



ANTI-SOCIAL BEHAVIOUR & HARASSMENT POLICY & PROCEDURE

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PROCEDURE**

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NUISANCE & ANTI-SOCIAL BEHAVIOUR POLICY & PROCEDURE

In providing an effective housing management service the Association aims to ensure that all tenants have the right to 'quiet enjoyment' of their home. As a landlord, Westway HA is often called upon to resolve difficult and complex situations that arise between tenants, residents and other members of the public.

1.1 AIM

The aim of the policy is to;

- Assist in identifying nuisance & anti-social behaviour
- Clarifying Westway's role in reducing and resolving issues involving anti-social and/or nuisance behaviour.
- Ensuring tenants and residents are aware of their rights & responsibilities and the extent to which Westway HA can assist them live in the 'quiet enjoyment' of their homes.
- Distinguish between harassment & anti-social behaviour

1.2 OBJECTIVES

Westway HA objectives in issues regarding anti-social behaviour are;

- Bringing about a fast, effective action which is appropriate to the individual situation whilst keeping the tenant involved & informed
- To promote a solution focused approach in dealing with and preventing anti-social behaviour.
- Enable staff take the appropriate response in the knowledge that all options have been considered.

2.0 ANTI SOCIAL BEHAVIOUR

Anti social behaviour (which also includes acts regarded as a 'nuisance') are usually unthinking, uncaring behaviour by a person or household which disturbs or adversely affects other people. Often this type of behaviour is not intended to cause harm but is upsetting to other people all the same.

Examples of anti-social behaviour include;

- General noise nuisance
- Abandoned vehicles
- Children creating a disturbance, shouting at passers-by or damaging property
- Drunken and/or disorderly behaviour
- Illegal drug dealing or drug use in a public area or in a way that affects the general public
- Indiscriminate dumping of rubbish

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- Visitors/ residents making noise in communal areas late at night, such as incessant ringing of bells, car horns, shouting or arguing
- Unhygienic premises
- Gardens left out of control
- Repairing or storing cars in communal area (often in a dangerous state)
- Dog mess
- Lack of upkeep of communal hallways

3.0 HARASSMENT

Harassment can be defined as offensive behaviour deliberately carried out against an individual or individuals. This offensive behaviour may be carried out because of their sex, sexuality, race, colour, religion, culture, age, disability or for other personal reasons. With harassment there is an intention to cause harm.

At the first contact with the association it is necessary that within a short space of time for the officer investigating the case is able to determine if the offensive behaviour is anti-social behaviour or deliberate harassment.

3.1 POSSIBLE INDICATORS OF HARASSMENT

Harassment can usually be identified because of some of the following;

- Victim believes they are being harassed because of their race, colour, sex, sexuality, religion, culture, age, disability or any other specific reason.
- The perpetrators may not be immediate neighbours of the victim
- The incident/s are unprovoked
- The incident/s are premeditated
- There have been a number of similar incidents over a period of time
- There is evidence of harassment e.g. graffiti, intimidation, other forms of physical evidence

3.2 TYPES OF HARASSMENT

Harassment can take a number of forms; each case will differ depending on the persons involved and the nature of the harassment. Every case must be dealt with on an individual basis, as what may apply in one case will not in another. There are however common features that apply and for this reason the Association has identified five principles types of harassment, which are outlined below:-

3.21 RACIAL HARASSMENT

‘A racist incident is any incident which is perceived to be racist by the victim or any other person’

Racial Harassment is a form of harassment where the action has a racial motive. In other words, the harassment concentrates on the race, colour or ethnic origin of an individual.

Racial harassment can take many forms, all of which can make an individual or community vulnerable and intimidated. Examples of activities which fall within the Association’s definition of racial harassment include:-

Physical assault, Verbal abuse, Racist graffiti, Damage to property/possessions, threatening or abusive racist behaviour/language.

This list is not intended to be exhaustive and there may be many other actions which may constitute racial harassment. The Association is aware that it cannot stop all forms of racial harassment but that it can take steps to minimise the harassment and support the harassed. *There is a separate section on Racial Harassment in Section 7 due to the particular damaging nature of this form of harassment.*

3.22 SEXUAL HARASSMENT

Sexual harassment means unwanted and often persistent comments, looks suggestions and emotional or physical contact – men can be sexually harassed but it is apparent that the vast majority of sexual harassment occurs to women by men. Sexual harassment is about power and involves one person imposing their will on another.

Sexual harassment is difficult to define by drawing up a list. Behaviour that one person finds acceptable may be annoying, hurtful or offensive to another. Some examples of sexual harassment include:

- Unnecessary touching or physical contact,
- Suggestive remarks or any other form of verbal abuse.
- Personal comments about any individual appearance, clothes size etc.
- Leering at a person’s body.
- Compromising invitations.
- Displaying pin ups or other offensive literature.
- Demands for sexual favours.
- Physical assault.
- Sexist assumptions and attitudes.

The Association recognises that many women are afraid to report a case of sexual harassment because:-

- They will not be believed.
- They will be accused of inviting the harassment

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- Publicity or gossip may follow.
- They will be ostracised by other tenants or colleagues.
- They will be seen as a trouble maker.
- They may face physical or verbal abuse.

By offering a victim centred approach which provided both a supportive and confidential environment for issues to be discussed and an action plan agreed upon, the Association hopes to encourage more women to report incidents of sexual harassment.

