

**London Borough of Merton**

**Housing Services**

**Statement of Policy and Procedure on  
Anti-Social Behaviour (ASB)**

**(Housing Act 1996, Section 218A)**

December 2004



If you would like more information in your own language,  
please contact us at the address shown in the box below.

Albanian

Nese deshironi me shume informacion ne gjuhen tuaj, ju lutemi te na kontaktoni ne adresen e dhene ne kutine me poshte.

Arabic

إذا أردت معلومات إضافية بلغتك الأصلية الرجاء الاتصال بنا  
في العنوان المدون ضمن الإطار أدناه.

Bengali

যদি আপনার নিজের ভাষায় লেখা আরও তথ্য চান তাহলে দয়া করে  
আমাদের সঙ্গে যোগাযোগ করুন, তলার বক্‌সে আমাদের ঠিকানা রয়েছে।

Chinese

如果你需要用中文印成的資料，  
請按低端方格內提供的地址與我們聯系。

Farsi

اگر مایل به اطلاعات بیشتر به زبان خود هستید، لطفاً با ما از طریق آدرس زیر تماس  
بگیرید.

French

Pour tout renseignement complémentaire dans votre propre langue, veuillez  
nous contacter à l'adresse figurant dans l'encadré du bas.

Gujarati

જો તમને તમારી પોતાની ભાષામાં વધારે માહિતી જોઈતી હોય, તો કૃપા કરીને  
નીચે અંતમાં આપેલા ખાનામાં દર્શાવેલા સરનામે અમારો સંપર્ક કરો.

Punjabi

ਜੇਕਰ ਤੁਸੀਂ ਪੰਜਾਬੀ ਵਿਚ ਹੋਰ ਜਾਣਕਾਰੀ ਲੈਣੀ ਚਾਹੁੰਦੇ ਹੋ ਤਾਂ ਹਿੱਸਾ ਵਰਕੇ  
ਹੇਠ ਲਿਖੇ ਖਾਨੇ ਵਿਚ ਦਿੱਤੇ ਪਤੇ 'ਤੇ ਸਾਡੇ ਨਾਲ ਸੰਪਰਕ ਕਰੋ।

Somali

Hadii aad u baahan tahay faahfaahin intaa kabadan oo ku soobsan afkaaka  
hooyo ama Af Somali fadlan lana soo xiira cinwaanka hoos ku qoran.

Spanish

Si usted desea mas informacion en su propia lengua, por  
favor contactenos en la direccion al pie del formato.

Tamil

உங்கள் மொழியில் மேலதிக தகவலைப் பெற விரும்பினால், அடியிலுள்ள  
பெட்டிக் குள் தரப்பட்டுள்ள விலாசத்தில் எம்முடன் தொடர்பு கொள்ளுங்கள்.

Urdu

اگر آپ اپنی زبان میں مزید معلومات حاصل کرنا چاہتے ہیں تو براہ کرم  
ہم سے اس پتے پر رابطہ قائم کریں جو کہ نیچے کے بکس میں درج ہے۔

Information is also  
available in large print,  
in Braille and on tape.

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# PART A - POLICY STATEMENT

## 1. Introduction

### Legal requirements

The Government considers that tackling anti-social behaviour (referred to as ASB in this document) is a national priority. This has resulted in the introduction of the Anti-Social Behaviour Act 2003 (amending the Housing Act 1996), which requires us to publish a Statement of policy and procedure on ASB. This document is Merton Council's Statement showing how it will deal with ASB.

This document can be viewed on the Council's website and is available for inspection at Council offices. A copy will be provided free of charge on request. A Summary of the Statement is also available free of charge.

**This document is available in large print, Braille or other languages on request.**

### Scope and purpose of this Statement

This Statement sets out our policy and procedures on ASB in relation to our role as landlord of Council homes and mainly applies to Council tenants and leaseholders. The Council's more general approach to ASB is set out in Merton' Anti-Social Behaviour Strategy and the Crime and Disorder Strategy 2002-2005.

We share the importance that the Government places on dealing with ASB. Publication of our policy and procedures will enable residents and staff alike to understand what is meant by ASB and the commitments we are making to deal with it.

The Statement of policy outlines our general approach to ASB and the specific policies we have for dealing with it. The Statement of procedures outlines what we do when ASB occurs. It enables everyone to understand how we will deal with a complaint of ASB and what is expected of residents.

### How the Statement was produced

The Statement has been drafted in consultation with stakeholders, including Council tenants and leaseholders, Council officers, elected Members, other social landlords and external agencies.

In particular, all tenants and leaseholders were given the opportunity to comment on the draft Summary and any views expressed were considered before the Summary and full Statement was agreed and published.

## 2. Definition

### Legal definition

Under the Housing Act 1996, ASB is defined as conduct which:

- is capable of causing nuisance or annoyance to any person; and
- directly or indirectly relates to or affects the housing management functions of a relevant landlord; or
- consists of or involves using or threatening to use housing accommodation owned or managed by a relevant landlord for an unlawful purpose

'Person' in this definition includes anyone who has a right to live in property owned or managed by the Council, those living in any other property in the neighbourhood (for example, owner occupiers, tenants of other landlords) and anyone else lawfully in such property or in the locality (for example working or using local facilities).

The 'housing management function' covers any activity that the landlord would undertake in the day-to-day and strategic management of the stock. This would include:

- Tenant participation (now called Community Development in Merton)
- Repairs and maintenance
- Rent collection
- Neighbourhood management

Matters that might 'indirectly' affect the housing management function could include housing support, environmental health, refuse collection and other services provided that help with the efficient operation of the landlord function.

### Merton definition

Merton has also adopted, through the Safer Merton (previously called the Merton Partnership Against Crime) ASB Strategy 2004, its own deliberately wide-ranging definition of ASB, so that most behaviours that people might regard as anti-social will be covered. The definition is:

***“low-level persistent behaviour, whether or not in itself criminal, by one household or individuals, causing disturbance, distress, harm or fear which severely impacts on quality of life for local people”***

This means that even some criminal activity may be classed and dealt with as ASB (as well as being treated as a crime). What really matters is the impact of the behaviour on other people.

### Anti-social behaviours

There is no set standard of behaviours considered acceptable or unacceptable by everyone. However, as a guide we have set out some examples of the type of conduct that could be classed as ASB. This is not intended to be a complete list and each complaint we receive will be taken seriously and considered on its merits.

<b>Type of ASB</b>	<b>Examples</b>
Noise nuisance	<i>Loud parties, shouting, TVs &amp; radios etc. at high volume, defective burglar alarms</i>
Intimidation and harassment	<i>Name calling, threats, damage to property, violence</i>
Local environmental quality issues (also called 'Enviro Crime')	<i>Litter, dog fouling, graffiti, fly-tipping, nuisance vehicles, car repairs (depending on the circumstances)</i>
Aggressive and threatening language and behaviour	<i>Often associated with groups of youths and/or with alcohol abuse</i>
Actual violence against people or property	<i>Often associated with harassment. Includes domestic violence</i>
Hate behaviour	<i>Directed against members of particular groups because of perceived differences (for example, race, age, religion, mental health, disability or sexual orientation)</i>
Using a home for an unlawful purpose	<i>Selling drugs is a common example</i>

It is important to note that the ASB could be:

- by a Merton Council tenant, affecting other tenants, owners or others lawfully using a property or facilities in the local area, or
- by an owner of a property, or tenant of another landlord, in the local area, affecting a Merton Council tenant

### **3. General policy statement**

We believe that residents have the right to live in their home in peace and free from fear, disturbance, distress or harm. No one should be expected simply to 'put up' with ASB. So we are committed to taking or supporting the full range of effective action to deal with ASB, whether this is by enforcement, prevention, diversion or rehabilitation.

