# Access issues: What to do when a resident will not provide access?

Aisha Akhtar

# Objectives

- Understanding what amounts to ASB
- Preventing ASB
- Dealing with witnesses
- Overview of the anti-social behaviour legislation
- Effective case management: risk assessment
- Tools to tackle ASB
- Multi-agency working
- Legal action: Possession/injunction action
- Good practice in the gathering of evidence
- Vulnerability and mental health; cuckooing

# Why do we need to tackle ASB?

- ASB in neighbourhood can make life miserable
- People do not feel safe
- can have a devastating impact on communities and individuals
- Can lead to more serious crimes taking hold inc violence
- Some behaviour such as a neighbour playing the radio loudly, may seem insignificant as a one-off, but can have a serious negative impact if part of a persistent pattern of behaviour
- often directed at the most vulnerable members of our society
- tragic of consequences
- can reduce trust and a sense of community by making people avoid interaction

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# Definition of ASB

- The Anti-Social Behaviour, Crime and Policing Act, 2014 defines ASB as ;

- *(a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,*

- *(b)conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or (c)conduct capable of causing housing-related nuisance or annoyance to any person.*

# What is ASB?

- noisy and/or abusive behaviour
- vandalism
- graffiti
- intimidation
- public drunkenness
- littering
- fly tipping
- illegal drug use
- excessively barking dogs



# What is not ASB?

- Babies crying
- Cooking smells
- One off parties
- People being rude, or giving you a ‘funny’ look
- Cats roaming or fouling
- Disputes on social media such as Facebook
- Normal household noise eg occasional door slamming
- Inconsiderate parking
- Civic disputes between neighbours
- gossip

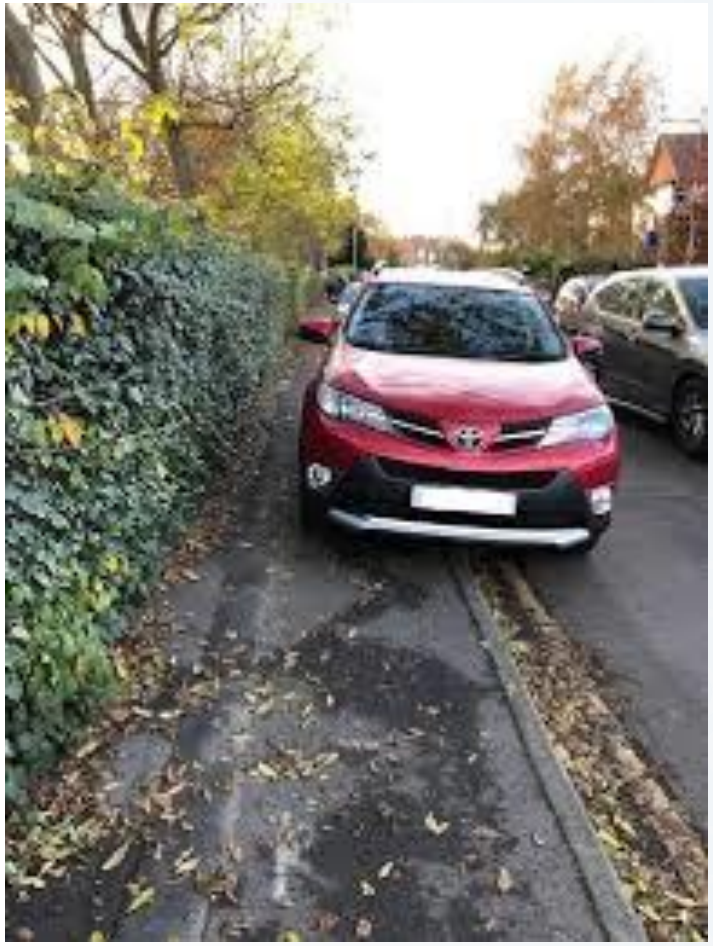
# Vacuuming alone is not ASB!



# Children playing is not ASB!



# Inconsiderate parking is not ASB!



# ASB Laws

- Protection from Harassment Act 1997
- Housing Act 1996
- Anti-social Behaviour Act 2003
- Policing and Crime Act 2009
- Anti-social Behaviour, Crime and Policing 2014
- Local Government Act 1972
- Equality Act 2010



# How to prevent ASB; early intervention?

- The aim is to stop the incident - not evict someone and move the problem elsewhere.
- TRIPLE APPROACH; EARLY INTERVENTION, POSITIVE ENGAGENMENT & ENFORCEMENT WHEN NEEDED
- Work with young people and schools
- Mediation
- Supporting perpetrators eg, counselling
- Warning letters
- ABCs
- Pre-tenancy checks
- Pet agreements; where nuisance is caused by pet
- Tenancy support services
- Empower tenants to help themselves (see Surrey Police 'Dear Neighbour') signposting the call to other agencies
- Extending introductory/starter tenancy
- Investigate the health and welfare of tenant and family
- Environmental Health/ Community Safety Teams



# DEAR NEIGHBOUR...



**As you know, we're part of a community which means being mindful of each other. You may not know but we were disturbed on:**

Date: / / Time: :

**Disturbed by:** (Please tick which applies)

- ☐ Loud music
- ☐ Dog barking
- ☐ People shouting
- ☐ Noxious smells
- ☐ TV too loud
- ☐ Other
- ☐ Door slamming

**The effect on us was:** (Complete box below)

Being part of a community means being mindful of each other especially in these stressful times where we are having to spend more time in our homes.

We hope you don't mind receiving this, but just wanted to let you know the impact this had on us, in case you weren't aware.

Thanks for your cooperation!

SEE THE BIGGER PICTURE

# Noise complaints. What can social landlords do to improve?

- Housing Ombudsman found that in 89% of the cases looked at, the residents were dissatisfied with landlord's response to noise reports.
- landlords are not responsible for soundproofing homes above standards applicable at the time of the building
- HO states; actions to be taken to prevent or mitigate the typical sources of noise nuisance; more cost effective in long run
- noise is non-statutory and not ASB:;
- **PREVENTION**; Landlords should update void standards to ensure that carpets are not removed unless they are in a poor condition, hard flooring is removed when there have been reports of noise linked to a property
- New tenancies for flats with other homes below, should include clauses that hard flooring is not permitted
- Only allow hard floors if appropriate underlay is present
- landlords should signpost residents to funding for carpets and rugs.