3.23 HARASSMENT OF PEOPLE WITH A DISABILITY

The term person with a disability describes many groups of people with disabilities. A person may have impaired mobility, be profoundly/partially deaf or blind, have epilepsy or may be mentally disabled. All these and many more are included in the term people with a disability.

Disabled people's harassment can take many forms as in all forms of harassment, some more subtle than others. There are many words used to describe people with disabilities which in themselves are offensive. Some people say they are scared of people with disabilities which in themselves are offensive. Some people say they are scared of people with disabilities others see people with disabilities as a threat. People with disabilities can face both verbal and physical harassment because of prejudice and sometimes ignorance.

As with all types of harassment, the victim should be asked what they would like to see happen. This is particularly true with people with disabilities as they frequently suffer from the experience of being "done to" and not asked their wishes.

To support a person with a disability through any harassment is to work with them and not for them. The individual will know what they can deal with and will be the expert.

3.24 HARASSMENT OF LESBIANS OR GAY MEN

Lesbian or gay men belong to a minority group (approximately 10% of the population) against which there is a popular discrimination. Although they both face harassment, they are very different sections of the community and as such the harassment they encounter should be taken as very different.

Many heterosexuals have a socially induced dislike for both lesbians and gay men, even before they have been acquainted with someone who is lesbian or gay man. Harassment can stem from ignorance and misinformation. There are many words used to describe lesbians and gay men that can be both offensive and intimidating.

To take no action may increase the pressure on the individual.

3.25 OTHER FORMS OF HARASSMENT

There are other groups that are not specifically mentioned, all of which can face harassment. Any individual can face some form of harassment and although may not suffer the harassment on such a scale that the identified groups have, will find the experience difficult and intimidating.

Harassment because of age, religion appearance, trade union activity, through domestic violence or against people with HIV. ARC or AID's is also recognised and condemned by the Association.

4.0 RECEIVING A COMPLAINT REGARDING ASB AND/OR HARASSMENT

When a complaint is received the officer should initially determine if this is the first time such a complaint has been made by the tenant, resident, family or neighbour. If it is the first time using the criteria described above and any other factors that may arise it should be determined if the behaviour complained about should be considered anti-social behaviour or deliberate harassment.

The officer dealing with the complainant at this point should be very sensitive to the complainant needs. The officer should be realistic with the complainant and should strive to come to joint decision with the complainant to the nature of the complaint. For example the officer should make clear that the fact that the complaint is considered anti-social behaviour this does not mean not will treated any less seriously by the organization.

4.1 PROCESS FOR DEALING WITH ASB AND/OR HARASSMENT CASES

Any complaint from a complainant alleging anti social behaviour should be passed through the particular housing officer for the area. Depending on the nature of the complaint and how the complainant is made e.g. over the telephone or in person or in writing, the housing officer at the earliest possible stage attempt to establish an 'action plan'. At the point of deciding upon an action plan it should be clear if the case is being treated as nuisance/ anti social behaviour or more targeted harassment. (use section 3 to help determine this). If it not possible to establish an action plan at the first report then a meeting/ interview should be arranged between the housing officer and the complainant. This obviously should be at a mutually convenient time and venue but preferably within a week of the first report.

4.2 THE ACTION PLAN

The action plan should be a plan the complainant feels comfortable with. It can be as detailed as taking diary notes of events or anti social acts to simply the complainant approaching the alleged perpetrator and resolving the issue between themselves.

The action plan should include time frames agreed between the housing officer and the complainant. The action plan should have an end date by which the housing officer will contact the complainant and ascertain if the problem is continuing and further action is required.

Regardless of how an action plan is decided or agreed (i.e. by phone or in person) a written note of the action plan should be sent to the complainant within 3 days of should a plan being agreed. The written note should take the form of a letter outlining what has been agreed and the set timescales.

Examples are;

A tenant phones to complain that her neighbour keeps leaving his bicycle in an awkward position on the communal hallway, thus making it difficult for her to move children's buggy. The housing officer receives the complaint by telephone. The housing officer after discussing with the complainant might suggest that the complainant contact her neighbour directly to see if they can't work out a solution to the problem between themselves. If the complainant is in agreement, this will be noted as the 'action plan'. The housing officer should then write to the complainant detailing the action plan, noting within the letter that the complainant will be contacting her neighbour, within a set time period and finally that the housing officer will be contacting the complainant at a later agreed date to ascertain if the problem has been resolved.

A tenant comes into the office to complain that he suspects his neighbour is constantly tampering with his post, leaving offensive pornographic material his letter box, etc. Once again the housing officer should have a detailed conversation/ interview with the complainant. At this interview it should be determined as best possible if this is targeted harassment or just a nuisance. It is obvious that such as case will require further investigation and it would appear to be a harassment case. As such the 'action plan' in this case should outline the investigation to be carried out by Westway staff as well as any actions to be required by the complainant. Such an action plan should have clear timescales and a written confirmation of the action plan should be sent to the complainant.

Action plans can be on-going and generic. They need not be static but change as the situation changes. The important thing about an action plan is that it clearly outlines what action is being taken to remedy the problem and makes the Westway in general and the housing officer in particular accountable for our actions.