Our general policy is to:

#### **What this means**

##### **Take action to prevent ASB**

We recognise that dealing with ASB is not simply about taking enforcement action. Wherever possible and reasonable to do so, we will actively look for and implement actions, schemes and initiatives designed to prevent ASB occurring in the first place. This includes, for example, diversionary schemes aimed at young people and the support and rehabilitation of perpetrators where appropriate.

##### **Offer advice and encouragement to residents on resolving disputes themselves**

Often the best way to resolve a dispute is for residents to sort it out themselves. For less serious neighbour disputes in particular, we will suggest that they might wish to have a friendly word with their neighbour before we get involved. Often, people don't realise their behaviour is annoying to other people. It could be that there is a lifestyle difference, which requires a little give and take

and understanding by all concerned.

However, we will always respect a complainant's wishes if they don't want to approach the perpetrator themselves.

**Take seriously all reports or complaints we receive**

If a resident tells us they are the victim of ASB and wants our help, regardless of the nature of the complaint, we will listen to, record, investigate and deal with the report according to our procedures.

**Take action that is proportionate, flexible and appropriate**

All complaints of ASB are different and so we will tailor our response according to the circumstances of each case. Usually, however, the action taken will be incremental, so that the firmest or most extreme actions, such as eviction, are only taken as a last resort.

Unless the ASB complained about is of a serious or urgent nature, we will try to deal with it without taking formal enforcement action wherever possible. This could include helping the parties involved to sort it out themselves, offering advice or support to either the victim or perpetrator or both as appropriate, by arranging mediation, or perhaps by reminding the 'guilty' party of their obligations as a tenant or leaseholder.

If informal action does not work, or if the ASB is serious, we will decide what action to take in each case from the full range of formal and legal remedies available to us procedures.

**Encourage and enable victims and witnesses to play a full part in action taken to deal with ASB**

We will agree an action plan with the complainant that sets out clearly what actions we intend to take and when and also what the complainant should do. We will only carry out actions that have been agreed with the complainant. We will keep all parties involved, including witnesses, informed of progress. We will support complainants and witnesses throughout any legal proceedings.

**Support victims in their own homes**

Our starting position is always to support complainants in their own home and take action against perpetrators, rather than rehousing complainants. Rehousing requests will be considered where there is a danger to the health and well-being of the complainant and there is no more effective way of removing that danger. Support offered to complainants could include physical security measures.

**Work in partnership with other agencies to tackle ASB**

We recognise that ASB, in all its forms, can only be dealt with effectively by working in partnership with other agencies such as the Police, Social Services, Neighbourhood Wardens, Education Welfare, Youth Offending Service and voluntary agencies.

We will work with other agencies to improve information sharing and develop joint recording and reporting systems.

We will only seek the active involvement of or pass on information to other agencies with the consent of the parties concerned.

#### **4. Strategic context**

As landlord of over 9,000 homes in the Borough, we have played (and continue to play) an important role in the formulation and implementation of the Council's overall plans and strategies for dealing with ASB, crime and disorder. We intend to develop this role in the future. Our Statement of policy and procedure on ASB supports and links in with the Council's objectives, as set out in the Safer Merton ASB Strategy and the Merton Crime and Disorder Strategy.

##### The Safer Merton ASB Strategy 2004

This Statement of policy and procedure compliments and is compatible with the Safer Merton ASB Strategy, published in 2004. (Safer Merton was previously called the Merton Partnership Against Crime). In particular, there is a strong relationship between our approach to ASB as set out in this Statement and the key objectives of the Safer Merton ASB strategy, which are to:

- provide a clear definition of ASB
- improve information sharing and recording
- improve partnership working
- reduce the fear of crime and quality of life of residents
- protect and support victims and witnesses
- clarify departmental roles and responsibilities
- co-ordinate services for enforcement, prevention and diversion

All of these objectives are specifically addressed in this Statement.

##### The Merton Crime and Disorder Strategy 2002-2005

The Crime and Disorder Act 1998 places a duty on local authority Chief Executives and Police Borough Commanders, in partnership with other agencies, to work together to reduce crime and disorder in the Borough. The Merton Crime and Disorder Strategy sets out the priorities and plans designed to achieve this aim. The Strategy contains 7 key objectives:

1. To reduce the involvement of young people in crime.
2. To increase public reassurance, improve the quality of life and reduce fear of crime and disorder.
3. To reduce the incidence of domestic violence, racially motivated and homophobic crime through a comprehensive approach that will lead to a reduction in the true level of hate crime.
4. To reduce crime and disorder related to the misuse of alcohol and illegal drugs.
5. To reduce the incidence of street crime in Merton.



6. To reduce the incidence of burglary in Merton.
7. To reduce the incidence of reported motor vehicle crimes.

These objectives are fully supported by our policies and procedures on ASB. There are specific references throughout this Statement to many of the above objectives and the actions designed to achieve them.

A new Strategy, called the Safer Merton Crime and Drugs Strategy 2005-2008, is currently being drafted. This will contain new strategic priorities and when it is finalised, our Statement of ASB Policy and procedure will be reviewed, and revised if necessary, to ensure it compliments the new Strategy.

### Other legislation

There is a raft of legislation that our policy and procedures on ASB take into account. In producing this Statement, we have been particularly mindful of the obligations, responsibilities and limitations placed upon us by the:

Children Act 1989	S.27 requires us to consider any request concerning the interests of a child from other authorities, such as Social Services, before deciding on action to deal with ASB
Crime and Disorder Act 1998	This places a duty on the local authority and the Police, in partnership with other agencies, to work together to reduce crime and disorder in the Borough (see section 4. above for further details)
Disability Discrimination Act 1995	This makes it unlawful for a person managing premises to discriminate against a disabled person (this includes people with a mental illness or learning disability) living in those premises. Under subsequent case law, we must take any disability into account before deciding what action to take to deal with ASB.
Homelessness Act 2002	All local authorities have to produce a strategy for dealing with homelessness. An important part of the strategy is the prevention of homelessness. This means that we have to make every effort to resolve problems to do with ASB before taking steps to evict a tenant.
Race Relations Act 1976	We have a duty to: <ul style="list-style-type: none"> <li>• Eliminate unlawful racial discrimination</li> <li>• Promote equality of opportunity</li> <li>• Promote good relations between persons of different racial groups</li> </ul>
Human Rights Act 1998	Article 8 states that: <ol style="list-style-type: none"> <li>1. Everyone has the right to respect for his private and family life, his home and correspondence.</li> <li>2. There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is</li> </ol>

necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or the protection of rights and freedoms of others.

