropriate way forward.

If there is a difference of opinion between Council Departments regarding the most appropriate method of tackling the issue, then this must be escalated for resolution at management level.

Evidence gathering may include any of the below:

- Liaison with Legal Services to agree levels of evidence required to move to Step 5
- Deployment of Noise Monitoring Equipment – in cases of noise nuisance we can install our noise monitoring equipment to help capture evidence of the noise nuisance
- Other technical equipment deployments – such as Cameras (ensure appropriate authority in place to ensure compliance with RIPA / HRA)
- Obtaining of witness statements to support future enforcement
- House to House resident engagement
- Letter drops
- Covert deployments – such as Professional Witnesses (with appropriate authority)
- Evidence from partner agencies, for example Court proceedings undertaken by the police.
- Evidence from other services/organisations – for example CCTV, witness testimony from other professionals who may have witnessed issues.
- Evidence captured on Social Media

## **Step 5 – Enforcement**

Undertaking enforcement through the Courts is an expensive process, and each case must be considered on its own merits, in most cases enforcement will only be undertaken after attempts to resolve the matter through informal methods have been tried. However, it is accepted that on occasion the presenting facts are so serious that the requirement for enforcement is paramount, whether that is to safeguard an individual or to curb an individual's behaviour. Where this is the case, there should be a documented clear rationale as to why immediate enforcement action is the most appropriate course of action. Enforcement has a number of different approaches which may be the most suitable outcome for the presenting facts of a case, Officers considering enforcement must ensure they have gathered evidence that proves all of the evidential 'Test' criteria for the behaviour in question as laid down in the relevant Statutory Guidance for frontline professionals. Enforcement tactics include:

### **Issue of Fixed Penalty Notice**

Council Officers can issue Fixed Penalty Notices for certain offences within ASB legislation, notwithstanding, consideration needs to be given to ensure that the evidence exists should the recipient decline to pay the fixed penalty and their right to have the matter taken to Court. In addition, we need when considering issuing a fixed penalty ticket the ability to pay of the individual and the consequence if that would have a disproportionate outcome.

### **Civil Injunction**

The injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 is a civil power to deal with anti-social individuals. The injunction can offer fast and effective protection for victims and communities and set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating. For anti-social behaviour in a non-housing related context the test is that the conduct concerned has caused, or is likely to cause, harassment, alarm, or distress to any person. For anti-social behaviour in a housing context the conduct has to be capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises or the conduct is capable of causing housing-related nuisance or annoyance to any person. A court may grant the injunction against anyone who is 10 years of age or over. Applicants must consult the local youth offending team if the application is against someone under the age of 18. In very serious cases., especially those involving violence or a threat of violence, a Power of Arrest can be applied for and obtained if the appropriate test is met.

### **Criminal Behaviour Order (CBO)**

Obtained primarily by the Police but supported by Local Authority a CBO is issued by any Criminal court against a person who has been convicted of an offence to tackle the most persistently anti-social individuals who are also engaged in criminal activity. There must be a criminal conviction, but this does not necessarily need to relate directly to the ASB that the CBO is being sought for. The application for the CBO is made by the Crown Prosecution Service.

### **Dispersal Powers**

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The dispersal power is a flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to the local community. The power is preventative, allowing an officer to deal quickly with someone's behaviour and nip the problem in the bud before it escalates.

### **Community Protection Notice (CPN)**

A Community Protection Notice may be issued (following a written warning) to deal with any problem negatively affecting a community such as noise, graffiti, littering etc. The purpose is to stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life. The behaviour must be persistent and ongoing.

### **Public Spaces Protection Order (PSPO)**

A PSPO is designed to stop individuals or groups committing anti-social behaviour in a public place. A local authority can issue a Public Space Protection Order (after consulting with the police and other relevant bodies) to impose conditions on the use of an area to deal with a problem or nuisance. Wigan Council currently has 2 PSPO's in place covering Wigan and Leigh Town Centres.

### **Closure Notice/Orders**

The power to close a property is a fast, flexible power that can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder. The power comes in two stages: The Closure Notice and the Closure Order which are intrinsically linked.

