



**Neighbour Disputes,
Harassment and Anti-Social
Behaviour Policy**

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Related Documents

- **Scottish Secure Tenancy**
- **Short Scottish Secure Tenancy**
- **Anti-Social Behaviour Procedures**
- **Tenancy Management Policy & Procedures**
- **Asset Management Policy**
- **Tenant Participation Strategy**

Translation Statement

If you have any difficulties reading this information or need further help understanding our processes please contact us. We can make this document available in a variety of formats. All you need to do is let us know what you need and we will try to assist.

Compliance

This policy has been drafted to ensure that it complies with current legislation and industry good practice.

Equality & Diversity

Fyne Homes is committed to providing services which embrace diversity and which promote equality of opportunity. As an employer we are also committed to equality and diversity within our workforce. Our goal is to ensure that these commitments, reinforced by our values, are embedded in our day-to-day working practices.

Openness & Confidentiality

Fyne Homes believes that its members, tenants and other interested parties should have access to information on how it conducts itself. This means that unless information requested is considered commercially sensitive or personally confidential it will be made available on request.

General Data Protection Regulations

Fyne Homes recognises that the General Data Protection Regulations are an important piece of legislation to protect the rights of individuals in respect to any personal information that we may keep about them, whether on computer or in manual systems. We will treat your personal data in-line with our obligations under the current data protection regulations and our own Data Protection Policy. Information regarding how your data will be used and the basis for processing your data is provided in our Transparency Statements

1. Introduction

Fyne Homes understands the detrimental effect that neighbour disputes, harassment and anti-social behaviour have on our tenants and the wider community in which we operate, and as such agree to take a zero tolerance attitude to all such behaviour.

We will take all complaints seriously; however will encourage all parties involved in a dispute to resolve issues through their own efforts first. Where it is not possible to resolve a dispute in this manner the Association will take appropriate action, including legal action.

We also recognise that an effective strategy requires a multi-agency approach with input from the police, environmental services and other relevant agencies. It is also vital that we have the support of tenants and residents in implementing any strategy to address problems.

2. Aim

The main aims of this policy are:

- 2.1.1. to have a transparent and robust policy which ensures a consistent approach to neighbour disputes, harassment and anti-social behaviour;
- 2.1.2. to promote preventative measures by ensuring all tenants are aware of their responsibilities as detailed within their Tenancy Agreement;
- 2.1.3. to have procedures in place with clear lines of responsibility that are easy to understand and ensure we respond to complaints quickly and effectively;
- 2.1.4. to enable those living in our developments to have quiet enjoyment of their home with comfortable, safe and secure living conditions;
- 2.1.5. to use the information available to us in an effort to prevent issues arising;
- 2.1.6. to use the full range of remedies available to us in an effort to resolve issues quickly and amicably before resorting to legal action and ultimately eviction;
- 2.1.7. to establish good working relationships with other agencies, and adopt a multi-agency approach to resolving problems;
- 2.1.8. to set and monitor standards and outcomes for the different categories of neighbour disputes, harassment and anti-social behaviour.

3. Links to vision and strategic priorities

As a registered social landlord Fyne Homes recognise it must:

- 3.1.1.1. comply with the Scottish Social Housing Charter outcomes as set out by the Scottish Government;
- 3.1.2. meet the needs and aspirations of customers; and
- 3.1.3. build sustainable communities.

4. Legal framework

This policy adheres to legal requirements contained within the following legislation:

- Housing (Scotland) Act 2014
- Human Rights Act 1998
- Data Protection Act 2018
- Anti- Social Behaviour etc. (Scotland) Act 2004
- Dangerous Dogs Act 1991
- Environmental Protection Act 1990
- Equalities Act 2010
- Criminal Justice (Scotland) Act 2003
- Lawburrows Acts of 1429 & 1581
- Protection from Abuse (Scotland) Act 2001
- Protection from Harassment Act 1997

5. Categories of Complaint

There are different types of neighbour nuisance and anti-social behaviour. It is important to distinguish between the severities of the different types of behaviour to ensure that appropriate action is taken in each case.