This prevents us from intruding on an individual's private life by carrying out surveillance or monitoring except in specified circumstances. It also restricts the information that can be shared with other agencies.

Data Protection Act 1998

This deals with the holding, obtaining, recording, using and sharing of data of a personal nature. Data that is stored on paper, on computer or on film/video may be covered by the Act. The Act places restrictions on the use and disclosure of such data.

## **5. Obligations of tenants**

In an area like Merton, where people often live close together, residents should consider how their actions could cause nuisance or annoyance to others. Everyone has a social responsibility to act in a considerate way. It is also important that we show understanding and tolerance to others and respect different lifestyles. What one person may regard as inconsiderate or anti-social, most people might view as perfectly normal behaviour. So, for example, children playing normally, an occasional party or normal domestic activities are part of everyday life and will not automatically be treated as ASB.

### Tenancy conditions

We expect tenants to be aware of and adhere to the conditions of tenancy relating to ASB. It is not our intention to reproduce the full conditions of tenancy in this Statement. We have listed those that relate to ASB in summary form here and tenants should refer to their Tenancy Agreement for the full wording of these and other conditions of tenancy.

Tenants must:

- Take reasonable care of the property and treat the common parts of the block or estate with care and keep them free from obstruction.
- Keep private gardens (and window boxes) tidy.
- Not leave unroadworthy vehicles on the estate.
- Ensure that all people living in or invited to their home behave reasonably.
- Be considerate and act responsibly towards neighbours, allowing them quiet enjoyment of their home and not use the premises for any illegal purpose or do or allow anything which causes nuisance, annoyance or inconvenience to neighbours.

- Not racially, sexually or in any other way harass members of or visitors to other households or employees or agents of the Council or any other person visiting or otherwise engaging in a lawful activity in the locality.
- Not verbally or physically assault, threaten violence or otherwise intimidate employees or agents of the Council, or any other person visiting or otherwise engaging in a lawful activity in the locality.
- Ensure that the premises are not used to produce, supply, offer or possess with the intention to supply any controlled drugs unlawfully.
- Only park private motor vehicles on the estate and only in a garage or parking space and not park any vehicle on the approaches to the estate or on estate roads to the danger, nuisance, annoyance of neighbours or other residents on the estate.
- Not allow pets to cause nuisance or annoyance to others.

New tenants will be asked to sign up to these principles at the start of their tenancy.

### Leases

The rights and obligations of Council leaseholders are set out in their lease. Clauses relating on ASB may vary between leases, depending on when the property was sold. Leaseholders should refer to their own lease to check what clauses apply to them. Many of the actions set out in the Statement of procedure can be used against a leaseholder if necessary.

### Tenants' Handbook

There is further advice and guidance in the Tenants' Handbook on what tenants can do to minimise the likelihood of their actions being viewed as ASB.

## **6. Policies on different types of ASB**

We have a number of specific policies on particular types of ASB. These are listed below, together with the key features of each policy.

### Racial harassment

- This is viewed as a very serious form of ASB and we will use all the means at our disposal to resolve complaints of racial harassment, including eviction of the perpetrator where appropriate.
- Our policy is backed up by a specific clause in the Tenancy Agreement.
- We will support the victims of racial harassment in their own home.
- Transferring the victim will be considered where there is a real danger to the health and well being of the victim if they stay in their own home.

## Domestic Violence

- Our aim is to act as a caring landlord, sustain tenancies where possible, support victims of domestic violence and provide good advice.
- We will encourage victims to use restraining orders and injunctions to prevent domestic violence or to remove the violent person from the household.
- Temporary accommodation may be provided if necessary.
- We operate a joint protocol with Social Services on domestic violence.

## Nuisance caused by youths and children

- Complaints about groups of young people acting in an anti-social way are becoming increasingly common.
- Our policy is to:
  - work with partner agencies (such as Neighbourhood Wardens and the Police) to identify the youths
  - assist in the targeting of offenders
  - take effective enforcement action to stop any ASB caused by young people (through Acceptable Behaviour Contracts, for example)
  - try to prevent ASB by making physical improvements to estates where possible (better lighting, for example)
  - work positively with partner agencies to improve facilities on estates for young people and provide diversionary activities.

## Bulk rubbish and fly-tipping

- Our aim is to prevent the dumping of rubbish by identifying and taking action against those responsible.
- Dumped rubbish will be identified and removed quickly.
- Estate Services staff will inspect estates for bulk rubbish and fly-tipping on a regular and frequent basis.
- We will provide advice to residents on the correct methods of rubbish disposal.
- The Tenancy Agreement is currently under review and we aim to introduce a significantly revised Agreement in 2005. The new Agreement will include a specific clause on bulk rubbish and fly-tipping.

## Abandoned and nuisance vehicles

- Our policy is to identify and deal with abandoned and nuisance vehicles on Housing estates promptly.
- Abandoned vehicles in a dangerous condition will be removed as soon as possible.
- Estate Services staff will inspect estates for abandoned vehicles on a regular and frequent basis.
- We will take positive action to identify the registered keeper of abandoned and nuisance vehicles and take action against the registered keeper as appropriate.
- Our policy is backed up by a specific clause in the Tenancy Agreement prohibiting tenants from leaving unroadworthy vehicles on estates.
- We will work closely with Environmental Services to ensure that the way we deal with abandoned and nuisance vehicles is as comprehensive and effective as possible.

## **7. Support of complainants and witnesses**

We recognise that making a complaint about a neighbour or another person and possibly later giving evidence can be very stressful and demanding. We will do all we reasonably can to support complainants and witnesses throughout the process.

Such support could include:

- Dealing with the complaint promptly (see section 19. of this Statement).
- Keeping complainants and witnesses fully informed and involved.
- Always doing what we say we will do.
- Providing extra security to the home (such as, better locks, door chain, spy-hole, glazing film, fire proof letter box).
- Arranging extra patrols in the area.
- Arranging help through Victim Support (as well as offering general practical and emotional support, Victim Support offers a comprehensive service to victims and witnesses attending Court).
- Providing interpreters on request for people who do not speak, or only speak limited English or who are hearing impaired.
- Briefing on what will happen in court.
- Arranging transport for or accompanying witnesses to court.
- Providing a secure space at court separate from the alleged offender(s).
- Taking legal action to protect witnesses where appropriate.
- Arranging rehousing as a last resort if there is a very real threat of violence or actual violence.

## **8. Prevention of ASB**

As well as taking punitive action against offenders, we also aim to stop ASB, or prevent it occurring in the first place. This could include, for example:

- Supporting the Merton and Sutton Mediation service.
- Arranging mediation where appropriate.
- Using Acceptable Behaviour Contracts.
- Setting aside part of the budget for major works for Community Safety schemes proposed by residents themselves .
- Trying to prevent ASB by making physical improvements to estates where possible (better lighting, for example).
- Supporting and working closely with the Neighbourhood Warden service.
- Working closely with the Police.
- Working positively with partner agencies to improve facilities on estates for young people and provide diversionary activities.
- Publicising our policies and procedures on ASB so that everyone knows what the consequences might be of behaving in an unacceptable way.
- Participating in the Merton Crime and Disorder Strategy Information Sharing Protocol.
- Inviting new tenants to sign a pre-tenancy agreement setting out expected standards of behaviour.
- Actively researching best practice in dealing with ASB and implementing, in consultation with residents and others, new policies and measures where appropriate.

