



NEIGHBOUR DISPUTES & ANTI-SOCIAL BEHAVIOUR

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1.0 POLICY

1.1 Linstone Housing Association Limited will take positive and decisive action to deal with cases of anti-social behaviour which proves detrimental to our tenants' rights to the peaceful enjoyment of their homes.

1.2 It is Linstone's policy to deal with anti-social behaviour by:

- investigating all incidents of anti-social behaviour
- working in partnership with tenants, the police, social work and other organisations
- taking any necessary action against the perpetrator(s)

1.3 Linstone's policy is applicable to Linstone tenants, their families, other occupants and their visitors together with owner occupiers.

2.0 PURPOSE

2.1 The purpose of this paper is to provide guidance for staff on the procedures to be followed when dealing with neighbour disputes and anti-social behaviour.

3.0 DEFINITION

3.1 Anti-social behaviour can be defined as behaviour which affects a person's quality of life and the peaceful enjoyment of their home and which in Linstone's opinion constitutes anti-social behaviour. The Crime and Disorder Act 1998 defines anti-social behaviour as any conduct (including speech) that causes, or is likely to cause, alarm, distress, nuisance or annoyance to one or more persons not of the same household. A course of conduct must involve conduct on at least two occasions.

3.2 There are a wide range of issues which can be classified as neighbour disputes and anti-social behaviour. The Tenancy Agreement states that in particular, the tenant, those living with the tenant and the tenant's visitors MUST not:

- Make excessive noise, This includes, but is not limited to, the use of televisions, hi-fi's, radios and musical instruments and DIY tools.
- Fail to control pets or allow them to foul or cause damage to other people's property.
- Allow visitors to be noisy and disruptive.
- Use or allow the house to be used for illegal purposes.
- Vandalise or damage Linstone's property or any part of the common parts or

neighbourhood.

- Leave rubbish in unauthorised places.
- Allow their children to cause nuisance or annoyance to other people by failing to exercise reasonable control over them.
- Harass or assault any person in the house, or neighbourhood, for whatever reason. This includes that person's race, colour or ethnic origin, nationality, gender, sexuality, disability, age, religion or other belief, or other status.
- Use or carry offensive weapons.

In addition, the tenant, those living with the tenant and the tenant's visitors must not do the following in an anti-social way:

- Run a business from you house.
- Park any vehicle, caravan or trailer.
- Carry out work to any type of vehicle, caravan or trailer.
- Sell alcohol or use/sell drugs.

The above list is not an exhaustive list and is to be used as a guide when deciding whether the tenant, those living with the tenant or the tenant's visitors have acted in an anti-social manner. For incidents involving racial or other forms of harassment see separate policy HM08.

- 3.3 Where a Linstone employee is abused, threatened or assaulted by a member of the public as a direct consequence of their employment to Linstone Housing Association, we will take every reasonable step to protect our staff. For further guidance see Linstone's Health and Safety Manual, Section 3.5, Staff Safety/Violence.

4.0 RECEIPT OF COMPLAINTS

- 4.1 A neighbour dispute or anti-social behaviour complaint may be received:

- verbally
- in writing
- by the observation of a member of staff
- through a third party, e.g police

- 4.2 Anonymous complaints should be accepted and recorded.

It is unlikely that anonymous complaints, on their own, will be investigated, as these can be of a malicious nature, and can represent a form of harassment. One advantage of recording anonymous information is that it may help identify a problem at an early stage.

- 4.3 All complaints should be acknowledged in writing within 10 working days with the

complainant advised of the likely timescale for investigation. This letter can often take the form of arranging an interview or merely an acknowledgement of a complaint.

- 4.4 All complaints received must initially be assessed by the Estates Manager (Tenancies and Property) or an appropriate senior member of staff. This assessment will determine the seriousness of cases prior to passing them to the Housing Officer for action. When assessed complaints will fall into one of the undernoted four categories and handled accordingly.

4.5 Category A – Extreme Behaviour

This category will include cases such as drug dealing, unprovoked assault and violence. Racial harassment would also fall into this category but such cases require to be dealt with in accordance with our racial harassment procedures, refer to module HM08. There should be an immediate response to complaints in this category with the complainant interviewed, where possible, the working day the complaint is received.

Category B – Serious Anti-Social Behaviour

This will include cases of threatening or abusive behaviour, frequent serious disturbance or vandalism and damage to property. In such cases the complainant should be interviewed within two working days.