It is also important to note that this policy does not only cover our tenants but also those residing with them or occasional visitors.

Our policy categorises these into five areas within which complaints will be addressed, recorded and monitored:

5.1 Neighbour Nuisance

This occurs where two tenants disagree about any minor aspect of behaviour which causes nuisance and annoyance or unreasonably interferes with other people's rights to use and enjoy their home and community. This includes simple breaches of tenancy conditions and issues such as:

- Excessive noise
- Occasional disturbances
- Car repairs in inappropriate areas
- Nuisance caused by animals
- Nuisance caused by children
- Neglect of garden or cleaning responsibilities
- Litter and rubbish dumping

5.2 Anti- Social Behaviour

A person engages in anti-social behaviour if they:

- Act in a manner that causes or is likely to cause alarm or distress

- Pursue a course of conduct that causes or is likely to cause alarm or distress to at least one person not of the same household as them.

Conduct includes speech and 'a course of conduct' must involve such conduct on at least two instances. These cases are more complex than neighbour disputes and include issues such as:

- A variety of breaches of tenancy conditions
- Unresolved neighbour nuisance complaints
- Threatening and abusive behaviour
- Frequent disturbances
- Vandalism and damage to property
- Frequent rubbish dumping

5.3 Serious Anti-Social Behaviour

This is clearly unacceptable behaviour of a more serious nature causing severe problems and including issues such as:

- Criminal behaviour in or around the property
- Violence against the person
- Drug dealing/misuse
- Acts of harassment related to existing complaints
- Persistent fire raising
- Anti-Social Behaviour complaints that remain unresolved or that are escalating

5.4 Harassment

Behaviour deliberately intended to intimidate, dominate or harm an individual or a certain group, such as people from a minority ethnic group, different religion, people suffering from mental illness or people with a disability.

5.5 Non Tenancy Complaints

These are complaints which are not primarily about housing matters e.g. provision of non-housing services such as bus services, child protection or abuse.

Such complaints should be referred to the most appropriate agency for action or, in the first instance, the complainant referred to these agencies.

Fyne Homes will use a range of responses to the above categories of complaint and these will be set within a timed framework to ensure fast and effective response to all such complaints. The information on actions to be taken and related timescales is attached as part of our procedures in [Appendix 1](#) to this document

5.6 Complaints we do not consider Anti-Social Behaviour

These issues are generally not considered to be anti-social behaviour, but are part of day to day living:

- Noise that is not persistent and or intentional which occurs during normal daily working hours
- People walking across wooden floors whilst wearing shoes
- People using household appliances such as a vacuum cleaner, washing machine, tumble dryer
- People mowing their lawns
- Untidy gardens
- Children playing outdoors in common areas
- General family lifestyle noise or issues such as:
 - Cooking smells
 - Televisions
 - People talking in their homes or gardens
 - Children coming home from school
 - People playing with their pets
 - Differing lifestyles e.g. those working different shifts, or with other lifestyle clashes

We cannot take forward cases where reports are unsubstantiated by corroborating evidence such as from other witnesses and partner agencies.

We will not normally investigate anonymous complaints regarding non-tenancy issues or neighbour nuisance. We will use our discretion in deciding whether to investigate such complaints about anti-social behaviour or harassment. The Housing Officers will however log all complaints and our response in order to monitor any patterns developing that may require us to take action.

6 Prevention

Fyne Homes recognises that prevention is the most effective form of action. We cannot completely prevent anti-social behaviour, but we can work as a landlord to try to minimise the circumstances which may give rise to anti-social behaviour.