## **9. Rehabilitation of perpetrators**

Once ASB has taken place, our aim is to stop it happening again. We will investigate each complaint we receive to see how this can best be achieved. In some cases there may be an underlying cause, such as:

- Family or relationship breakdown.
- Mental illness or disability.
- Drug or alcohol dependency.
- Exclusion from school.
- A dispute between two families.
- A clash of lifestyles.

In such cases, taking legal action against the perpetrator may not be appropriate or effective, at least in the first instance, and we will work positively with partners, such as Social Services, to ensure the perpetrator receives all the advice or support needed both to modify their behaviour and prevent further ASB occurring and to maintain their tenancy and independent living. To help us in our joint working with our Social Services colleagues, we have agreed protocols on:

- Nuisance
- Mental Health
- Domestic Violence
- Evictions

If, despite the provision of suitable and adequate advice and support, the ASB continues, we will consider taking further action as appropriate to the case.

## **10. Multi-agency partnerships**

We recognise that ASB, in all its forms, can only be dealt with effectively by working in partnership with other agencies – both statutory and voluntary. Housing Services plays an active part in a number of multi-agency groups, meetings and initiatives dealing with ASB issues. These include:

- 'Safer Merton' – this strategic group includes the local authority, the Police, Probation Service, Health Authority, Crown Prosecution Service, Magistrates' Courts, Police Community Consultative Group, parts of the voluntary sector and the Drug Action Team. Safer Merton has responsibility for implementing the provisions of the Crime and Disorder Act 1998.
- Youth Offending Services – providing support/diversion for young people.
- Youth Inclusion and Support Panels – multi-agency planning groups that seek to prevent offending and ASB by offering voluntary support services and other interventions to high-risk 8 to 13 year old children.
- Prolific Offenders Group – offers support, help and diversionary schemes to try to reduce offending.

- Police Reassurance Areas – currently 5 in Merton in St. Helier, Abbey, Cricket Green, Pollards Hill and Figges Marsh Wards. Each has a Sergeant, 2 Constables and 3 Police Community Support Officers, working to identify the signals for insecurity and fear of crime and in partnership with local agencies to develop a resolution strategy.
- Neighbourhood Wardens – currently 9 in Merton, they patrol designated areas providing reassurance, help and support to local communities.
- Mediation Service – see section 22. for more details.
- Multi-Agency Casework Panel Meeting – held monthly, will bring together key partners and agencies to discuss individual cases and to decide what the best form of action to take would be.

We work closely with Merton's corporate Anti-Social Behaviour Co-ordinator, Support Officer and Case Workers, to ensure that the response to ASB is co-ordinated, that information is shared and that joint recording and reporting systems are developed.

## **11. Confidentiality**

Any information given to us in connection with a complaint of ASB will be treated in confidence. It will not be passed on to the person who is named in the information without the permission of the person who gave us the information.

## **12. Information sharing**

We can only tackle ASB effectively by working with our partner agencies and a key element of this approach is the sharing of information. We are also mindful of the requirement to share information lawfully, with due regard for the provisions of the Data Protection Acts and Human Rights Act.

To achieve this, we have agreed to share information with members of 'Safer Merton' in accordance with a signed protocol. Members include the local authority, the Police, Probation Service, Health Authority, Crown Prosecution Service, Magistrates' Courts, Police Community Consultative Group, parts of the voluntary sector and the Drug Action Team. We also share information under joint working protocols with our Social Services colleagues. Further sharing of information may be undertaken for similar purposes under new protocols. All sharing of information will be conducted in accordance with relevant legislation.

## **13. Staff training**

We will ensure, through training events, that staff dealing with ASB have a thorough working knowledge of our policy and procedures, and also of the law relating to ASB. Staff training needs are identified primarily at the annual performance appraisal meeting between a member of staff and his/her line manager. We currently run a one-day course for staff on legal updates and developments every 6 months. Other refresher training and updates when the law changes will also be provided as necessary.

## **14. Cross-tenure issues**

One of the main features of ASB is its indiscriminate nature. People from all tenure types - Council tenants, Council leaseholders, tenants and leaseholders of other social and private landlords and freeholders – may be the perpetrators or victims of ASB equally.

This means that to deal with ASB effectively, a cross-tenure approach is needed. Our policy and procedure on ASB supports this approach, through our involvement in strategic and multi-agency partnerships (as set out in this document) and by information sharing. We consulted other social landlords operating in Merton on our Statement of policy and procedure and have sent them all a copy of the published Statement so that social landlords know what to expect from us on ASB issues. We will seek to work with partner landlords on complaints of ASB, where appropriate, for the benefit of the wider community.

## **15. Protection of staff**

Our staff may occasionally be threatened or abused, or even harmed in the course of their duties when dealing with ASB. Protection of our staff is of paramount importance and we take our responsibilities in this area very seriously.

The highest risk is when staff are working alone. With this risk in mind, we have developed a Safe Lone Working Policy, which focuses on hazards associated with potentially aggressive or violent people. The key features of this policy are:

### Risk assessment

- To be carried out annually by both management and staff
- Includes all the potential threats a lone worker might face

### Training

- Staff to be trained in risk assessment, safety precautions and coping with incidents
- Managers to be trained in the application of the Safe Lone Working Policy

### Management responsibilities

- Managers to make clear what support is available to a lone worker in the light of known risks
- All incidents to be recorded and reported to the Police
- Complaints with a view to prosecution to come from the employee with the support of management

### Employee responsibilities

- Employees to familiarise themselves with the Lone Working Procedure
- Incidents to be reported as soon as possible

### Support and assistance to staff

- Employees reporting an incident to be supported
- Advice on pursuing a claim for damages to be given to the employee
- Counselling, medical advice and time off for pre-booked legal appointments to be given (by arrangement with the line manager)



## PART B - STATEMENT OF PROCEDURE

### 16. Introduction

This part of the Statement broadly outlines our operational procedures to deal with complaints about ASB. It addresses how complaints should be made, what happens when we receive a complaint, how cases are assessed and progressed, the provision of support to complainants and the use of enforcement action.

### 17. Resolving disputes informally

Very often the best way of resolving a problem is for the residents concerned to sort it out themselves. People don't always realise their behaviour is annoying to other people and can be reasonable if approached in person. It could be that there is a lifestyle difference, which requires a little give and take and understanding by all concerned.