Category C – Nuisance Cases

This will include cases of excessive noise, family disputes affecting neighbours, control of pets, behaviour of visitors or children and infrequent disturbance. For complaints received in this category the complainant should be interviewed within 5 working days.

Category D – Other Breaches of Tenancy

This will include complaints about stair/bin cleaning, garden upkeep and litter. With such cases it may not always be necessary to interview the complainant. Nevertheless the complaint should be acknowledged in writing within 10 working days with the complainant being advised of the likely timescale for investigation.

- 4.6 The person who lodges a complaint must be kept informed at all stages of the action taken.
- 4.7 Estate Manager must monitor on a monthly basis the number of complaints received and pass this information using Annex 1 to Housing Services Manager for inclusion in monthly Management Committee reports.

5.0 MULTI AGENCY WORKING

- 5.1 For certain complaints it will be necessary to work with other agencies. It will therefore be helpful if links can be made with named officers in other organisations who can be contacted either to discuss a case and obtain advice or to request action by another agency. The agencies with which it will most often be appropriate to liaise are:
- the police, particularly in cases involving violence and drug dealing
 - environmental health departments which are responsible for dealing with noise control and situations which pose a health hazard such as the accumulation of rubbish and problems caused by animals
 - social services departments in cases where children or elderly people are thought to be at risk or if there are problems due to people suffering or recovering from mental health, drug abuse or alcohol problems
 - the local authority for action under Crime and Disorder Act 1998. Local Authorities have the power to seek an Anti-Social Behaviour Order on behalf of Linstone Housing Association. ASBO's are court orders, which are granted through summary application to the sheriff. Breach of an ASBO is an offence with the likely penalties of fine and imprisonment.
- 5.2 Linstone Housing Association will attempt to ensure that formal written liaison strategies are developed with police. Such a strategy, which will require a co-operative police authority, should be reviewed annually. A close working relationship with the police can be mutually beneficial particularly where crime is a problem and can provide a formal mechanism to ensure there is regular liaison, co-operation, dialogue and exchange of information. Linstone already has in operation an agreement with the police on the disclosure of criminal conviction information.
- 5.3 A range of legal powers which can be used to deal with neighbour nuisance and anti-social behaviour are available to other agencies. At Annex 2 details are provided of the power available to other agencies to deal with some of the common nuisances.
- 5.4 Staff should also be familiar with the local bye-laws in existence as these can be used to deal with neighbour nuisance and anti-social behaviour. Local authorities have the powers to make bye-laws and can resort to prosecution where a bye-law has been broken.
- 6.0 FOLLOW-UP ACTION**
- 6.1 Neighbour complaints can cover a wide range of issues but the majority will be about minor problems. A small number of complaints could, however, develop into a serious problem if they are not or cannot be resolved at an early stage.

- 6.2 Those who lodge a complaint should be asked if they have spoken to the offending tenant in an attempt to resolve the problem. It should be explained to the complainant that some problems are better dealt with amicably and without the involvement of the Landlord. This approach will not, however, be appropriate in all cases and will depend on the nature of the complaint.
- 6.3 All complaints must be recorded on the Case Report, which is provided at Annex 3. The Case Report is intended as a checklist for staff which will also help provide a brief summary of the stage a complaint has reached.
- 6.4 Before interviewing the tenant who is making the complaint the Housing Officer must research the house files both of the tenant complaining and of the person they are complaining about. It is useful to check house files as this can often identify whether there is a history of similar complaints involving the persons concerned and provide details on the nature of any previous complaints. Colleagues may also be able to provide details on previous complaints.
- 6.5 Where it is necessary to interview the complainant this must be carried out within the appropriate timescale indicated at paragraph 4.5. During the interview with the complainant the Interview Report supplied at Annex 4 should be completed. It is important to try and obtain as much information as possible from the interview in an attempt to get a clear understanding of what happened. The Housing Officer must try and get an accurate picture of what happened by finding out and recording all relevant circumstances including what day it happened, what time, how often and who caused the problems. In addition try and establish if there are any witnesses who can substantiate the complaint. If the police attended try and find out from the complainant the name of the police officer(s) concerned.
- 6.6 A Diary Note form is provided at Annex 5 which can be supplied to complainants for the purpose of recording incidents.
- 6.7 Complainants should be advised that every effort will be made to ensure that any information they provide will be treated in confidence. Indeed the express consent of the complainant will be sought prior to any approach being made to the neighbour, when such an approach is made, the identity of the complainant will not be revealed. They should, however, also be made aware that such information may be used in the preparation of a court case should the need arise. No case will be taken to the legal action stage without fully consulting the complainant.
- 6.8 Any witnesses must be visited with statements being obtained and recorded using the Statement Form provided at Annex 6. Taking such action is intended to help clarify what has been happening and to assess if the complaints are justified. When interviewing witnesses or others, staff must be sure to protect the anonymity of the complainant. In serious cases neighbours should be asked if they are willing to appear in court as witnesses in any future legal action. Witnesses should be made aware that any statement they make may be used at a later date in court.