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# Noise nuisance ; insufficient evidence or investigation

- ***LB Lambeth v Fanfair, County Court February 2023***
- Lambeth brought this claim against Ms Fanfair on the basis of complaints of noise nuisance from her upstairs neighbours including snoring. The flat is a converted period terraced house.
- 3 video clips were disclosed which were of basically no evidential value, could barely hear anything.
- Ms Fanfair's gave an account of repeated attempts to seek Lambeth's assistance in resolving the problems with her neighbour. Mediation took place and it was accepted that sound insulation was needed, not done
- the interim injunction was discharged by District Judge Beckley who also then formally directed Lambeth to carry out tests to explore the sound insulation.
- The expert report found that the flat suffered from poor sound insulation and that the complainant may be disturbed by normal everyday noise as a result.

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- The matter came back before the court in January 2023. Despite the contents of the expert report, Lambeth refused to concede the application,
- In February 2023 the matter was listed for the final time. Without explanation to either Ms Fanfair or the court,  Lambeth did not attend. District Judge Jeffs proceeded in Lambeth's absence and accepted that the test for summary judgment was met as Lambeth has no reasonable prospect of succeeding. Costs to the Defendant.

## Continued....

- landlords should consider their net zero plans for insulation to ensure that the activity planned will also provide noise insulation from transference noise.
- recommended that anti-vibration mats are fitted into the washing machine space as a standard.
- **POLICIES;** does the policy or approach stand to deal with noise reports outside ASB.
- HO; triage methodology should be adopted, so that landlords can identify if a noise report should be handled under the ASB policy or the neighbourhood management policy.
- A good policy should have options eg mediation/info sharing
- 'how to be a good neighbour' leaflet in sign up info pack
- **Communication & record keeping;** manage expectations; how will a noise complaint be handled

- Refer to complaints policy if resident is dissatisfied
- HO states; sensitivity in the tone of communication is important
- Avoid using term ‘low level’ as it can cause distress
- HO advised that it is important to listen fully to noise recordings submitted by residents, consider action plans, undertake risk assessments and fully investigate all reports made
- **ALLOCATION;**
- homes with families or households with multiple occupants are likely to have a greater possibility of noise transference.
- consideration should be given to the suitability of allocating properties above ground floor, especially where previous reports of noise nuisance have been made.

# Autism

- Autism is a lifelong developmental disability which affects how people communicate and interact with the world.
- 1 in 100 people are on the autism spectrum
- There are around 700,000 autistic adults and children in the UK
- Autism is a spectrum condition and affects people in different ways
- Levels of severity can vary;;
- Require support
- Require substantial support
- Requires very substantial support
- Severity levels can fluctuate over time
- Decision making can vary dependant on the level of severity being experienced at the time.

- If an RP is aware of an autistic tenant, they must consider if the tenant has care in place
- **EQUALITY ACT APPLIES;** Anyone can make a referral for a Care Assessment
- Do your homework!
- What is the autistic person's preferred method of communication?
- Ensure you have the person's attention when speaking to them
- Agree dates and times and stick to them
- If meeting in person, fully explain the purpose for the meeting – specificity can reduce anxiety
- Say the person's name – direct their attention to you
- Avoid jargon
- Allow time for the person to process the information being given to them
- In any follow up correspondence, remove any ambiguity. Be clear and concise
- Consider a Single Point of Contact – that person can attend awareness training and build a rapport with the autistic person

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- Equality Act 2010
- S.149 – RPs are caught by this
- Ensure you do an Equality Act Review before considering what action to take
- Think about the behaviour being presented and whether any of this is linked to their autism
- Review your assessment regularly – your decision making should be based upon the most up to date review/information
- Psychiatric report is strongly recommended
- Report will detail any reasonable adjustments needed
- Single point of contact?
- Can be ordered by the court
- Training for front line staff?
- Make use of available resources
- If a medical diagnosis is going to be relied upon in court, it needs to be proven

# Case study



# Why is partnership so important?

- Common goal to keep communities safe ; prevent further harm
- housing providers are not equipped to deal with all aspects of ASB
- Work together toward achieving the same objective
- Working in silos can mean info blockages and missed info
- We can learn from each other ; lessons learnt
- Effective communication = better results
- Clearer accountability
- Different organisation mays have different powers
- ASB can be rooted in more complex contributory factors
- pool our knowledge, skills and experience
- avoids duplicate work and sharing crucial  evidence

## Problem case

- One family on an estate of mainly social housing stock had been engaged in an escalating amount of ASB and criminal activity that ranges from inciting groups of youths to harass residents in areas of the estate to singling out individuals, some of which are vulnerable, and subjecting them to attacks on their persons and their property.
- Their activities have been difficult to challenge due to the intimidation of victims and witnesses by the family on the estate and their extended family close by resulting in a lack of statements required in civil and criminal court proceedings to achieve judgments against them.
- The main perpetrators of the family are minors who have limited positive influences from the adults around them and had failed to engage with the education system in any meaningful way.
- Residents have been complaining to the landlord
- **How can effective partnership working tackle these issues?**

## What leads to complaints?

- Failure to engage in preventative measures
- Difficulty engaging with partner agencies
- Failure to support witnesses
- Lack of training or confidence of staff
- Only taking steps when the matter has escalated
- Focusing only on enforcement action
- Failing to investigate thoroughly
- Failing to identify the perpetrator has a ‘disability’
- not considering the Equality Act 2010
- Not addressing the underlying issues

# 1. Dealing with a complaint of ASB:Stage 1 – initial complaint

- A report of ASB can be received face to face, by phone, letter, email, web form or social media.
- Any staff member receiving a report should immediately log this on the system by raising a new, or adding to an existing ASB case and send the ASB case to relevant Housing/ASB officer for action.
- The officer should make contact with the complainant within your timescales and record details of the ASB incident. The officer will:
- Record details of witnesses, alleged perpetrators, and other agency involvement
- Log details date, time and location of the incident.
- Once the incident is logged, the officer can decide if it requires further investigation
- Is there a risk of harm? Are they safe in their own home?
- Whether the complainant has any special needs or **vulnerabilities** or a **repeat victim**
- Provide details of support services
- Agree monitoring frequency ; linking incidents and victims where appropriate