4.3 COLLECTING EVIDENCE

In cases of anti-social behaviour if there is no immediate resolution then in order to process further it may be necessary for officers to obtain as much evidence as possible in order to ascertain the facts of the a particular case.

Any evidence collected must collected in a systematic professional manner and all details kept in a secure confidential file. Officers must be aware that any evidence collected may be used in a court of law and as such officers must be aware evidence must collected a presented in a way that will be admissible in court.

Evidence can take the following forms

- Victims' testimonies and/or affidavits
- Witnesses' testimonies and/or affidavits
- Diary evidence
- Photographs
- Video & CCTV evidence
- Police records & testimonies

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- Voice recordings
- Environmental Health notices and reports
- Third party evidence such as doctors or social workers
- Westway HA staff reports, witness statement and/or affidavits
- Professional witness testimonies

5.0 REMEDIES

Below is a list of different remedies that can be used to remedy anti-social behaviour and or harassment cases. Any or a combination of these remedies can be used depending on the individual cases. Before any legal remedy is used it must be approved by the Chief Executive as legal remedies are not only expensive to the organisation but can also lead to loss of a resident's home.

5.1 NON LEGAL REMEDIES

The way we approach a complaint is crucial since this can either aggravate a situation or be the first step towards reconciliation. Impartial investigation at the initial stages should be combined with conversations about what both parties would see as a satisfactory solution, This paves the way for some of the non-legal solutions which may go on to form the action plan following the initial investigation. It is important that whatever remedies are chosen they are relevant to the situation and agreed with either one or both parties. They do not need to be implemented in any order i.e., holding a case conference meeting may be more appropriate than looking into support for a tenant

5.11 NEGOTIATING BETWEEN PARTIES

Having spoken to both parties separately, we are in a unique position to find solutions, The information gathered should primarily be used to direct people towards mediation, However, if this is steadfastly refused, there still may be instances where we intervene to bring a solution about This is likely to follow on from seeing areas of compromise or misunderstanding following initial interviews with each party. It may not be necessary to have a joint meeting although we may bring them together where this is not likely to prove contentious. The role of WHA will be to help both parties focus on a solution and not to cast blame. We can shuttle between both parties with previously agreed solutions. Where an agreement has been reached this should be confirmed to each party in writing,

5.12 MEDIATION

WHA staff are expected to have a good knowledge of how mediation works in practice and to actively promote this service. Mediation should be considered when a dispute is first brought to our attention although it can be used at any time. The earlier it is used the more effective it is likely to be. Once we have started taking action this may decrease the chances of mediation working, for example keeping a diary can reinforce the idea of opposing sides and finding punitive solutions. WHA will use external mediation services

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to negotiate between parties for a solution to neighbour disputes, they can work in the following ways;

- Working with only one side of a dispute
- Initial separate interviews followed by a joint meeting
- Working separately with each side of a dispute so they don't meet (shuttle mediation) mediation with groups
- Mediation work with youths

In most cases people reporting anti-social behaviour to us will be resistant to the idea of mediation. This is likely to be based on little knowledge of how mediation works in practice and the benefits it can bring about. In some cases tenants may also want to hand responsibility for the problem over to us. There is a need therefore to talk through these areas of concern with the tenant and to offer this as the best way of finding a lasting solution.

In some cases there will be no other option. This is especially true where the anti-social behaviour is unlikely to result in repossession and either party will have to wait a long time for a transfer.

Mediation may not be suitable in cases where there is violence, harassment or threatening behaviour.

Most mediation services operate on a borough wide basis although the service varies between areas, some only catering for Local Authority tenants.

5.13 ENVIRONMENTAL HEALTH

Environmental Health Departments have powers under the Environmental Protection Act 1990 which are sometimes more appropriate than the powers we have as a landlord, they deal with:

- Noise nuisance
- Dumping of rubbish
- Unhygienic premises

The tenant will usually make a direct complaint to Environmental Health Dept. The Environmental Health Department may take action themselves under s.80 of the Act or they may advise a complainant to take their own action under s.82 of the Act.

Environmental Health should investigate the claim and if appropriate they will serve an abatement notice against the perpetrator. Should the perpetrator continue this behaviour in contravention of the notice, they can apply to the magistrate's court to prosecute and the perpetrator can be fined. The Environmental Health department may also be given power to take any action necessary to prevent the nuisance re-occurring i.e. seizing of stereo equipment.

For a prosecution to be successful, evidence will need to be presented in court. The Environmental Health officers will try and witness the breach themselves for this purpose. Advice to tenants when referring them to Environmental Health needs to be realistic. If the breach is not unreasonable or where it may be difficult to collect evidence, Environmental Health may be limited in what they can do.

If we are able to support the evidence in any way we should be working with Environmental Health to do so. It is often useful to talk through a case with the EH officer, see the section on partnership working. We may also want to contact them on behalf of a tenant to see what options are available.

5.14 PHYSICAL IMPROVEMENTS

If there are issues around security or safety, then consideration should be given to improvement works. These will need to be costed and discussed with the line manager. In some cases they may be paid for out of the service charge budget i.e. better lighting in a communal area, although this will have to be agreed with all the tenants first. Where a service charge is not appropriate, other options should be considered with reference to budgets held by the line manager. There may be opportunities for tapping into funding from elsewhere, i.e. grant giving trusts or community fundraising events. Approaches to external agencies should be done via fundraising.