6.1 Design of Developments

The Association will take a team approach when designing new developments and include Housing Management staff in this process. This method of corporate working is an effective way of ensuring that the design of developments will take account of future potential problems in both living in and managing the housing development. In particular we will pay attention to the following factors which can prevent problems of nuisance and anti-social behaviour:

- Sound insulation
- Stair and development lighting
- Provision of door entry systems
- Adequate fencing
- Clear distinction between public and private space
- Security by design
- Situation of car parking

6.2 Applications for Housing

The HOME Argyll policy allows for applications to be suspended where a previous landlord report indicates that there has been a history of anti-social behaviour within the last 3 years.

Similarly the Association may not allow existing tenants to transfer to another Association property or engage in a mutual exchange where there is a history of anti-social behaviour against any of the parties involved in the previous 3 years.

There are however circumstances where legislation does not afford social landlords this flexibility, and in those cases where possible we will endeavour to allocate our homes sensitively.

6.3 Allocations

Fyne Homes aims to let houses in a way that is sensitive to the surrounding area if there is already evidence of actual or potential problems in that area. For example, if possible we would avoid letting a property to a family with lots of young children in an area where the number of young children is already causing a problem.

Where an applicant or tenant or someone living with the tenant has acted in an antisocial manner, or pursued a course of conduct amounting to harassment of another person in the last 3 years we may issue a Short Scottish Secure Tenancy.

6.4 Tenancy Sign Up Meeting and Settling in Visit

As the Tenancy Agreement forms the basis of the legal contract between the tenants and the Association, we will take the opportunity to go through this clause by clause with all new tenants when signing them up, paying particular attention to respect for others.

The settling in visit which is carried out within the first few months of every new tenancy is another good opportunity to remind tenants of their rights and responsibilities. We can also find out how the new tenants are getting on with their neighbours and identify any likely problems early on.

6.5 Maintenance

We aim to have priority response times to deal with the results of anti-social behaviour such as graffiti removal, provide effective security for empty buildings and upgrade security provision as part of routine repair work.

6.6 Tenants Handbook

Amongst other items, the handbook gives advice on dealing with neighbour problems and explains what the Association can do to help e.g. the Association has access to independent trained mediators to help with dispute resolution

7 Procedures

In order to implement the aims and objectives of this policy, a comprehensive set of procedures is required. These must, first and foremost, set out clear lines of responsibility for staff, those complaining and those complained against. They will clearly detail the steps to be taken at each stage of the process and will be easily understood by all who use them, including staff, committee members, tenants and residents.

These may be subject to change from time to time to incorporate new practices or eradicate old ones and are therefore separately documented from this policy. The key principles of the procedure are attached as [Appendix 1](#)

8 Remedies

We are committed to using a wide range of approaches to tackle the range of anti-social behaviour issues and to keep up to date on current best practice. We will always aim where appropriate to resolve the problem either by prevention or by using informal methods. However where this approach fails we may resort to legal remedies. The range of methods we are likely to use are:

- Tenancy Warnings
- Partnership Working
- Management Transfers
- Mediation
- Interdicts
- Specific Implement
- Acceptable Behaviour Contracts
- Notice of Proceedings
- Conversion to a Short Scottish Secure Tenancy
- Anti-Social Behaviour Orders (ASBOs)
- Interim Anti-Social Behaviour Orders
- Eviction

The remedies open to the Association and when we would consider using them are included within the procedures.

We would always see eviction as a last resort not only because of the seriousness of taking away someone's home but also because it may only be moving the problem elsewhere rather than resolving it.

9 Action against Non – Tenants and Owner Occupiers

Fyne Homes operates over a large geographical area containing different types of tenures including amongst others; owner occupiers, private tenants and other Registered Social Landlords. There are therefore situations arising that involve these other tenure types.

We will make every attempt to help resolve these problems through informal, non-legal remedies such as mediation. We will give support and assistance to our tenants who are experiencing anti-social behaviour from non – tenants and ensure the relevant authorities

are involved i.e. Police Scotland, Environmental Services and any other appropriate partners.

Conversely, complaints are sometimes received from people who are not tenants of the Association but who are experiencing anti-social behaviour from one of our tenants. In such situations, we will ensure that the tenant is dealt with according to the terms of this policy and related procedure and again we will endeavour to use non-legal remedies in the first instance.