## 2. Risk assessment and action plan




- Complete a **Risk Assessment**
- Agree an 'Action Plan' with them and send this to the complainant
- Clear time scales and communication method
- Agree 'Monitoring Frequency' (this informs the complainant how often you will update them)
- Action plan; this should detail any action to be taken by the ASB/housing officer and the complainant
- If this is done over the phone a copy should be sent to the complainant with a cover letter confirming the information. If its in person they should sign it
- The plan should include referral to any agencies if needed; cannot force someone to engage with services, but the referral form itself is good evidence
- The plan should be reviewed throughout and new or continuing actions agreed

# 3. Interviewing the victim/witness...tips!

- When interviewing victims and witnesses be sure to consult your organisation's system for recording which tenants are known to be dangerous
- allow enough time for the interview so that the interviewee does not feel rushed.
- be prepared to arrange for support services, such as translation service
- If the interviewee is vulnerable you can invite them to bring a third party along
- Ask what the complainant is expecting from you
- A sensitive, supportive approach increases cooperation
- Take notes in the interview
- Spend the majority of the time listening, rather than talking
- Avoid undermining the victim's perception of the incident, especially if they believe that racism was involved.
- Never make promises

# Continued.....

- Be empathetic but don't take sides; remain impartial.
- Agree any actions that need to be taken by either you or the interviewee, so that the interviewee feels a part of the process.
- Ensure witness gives permission to use information; if not use as ‘hearsay’ ie, second hand (Civil Evidence Act 1995
- Explain court procedures
- Identify vulnerable witnesses; (consider additional security, spyholes more locks, a temp move)
- obtain the names and addresses of any other witnesses and the details of the suspected perpetrators.
- Explain of they need to keep diary sheets and why
- At the end of the interview, summarise what has been discussed and ask the interviewee to confirm that you have recorded the main points. Confirm the next steps.

## Stage 4– interviewing/contact with the alleged perpetrator

- Check the system for red flags
- Check tenancy file may be on ongoing legal action eg rent arrears ; Liaise
- Documents which identify the complainant should not be taken to the interview!
- Identify any support needs
- explain the nature of allegations
- ask the alleged perpetrator for their side of story
- explain the relevant tenancy terms where appropriate
- agree any changes to behaviour as a result of the meeting
- suggest mediation where appropriate if no agreement can be reached
- Write to them with the outcome or action

## 5. Undertaking case work and enforcement

- Investigating further; gather evidence
- getting reports from other agencies; eg police
- Arranging mediation; or
- Taking enforcement actions including writing warning letters and taking appropriate enforcement action where appropriate.
- Keep complainant updated
- Share action with partners
- Non legal enforcement tools eg warning letters
- Legal action
- Keep records; if its not logged it didn't happen!!

## Stage 6 – legal action

- Last resort
- Depends on severity of ASB
- Action must be reasonable and proportionate!
- Prior to any enforcement, a Proportionality Assessment must be completed
- Carry out internal review of case
- Can be used with other methods eg support services
- Must have evidence ready

# 7 Update, close, monitor

- There are some scenarios where a case cannot be progressed further and will need to be closed:
- -the complainant has made no further contact
- -you have been unable to determine a breach of tenancy by the alleged perpetrator
- -evidence (witnesses, interviews etc) does not support the complainant's claims
- Make sure that the complainant and the alleged perpetrator/s are clear for the reasons why you are closing the case. Then send a Concluding Investigation Letter to the complainant and close the case
- Publicise successful outcomes
- Lessons learnt

# Evidence gathering




- Diary sheets
- Written proof of threats
- Text messages
- Noise monitoring equipment (NoiseApp)
- CCTV; other filming
- Professional witness statements/police/Environmental health reports
- Photographs
- Evidence from other agencies eg council
- Telephone call recordings
- Police incident numbers/disclosure
- Anonymous questionnaires as a way of gathering information from the community

# What about ring door bells?



- The DPA imposes strict rules on the use of cameras and images
- May need landlords permission
- captured only for limited domestic purposes is not covered by the restrictions of the DPA.
- ICO; states that the use of security cameras for “limited household purposes”, including protecting an individual’s home from burglary, is NOT covered by the DPA
- If the camera faces outwards ie, in shared communal area it may fall under the DPA; Where the use of cameras is covered by the DPA there are several requirements which have to be satisfied
- Putting up clear signs to say that CCTV is in operation;
- Only using the footage for the purpose for which it has been taken;
- Only keeping footage for as long as it is needed; Deleting footage of people if they ask you to do so within 1 month (unless need it eg, legal dispute)
- Not releasing footage to third parties; Individuals have a right to access the personal data you hold about them,
- Keeping the footage safe.
- Consider any objection you get now from particular people
- If the video bell only activates when pressed to allow person to see who is at the door, then that should be acceptable
- Video Doorbell Project in Ipswich free for repeat ASB victims
- Can ask tenant to check the ICO guidance

# How can I use CCTV responsibly at my property?

- **Think about the following questions:**
- Do I really need CCTV?
- Are there other things I could use to protect my home, such as better lighting?
- What is the most privacy-friendly way to set up the system?
- What areas do I want the cameras to capture?
- Can I position the cameras to avoid intruding on my neighbours' property or any shared or public spaces?
- Do I need to record the images, or is a live feed enough?
- Has my CCTV system got an audio-recording facility? Audio recording is very privacy-intrusive. So in most cases where householders use CCTV, they should disable audio recording.
- Better locks, security lighting or an alarm system may be more effective and less expensive ways of securing your property.
- your use of a domestic CCTV system may be appropriate, but publicly uploading or streaming footage of identifiable people would need more justification. In most cases it would not be justifiable.

# Legal remedies



# Preparing for legal action ...checklist

- Is everything documented?
- Do you have good evidence to support your action?
- Make sure you are taking 'reasonable and proportionate action' (*Manchester City Council v Pinnock)*
- Have you considered the equality Act?
- Fill in assessment form
- Have all other options been explored?



# What is domestic abuse?

- **The Homelessness Code of Guidance** states that domestic abuse is not limited to physical violence or confined to instances within the home.
- It can include any incident or pattern of incidents of controlling, coercive, threatening behaviour, violence or abuse.
- Controlling behaviour is a range of acts designed to make a person subordinate or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour.
- Coercive behaviour is an act or a pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm, punish, or frighten their victim.
- Economic abuse is behaviour that has a substantial negative effect on the victim's money, property, goods or other services.