We support this approach by offering encouragement and advice on how to approach the person causing the problem. Where appropriate and safe to do so, when a complaint is reported for the first time, we will ask the complainant if they have discussed the problem with the person or people they are complaining about. **But we will never insist that the complainant speaks to the person carrying out the ASB before we are prepared to take action ourselves.**

If you are suffering from ASB and are willing to try to sort the problem out yourself, we advise that you think about what you are going to say before you speak to the other person. When you are talking to the other person, please consider the following advice:

- Be clear about what the problem is and how it affects you.
- Don't stray from the main issue.
- Think about the outcome you would like and what the outcome is likely to be
- Stay calm and friendly.
- Listen to the other person's views and think about what they are saying.
- Try not to bring up incidents from the past.
- Try not to interrupt when the other person is talking.
- **If the person is unreasonable - leave the discussion.**

If you have tried this approach and it hasn't worked, or if you don't feel able to speak to the other person, or the ASB is simply too serious to sort out yourself, Housing Services will get involved and take action as set out in the following sections.

### 18. Making a complaint about ASB

Complaints about ASB should be made to Housing Services (see below for contact details). A complaint can be made by phone, in person, by letter, email or through a representative. Anonymous complaints will also be recorded and investigated as far as is possible.

A complaint or report about ASB may be made by anyone who experiences or notices the problem. For example, this could be:

- an individual tenant or leaseholder
- a group of tenants or leaseholders
- a private tenant or owner
- a Neighbourhood Warden, Police Community Support Officer or Police Officer
- estate staff

A complaint may also be made through a representative, for example a Councillor, MP, Citizens' Advice Bureau or Victim Support.

If you want to make a complaint about ASB, please:

Write to: **Tenancy Services Manager  
Merton Housing Services  
Chapel Orchard  
Church Rd  
Mitcham  
CR4 3BE**

Call in person: **At the same address as above  
(office hours are 9am-5pm, Monday to Friday)**

Phone: **0845 304 6090**

Email: **housingervices@merton.gov.uk**

**If you consider that you or anyone else is in immediate danger as a result of very serious ASB occurring outside normal office hours, you should phone the police.**

#### **Noisy parties**

If a party is being held and you want to complain about the noise while the party is still happening, you should contact the Environmental Health noisy party patrol service. The service operates in conjunction with the police. The service operates:

- during the Winter on Saturday night from 11pm to 4am
- during the Summer on Friday and Saturday night from 11pm to 4am

The officer is can be contacted on: **020 8947 1212**

The officer will visit the property to see if a nuisance is being caused and will take whatever action is most appropriate at the time.

## **19. Receiving and assessing the complaint**

When a complaint about ASB is received, we will record it and always treat it seriously. Usually, the complaint will then be passed to a named Housing Officer or Leasehold Housing Officer (depending on the circumstances of the complaint). When this happens the complainant will be told the name and contact details of the officer who will be dealing with the case.

Where appropriate (for example, a report of an abandoned vehicle) the complaint will be passed to our Estate Services Team (the Caretaking Service) or Environmental Services. We will tell the complainant when this happens.

The officer dealing with the complaint will make an initial assessment of the seriousness and urgency of the case and, taking the vulnerability of the complainant into consideration, place the complaint into one of 3 levels:

<b>Level 1</b>	<p>This covers the most serious or urgent types of ASB.</p> <p>Examples might include:</p> <ul style="list-style-type: none"><li>• racial harassment</li><li>• domestic violence</li><li>• other hate crime</li><li>• arson or attempted arson</li><li>• behaviour resulting in danger to the complainant or others</li></ul> <p><b>For Level 1 complaints, we aim to arrange and carry out an interview with the complainant within 1 working day of receipt of the complaint.</b></p>
<b>Level 2</b>	<p>This covers ASB where there is no immediate threat to the complainant or others.</p> <p>Examples might include:</p> <ul style="list-style-type: none"><li>• problems associated with groups of youths</li><li>• damage to property</li><li>• using the home for an unlawful purpose</li><li>• regular loud noise</li></ul> <p><b>For Level 2 complaints, we aim to arrange and carry out an interview with the complainant within 5 working days of receipt of the complaint. The interview arrangements will be confirmed in writing to the complainant.</b></p>
<b>Level 3</b>	<p>This covers relatively low level ASB that is unlikely to cause harm in the short-term.</p> <p>Examples might include:</p> <ul style="list-style-type: none"><li>• overgrown gardens</li><li>• car repairs</li><li>• occasional noise</li></ul> <p><b>For Level 3 complaints, we aim to arrange and carry out an interview with the complainant within 10 working days of receipt of the complaint. The interview arrangements will be confirmed in writing to the complainant.</b></p>

If the circumstances change, or if new information comes to light (in interview with the complainant, for example) a case may be re-categorised at a different level.

If a complaint is made in person, we will aim to carry out a full initial interview at that time.

Interviews will be carried out at a time and place (this could be at our office, the complainant's home or another place mutually agreed) convenient to the complainant.

## 20. Interview

The purpose of the interview is to establish all the details and facts about the complaint (a standard ASB interview form will be used for this) and to discuss and agree what action will be taken and by whom. At the end of the interview an action plan will be drawn up, clearly setting out the agreed actions.

The complainant will be asked to read and sign the written record of the interview and the action plan to confirm their agreement to both documents. The complainant will normally be given a copy of the interview form and the action plan at the end of the interview. If this is not possible, the interview form and action plan will be sent within 1 working day of the interview.

The interview form will invite the complainant to give his/her consent for us to:

- contact the alleged perpetrator, and
- contact and/or share information with specified partner agencies.

## 21. Action plan

This sets out the actions that either we or the complainant agree to take following the interview. It is not possible to list all the possible actions here, but some examples are:

- We might agree to:
  - try to identify the alleged perpetrator (if not known by the complainant)
  - speak to the person causing the problem (with the complainant's consent)
  - speak to witnesses
  - try to gather more evidence
  - offer security improvements to the home
  - involve other agencies (such as Social Services, Environmental Health or youth services)
  - arrange mediation
  - provide further information and advice
  - consult Legal Services about possible legal action
  - take legal action
- The complainant might agree to:
  - speak him/herself to the person causing the problem
  - keep an incident log
  - contact other support agencies
  - contact the police (if a crime may have been committed)
- The action plan should always include:
  - the estimated timescale for any action agreed (where possible)
  - how the complainant will be kept informed of the progress of the case

The usual actions that we might agree to take are set out in greater detail in the following sections. Any action we do decide to take will depend on the circumstances of each case. Some actions can take place at the same time.

## **22. Mediation**

Mediation usually results in the meeting of people involved in a dispute to discuss and hopefully resolve it with the help of an independent person, called a mediator. However, mediation can sometimes take place without a meeting between the two parties involved. The mediator will be a trained volunteer from the Merton and Sutton Mediation service. Mediators are neutral and don't take sides. The service is free, confidential and independent of the Council. The final decision on whether a case is suitable for mediation rests with the Mediation service.

Everyone gets a fair chance to have their say and be listened to. The aim is to reach an agreement about future behaviour to which everyone involved signs up. Solutions are not imposed, but agreed willingly by both parties. Details of any agreement will be confirmed in writing to both parties.