Practically, we can utilise a partial closure notice when we are seeking to safeguard an individual who is unable to restrict persons attending their address and causing anti-social behaviour due to their vulnerabilities. A partial closure order can also be used to protect those affected within the community by anti-social behaviour at an address by excluding others from the tenant's address, i.e. frequent large gatherings/parties.

We may utilise a full closure notice when we are seeking to prevent anyone from entering the address, this would include the tenant. This is used in the most serious of cases, i.e. where there is evidence a tenant and their associates are dealing drugs from an address.

This power can be used for both Council and private properties, including those which are owner occupied.

### **Noise Abatement Notice**

Section 80 of the Environmental Protection Act 1990 allows a local authority to serve a 'noise abatement notice' where it is satisfied that a statutory noise nuisance exists or is likely to occur or recur. This requires the abatement of the nuisance and prohibits a recurrence by execution of whatever works are necessary within a timeframe specified within the notice.

Noise nuisance is not specifically defined in the 1990 Act. It is, however, generally regarded as something which could be construed as such by an 'average' person. One case recently established that normal, everyday residential use of premises would not constitute a common law nuisance and therefore could not constitute a statutory nuisance. However, it may be observed that what is

normal and every day for one person may not be for another because of the differing lifestyles of neighbours.

What is very clear, however, is that a statutory, or indeed common law, noise nuisance is not defined purely by measured noise level but by its likely effects on an average person. As well as locality and of course noise level, several other factors are considered including:

- time of day of disturbance; sleep disturbance is important in this respect, as well as relaxation during the evenings, even outdoors, but special provision for shift-workers, or other people with specific needs, is usually not made because of the focus on the 'average' person.
- frequency - how often the noise occurs; something which happens only rarely would normally be less of a nuisance than something which happens every night or day.
- duration – how long the noise goes on for; a short-term effect would normally be considered less of a nuisance than one which extends for several hours or even days.
- convention – how 'normal' is the noise; a neighbour mowing their lawn once a week would normally be considered acceptable but a neighbour regularly listening to music outside at the same level for the same time would not.
- avoidability; a noise disturbance which is easily avoidable can easily be perceived as more of a nuisance simply because it can be avoided.

### **Extension of an Introductory Tenancy or Issue of a Notice of possession proceedings (NOPP)**

For Council owned properties where an introductory tenant has broken one of the conditions of their tenancy, we may consider extending the period of the tenancy for a further 6 months to allow the tenant time to correct their behaviour (must be no less than 8 weeks before the end of the 'trial' period. A Notice must be served on the tenant to extend the period of the Introductory Tenancy. A tenant has a right to seek a review of a decision to extend the period of the Introductory Tenancy.

Alternatively, or at any time during the introductory period of the tenancy, -we can serve the tenant with a 'Notice of Possession Proceedings', this notice will outline the legal action we may take which could result in them losing their home. A tenant has the right to seek a review of the issue of the Notice.

### **Notice of Seeking Possession (NOSP)**

This is a notice served on a secure tenant of the intent to seek possession of their property.

### **Grounds for Possession**

The Housing Act 1988 as amended by the Housing Act 1996 lays down certain circumstances (grounds) under which a landlord may successfully apply to court for possession.

The grounds for possession fall into two categories: mandatory, where the tenant will be ordered to leave if the landlord can prove breach of contract, and discretionary, where the court can decide one way or the other.

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These grounds for possession apply to tenancies entered after 15 January 1989. The terms of the tenancy agreement must make provision for termination on these grounds.

### **Absolute Grounds for Possession**

In exceptional cases where anti- social behaviour (or criminality) persists and it becomes necessary to seek possession, the processes for evicting anti-social tenants can be lengthy and expensive, prolonging the suffering of victims, witnesses, and the community. The absolute ground for possession was introduced to speed up the possession process in cases where anti-social behaviour or criminality has been already been proven by another court. This strikes a better balance between the rights of victims and perpetrators and provides swifter relief for those victims.



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