# Meaning of personally connected

- Personally connected means they are, or have:
- been married to each other
- been in a civil partnership with each other
- agreed to marry one another (whether that agreement has ended or not)
- entered into a civil partnership agreement (whether that agreement has ended or not)
- been in an intimate personal relationship
- had a parental relationship to the same child
- Relatives are also classed as personally connected. Relatives include parents, grandparents, children, grandchildren, siblings, aunts, uncles, nieces and nephews. Step and half relations are included
- The perpetrator and victim must be aged 16 or over for the definition to apply

# Domestic abuse; relationship breakdown

- Ground 2A HA 1985; or 14A Housing Act 1988
- The dwelling-house was occupied (whether alone or with others) by a married couple, a couple who are civil partners of each other or a couple living together as if they were a married couple or ] civil partners and—
- *(a) one or both of the partners is a tenant of the dwelling-house,*
- *(b) one partner has left because of violence or threats of violence by the other towards—*
- *(i)that partner, or*
- *(ii) a member of the family of that partner who was residing with that partner immediately before the partner left, and*
- *(c)the court is satisfied that the partner who has left is unlikely to return.*

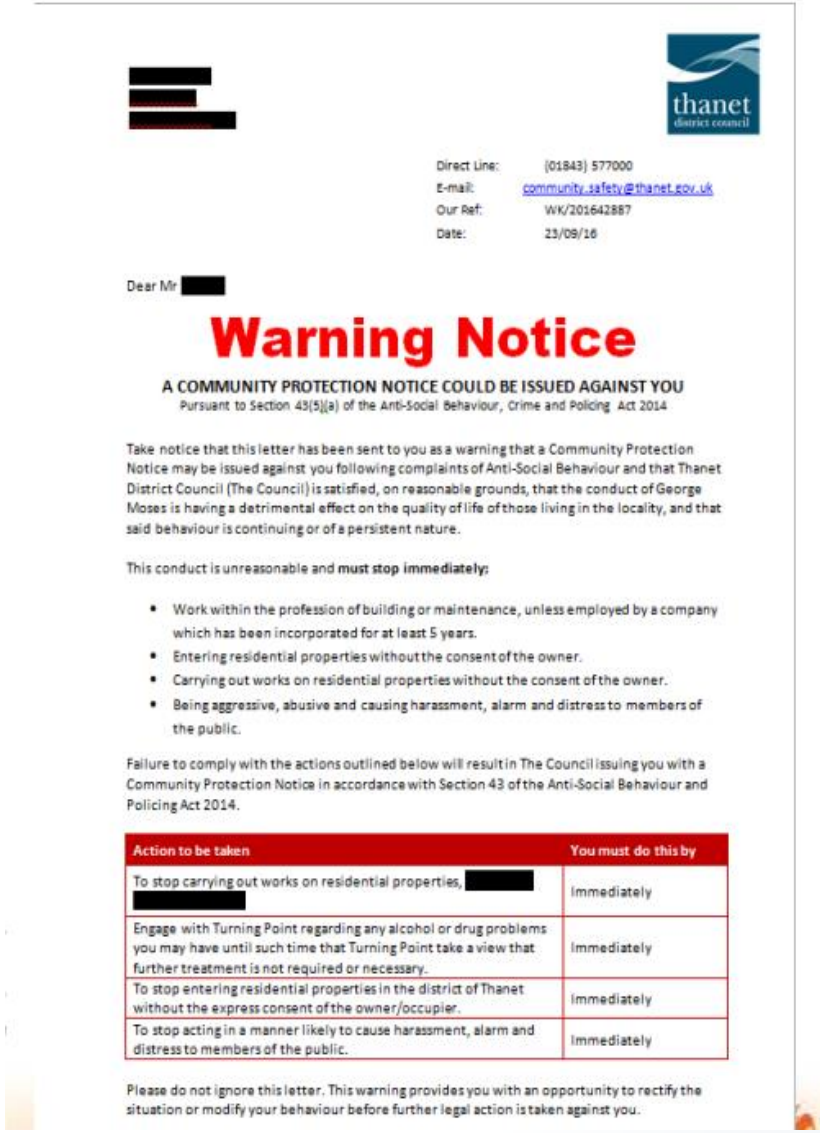
- **Alleged victim unwilling to provide a statement**
- The case of ***London and Quadrant Housing Association v S (unreported)*** ;
- a strong case can be made without the alleged victim attending court
- LL relied on extensive contemporaneous notes and documents and statements from support workers who had assisted the alleged victim at the time of the abuse
- Neighbours complain about the noise of fighting and being scared by the aggression of the perpetrator however we have no actual evidence of domestic abuse.
- As part of multi-agency working it is worth noting that Police can take forward a victimless prosecution and as housing officers can provide crucial information.
- Under the ASB Crime and Policing Act 2014, if the perpetrator is witnessed being physically or verbally aggressive or threatening to household members and that witness is willing to give evidence, then it is possible to apply for an exclusion order excluding the perpetrator from their home and from the vicinity of the premises.

# CPN

- to stop a person aged 16 or over, business or organisation committing ASB which spoils the community's quality of life.
- Test; behaviour has to;
- -have a detrimental effect on the quality of life of those in the locality ;
- - be of a persistent or continuing nature and be unreasonable
- CPN can deal with a range of behaviours
- **Breach = A fine of up to level 4 £2500 (for individuals), or £20,000** for businesses.
- Some organisations are prosecuting for breach of CPN and making an application for a CBO alongside this
- Organisations should have a clear position on their approach to using the CPN, including the types of behaviour it can be used to address, the level of evidence that is required etc.
- Understand that CPN can result in criminal record; so use appropriately
- conditions that we include are proportionate and necessary



- example, if a dog was frequently entering a neighbour's garden through a broken fence, the owner could be issued with a CPN requiring s/he fixes the fence and, if appropriate, require that the owner and dog attended dog behaviour training classes.
- Works in default can be undertaken and recharged
- Court can order the seizure of specified items
- A fixed penalty notice may also be issued for this behaviour
- An appeal against a CPN or its terms can be made to a magistrates' court within 21 days of issue.