10 Multi-Agency Approach

Fyne Homes recognises the need to work with other agencies in order to receive their assistance in relation to disputes and anti-social behaviour, and have signed up to a local protocol in terms of information sharing with other agencies in order to bring a co-ordinated approach when resolving issues.

We also recognise that our input might be equally valuable to other agencies when they are attempting to resolve non-housing issues and will commit to working with them in a reciprocal arrangement.

Agencies that are part of the multi-agency approach include:

- Police Scotland
- Argyll & Bute Council Environmental Services
- Argyll & Bute Council Housing Services (Homeless) Dept.
- Social Work
- Housing Support organisations e.g. Cargomm, HELP Project
- Women's Aid

Any protocols or procedures agreed are kept separately from this document but copies of these will be available on request.

11 Monitoring and Reporting

Fyne Homes is committed to continuous improvement in service delivery and standards, and understands that effective monitoring and reporting is essential to the process of evaluating and reviewing performance.

We will produce quarterly monitoring reports for the Association's Management Committee which will facilitate the effective monitoring of the Association's performance in this area.

We may also, as part of the protocol, make these reports (either in part or in their entirety) available to our partner agencies for comparison and/or benchmarking.

Furthermore we will publish details of complaints received annually.

We will analyse the information gathered to see if there are any trends or emerging patterns that we should be aware of when improving our service delivery and quality of life for our tenants. The results of such analysis may also show us areas of weakness that need to be addressed in the next policy/procedural review.

12 Policy Review

This policy will be reviewed on a 3 yearly basis unless there are any legislative changes that require to be incorporated or our monitoring and internal review process highlights necessary changes before this time. It should be noted that the procedures may be updated without a review of this policy if there are no material changes required.

13 Complaints and Appeals

It should be made easy for complainants to report problems in the way that suits them best and this need not necessarily be in writing, though they would be encouraged to do so in view of any possible future court action. All complaints will be investigated in the first instance, by the local Housing Officer.

Housing Officers will contact complainants within the following timescales to acknowledge their complaint and ask for further detail if this is necessary:

Category of Complaint	Timescale (working days)
Neighbour Nuisance	Within 3 working days
Anti-Social Behaviour	Within 1 working days
Serious Anti-Social Behaviour	Within 1 working day
Harassment	Within 1 working days
Non Tenancy Complaints	Within 3 working days

Housing Officers will aim to take appropriate action to resolve complaints within the following timescales:

Category of Complaint	Timescale (working days)
Neighbour Nuisance	Within 10 working days
Anti-Social Behaviour	Within 10 working days
Serious Anti-Social Behaviour	Within 5 working days
Harassment	Within 5 working days
Non Tenancy Complaints	Within 10 working days

Where a complainant is unhappy with progress made or decisions reached by the Investigating Officer under this Policy, the case will be reviewed by the Housing Services Director. Thereafter if a complainant remains unhappy he/she will be referred to our Complaints Procedure.

14 Training and Development

We are committed to training our staff appropriately to enable them to reach their full potential. It is crucial that all members of staff receive training in this specific area, so we will ensure all of our Housing Management staff has or is working towards a recognised 'Housing Law & Advice' qualification. We will also:

- Train all members of our Housing Management Team on this policy
- Train all members of our Housing Management Team on the associated procedures

- Provide training to frontline staff on how to deal with difficult situations
- Provide additional training specific to Anti-Social Behaviour law and appropriate use of remedies to our Housing Management Team.

15 Financial Implications

There is no doubt that anti-social behaviour costs the Association money which of course in turn can impact on rent levels and other resources. It is quite difficult to gather figures as there are many indirect costs also involved in this issue. Costs involved include:

- Legal costs
- Repair costs – vandalism etc.
- Security costs
- Void costs – properties can become hard to re-let
- Staff time
- Insurance costs

The effective implementation of this policy should help mitigate the effect of these costs and other impacts associated with anti-social behaviour, such are reputational issues.