Mediation can be a very successful way of resolving disputes between neighbours and our policy is to always suggest and encourage the use of mediation in suitable cases. With the agreement of the parties involved, we will refer the case to the Merton and Sutton Mediation service. Once the referral is made, the mediator will:

- contact both clients to discuss mediation and make an appointment to meet them
- visit both clients to find out about the situation and how they feel it can be resolved
- assess the case and the best way forward – indirect mediation, direct mediation or a combination of the two
- monitor any agreement and mediate any changes
- close the case and inform Housing Services

If mediation is tried, but fails, this may strengthen our case for taking legal action. If either side refuses (in suitable cases) to take part in mediation, it could weaken their case in court.

Not all cases are suitable for mediation and mediation does not always resolve the problem. Other action we can take (depending on the circumstances of the case) is set out below.

## **23. Contacting the perpetrator**

The person causing the nuisance is called the perpetrator. With the complainant's consent, we may write to or visit the perpetrator to:

- make him/her aware of the problem
- ask for his/her version of events
- remind him/her of their obligations under the tenancy agreement or lease (if appropriate)
- tell him/her to stop the ASB (if appropriate)
- make the consequences of non-compliance clear (if appropriate)
- issue a formal written warning of what will happen if the ASB doesn't stop

## **24. Case review**

At this stage in the procedure, it is likely that the Officer dealing with the case will review it with his/her line-manager, the Neighbourhood Coordinator. Depending on the circumstances, Legal Services may also be invited to the review meeting.

The review meeting will consider whether:

- the complainant and witnesses have been kept informed and provided with help and support as agreed in the action plan
- all avenues of evidence gathering have been explored
- any further support for the alleged perpetrator should be considered
- any legal action should be considered
- any further action can be taken
- any other agencies or Council departments should be involved
- the case should be closed

Any further action agreed will be recorded on the action plan, showing who is going to carry out the action and the timescale. Any changes to the action plan will be notified to the complainant.

## **25. Evidence**

One of the most important aspects of dealing with ASB is obtaining the evidence needed to take appropriate and effective action. This can also be one of the more difficult and problematic parts of the process. Evidence gathering can take a number of forms, but it works best if the complainant and the Council work together. The evidence needed for legal action must:

- be first hand – it must be what the complainant or witness saw or heard
- be available in writing (in an incident log, for example)
- be sufficient to convince a court that it is reasonable to grant the order we are seeking
- show that the ASB has had an impact and what that impact is

Usually in possession cases and sometimes in injunction proceedings, the evidence must be given in person at court.

Some of the ways in which evidence can be gathered are set out below.

### Incident Logs

It is important to have as much detail as possible about the ASB being reported and so both complainants and witnesses are normally asked to keep an Incident Log as soon as possible after making the initial complaint. The Incident Log is a standard form allowing complainants and witnesses to make a detailed note of incidents as they happen. Over time, this helps us to assess the seriousness and frequency of the ASB. Also, by knowing when the incidents occur, we can better target resources to try to deal with the problem (for example, ask a caretaker or Neighbourhood Warden to patrol at the times when incidents are most likely to occur). Incident Logs can also be presented

as evidence in Court – either by the complainant/witness or sometimes by a third party if necessary.

If, for any reason, the complainant cannot keep written Incident Logs, we will consider other practical ways to keep records (for example, a Dictaphone tape recorder). Incident Logs may be completed in whatever language the complainant/witness is most comfortable with and we will arrange for them to be translated.

### Professional Witnesses

If there are no witnesses to the ASB, it may be possible for a variety of professionals to gather evidence of incidents. Even where there are witnesses to the ASB, the services of professionals may still be used to provide independent evidence, particularly if legal action is being considered. We will obtain the consent of the complainant at the initial interview to share information with other agencies.

### Neighbourhood Wardens

If the residents involved in the complaint live in an area covered by the Neighbourhood Warden scheme, we will normally (depending on the circumstances of the case) brief the local Warden about the complaint. The Neighbourhood Wardens work from 2pm to 9pm from April to September and 12noon to 8pm from October to March. This means they can witness events that occur outside normal working hours and can ask individuals (groups of youths, for example) to move away from the area, or call the police if necessary. They can also call on the complainant or witnesses to check they are alright and find out if any further incidents have occurred. The Neighbourhood Wardens can record the information the complainant gives them even if they do not actually witness any incidents themselves and they can present this in Court later if necessary as hearsay evidence.

### Police

There are a number of Reassurance Areas in the Borough (see section 10 for more details) where there are teams comprising a Sergeant, 2 Police Officers and 3 Police Community Support Officers. We will work closely with these teams. The police can check information from police records, develop a joint approach to dealing with the problem, target the Police Community Support Officers patrols, give advice on possible criminal action and attend Court to present police evidence in civil cases.

If the Ward where the ASB is taking place is not a Reassurance Area, there should still be a Beat Manager. We will maintain a close working relationship with this Officer.

### Estate Services staff

Caretakers and cleaners often have a great deal of information about what goes on their estates and can act as our 'eyes and ears'. They can be asked to provide information about incidents they witness while they are carrying out their duties on estates. A caretaker can also be asked to attend out-of-hours to witness noise or other ASB. They can ask for the noise to be turned down if it appears safe to do so. Estate staff can also give evidence in Court.

## Private Firms

There are a variety of private firms we can use to try to obtain information/evidence, if none is available from elsewhere. Use of private professional witnesses is very expensive and not always effective and we would usually only consider this option if the ASB:

- is serious, or
- has been going on for a considerable length of time, and
- all other methods of resolving the problem have failed.

The decision to use a private firm will be taken by the Tenancy Services Manager in consultation with the Neighbourhood Coordinator, the local Police Team and Legal Services.

## CCTV

If the area where the ASB is taking place is covered by the Council's CCTV system, incidents may be recorded on the tapes held in the CCTV room. Tapes are kept for one month.

If there is a pattern of incidents emerging from the Incident Logs or incidents are taking place in a specific location, the CCTV room staff can be asked to keep an eye on the location.

## Covert CCTV

The Council and Police have covert cameras that can be used to gather visual evidence of incidents. The range of the cameras is small, but where nuisance is occurring in a hallway, entrance, outside someone's front door, or in a relatively small area outside a block these cameras may be able to collect useful evidence.

Any use of covert CCTV will be carried out in accordance with the 'Code of Practice and Operational Procedures for the Management and Operation of Merton's Rapid Deployment and Covert CCTV Systems'. This Code is designed to ensure that covert CCTV schemes will be operated fairly and within the law and only for the purpose for which they were set up.

## Witnesses

If the complainant is unable to identify witnesses to the ASB or cannot be specific about who might have witnessed incidents and it would seem likely that other tenants may be affected, we will make enquiries of neighbours who might have witnessed incidents. This information may help assess the seriousness of the ASB and who is responsible. We will normally ask any witnesses to complete Incident Logs.

## Environmental Health

Environmental Health operates the Noisy Party Patrol in conjunction with the Police from Wimbledon Police Station (see section 18 for more details).



An Environmental Health Officer witnessing noise nuisance on a call-out does have powers to confiscate equipment if the noise is extreme and it is not abated on request. In practice, this power only rarely has to be used and usually a warning will be issued. Housing Services are advised of any Environmental Health involvement in a case.