[redacted]

thanet district council

Direct Line: (01843) 577000
E-mail: community.safety@thanet.gov.uk
Our Ref: WK/201642887
Date: 23/09/16

Dear Mr [redacted]

# Warning Notice

**A COMMUNITY PROTECTION NOTICE COULD BE ISSUED AGAINST YOU**
Pursuant to Section 43(5)(a) of the Anti-Social Behaviour, Crime and Policing Act 2014

Take notice that this letter has been sent to you as a warning that a Community Protection Notice may be issued against you following complaints of Anti-Social Behaviour and that Thanet District Council (The Council) is satisfied, on reasonable grounds, that the conduct of George Moses is having a detrimental effect on the quality of life of those living in the locality, and that said behaviour is continuing or of a persistent nature.

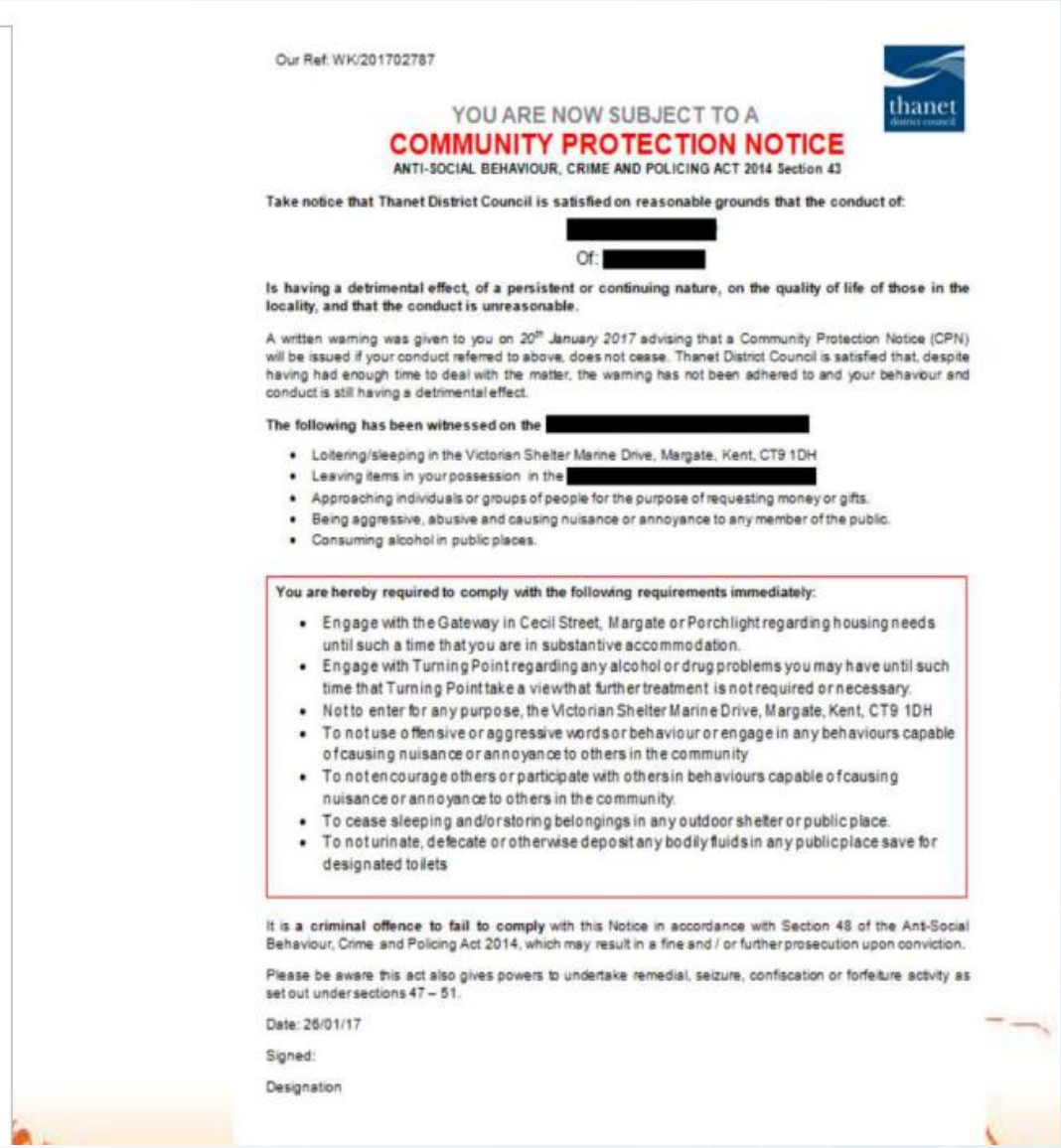
This conduct is unreasonable and **must stop immediately:**

- Work within the profession of building or maintenance, unless employed by a company which has been incorporated for at least 5 years.
- Entering residential properties without the consent of the owner.
- Carrying out works on residential properties without the consent of the owner.
- Being aggressive, abusive and causing harassment, alarm and distress to members of the public.

Failure to comply with the actions outlined below will result in The Council issuing you with a Community Protection Notice in accordance with Section 43 of the Anti-Social Behaviour and Policing Act 2014.

| Action to be taken | You must do this by |
|---|---|
| To stop carrying out works on residential properties, [redacted] | Immediately |
| Engage with Turning Point regarding any alcohol or drug problems you may have until such time that Turning Point take a view that further treatment is not required or necessary. | Immediately |
| To stop entering residential properties in the district of Thanet without the express consent of the owner/occupier. | Immediately |
| To stop acting in a manner likely to cause harassment, alarm and distress to members of the public. | Immediately |

Please do not ignore this letter. This warning provides you with an opportunity to rectify the situation or modify your behaviour before further legal action is taken against you.



Our Ref: WK/201702787

thanet district council

YOU ARE NOW SUBJECT TO A
# COMMUNITY PROTECTION NOTICE
ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014 Section 43

**Take notice that Thanet District Council is satisfied on reasonable grounds that the conduct of:**

[redacted]

Of: [redacted]

**Is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and that the conduct is unreasonable.**

A written warning was given to you on 20th *January 2017* advising that a Community Protection Notice (CPN) will be issued if your conduct referred to above, does not cease. Thanet District Council is satisfied that, despite having had enough time to deal with the matter, the warning has not been adhered to and your behaviour and conduct is still having a detrimental effect.

**The following has been witnessed on the** [redacted]

- Loitering/sleeping in the Victorian Shelter Marine Drive, Margate, Kent, CT9 1DH
- Leaving items in your possession in the [redacted]
- Approaching individuals or groups of people for the purpose of requesting money or gifts.
- Being aggressive, abusive and causing nuisance or annoyance to any member of the public.
- Consuming alcohol in public places.