Version number	Revision Date	Part of doc revised	Reason for revision	Approved by

Appendix 1:

Key Principles of Procedures for Dealing with Neighbour Disputes, Harassment and Anti-Social Behaviour.

General Principles of Procedure

The policy and procedure is based on the following general principles:

1. Reporting Complaints

It should be made easy for complainants to report problems in the way that suits them best and this need not necessarily be in writing, though they would be encouraged to do so in view of any possible future court action. They could opt to report complaints verbally and may be accompanied by a friend or advisor. All complaints will be investigated in the first instance, by the local Housing Officer

2. Approach

It is important that we take a non-judgemental approach to complaints as some may be unfounded or even malicious. We aim to support all parties to a complaint as far as we can.

3. Response Times

We will respond quickly, sensitively and objectively to complaints received. The response may be in the form of a telephone call, an email, a text, a home visit or an interview within the office or at the home if this is preferred.

Housing Officers will contact complainants within the following timescales to acknowledge their complaint and ask for further detail if this is necessary:

Category of Complaint	Timescale (working days)
Neighbour Nuisance	Within 3 working days
Anti-Social Behaviour	Within 1 working days
Serious Anti-Social Behaviour	Within 1 working day
Harassment	Within 1 working days
Non Tenancy Complaints	Within 3 working days

Housing Officers will aim to take appropriate action to resolve complaints within the following timescales:

Category of Complaint	Timescale (working days)
Neighbour Nuisance	Within 10 working days
Anti-Social Behaviour	Within 5 working days
Serious Anti-Social Behaviour	Within 5 working days
Harassment	Within 5 working days
Non Tenancy Complaints	Within 10 working days

If any of the complaints, irrespective of category, represent an immediate threat to the safety of occupants of the building or to the structure of the property e.g. rubbish blocking fire exits, action taken to resolve this will be taken within 24 hours.

4. Action taken to resolve complaints

Where appropriate in the first instance we will address the issue directly with the person or persons concerned and monitor the situation where necessary. In many cases simply making the person aware that there is an issue can resolve the situation in an informal way.

Taking action to resolve complaints includes:

- Addressing the issue with the alleged perpetrator
- Issuing complaint logs to relevant parties to gather corroborating evidence
- Issuing tenancy warnings
- Conversion to a Short Scottish Secure Tenancy
- Involving partners in addressing the issues e.g. Environmental Services, Police Scotland, Social Work
- Offering mediation
- Management Transfers
- Implementing Acceptable Behaviour Contracts
- Taking legal steps against the person and or tenancy e.g. Anti-Social Behaviour Orders (ASBOS), Notice of Proceedings, Eviction

The action to resolve a case will vary case by case, and due to GDPR we may not be able to disclose what action has been taken, however we will always inform the complainant when we have taken appropriate action even if we cannot share the detail.

In cases of Anti-Social Behaviour and Serious Anti-Social Behaviour we will leave the case open for a 3 month period from the date of the first complaint. If there is no further evidence of incidents during this period the case will be closed. Should issues occur after this a new case will be opened, and evidence from previous incidents may be used to pursue legal action.

Should it not be possible to meet the timescales for complaints detailed above then we will inform the complainant of the reasons for the delay and of the reviewed timescale. We will also take any necessary interim action.

All cases of Serious Anti-Social Behaviour and Harassment will be reported to Police Scotland by Fyne Homes if the complainant has not already done so.

The Association will only resort to legal remedies when all other options have failed to resolve the situation. Eviction will at all times be an absolute last resort.

5. Complaints Regarding Harassment

In such complaints we will take a victim centred approach ensuring we are sympathetic to the stress and needs of the complainant.

6. Tenants with Particular Needs

We will make every attempt to make sure tenants with particular needs have appropriate assistance and support to maintain their tenancies.