5.15 PARTNERSHIP WORKING

In many cases it helps to build up a dialogue with partner agencies, these are likely to include the Police, other landlords, Environmental Health, Social Services, Local Authority Housing Department and voluntary organisations. It is often useful to know what another agency is doing so that the action plan takes this into account. Areas where partnership working might be useful are:

- Sharing CCTV equipment
- Making improvements to communal areas
- Arranging a community event
- Agreeing an action plan for vulnerable tenants
- Doing joint visits to tenants e.g. with Environmental Health or the Police
- Joint estate inspections

The emphasis should be to open up a dialogue which encourages 'joined up' action planning. Where we wish to take the lead on a case it is possible, with the agreement of the other parties, to draw up a single, joint agency action plan.

In areas where tenant confidentiality is an issue we can share information which the other agency is already aware of i.e. that an individual has a mental health problem. The only new information is likely to be the action we are taking to remedy the situation. This can be expressed in general terms i.e. we are taking legal action which may lead to the

property being repossessed. The information shared should materially enhance the chance of a solution for those suffering from the anti-social behaviour.

5.16 CASE CONFERENCE STYLE MEETING

This model of meeting is a way of bringing together people and professions with different perspectives on one case e.g. Police, School, Social Services, Environmental Health, other landlords etc. Its aim is to agree what action each organisation will take and see that this works towards the same end. It is also possible to invite just one key individual from another agency to an internal meeting e.g. a social worker, consortia landlord Housing Officer or caseworker providing support.

5.17 REFERRING TO ADVICE/SUPPORT AGENCIES FOR VULNERABLE TENANTS

Where either party is in need of extra support or advice, a referral should be made to the appropriate agency. You should contact the appropriate section of the local authority about what is available in your area. Contacting the agency should be recorded in the action plan and may be the responsibility of either the tenant or WHA.

Where either party has mental health problems or a history of substance misuse, a referral/ contact should be made to the relevant Social Worker, CPN (Community Psychiatric Nurse), probation officer, etc. The file should be checked for other such contacts and followed up to get a clearer picture of the tenants needs and support. See the section on partnership working. If there is an existing care plan, we should make sure this is being implemented.

In most cases the affected party will be able to participate in resolving the conflict and take responsibility for their behaviour. The difficulty is in building up a relationship with the tenant so this can happen; it will often require the intensive involvement of a WHA staff. Emphasis should therefore be placed on trying to get this in place. In more serious cases this may not be possible and there may be a need for ongoing support, sectioning or a move to a supported housing environment.

5.18 COMMUNITY DEVELOPMENT

Community Development should be used to resolve and prevent conflict, see section four on prevention. Working with tenants in positive ways through community events helps them to get to know each other and see the person behind the dispute. It also gives people a chance to put their energies into something different Where a dispute is known about and both parties are involved in a community event, work needs to be done with the individuals to try and bring them together. If this is not working care needs to be taken to prevent the situation developing.

Mutual Aid agreements can be used to get tenants on an estate to engage in being a 'good neighbour'. The agreement covers areas of support such as childcare, socialising,

shopping, keeping an eye on each other's properties etc. Tenants undertake to do this voluntarily and they should be involved in drawing up the agreement

5.19 MOBILITY/TRANSFER OPTIONS

All tenants have the option of going on the transfer list but there are no special categories for people suffering from anti-social behaviour although applicants are given a higher priority if they or victims of harassment and/or threats of violence/ actual violence. The applicant may have to wait a considerable time for an offer of rehousing. The emphasis should therefore be on finding ways to make living in the current situation as trouble free as possible.

5.2 LEGAL REMEDIES

5.21 INJUNCTIONS

Injunctions should be considered as part of a solution to anti-social behaviour where it is established that one party is wrong and mediation has failed or is not appropriate. Injunctions can be attached to possession proceedings or as in the case of perpetual injunctions taken out as a separate action. Injunctions are an effective way of dealing curtailing anti-social behaviour. The cost of injunctions is usually less than possession proceeding and the chance of them being granted is greater.

An injunction is granted by a County Court to either stop someone from doing something e.g. to stop playing loud music or make them do something, e.g. remove abandoned vehicles. An injunction can be taken out by a tenant against another tenant or by Westway HA for breach of tenancy. Westway HA can also take out an injunction against non tenants, for instance in cases of trespass.

The advantages of using injunctions include;

- A quick response in emergency situations
- Providing protection for complainants during possession proceedings
- For use against non-tenants
- Witnesses do not need to attend court
- Can be used to strengthen a case for possession

5.211 DIFFERENT TYPES OF INJUNCTIONS

Different types of injunctions exist, the housing manager and CEO should decide on which type is most appropriate for the situation;

5.211a An Interim Injunction, this will usually last between three and twelve months and is often used as part of a case for possession. Interim injunctions can be heard at short notice to deal with emergencies. They can be heard 'ex-parte' this means the perpetrator is not aware of the hearing. In case of 'ex-parte' hearing the injunction will usually only

last a week and will be followed by a proper hearing. Evidence can be given in form of affidavits given by the person/s suffering from the nuisance.

5.211b Perpetual Injunction is used to permanently restrain someone from repeating a specific anti-social behaviour. Perpetual injunctions are a good remedy where possession is not appropriate or difficult to obtain due to lack of evidence. They are sometimes easier to obtain than a possession order (suspended or otherwise) as breach does not lead to loss of home but rather a fine and/or imprisonment.