**You are hereby required to comply with the following requirements immediately:**

- Engage with the Gateway in Cecil Street, Margate or Porchlight regarding housing needs until such a time that you are in substantive accommodation.
- Engage with Turning Point regarding any alcohol or drug problems you may have until such time that Turning Point take a view that further treatment is not required or necessary.
- Not to enter for any purpose, the Victorian Shelter Marine Drive, Margate, Kent, CT9 1DH
- To not use offensive or aggressive words or behaviour or engage in any behaviours capable of causing nuisance or annoyance to others in the community
- To not encourage others or participate with others in behaviours capable of causing nuisance or annoyance to others in the community.
- To cease sleeping and/or storing belongings in any outdoor shelter or public place.
- To not urinate, defecate or otherwise deposit any bodily fluids in any public place save for designated toilets

It is **a criminal offence to fail to comply** with this Notice in accordance with Section 48 of the Anti-Social Behaviour, Crime and Policing Act 2014, which may result in a fine and / or further prosecution upon conviction.

Please be aware this act also gives powers to undertake remedial, seizure, confiscation or forfeiture activity as set out under sections 47 – 51.

Date: 26/01/17

Signed:

Designation

# CBO  Criminal Behaviour Orders

- CBO is available on conviction for any criminal offence in any criminal court. The order is aimed at tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court. For nay criminal offence
- may also include requirements to address the underlying causes of the offender's behaviour.
- application of the prosecution.
- A local authority may also approach the prosecution directly with a request
- Before applying for a CBO for a youth, the prosecution must find out the view of the local youth offending team

- Test; *if the court is satisfied, beyond reasonable doubt, that such person has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person, and considers that the making of the CBO will help in preventing that person from engaging in such behaviour.*
- there is no need that the court satisfies itself 'beyond reasonable doubt',
- Application for a CBO does not require a direct link between the criminal behaviour which led to the person's conviction for the other criminal offence and the antisocial behaviour for it to be issued by the court#
- Breach of a CBO is a criminal offence punishable with imprisonment and/or a fine.
- In addition, breach of a CBO by a secure or assured tenant, or by someone living or visiting the tenant's property, can lead to eviction under the mandatory ground for antisocial behaviour.

## example

- A young person has been convicted of criminal damage after breaking the window of an elderly person's house following an ongoing campaign of harassment. WIth the Criminal Behaviour Order, they can be prevented from going near their victim's house, but also make good the damage to the victim's window and engage with a mentoring programme to address the reasons why they were harassing the victim.

# Property closure order

- close premises quickly which are being used, or likely to be used, to commit nuisance or disorder police/LA can apply
- **2 stages;**
- Up to 48 hours; test; '*Nuisance to the public; or disorder near those premises*' ; *Civil NOT criminal proceedings*
- Up to 6 months; test; '*Disorderly, offensive or criminal behaviour; Serious nuisance to the public; or disorder near the premises*'
- Breach; upto 6 months in prison
- Can have 'partial' even for communal areas
- used as a way of preventing a problem from occurring in the first place, eg large scale illegal event


POLICE
CLOSURE ORDER

# Network recent case...

- Mr M had lost control of his tenancy, the property was being used for criminal activity in the form of drug use and prostitution; resident would not engage; syringes in communal areas; a fight was caught on CCTV, knives used
- Neighbouring residents were terrified and wanted to move out of the area. They were too scared to make named statements/threatened
- We liaised with the police to support them in actioning a closure order on the property. Multi-agency approach, social services
- Obtained full order 3 months; It prevents anybody except the owner from entering the property. If breached, the offender could be arrested.
- then applied for possession on absolute grounds

# Injunctions

- S1 to 21 of the Anti-social Behaviour, Crime and Policing Act 2014
- ***Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or***
- ***Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and***
- ***Just and convenient to grant the injunction to prevent anti-social behaviour***
- 10 years +
- Lower level of proof (civil)
- Breach = up to 2 years in prison and/or unlimited fine

# ASB Ground Assured and secure .....

- The tenant or a person residing in or visiting the dwelling-house—

- *(a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality,*
- *(aa) has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord of the dwelling-house, or a person employed in connection with the exercise of the landlord's housing management functions, and that is directly or indirectly related to or affects those functions, or*
- *(b) has been convicted of—*
- *(i) using the dwelling-house or allowing it to be used for immoral or illegal purposes, or*
- *ii) an indictable offence committed in, or in the locality of, the dwelling-house.*

# Renting Homes (Wales) Act 2016

- From 1 December 2022, “occupation contracts” will govern the relationships between landlords and occupiers
- All contracts will contain a term prohibiting ASB. S55
- The ASB crime and policing act 2014 is unaffected apart from on the grounds of possession. Causing ASB can result in eviction or an application to court for a contract to be replaced with a ‘prohibited conduct standard contract’, resulting in a periodic standard contract and reduced security of occupation. No mandatory ASB grounds
- The Welsh Government may by regulation amend Section 55 Anti-Social Behaviour and other prohibited conduct.
- ASB serve a Notice under S159 RHW23 (or RHW 32 and 33 if joint contract holder’s)
- Notice expires 6 months after service

- Grounds for possession can be mandatory or discretionary. When the ground is proven, the court must:
- make a possession order when the landlord is using a mandatory ground
- only make a possession order when the landlord is using a discretionary ground if it is reasonable to do so;
- *length of time the tenant has lived in the property*
- *breaches of earlier agreements or court orders*
- *health and age of the tenant and their household*
- *respective financial position of the landlord and tenant*
- *conduct of the tenant and their willingness to remedy any breach*
- *in cases of antisocial behaviour, the wider effects of the nuisance or annoyance caused.*

# What if its someone living in the house causing the ASB?

- ***Portsmouth City Council v Bryant: CA 2000***
- It may be unreasonable to impose a possession order against a person in respect of a failing over which they have no control.
- Must consider if suspending it is a good idea
- *It may very well be unreasonable to make even a suspended order against somebody who will be powerless to rectify the situation and it will almost certainly be unreasonable to make an outright order against such a person.*

# Absolute grounds for possession

- Last resort
- S84A Housing Act 1985  7A Housing Act 1988
- One of five conditions:
    1. Convicted of a serious offence.
    2. Breached ASB injunction.
    3. Convicted for breaching a CBO.
    4. Convicted for breaching a noise abatement notice.
    5. Property closure order in place.