If any issues covered by this policy arise in relation to such tenants we will work with the tenant's support agencies to help, whether the tenant has been causing the nuisance or is the victim of harassment or anti-social behaviour.

If we cannot resolve the situation quickly then we may call a case conference of relevant organisations to explore what solutions are available.

Ultimately though, if we cannot find another acceptable solution and the tenant continues to breach his/her tenancy agreement we will take legal action as appropriate. We will work closely with the tenant's support agencies and other statutory bodies during the whole process.

7. Confidentiality

We will treat all complaints in the strictest of confidence with the following exceptions:

- The details of anonymous complaints about any kind of anti-social behaviour may also be passed to the appropriate agency.
- It concerns criminal behaviour and we are obliged to inform the police.
- There is a risk to the health and welfare of an individual – in this case we will inform the relevant agency.

Appendix 2

Legal Remedies

ANTI-SOCIAL BEHAVIOUR: A BRIEF GUIDE TO THE LAW

This appendix is designed to be a brief guide to the law in this area. It looks at the definition of anti-social behaviour and the remedies available to those affected. The law in this area is very complex and difficult and this appendix should not be regarded as a full and complete statement of the law. It is not intended as a substitute for expert legal advice.

REMEDIES

There are many potential remedies available to persons suffering from the effects of the anti-social behaviour of others. Some of these remedies, but not all, require the use of court procedures. In certain cases the remedy cannot be used by the person suffering the behaviour but can only be utilised by some other organisation, in many circumstances, the local authority. The remedies which are available include non-court remedies and court remedies.

NON-COURT REMEDIES

Mediation

Mediation is a process where an independent third party attempts to resolve a problem between two other parties in a manner which is acceptable to both. It has been described as an attempt to “turn a two way fight into a three way search for a solution”. The mediator cannot impose a solution on the parties. All parties must agree with the outcome. Mediation is not suitable for all disputes, but it can be a procedure which is of benefit in many disputes involving anti-social behaviour. In some situations, the person who is creating the problem is unaware it is causing difficulties or annoyance to others. Neighbours should be encouraged to speak to other neighbours and advise them of their difficulties. If that does not resolve the problem, then mediation can be a useful solution. Throughout Scotland, there are a number of mediation services provided by local authorities and by other voluntary organisations. Mediation has great potential to save money, time, energy and anxiety.

Arbitration

Arbitration is a process similar to mediation which seeks to resolve disputes without recourse to court procedures. Arbitration is a process where an independent third party, after investigation, offers parties a solution or has the power to impose a solution upon parties. Arbitration differs from mediation in this respect, namely the arbitrator has the power to impose a solution upon the parties unlike mediation where all parties must agree to the outcome. When agreeing to arbitration, parties must agree the arbitrator has that power.

Acceptable Behaviour Contracts

An Acceptable Behaviour Contract (ABC), also known as an Acceptable Behaviour Agreement, is an intervention designed to engage the individual in recognising their behaviour and its negative effects on others, in order to stop the offending behaviour.

An ABC is a written agreement between an anti-social behaviour perpetrator and their local authority, Youth Inclusion Support Panel, landlord or the police.

ABCs are usually used for young people but can also be used for adults.

The ABC consists of a list of anti-social acts that the offender agrees not to continue and outlines the consequences if the contract is breached.

Contracts usually last for six months but can be renewed if both parties agree.

ABCs are not legally binding, but can be cited in court as evidence in ASBO applications or in eviction or possession proceedings.

Conversion to a Short Scottish Secure Tenancy for Anti-Social Behaviour

Section 7(2) of the 2014 Act extends the circumstances when we could serve you with a notice converting your Scottish Secure Tenancy to a Short Scottish Secure Tenancy. This means that in certain circumstances we can change your tenancy agreement to a different type of tenancy agreement called a Short Scottish Secure Tenancy which gives you fewer rights and less protection from eviction than a Scottish Secure Tenancy. A Short Scottish Secure Tenancy has a fixed duration, unless we agree to extend it or convert it back to a Scottish Secure Tenancy.