- 6.9 In some investigation corroboration may be obtained from other staff, e.g. concierge and maintenance staff or from the police and Social Work.
- 6.10 The tenant who is the subject of the complaint should be interviewed. On occasion it may be appropriate for the Housing Officer to be accompanied by another colleague or for the interview to take place in the office. Staff undertaking home visits should be aware of the contents of the Violence to Staff section within the Linstone Health and Safety Manual. Inform the tenant(s) of the nature of the complaint made against them and ask for their comments. The Response Form supplied at Annex 7 should be completed once the tenant(s) has given their comments against them. The name of any person(s) who can confirm the version of events as advised by the alleged offending tenant should be noted on the Response Form. Again the identity of the complainant should not be revealed.
- 6.11 When the investigations have established what has been happening the Housing Officer and an appropriate senior member of staff, i.e. Estate Manager or Housing Services Manager, will jointly decide on the course of action to be taken. The complainant and the person complained about should be advised of the decision taken and the action proposed.
- 6.12 The action proposed will be based on the individual circumstances of the case. Some of the possibilities in terms of the proposed action may include:
- no further action
 - no immediate action but with continued monitoring
 - warning interview
- 6.13 The warning interview will be carried out when the complaint has been corroborated. It will always be an interview by appointment as this will be a formal interview which may lead to Court action and therefore requires to be accurately documented. Again for legal reasons but also for reasons of safety it may be appropriate for the Housing Officer to be joined by another colleague for the interview to take place in the office. The offending tenant must be made clear about the incident(s) to which the warning relates. In addition the tenant must be advised of the action including legal action that Linstone would be prepared to take if there is no change in behaviour. A letter must be sent to the offending tenant within 5 working days of the warning interview. This letter should refer to the interview giving details of the corroborated complaints and the further action that will be taken if there is no change in behaviour.
- 6.14 In certain circumstances it may be decided not to hold a warning interview but merely to send a warning letter. This may be considered more appropriate for less serious cases such as complaints about litter, pets, stair cleaning and garden upkeep.

- 6.15 Mediation is an option, which can be used in an attempt to resolve a dispute. The Housing Services Manager has discretion to decide at what stage it may be appropriate to introduce mediation. There are a number of external agencies which can be employed to provide this service.
- 6.16 If a situation does not improve the Housing Officer should discuss the case with the Estate Manager. This will enable consideration to be given as to what further action is required. One option may be to hold a further warning interview emphasising the seriousness of the situation followed by a second warning letter.
- 6.17 Where a problem persists following a second warning interview and letter the matter should be discussed with the Housing Services Manager for consideration of further action. At this stage the options for further action will likely include legal action. At Annex 8 a number of possible options together with a description of each are provided which offices will wish to consider.
- 6.18 Some types of nuisance behaviour will satisfy grounds for repossession. The grounds on which the court may order recovery of possession under Scottish Secure tenancies are specified in Schedule 2 of the Housing (Scotland) Act 2001 a copy of which is provided at Annex 9.
- 6.19 The use of professional witnesses should be considered in certain circumstances such as persistent, extreme and serious cases where tenants are reluctant to give evidence in court or in addition to verbal or written evidence from tenants. Professional witnesses can include those such as the Police, Social Work and Housing Staff. They can, however, also include private investigators. The decision to use professional witnesses will be made by the Director in consultation with the Housing Services Manager.
- 6.20 The Housing Services Manager will decide what form of legal action is appropriate after consultation with our Legal Advisors if necessary. Our solicitor will be able to provide advice on the most suitable form of legal action available. When seeking advice on a particular case detailed information should be provided. At Annex 10 a checklist is provided outlining the information which should be passed to the Legal Advisor to help them to decide on the most appropriate course of action.
- 6.21 The powers of landlords to deal with anti-social tenants are limited and largely depend on the ability to prove a case in court. It is therefore important that an accurate record of all complaints, incidents and action taken is held as this will form the basis of the proof.
- 6.22 The committee will be advised of progress in anti-social case through the monthly Housing Management report. Any decision to proceed with legal action will be referred to the Management Committee for approval.