# Conviction of serious offence

- The tenant, or anyone living in or visiting the property, has been convicted of a serious offence that was committed on or after 20 October 2014:

- in the locality of the dwelling house, or

- elsewhere against either a person who lives, or has a right to occupy accommodation, in the locality, or

- elsewhere against the landlord or someone employed (whether or not by the landlord) in connection with the landlord's housing management functions.

# Locality

- matter of fact for the judge
- incident in a shopping centre three streets away from the tenant's property was within the boundaries of the local estate and therefore within the locality
- In ***Knowsley Housing Trust v Prescott (2009),*** Knowsley issued possession proceedings against joint tenants for rent arrears and also for the conviction of Mr Prescott who pleaded guilty to conspiracy to supply cocaine and amphetamines; he had been involved in a drugs factory which was found approximately ½ a mile away from their property on the same housing estate. The criminal activity was found to have occurred in the locality.
- the more closely the criminal conduct in question is connected to the house in respect of which possession is sought, the more compelling the case for an immediate order for possession
- Prepare a **map** of the area identifying the tenant's property and where the incident occurred

# ASB case review




- Victim has right to request review of case
- Threshold; three complaints in six month period
- Agencies will share information related to the case, review what action has previously been taken and decide whether additional actions are possible
- The review encourages a problem-solving approach aimed at dealing with some of the most persistent, complex cases of ASB
- The victim is informed of the outcome of the review. Where further actions are necessary an action plan will be discussed with the victim, including timescales
- Another person, or body, can apply on a victim's behalf, for example a family member, a local councillor or an MP

# Reason for ASB case review

## MISERY DAY AFTER DAY

**THURSDAY MAY 10, 2007**

Youngsters are riding their bikes into the front hedge of the family home. Miss Pilkington, pictured, says her son Anthony, now 19, is so frightened at the noise he is 'pacing up and down the stairs'.

**SATURDAY, MAY 12**

'They were outside shouting up at my window. I draw back my curtains and they vanish. I turned my lights out and sat in the dark until 2.30am. Stressed out.'

**SUNDAY, MAY 13, 4PM**

(Youths are shouting and attacking her hedge again) 'It's chucking down with rain. Fed up. Cheesed off. Why can't they just walk past without doing anything? Why can't they walk on the other side of the road?'



**SATURDAY, JUNE 2**

(After stones were thrown at the house) 'They went to number 57, lit a fag and then tried to set fire to fences between the houses. Really cheesed off. Can't they just walk down the street without doing anything? It seems impossible.'

## THE DIARY OF DESPAIR

THESE are just some of the 33 calls from Fiona Pilkington recorded on police logs.

- November 17, 1997: Miss Pilkington reports chequebook and disability book stolen from car.
- October 4, 2000: Her mother Pam Cassell, 72, calls police about youths lighting fires in the street.
- October 30, 2000: Youngsters throw eggs at the house. No officers available.
- March 26, 2003: Anthony, who is being bullied at school, goes missing. An officer visits and the teenager returns hours later.
- August 3, 2003: Anthony is punched in the mouth.
- January 9, 2004: Youths throwing stones and bottles and setting fire to gates and fences. No officers attend.
- January 24, 2004: Bullies threaten Anthony's life. Police say it is a matter for the school.
- January 28, 2004: Further threats to kill the teenager. Police offer bullying advice but do not visit.
- June 11, 2004: Youths 'mooning'. Officer attends but rules no offence has taken place.
- June 22, 2004: Miss Pilkington reports youths taunting her daughter. She is given 'advice'.
- June 25, 2004: She calls to say her son is being abused. No officer attends.
- July 3, 2004: Anthony is locked in a shed at knifepoint.
- July 28, 2004: Anthony is attacked with an iron bar. Police arrive but Miss Pilkington, terrified of reprisals against him, does not want a prosecution.
- October 28, 2005: Another call about yobs. Police do not attend.
- November 3, 2005: Gang jumping on hedge, shouting abuse. No officer available.
- October 13, 2006: Anthony pushed into a car, hurting his hand. Officer attends eight days later, no action.
- February 2, 2007: Youths smashing bottles in front garden. No officer attends.
- April 6, 2007: Anthony hit by stones as he rides his bike. Police contact council who write warning letters to the youths.
- June 2, 2007: Children smoking in front garden. Officer reports that Miss Pilkington is 'overreacting'.
- September 25, 2007: Window smashed. Officer arrives next day.
- September 26, 2007: Children throwing stones at the house. Officer speaks to them.
- September 28, 2007: Fifth window smashed.
- October 4, 2007: Youths throwing stones at windows. Email sent to beat officer but no one attends.
- October 23, 2007: Two girls jumping on the hedge and taunting Francecca. Miss Pilkington advised to draw the curtains.

# What are the 9 protected characteristics?

- age
- disability
- gender reassignment
- marriage and civil partnership
- pregnancy and maternity
- Race
- religion or belief
- Sex
- sexual orientation

# Cuckooing



# Who is at risk of being cuckooed?

- Have previously or currently experiencing neglect self care issues
- Lack of stable home
- Domestic abuse
- Been homeless before
- Mental health issues
- Learning difficulties
- Disability
- Socially isolated
- Economically vulnerable ie debts
- Substance abuse issues
- Been in care or are in care
- Connections with gangs
- Known to the police
- Minors

# Cuckooing; signs to look for

- An increase in number of comings and goings to property ; pressing buzzers
- Family raises concerns
- Offenders will have new vehicles outside property, or use t hire cars
- Possible increase in ASB in area ; increase in reports to pol
- Disengagement with support services
- Professionals visiting may become aware of unidentified p property
- Property may appear sparse of valuables and may be in a st disrepair
- Tenant has no key to their property/ replace locks
- Tenant says; 'visitors are friends'
- Damage to property
- Door always being propped open
- Tenant not giving access
- Rent account in arrears or large credit
- Bins overflowing/lots of takeout boxes
- No food in fridge
- Tenant being accompanied by unknown people to meetings




POLICE



- **Line of duty fans…….…**



## Case; cuckooing

- Female late 40s no drug issues
- Considerable physical health issues, communication difficulty
- Possible sexual exploitation
- Property is a state of disrepair
- Target by local class A drug users, discarded paraphernalia
- Emergency partial closure order put in place, but ignored by drug users
- Care staff stopped visits due to high risk
- Adult social care deemed tenant to have capacity This was challenged, multi agency meeting put in place New assessment; deemed not to have capacity, appropriate care package now in place.
- Outcome; resident would like to move