The circumstances now include any situation where a tenant or someone living with the tenant has acted in an antisocial manner, or pursued a course of conduct amounting to harassment of another person. This conduct must have been in or around the house occupied by the tenant and it must also have happened in the 3 years before the notice is served.

Section 7(2) of the 2014 Act also places new requirements on social landlords when issuing a notice to a tenant converting a tenancy to a Short Scottish Secure Tenancy as a result of antisocial behaviour. In cases where no antisocial behaviour order has been granted by the court, the landlord must include in the notice the actions of the person who has behaved in an antisocial manner, the landlord's reasons for converting the tenancy and details of the tenant's right of appeal to the sheriff.

Legal Remedies

A variety of potential legal remedies exist to deal with the problems of anti-social behaviour. Some are available to the persons suffering from the behaviour, some can only be utilised by appropriate authorities. All of them involve court action which has potential implications regarding expense. In most situations, the assistance of a solicitor will be necessary.

Interdict

An Interdict is a court order which prohibits someone from carrying out an act which they are legally obliged not to do. The purpose of an Interdict is to prevent future wrongdoing. It is not designed to provide compensation for something that has already happened. An Interdict action can be raised by any person. In the case of allegations of anti-social behaviour, any person suffering from the behaviour would be entitled to raise the Interdict action. Where the behaviour is being caused by a tenant and the behaviour is in breach of the tenancy conditions, the landlord would also be entitled to raise such proceedings.

Interdict as a remedy for anti-social behaviour is also available to owner-occupiers. Interdict can be obtained as an interim or emergency measure in certain circumstances. It is now also possible to attach a Power of Arrest to certain Interdicts in terms of the Protection from Abuse (Scotland) Act 2001. Interdict is a complex legal remedy and expert legal advice should be sought before commencing proceedings.

There are also provisions under the Protection from Harassment Act 1997 which allow the courts to grant orders known as “non-harassment orders”. Again this is a complex legal remedy and expert legal advice should be sought before commencing such proceedings.

Specific Implement

The remedy of Specific Implement is an order of the court requiring a person to do something, to perform his or her legal obligations for example, obligation under a contract. This differs from an Interdict which is a preventative order requiring someone not to do something. It can be used when we require a tenant to take positive action.

There are a number of complaints we receive which could potentially be the subject of an action for a specific implement. For example failure of tenants to maintain their own gardens, failure to fulfil responsibilities to clean communal areas, and other behaviour affecting the amenity of communal areas such as common closes and drying greens.

Environmental Protection Act 1990

This Act of Parliament created the concept of “statutory nuisance”. Although its application may be limited in the field of anti-social behaviour it may be possible to use the procedures created under this Act. This act requires any person who is aggrieved by a statutory nuisance to serve a notice on the person causing the nuisance. If the nuisance is then not stopped, legal proceedings can be taken against the person causing the nuisance and a court order obtained. Statutory nuisance in terms of this Act occurs if one of certain prescribed events exist, which is “a nuisance or prejudicial to health”. It may be possible in the field of anti-social behaviour to utilise this legal remedy in situations involving accumulations of deposits of waste, with the keeping of animals or with situations involving excessive noise.

Lawburrows

Lawburrows is an ancient Scottish remedy designed to protect a person against anticipated physical harm to themselves or damage to their property. The remedy dates from the Lawburrows Acts of 1429 and 1581. It is a very seldom used remedy but does have certain advantages in neighbour nuisance situations. An application is made to the court for an order requiring the person causing the nuisance to find caution (i.e. grant a bond securing

payment) for a sum of money to be determined by the court. If the person thereafter contravenes the order, the amount of money which has been lodged in court will be forfeited. Lawburrows may be used in a situation of serious neighbour disputes involving actual or threatened violence or damage rather than lesser nuisances.