If legal action is taken, Environmental Health will be able to give evidence in Court on the levels of noise and give their professional judgement about the levels of disturbance caused.

### Noise-Monitoring

Environmental Health also have noise monitoring equipment which can be installed in individuals' homes to monitor sound levels caused by mechanical noise (for example, loud music, TVs). There is high demand for this equipment and it cannot be installed immediately on request, but it can be booked usually a few weeks in advance. The complainant will need to keep and submit Incident Logs to give an indication of the frequency and levels of noise before noise-monitoring equipment can be installed.

If noise is recorded and Environmental Health considers that it represents a nuisance, consideration may be given to the serving of a Noise Abatement Notice under the Environmental Protection Act 1990. Consideration may also be given to taking other forms of legal action at the same time.

We will advise the complainant of the outcome of noise monitoring, including if no noise was recorded by the monitoring equipment or the noise was of an acceptable level.

## **26. Target hardening**

'Target hardening' is the name we give to the various physical security improvements that may be carried out, either to an individual home or to the shared areas of estates.

In individual homes, the type of security improvements we may consider (depending on the circumstances of the case) are the fitting of:

- better locks - all Council properties should be provided with a night latch and a 5 lever dead lock set one third of the distance from the top of the door and one third of the distance from the bottom of the door respectively.
- a door chain – all council properties should be fitted with a door chain
- a spy hole – all Council properties should be fitted with a spy
- a London Bar – these can be fitted to doorframes to provide addition strength around the lock keeps
- frame bolts - can be fitted to back doors, but not front doors
- glazing film - can be applied to windows if there is a history or danger of them being broken
- fire proof letterboxes – these can be fitted if there is a risk of arson or attempted arson

This service can be provided for leaseholders, but unless there are exceptional circumstances, we will make a charge for any work we carry out.

The Police Crime Prevention Service can also carry out inspections on request and give advice to individual tenants and leaseholders.

In shared areas, ASB may be occurring because the area is not well lit, or overlooked, or because there are many escape routes from the area. We will discuss such problem areas with the local Reassurance Area team, Crime Prevention Officer or Beat Manager and local residents with a view to agreeing possible solutions.

## **27. Acceptable Behaviour Contracts (ABCs)**

An ABC is a voluntary agreement that puts limits on the offender's behaviour in a signed agreement. They are normally drawn up by Council officers and the Police, together with the offender. They are often used with young people. An ABC might cover issues such as:

- the volume or timing of music being played
- the use of offensive or threatening language
- places or people that the person must avoid

## **28. Legal action**

Unless the ASB complained of is very serious, legal action to resolve the problem will only normally be considered after other ways of dealing with the complaint have been ruled out or have been tried and failed.

Before we start legal action, we will explain to the complainant, and to any witnesses, what we are proposing to do, what will be expected of them and the likely timescale. We will keep everyone involved updated on any developments in the case.

There is a range of legal remedies to combat ASB and the action or actions chosen will depend on the type and seriousness of the case and the evidence available. The range of legal remedies and the features of each are set out below.

## **29. Anti-Social Behaviour Orders (ASBOs)**

An ASBO will usually only be sought in cases of serious ASB. They are often used after an ABC has been breached. They can be used against anyone over the age of 10 who has acted in "a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself". A Parenting Order may also be applied to the parents or guardians of children aged between 10 and 17 years of age.

ASBOs are intended to be preventative - they place limits on a person's behaviour or actions (for example, it may stop them using threatening behaviour or exclude them from a particular area). They remain in place for a minimum of 2 years and there is no maximum period. Breach of an ASBO is a criminal offence, with possible maximum conviction of 5 years' imprisonment or a fine or both.

Either the Police or the Council can apply for an ASBO, but there must be consultation between the two. Merton has a set procedure for obtaining ASBOs.

## 30. Injunctions

An injunction is a civil remedy obtained through the County Court or High Court. They may be made as well as or instead of an ASBO. They either forbid a person from doing something (such as playing very loud music) or make them do something (such as clearing all the rubbish from their garden).

There are a number of types of injunction available to us, including specialist injunctions to help us deal with ASB.

The common characteristics of injunctions are:

- They are a discretionary court remedy (the court does not have to grant an injunction if it does not see fit).
- There needs to be a cause of action (for example, a breach of a tenancy agreement is a cause of action because it is a breach of contract).
- They are designed to stop or compel behaviour.
- They are enforceable by a maximum of 2 years in prison for contempt of court if a breach is proved beyond reasonable doubt.
- They are generally not suitable for those under 18, or those without the mental capacity to understand what they are doing is wrong, and to change when challenged.
- The complainant will usually be named in evidence, but may not have to give evidence in person in exceptional circumstances.
- They can be available on an interim or emergency basis.

Injunctions can be used for a wide variety of breaches of Conditions of Tenancy or Lease, including nuisance caused by pets, threats of violence towards members of staff, untidy gardens, refusal to provide access to property so that works can be carried out, acts of harassment or other nuisance.

There are a number of different types of injunctions:

### a) General injunctions

Injunction to stop trespass on land – available if we prove:

- that we own or control the land, and
- that the defendant has been asked not to go on the land, but still does.

Injunction to restrain assault on staff – available if we prove that the defendant has threatened or actually abused or assaulted a member of staff in the course of their employment.

Injunction to prevent breach of the Tenancy Agreement or Lease/Transfer Document – can be used to enforce the terms, including the nuisance clause.

Injunction under s.222 Local Government Act 1972 – can only be used by local authorities. We can take out civil or criminal proceedings where relief is sought for the well being of the local community. Section 91 of the Anti-Social Behaviour Act 2003 introduces a power of arrest to an injunction obtained under section 222. If the court grants an injunction that prohibits conduct capable of causing nuisance or annoyance to a person, it can attach a power of arrest if:

- the conduct includes the use or threatened use of violence, or
- there is a significant harm to a person (harm in this context includes serious ill treatment or abuse, whether physical or not).

#### b) Housing injunctions

Section 13 of the Anti-Social Behaviour Act 2003 repealed sections 152 and 153 of the Housing Act 1996 and introduces new provisions allowing us to apply for injunctions to prohibit ASB that affects the management of our housing stock. These provisions are covered in sections 153A to 153D of the Housing Act 1996.

Section 153A applies where the defendant is engaged or threatening to engage in conduct capable of causing nuisance or annoyance to any person:

- a) with a right to reside in housing accommodation owned or managed by us, or
- b) residing in other housing accommodation in the neighbourhood, or
- c) engaged in a lawful activity in the neighbourhood, or
- d) employed in connection with the exercise of our housing management functions, and
- e) that conduct directly or indirectly relates to or affects our 'housing management functions' as landlord.

Section 153B applies where a perpetrator has engaged in conduct which consists of or involves using or threatening to use housing accommodation owned or managed by us for an unlawful purpose.

Section 153C applies where the court grants an injunction under section 153A or 153B and it thinks that the conduct consists of use or threatened use of violence or a significant risk of harm to a person mentioned in section 153A. In these circumstances, the court may exclude the perpetrator from any premises or area specified in the injunction.