7.0 OWNER OCCUPIER COMPLAINTS

7.1 Owner v Tenant

Complaints made by owner occupiers against Linstone tenants will be investigated under the same procedures as complaints made by tenants with any appropriate action being taken.

7.2 Tenant v Owner

When complaints are made by a tenant against an owner occupier these should be investigated in the usual manner. Where both parties are willing to negotiate, mediation can be useful, regardless of tenure.

7.3 Where a case reaches the stage that a warning letter requires to be sent to an owner this should make clear the corroborated complaint received and that there has been a breach of the feu conditions. The feuing conditions are contained in a Deed of Conditions recorded over each estate which is referred to as a burden in the Feu Disposition, the purchaser's title to the property. This means that real and enforceable conditions are imposed on the purchaser and subsequent purchasers by the feu superior. When writing to the owner it may be relevant to refer to the clause in the Deed of Conditions that has been breached.

7.4 The Deed of Conditions contains a number of clauses which require to be adhered to by owner occupiers. In terms of taking action against an owner in relation to anti-social behaviour and neighbour nuisance it is likely the most commonly used clauses shall be Clause 14 and Clause 18. The wording of these two clauses is provided at Annex 11.

7.5 In certain circumstances it may also be appropriate to send a letter to an owner occupier's lender to alert them to the behaviour that is giving cause for concern. This could be done by supplying the lender with a copy of the letter sent to the owner describing the anti-social behaviour and warning of the possible action which might be taken. The circumstances when offices may wish to proceed with this option would include cases where a property has been sub-let and it is the behaviour of the tenant that is causing concern and instances where the condition of a property is deteriorating to the extent that the lender's interest is not secure. Again Linstone's solicitor can give advice on taking this approach which would include providing information on other circumstances where this option may be appropriate.

7.6 Close liaison with our Solicitor is necessary when taking action against an owner occupier particularly in relation to legal action.

7.7 If considered appropriate legal action can be taken against an owner occupier where there is breach of a real condition in the Deed of Conditions. The options available include:

- an interdict could be raised in relation to the behaviour contravening the obligation. If this is ignored, further action can be taken for breach of interdict.

- an action of specific implement can be raised. This would be raised where the objective was to make the owner take some action to fulfil an obligation.
- the most drastic action is to irritate the feu. Here, an action for recovery of possession of the house could be taken to the Court of Session or Sheriff Court. This remedy is only available if a specific clause is included in the Deed which imposes the conditions concerned.

7.8 Owner v Owner

Where a dispute is between two owner occupiers they should be advised that Linstone will not get involved and they should contact their solicitor. It would also be good practice to make such owners aware of the circumstances where other agencies may be able to assist due to the legal powers available to them.

However where a dispute involving two owners has implications for the wider community, including Linstone tenants, the Association may choose to exercise its right to take action as Feu Superior.

8.0 GENERAL

8.1 Staff with responsibility for signing up tenants must explain our policy on dealing with neighbour disputes and anti-social behaviour to all new tenants when they sign their missive of let.

8.2 Any tenant or Owner Occupier seeking rehousing through Linstone must prove that they are currently conducting themselves in a satisfactory manner.

- The tenant and those living with the tenant who are currently the subject of ongoing investigations for anti-social behaviour or are in receipt of a written warning for such behaviour, or any other tenancy breach will require to be free from other incidents for a period of 6 months before any rehousing request is considered.
- The applicant has previously been evicted from a previous tenancy, or the subject of an Anti-Social Behaviour Order due to harassment or anti-social behaviour will be required to demonstrate how their behaviour has changed. Where a successful eviction action has taken place any new tenancy offered will initially be granted as a Short Scottish Secure Tenancy and will be the subject of certain support services.
- The applicant is the subject of legal action in respect of his / her current tenancy on the grounds of harassment or anti-social behaviour will not be considered for rehousing until the outcome of the legal action is known.

Such restrictions can be lifted if the applicant's individual or family situation can show

material change or “good cause” under relevant social work legislation, e.g.:

- i) can demonstrate 6 months satisfactory behaviour within the community
- ii) any social, medical, or other problem which may have contributed to previous behaviour (e.g. drug or alcohol dependency) has been under control for 6 months

A request for reconsideration of any decision should be made to the Housing Services Manager. If still unhappy there is a right to submit an appeal in writing to Linstone’s Director and then the Management Committee. Finally an approach can be made to the Housing Association Ombudsman.

If this proves unsuccessful the applicant may again request reconsideration of their application after six months.