Anti-Social Behaviour Orders

The Crime and Disorder Act 1998 brought into effect a new court order called an Anti-Social Behaviour Order (ASBO). This order can be obtained against any individual who is aged 12 years or over. Their behaviour must be “anti-social”. This means their behaviour has caused or is likely to cause alarm, distress, nuisance or annoyance to people who do not live in their household. The court must also be satisfied the ASBO is “necessary” to protect other people from further anti-social acts. The order will prohibit that person from doing whatever is considered necessary by the Court to protect people in that area from further anti-social acts by that individual.

- Where a child is involved, the Sheriff is required to have regard to advice provided by a Children’s Hearing before determining the application for an ASBO. Therefore, before such an application can be determined, the Children’s Reporter will be required to arrange a Children’s Hearing for the purpose of obtaining their advice as to whether it agrees an ASBO is necessary for protecting person(s) from further antisocial behaviour by the child.

The Criminal Justice (Scotland) Act 2003 extended the use of Anti-social Behaviour Orders to registered social landlords. Since June 2003 it has been open to housing associations as registered social landlords to seek anti-social behaviour orders. Anti-social behaviour orders can be sought against any person whether they are an owner occupier, a private sector tenant or a public sector tenant. It can also be sought against any person even though they are not a tenant. The relevant law is now contained in the Anti-social Behaviour etc. (Scotland) Act 2004.

The application for the ASBO is made to the local Sheriff Court acting in its civil capacity. The Court can also grant an interim or temporary Anti-social Behaviour Order.

If an ASBO is granted then any breach of the order is treated as a criminal offence. The maximum penalty for breach of an anti-social behaviour order is five years imprisonment.

If an ASBO is granted against a person who is a Scottish Secure Tenant or is granted against a person who is a member of that tenant’s household then the landlord has the power to convert the tenant’s Scottish Secure Tenancy to a Short Scottish Secure Tenancy. This conversion effectively puts the tenant on probation and the landlord can seek recovery of possession without needing any specific ground of eviction if they commence eviction proceedings within a period of twelve months from the date of conversion.

ANTI-SOCIAL BEHAVIOUR AS A GROUND FOR EVICTION

Housing Associations have the power to seek eviction orders against tenants who are guilty of anti-social behaviour. Anti-social behaviour in this context means behaviour which has caused or is likely to cause alarm, distress, nuisance or annoyance. The use of the phrase “likely to cause” means landlords can lead evidence in anti-social eviction cases from professional witnesses. It is not necessary for the persons actually suffering the behaviour to give evidence. If there is sufficient evidence of anti-social behaviour from other sources then the court is entitled to infer the behaviour was “likely to cause” alarm, distress, nuisance or annoyance and grant the order. The behaviour must take place in the locality of the house. The behaviour of other residents of the house including visitors and lodgers is also covered in addition to the behaviour of the tenant.

In addition to the general ground of eviction for anti-social behaviour, there is also a further ground of eviction open to landlords where a tenant has been convicted of using the house for immoral or illegal purposes or has been convicted of an offence punishable by imprisonment committed in or in the locality of the house. This ground can be used to seek eviction orders against persons guilty of various criminal offences including drug dealing.

It should be noted tenants against whom eviction actions are raised are entitled to defend these actions. However the Housing Scotland 2014 Act changes the way in which a Scottish Secure Tenancy can be ended following a conviction for serious antisocial or criminal behaviour. Section 14(2) of the 2014 Act means that a court does not have to consider whether it is reasonable to make an order for eviction where the landlord has grounds for recovery of possession under Schedule 2 paragraph 2 of the Housing (Scotland) Act 2001.

Eviction orders for Anti-social Behaviour can only be sought against tenants. Accordingly these provisions cannot be used against owner-occupiers. It is not possible to evict an owner-occupier who is responsible for anti-social behaviour. Accordingly persons suffering from the anti-social behaviour of owner-occupiers must consider the other remedies contained in this paper including interdict, non-harassment orders and anti-social behaviour orders.