Under section 153D, the landlord can apply for an injunction against a tenant for a breach or anticipated breach of the Tenancy Agreement on the grounds that the tenant is engaging or threatening to engage in conduct capable of causing nuisance or annoyance to any person, or is allowing, inciting or encouraging any other person to engage or threaten to engage in such conduct.

The court may add a power of arrest to an injunction, and if an injunction is then broken the perpetrator may be fined or even imprisoned.

The decision to obtain an injunction and what type it should be will be made in consultation with Legal Services. The complainant and witnesses will be advised of this decision.

## **31. Introductory Tenancies**

Most new Council tenants, unless they have been secure tenants of other landlords, are given an introductory tenancy for a period of 12 months. If there is evidence that an introductory tenant has breached their conditions of tenancy, provided we follow the correct legal procedure the court must grant a Possession Order if we request it. If an introductory tenant successfully completes the introductory period, the tenancy will automatically become secure.

## **32. Demotion Orders**

Demotion Orders have the effect of making secure tenancies similar to introductory tenancies. If there is evidence that a secure tenant, a member of his household or visitor is carrying out ASB as set out in sections 153A and 153B of the Housing Act 1996 (see section 30. above for more detail), we can apply to the County Court for a Demotion Order.

A Demotion Order takes away a tenant's:

- secure tenancy for one year from the date specified in the order
- statutory rights (such as the Right To Buy) whilst the tenancy is demoted.

Essentially, the tenant can be considered to be 'on probation' for one year.

When applying for a Demotion Order, we will need to demonstrate to the Court that the tenant's conduct was 'capable' of causing nuisance and annoyance, rather than 'likely' to cause nuisance and annoyance. This should make it easier to prove ASB, but it does not remove the necessity for good evidence from witnesses. The evidence will need to show to the court that the ASB:

- has taken place, and
- is capable of causing nuisance and annoyance, and
- affects the housing management of the property.

If at the end of the demoted tenancy period, there has been no further ASB, the demoted tenancy will revert to a secure tenancy.

If, however, there is further ASB or another breach of the tenancy conditions during the demoted tenancy period, we can apply to the court for possession of the demoted tenant's home. The court must grant a possession order if the Council requests it and the correct legal procedure has been followed.

A Demotion Order is only likely to be used for relatively serious or persistent ASB and possession of a demoted tenancy is only likely to be sought if the ASB continues during the demoted tenancy period.

## **33. Possession Orders (secure tenancies)**

We can apply to the County Court for a Possession Order if, in the case of secure tenants, one or more of the grounds for possession contained in Schedule 2 of the Housing Act 1985 have been satisfied.

The grounds which ASB normally falls under are Grounds 1,2, 2A, 3 and 4. Once the ground has been proved the court then has to decide if it considers it reasonable to order possession.

Possession proceedings will normally only be started if other available remedies have failed and so only apply to more serious ASB. Courts are increasingly expecting landlords to have tried every appropriate alternative to make the tenant comply with the Conditions of Tenancy before considering possession proceedings.

The first formal stage towards possession proceedings against secure tenants is the service of Notice of Seeking Possession (NOSP). If the problem continues after serving a NOSP, the Housing Officer, Neighbourhood Coordinator and Legal Services will jointly review the case and decide whether to issue Court proceedings.

If court proceedings are deemed appropriate, then both the complainant and the perpetrator will be notified in writing that the case is being referred to court.

The full hearing could be listed anything from 6 months to a year after the claim has been issued. The complainant and witnesses will be advised of the likely timescale and kept informed of dates that impact on them. In the meantime, we will ask complainants and witnesses to continue to keep records of further ASB.

Any evidence presented in court must:

- be first hand (that is, come from someone who has witnessed the event and they must attend Court to present it)
- be clearly set out in writing
- be contemporaneous (that is, written up as when incidents occur)
- convince a judge that it is reasonable to grant the Council the Possession Order
- show the effect the ASB has had on the victim/s
- be from more than one source, unless there is very compelling evidence from one person.

In deciding whether to grant the Possession Order, the judge will consider:

- the seriousness of the nuisance
- the tenant's personal circumstances such as health, age, any dependant children
- the interests of other tenants
- the effect the ASB has had on the victim or others
- whether the tenant has provided any assurances about future conduct
- any other relevant circumstances
- action previously taken by officers, including letters, warnings, interviews etc

An order may be immediate or suspended (a suspended order means the tenant cannot be evicted unless they break the terms of the suspended order).

## **34. Eviction**

The eviction of a tenant is considered to be an action of last resort and will usually only be carried out if the ASB is very serious or persistent and other available appropriate remedies have failed.

If an immediate Possession Order is granted, or if the terms of a suspended order are broken, it is likely that we will apply to the court for a warrant of execution to evict the tenant.

A tenant who has been evicted has the right to make an application to us for rehousing, for example under homelessness legislation. We will consider any such application on its merits, but in most cases we do not have a duty to offer permanent accommodation

and in these circumstances the (former) tenant will not normally be rehoused by the Council.

### **35. Case closure**

A complaint about ASB will remain as a 'live' case until:

- it is resolved to the satisfaction of the complainant, or
- it is thought by both the Housing Officer and the Neighbourhood Coordinator that all possible action has been taken to resolve it, or
- there have been no further reported instances of ASB in the previous 3 months (except cases where legal action is being taken)

The decision to close the case will be taken jointly between the Housing Officer and Neighbourhood Co-ordinator and the complainant and witnesses will be informed in writing.

### **36. Monitoring**

We will actively record and monitor the incidence of ASB. Records will be held and maintained both at the level of the individual case and at more general levels.

Maintaining detailed records of individual complaints of ASB will enable us to check that we are following our procedures and to monitor our performance against targets (for example, the target response times for the initial interview with the complainant).

The more general record keeping and monitoring could include, for example:

- recording the number of:
  - complaints of ASB we receive by the level of seriousness/urgency of the case
  - cases referred to mediation
  - Acceptable Behaviour Contracts agreed
  - Anti-Social Behaviour Orders served
  - Demotion Orders obtained
  - Possession Orders obtained
  - evictions carried out on grounds of ASB
- recording the success rate of each of the various actions we take to combat ASB
- mapping the incidence of ASB on housing estates across the Borough

This will allow us to assess the overall scale of the ASB problem, check for 'hotspots' so that we know where to direct our resources and help us to decide what type of action works best in any given situation.

In addition, to help us evaluate the effectiveness of our ASB policies and procedures we measure, through satisfaction surveys, the percentage of tenants who consider the various types of ASB that are experienced to be a serious problem. We also ask tenants how satisfied they are with the area as a place to live.

From time to time we may also carry out surveys of residents who have experienced ASB to find out how satisfied they were with the way their case was dealt with and with the outcome.

All of the results of monitoring and surveys will be fed into the corporate record keeping system so that the overall position on ASB in Merton at any point in time is understood.

### **37. Review**

The Statement of policy and procedures on ASB will be reviewed annually and if any changes are proposed, they will be subject to consultation. In the event that the Statement needs updating, a revised Statement and Summary will be re-published.