5.211c A ‘quia timet injunction’ can be used where there is advance warning of an impending nuisance, such as a pay party

Where an injunction has been granted, continued breach is a contempt of court and the perpetrator can be fined or imprisoned at a subsequent hearing provided there is adequate proof. Where there is ‘power of arrest’ attached to an injunction a perpetrator can be arrested for breach brought before a Judge within 24 hours. Witnesses will need to be present to give evidence. Power of arrest can only be attached to an injunction where violence or threat of violence to a person is involved. The easiest types of injunction to obtain are those prohibiting someone from committing a criminal activity i.e. violent behaviour. The evidence required for an injunction that may infringe on someone’s rights such as preventing someone entering their own home will require much more robust evidence.

5.212 APPLYING FOR AN INJUNCTION

An injunction is a discretionary remedy by the County Court. There are a number of different types of injunction (listed above) legal advice may be sought as to the most appropriate type having regard to the circumstances of the case.

In most instances it will be appropriate to issue a claim for damages for breach of covenant (i.e. not to cause a nuisance or not to have a pet without the Association’s permission) and to seek an injunction in those proceedings restraining the tenant from committing the nuisance complained of.

To obtain an injunction it is necessary to show that there is an arguable case (quality of evidence is therefore very important) and that the balance of convenience favours granting the injunction rather than refusing it.

The object of an injunction is to preserve the status quo or to preserve what ought to be the status quo.

If the terms of an injunction are breached a fine or imprisonment can be imposed.

5.23 POSSESSIONS ORDERS

Where an act of anti-social behaviour or harassment can be proven, this may indicate that a tenant of the association has breach his/her tenancy agreement. As the association then proceed to court for a 'possession order'. Possession orders are very serious and can result in a tenant losing their home. Possession orders should only be sought in the most extreme cases.

As with rent arrears cases Possessions orders can be either;

- Outright
- Suspended

An 'outright possession' order means the court has granted Westway HA the right to lawfully evict the tenant (in this case because of a breach of the tenancy)

A 'suspended possession' order the court will order that the tenants behaves in certain way, if this breached the landlord (Westway HA) will have leave by the court to apply for an eviction. As an outright possession order requires strong and a credible amount of evidence, it is often more feasible to seek a suspended possession order. In these situations the Westway staff should reassure the complainants and witnesses that a 'suspended possession order' is a positive result and should ensure the offensive behaviour stops. Where a case is defended, lawyers will often use grounds of reasonableness. They are much more likely to agree to a suspended order and will have a harder job arguing against it.

5.231 APPLYING FOR A POSSESSION ORDER

Possession action should only be considered for serious situations, where the Association deems it appropriate to deprive the tenant of their home, unless the breach is remedied.

The first step in the process is to serve a Notice of Seeking Possession.

For a secure tenant the NISP could be served on Ground 1 (breach of tenancy obligation) and/or Ground 2 (guilty of conduct which is a nuisance or annoyance to neighbours). If Ground 2 is to be used, the word 'guilty' implies a higher burden of proof and therefore strong evidence is required.

For an Assured tenant the Notice of Seeking Possession could be served on Ground 12 (similar to Ground 1 for secure tenants), and/or Ground 14 (similar to Ground 2 for secure tenants).

On expiry of the Notice of Seeking Possession, the Operations Manager should obtain the Chief Executive approval before proceeding to court.

The court has discretion and must consider the overriding question of reasonableness in deciding whether or not to grant possession. The quality of evidence is important in demonstrating that every effort has been made to resolve the problem before taking legal action. For this reason, it is important that detailed notes of all interviews are taken. In addition, the complainants should keep a comprehensive diary giving dates, times and frequency of the nuisance (See Appendix 1)

There are no mandatory grounds which can be used for nuisance which will ensure that a possession order is granted.

Except in most serious cases the most likely outcome is for the order to be suspended or adjourned on the condition that no further acts of nuisance or annoyance occur.

For serious situations whilst waiting for the NISP to Expire or for full hearing, it is possible to apply for permanent injunction under S22 of county Courts Act 1984. No claim for damages is necessary. Strength of evidence is important but in most instances an ex-parte injunction will be granted which means that the defendant will give an undertaking to comply with the order.

5.24 ANTI-SOCIAL BEHAVIOUR ORDERS

Anti-social behaviour orders (ASBO's) were introduced as part of the Crime & Disorder Act 1998. The Orders are granted by the magistrate's court to control anti-social behaviour of anybody over the age of 10 years old. The contents of the order can be very specific and can include exclusion from specified areas, prohibition of named activities, and control of behaviour.

Breach of an ASBO can result in a fine or imprisonment.

Obtaining an ASBO can only be obtained in the court by a local authority and/or the police. Each local authority will have it's own arrangements for dealing with request for ASBO's, they will include a multi agency approach. An ASBO will only be considered where other solutions have already been tried or are not appropriate.

Most local authorities have a panel made up of different organisations which look at individual cases and make a decision how to proceed. It is unusual for an RSL to be part of this panel. To enable the process there is a protocol which relevant organisations are signed up to which allows sharing of information. It is particularly useful when obtaining information from the police. Westway HA consider signing up to relevant protocol in our key areas of operation.