# Tips; cuckooing

- Help with anti-social behaviour for social housing tenants - GOV.UK (www.gov.uk)
- Use all opportunities to get info about concerns on the tenant ie, from visits, speaking about rent by phone, contractors attending ; eyes and ears
- Staff training to what to look out for; confidence; if something doesn't seem right report it
- Info sharing; across various teams ie, repair team and rents team/ASB, issues are usually not a one off in isolation but park of a bigger picture
- Ensure you know your organisations safeguarding referral system; takes more than 1 agency to deal with cuckooing; keep records of referrals
- Is the tenant the victim or perpetrator?
- Take action where needed

# What is the public sector equality duty (PSED)?

- **What is the background?** Stephen Lawrence murder
- **S149 of the Equality Act 2010**
- PSED is often raised as a defence to a possession claim at Court to a rent arrears case or ASB; make sure you have not discriminated
- **Top tips!**

1. Record keeping!!
2. Make enquires.
3. Good evidence.
4. check your policies
5. investigate complaints eg made by the disabled occupier against their neighbours
6. Consult with specialist agencies (doctors, social services, mental health teams, tenancy support)

# Birmingham City Council v Stephenson [2017]

- Eviction proceedings of a schizophrenic tenant
- COA state the landlord needed to ensure it had looked at alternative action before possession and document the reasons
- In this case there was evidence that the tenant's condition and behaviour could be moderated with treatment/medication
- Court stated other options might have been; the tenant receiving support from social services reminding him to take his medication and attend treatment appointments, support from other mental health professionals, a change of medication and/or investigation as to whether the LA might be able to provide more suitable, supported alternative accommodation for the tenant.
- It was for the landlord to show that nothing less than an eviction would do. PO was set aside

# Vulnerability

Who might be identified as vulnerable?



# ASB and mental health issues

- **Is the Person Disabled?**
- Section 6 of the Equality Act 2010 defines disability:

(1) A person (P) has a disability if—

*(a) P has a physical or mental impairment, and*

*(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.*

- **Long term?** Is at least 12 months; can fluctuate ie, likely to reoccur
- Past disability ; person is protected permanently
- **Deemed disabilities;** cancer, HIV, MS, certified as blind,

# Is a mental health condition a disability?

- Must last at likely to last 12 months
- Affects normal day to day activities eg interacting with people

- The following are examples that can lead to a disability;
- - dementia
- -bipolar disorder
- -OCD
- -Schizophrenia

# Does the person lack mental capacity; Mental Capacity Act 2005

- Always presume capacity is present unless its proven otherwise/ can fluctuate

- *Test; a) Does the person have an impairment of, or disturbance in the functioning of, the mind or brain (whether temporary or permanent)?AND*

- *b) Is the person unable to make the decision in question because of that impairment*

# ASB and capacity....questions to consider...

- Does the tenant understand they have a Tenancy agreement?
- Do they understand if they continue the ASB they are breaching tenancy?
- Do they understand that landlord will take action if they continue
- Would they be able to comply with a suspended possession order?
- Would they be able to understand the terms of an injunction?
- At court a medical report would be needed to show no capacity
- A capacity assessment can be undertaken by for example a social worker or mental health worker or a local authority should strongly consider instructing a consultant psychiatrist

hqn TRAINING

# What is hate crime?

- when a person is targeted because there is a hostile attitude or prejudice towards their:
- Disability
- race or ethnicity
- religion or belief
- sexual orientation
- transgender identity
- in year ending March 2020, there were 105,090 hate crimes recorded by the police in E&W; 8% increase
- Hate crimes come in many different forms eg violence, graffiti, malicious complaints etc and strike at the heart of communities. EG An incident is a racist or religious hate incident if the victim or anyone else thinks it was carried out because of hostility or prejudice based on race or religion.
- Online hate crime is on the increase

# London & Quadrant; case ASB lessons to learn

- A court has ordered L&Q to compensate a tenant who was not told of her neighbours' "abusive, threatening and racist" behaviour before she moved in.
- Tia Jones, a single black woman, took L&Q to court after she was forced to flee her home in 2015, the neighbours had been convicted of a public order offence and two racially aggravated offences towards Ms Jones but L&Q had not evicted them nor successfully rehoused Ms Jones.
- Ms Jones had continued to pay rent for the flat despite not occupying it for 5 years, and L&Q has threatened her with possession proceedings on the grounds that she was no longer in occupation.
- court ordered L&Q to pay her **£31,000**, as they had assured her that there had been no record of ASB at the property before she made the decision to swap her previous home; This is despite the flat's previous occupant, a black man with learning difficulties, reporting to L&Q that he had experienced racist and threatening behaviour from the same neighbours

# What if the homeowner is causing ASB?

- perpetrator is a home owner (leaseholder or shared owner)
- consider non-legal remedies
- Obtain a copy of the lease for relevant nuisance ground
- measures to enforce breaches of covenants;
- *applying for an injunction*
- *and in extreme cases we can serve a notice under section 146 of the Law of Property Act 1925. These notices specify the breach of lease, giving the leaseholder a chance to remedy it. If a First Tier Tribunal or a court then determines that a breach has occurred, or if the L/H admits the breach, then serve a notice of forfeiture. Forfeiture means ending the lease and repossession, this route is very unlikely*

# Police dispersal powers

*Police power, once initiated, requires a person to leave a esignated area if they are committing or likely to commit ASB*

**⇒82 dispersals initiated**

- ⇒ Solely Police power
- ⇒ No longer requirement to consult with Local Authority
- ⇒ 'Immediate', Inspector authority, no lengthy case build
- ⇒ Maximum of 48 hours (can be rolled over)

# Public spaces protection order

*Prohibits specific things done in a restricted area*
*To stop individuals or groups committing ASB in a public place*

⇒ Can only be implemented by the Local Authority
⇒ Consult with Police and Police Crime Commissioner
⇒ Publicise to stakeholders
⇒ Can restrict access, associations or activities
⇒ Justified and proportionate
⇒ Need to ensure enforcement capability or pointless
⇒ 3 year duration (with one further 3 year extension only)
⇒ £100 'on the spot' FPN (up to £1000 if goes to court)

# Questions