To pursue an ASBO contact should initially made with the relevant local authority.

6.0 MONITORING

Records of all anti-social behaviour cases and harassment cases must be kept and co-ordinated by the housing manager. Records of meetings, letters, action plans, etc should be kept on the relevant tenant's file. Records of all harassment cases must record the type of harassment or incident, i.e. racial harassment or neighbour dispute.

There should be a central record of all cases. The central record will log address, type of case, duration, relevant dates and outcome of case. This record to be updated monthly including any new information until the case is considered closed.

The Operations Manager must present records, facts and figures for anti-social behaviour to the Chief Executive on a monthly basis. These figures should include all current cases and cases which are not yet deemed closed. Any complicated case can only be deemed closed if approval is given by the Chief Executive.

7.0 RACIAL HARASSMENT

Westway Housing Association uses the definition of a racist incident as defined and recommended by the Stephen Lawrence Inquiry (as published by the Home Office 25th May 2000)

‘A racist incident is any incident which is perceived to be racist by the victim or any other person’

It is extremely important for association officers to take note of this definition whenever a tenant reports any incident including incidents of harassment. If the alleged victim, tenant, neighbour, the officer receiving the report or any other person perceives the incident as racist then not only should it be recorded as such but Westway's Racial Harassment Procedure should immediately be put in place.

As indicated in the aforementioned Home Office publication, the reason this definition is used is not to prejudge the question of whether a perpetrator's motive was racist or not (this may have to be proved at a later date for instance if the perpetrator is charged with a racially aggravated offence or in the case of a Westway tenant a possession order may be sought against the alleged perpetrator for breach of tenancy) BUT to ensure that all investigations regarding the harassment take full account that there may be a racist dimension to the harassment. Westway's records must show that a racist incident or incidents has occurred and more importantly our tenants who may be victims of this type of harassment are treated in a victim centred approach with the sensitivity and seriousness that this type of harassment requires. All reported incidents of racial harassment, however isolated, will be investigated. Prompt action should be taken in support of the victim. Failure to act quickly gives the wrong message to alleged perpetrators and can result in problems escalating.

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Racial Harassment is a form of harassment where the action has a racial motive. In other words, the harassment concentrates on the race, colour or ethnic origin of an individual.

Racial harassment can take many forms, all of which can make an individual or community vulnerable and intimidated. When the victim believes the attack was of a racist nature and/or there is direct evidence of a racist motive. As such it is distinct from other forms of harassment' Examples of activities which fall within the Association's definition of racial harassment include:-

Physical assault, Verbal abuse, Racist graffiti, Damage to property/possessions, threatening or abusive racist behaviour/language.

This list is not intended to be exhaustive and there may be many other actions which may constitute racial harassment. Many of these incidents may be criminal offences that may be prosecutable. Wherever possible, appropriate action to be taken against alleged perpetrators, including resident's, visitors and trades-people.

It is important that Westway HA takes seriously any incidents of racially motivated harassment. Westway HA will not tolerate racial harassment of residents, staff or contractors. This policy concentrates on victims who are residents of Westway HA properties. Where a member of staff or contractor has reported being a victim of racial harassment by a Westway resident then the procedures will, for the most part, be unchanged. There may however be alternative mechanisms for support and staff may wish to refer to the Staff Handbook for guidance.

Once it is determined that an incident may be a case of racial harassment, the senior management team, i.e. Operation Manager and Chief Executive must be informed as soon as practically possible. The Operations Manager & Chief Executive must be kept abreast of the case at all times by regular briefings, emails and other communications tools used within the office.

Racial Harassment Guidelines

Overview

- With a victim centred approach all reported cases must be investigated.
- Cases of racial harassment may also come to light in the course of other staff duties. For example comments may be made to staff or graffiti may be noticed during a site visit. It is recognised there may not be a person to interview in these circumstances but the incident should be recorded on the database in case there are further incidents.
- When a complaint is received an initial investigation is carried out as soon as possible by whoever first received the information, housing officer or Operations Manager.
- The victim should be asked whether they require a translator. If a translator is required one must be made available for the formal interview. At this time as much information as possible should be gathered for a risk assessment.
- A site visit should be made if requested or considered necessary. If possible any evidence should be photographed before being cleaned up or repaired.

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- Emergency repairs should be ordered. Racist graffiti must be removed within 48 hours.
- The police should be contacted if required
- The Anti Social Behaviour & Harassment (including racial harassment) leaflet should be given to the complainant with details of local support agencies.
- A copy of Incident Report will be sent to all involved agencies e.g. police, social services, other support agencies. The complainant's consent will be required for this.
- A formal interview should be conducted within 2 days.
- Further details on legal & non legal action is detailed in Section 5 of Anti Social Behaviour & Harassment Policy.

Formal Interview

Once the initial visit and form have been completed, a formal interview should be scheduled to take place within **two working days**. This time scale may only be longer if the complainant cannot meet within this time. The aim of this interview is to support the victim and find out enough details to formulate a plan of action.

The interview should take place in private and in a place where the victim feels safe and comfortable. They should be told that they are welcome to bring someone along for support.

Staff will be offered training in interviewing techniques. They should be sympathetic and assure the victim that all information provided will be treated in confidence but they should also remember to remain objective and neutral.

Making an Action Plan

Using a victim centred approach includes letting the victim choose how they would feel most comfortable about pursuing the case. There are other factors that should also be taken into consideration. These include:

- The nature of the harassment
- The powers of Westway HA
- The powers of other bodies
- The level of evidence, in the case of legal action

The following are six options that should be offered to the victim as possible paths of action. All options must be discussed and addressed in the action plan. These options are not exhaustive and other options may also be agreed.

a. Involve a mediator –

Mediation is a cheaper and quicker alternative to legal action for resolving racial harassment cases. Both parties must be agreeable, able and willing to be reasonable. Mediation is not appropriate if there is fear or risk of abuse and/or violence and/or further harassment.

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Depending on the circumstances, a mediation service may be used. This is especially useful if it is important that the Group be seen to be completely independent. The mediation service should be stable and well established. The service should provide:

Assured confidentiality

- Good links with other agencies
- Well-trained and competent mediators
- Equal employment policy and procedures
- Effective case work recording and evaluation outcomes
- Written declarations of the agreements to be signed by both parties
- Performance monitoring systems
- The use of an external mediation service should be confirmed by the Operations Manager. A list of mediation services is at the end of this policy.
- Advise complainant to compile Diary Evidence
- This involves giving the victim a diary in which any further incidents are recorded giving details of:
 - the date
 - the time
 - a detailed description
 - details of the alleged perpetrator
 - any witnesses
 - how it affected the complainant

This should be done in the complainant's first language to ensure accuracy. Photographs should be included where possible. It is important the diary is completed as soon as possible after the occurrence of the incident. The information recorded may be used as evidence if legal action is taken.

c. Write to and/or interview alleged perpetrator –

The victim may feel that a letter or interview by staff may help. The complainant should be made aware that when approached, the alleged perpetrator may guess the identity of the complainant. If the alleged perpetrator is not a resident of the Westway or another RSL this option may not be appropriate and another option may need to be considered. If the alleged perpetrator is a tenant of another Housing Association it may be possible for them to take action and/or joint action (with SHG) to be taken against their tenant.

d. If a criminal act has been committed the Police may be able to deal with it –

If the incident appears to be a criminal offence, staff should ask permission to involve the local police if the resident has not done so already. A copy of the incident form should be sent to the police within five working days. The letter should request an investigation into the incident and a report on any action they will be taking.

Examples of criminal offences include:

- Damage to property – Criminal Damage Act 1971
- Assault or actual bodily harm – Common Law Offences Against the Person Act 1971

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- Distribution of racially inflammatory material – Criminal Justice and Public Law Act
- Intentional harassment – Criminal Justice and Public Order Act 1994 or provocation of violence or offensive behaviour – Public Order Act 1986 by:
 - i. Using threatening, abusive or insulting words or behaviour, or disorderly behaviour; or
 - ii. Displaying any writing, sign or other visible representation that is threatening, abusive or insulting.
- Racially aggravated offences including harassment, public order and assault – Crime and Disorder Act 1998

e. Involve internal/external Support Agencies –

The complainant may feel that he/she needs further support as a result of the stress they have been put under. The Housing Officer/ Operations Manager should work with the complainant to identify and arrange additional support.

Appendix XXX is a list of external support agencies that should be completed by staff with the relevant information for each estate. Names, numbers and addresses can be given to the victim from this list. If the victim wishes, a staff member may contact the agency/s directly.

f. Transfer Options – In some cases the victim may feel that a housing transfer is the only solution. The complainant should have the Westway HA management transfer policy explained to them and be given a transfer form to read and complete.

Agreeing the Action Plan

If the resident is vulnerable to attack improvements to security measures should be considered.

Time scales need to be agreed upon. As a guide the Operation Manager should ensure that the complainant is contacted at least twice within the first six weeks after the formal interview. It should be noted whether the racial harassment has stopped since the initial report. Each plan of action will require different time scales.

The monitoring process should mean the victim is contacted again after three months to further assess the situation

Once the victim has agreed upon a course of action that may include one or more of the above options, the plan needs to be agreed upon. Both staff and victim should sign the drafted Action Plan to acknowledge that an action plan has been set out and both parties are in agreement.

Appeals

If no agreement can be reached on the action plan, the victim may appeal to the Chief Executive and commence Westway's Complaint Procedure.

Implementing the Action Plan and Monitoring Progress

The Operations Manager is responsible for monitoring the progress of each case and is responsible for administering the agreed action plan.

If at any stage staff or complainant feel the action plan is not having the intended effect, a review of the whole case and action plan should take place involving the complainant, staff and other agencies.

At monthly Senior Management Team meetings, the SMT will review all live racial harassment cases. Operations Manager should provide up to date information on each case. The purpose of the review is to decide whether each case is ongoing or whether the harassment appears to have ceased. The case will be closed or left open according to the decision. If the case is closed the Operation Manager should write to the complainant explaining why Westway HA does not consider it appropriate to take any further action at this stage. The case may be reopened at a future date if the racial harassment recommences.

Legal Action

Legal action may be considered if all action taken as per the action plan has failed to stop the harassment and:

- Enough evidence has been gathered to initiate legal proceedings, or
- The perpetrator has had a criminal charge brought against them.

Legal action may also be necessary in very serious cases of racial harassment where there is a threat to the safety of residents or staff. Before proceeding the complainant should be contacted and asked whether they wish to take legal action. If they do not want to take this action then their action plan should be reviewed and monitoring continued. The complainant may want to take legal action themselves in which case they should be advised to contact an advice centre or a solicitor for independent advice.

If the resident wishes Westway HA to proceed a Notice of Seeking Possession (NOSP) must be served on the alleged perpetrator before possession proceedings are initiated. A NOSP is valid for one year but must be considered carefully before issue as the effect may be undermined by overuse. If the NOSP terms are breached the case should be referred to a solicitor for possession procedures to be followed.

It may be preferable to try to obtain an injunction in the first instance as it is quicker, there is a lower burden of proof and witnesses generally do not have to attend court. If the judge sees the case as serious, he/she may order a trial to take place urgently.

Anti Social Behaviour Orders (ASBO's) prohibit individuals aged 10 or over from undertaking specified activities in order to protect communities from antisocial behaviour. The police or local authority should be contacted and they can apply to the court for an order prohibiting a named individual from doing anything described in the order.

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The complainant should be kept informed of the case's progress at regular intervals and be informed of the final outcome. For injunctions the case should be monitored to ensure the perpetrator is complying with the conditions of the injunction, Suspended Possession Order (SPO) or ASBO. See 5.2 in Anti Social Behaviour & Harassment Policy for further details on legal action.

Monitoring

As with all harassment & anti social behaviour cases, racial harassment will be recorded centrally and the Senior Management Team & Board will be given regular statistics at all their meetings.

Training

Staff will receive compulsory training to help them identify incidents of racial harassment and deal effectively and sensitively with such incidents. This includes challenging any discriminatory language or behaviour when it occurs and reporting incidents of racial harassment if seen during other job duties e.g. racist graffiti on a site visit.

As part of the staff induction, training will be given on completing Incident Forms and on the informal and formal interviewing skills, interviewing victims and perpetrators especially specifically in relation to nuisance and harassment cases.

Publicity and Prevention

It is hoped that publicising Westway's stance and the consequences of inciting racial harassment will discourage racial harassment and encourage victims to come forward. An information leaflet will be available for residents. It summarises the Westway's Anti Social Behaviour & Harassment (including racial harassment) policy and what to do if they are the victim of a racial harassment incident. The leaflet will be on display and/or available at Westway's office. Posters will also be available and should be displayed on estate notice boards. Any successful prosecutions should be publicised in the tenant's newsletter and local newspapers.

References

Some useful books for reference are:

- 'Living in Terror' by the CRE
- 'The Guide to the Law and Practice on Racial Harassment' by Duncan Forbes
- 'Interviewing the Perpetrators of Racial Harassment – A Guide for Housing Managers' by Gerald Lemos.

Racial Harassment - Appendix **Guidelines for interviewing alleged perpetrator**

Contacting the alleged perpetrator

Where alleged perpetrators are identified and they are Westway residents, the Housing Officer should interview them. They should be visited without appointment in very serious cases requiring urgent action. In other cases a letter should be sent to make an appointment. This decision should be made in conjunction with the complainant/victim as part of agreeing the action plan.

The letter may include:

- An invitation to discuss possible breaches of the tenancy agreement. It should not reveal the nature of the complaint at this stage as this may leave the victim open to attack.
- An appointment for them to discuss the problem, usually at Westway Office. An appointment at home may be suggested if this might produce evidence of acts of harassment.

The letter should not disclose the identity of the complainant without his/her permission.

At the interview

1. Remain objective and avoid accusations
2. Do not disclose the name of the complainant unless they have given their permission.
3. Take detailed notes of the discussion.
4. The aim of the interview is to deter further acts of racial harassment by:
 - Informing them there has been a complaint of racial harassment.
 - Discussing the alleged incidents in detail, being specific about the alleged effects on others.
 - Explaining Westway's racial harassment policy, stressing how seriously the Group views racial harassment.
 - Explaining the relevant harassment clauses of the tenancy agreement and reminding them they are responsible for behaving in an appropriate manner and for the actions of other members of the household, including children, lodgers, visitors and pets.
 - Warning them that if the allegations are true they are in breach of their tenancy agreement and Westway HA will have the option of taking legal action. However, avoid threatening legal action at this stage. If this is not followed through on this occasion it will lose its impact if required in the future.
 - Make and record observations that support the statements of the complainant. For example if the alleged perpetrator behaves in a discriminatory way during the interview or if the interview is at the alleged perpetrators home and discriminatory material is seen in the home.

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A report must be completed to record the outcome of the meeting. It should also assess the reaction of the alleged perpetrator. The contents of this report should be discussed with the Operations Manager and the action to be taken.

NOTE: If the Housing Officer has concerns about interviewing the alleged perpetrator alone they should raise their concerns with the Operations Manager.

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Racial Harassment - Appendix

Referral Agencies

AGENCY	ADDRESS	CONTACT NAME	CONTACT NUMBER
Housing Support Workers			
Residents' Association			
Citizens Advice Bureau			
Mediation Services			
Police:			
Community Safety Unit			
Local Authority:			
Social Services			
Housing Department			
Community Relations Council			
Commission for Racial Equality			
Victim Support			
Neighbourhood Watch Scheme			
Crime Prevention Panel			
Any representatives of Ethnic Minority or Religious Groups			
Other agencies:			