

MAGNA HOUSING

PROCEDURE FOR DEALING WITH ANTI-SOCIAL BEHAVIOUR

1. Introduction

- 1.1 This procedure supports Magna's Anti-Social Behaviour Policy, Hate Incident, Crime and Harassment Policy, Domestic Abuse Policy, Safeguarding Policy & Procedure and provides guidance to staff on dealing with complaints about anti-social behaviour.
- 1.2 The aims of this procedure are to resolve an anti-social behaviour problem quickly, taking the appropriate action to remedy the situation, and to keep the complainant informed throughout the case.
- 1.3 The procedure has been drawn up to take account of the provisions of the Anti-Social Behaviour Act 2003, the Anti-social Behaviour, Crime and Policing Act 2014 as well as other legislation and available good practice and guidance from the Department for Communities and Local Government, Homes and Communities Agency, the National Housing Federation and other sources.
- 1.4 The Head of Housing Services is responsible for ensuring compliance with this procedure.

2. Definitions of anti-social behaviour

- 2.1 According to the Crime and Disorder Act 1998, anti-social behaviour is behaviour which causes or is likely to cause harassment, alarm or distress to one or more people who are not in the same household as the perpetrator.
- 2.2 The Antisocial Behaviour, Crime and Policy Act 2014 further describes ASB in a housing related setting as "conduct capable of causing housing-related nuisance or annoyance to any person".
- 2.3 Anti-social behaviour can take a number of forms. Some anti-social behaviour is of a serious, criminal nature. Other behaviour may not be criminal in nature but can be equally detrimental to the quality of life in a community.

3. Preventing anti-social behaviour

Allocation & Sign-up

- 3.1 References are sought and checked in the allocation of a property, and the applicant is assessed for their suitability. If they have a recent history of ASB, their application can be refused. The allocation is managed under the Housing Allocation Procedure. At the sign up the tenant is asked to read and sign an information sheet to indicate their understanding of their obligations and rights regarding ASB & nuisance.

Home visits

- 3.2 Home visits, whether those carried out for new tenants, or visits made in other circumstances, are also a chance for staff to pick up on any problems at an early stage and discuss these with residents. Examples may include problems with pets or the condition of a garden.

Estate inspections

- 3.3 Estate inspections by Community Safety Officers, Housing Officers or the Estates Team can also be a means of detecting any potential anti-social behaviour issues at an early stage, particularly in communal areas.

Tenancy support

- 3.4 Community Safety Officers will refer households where tenancy support is appropriate to Magna's Tenancy Sustainment Service, a local floating support service or other external agency

4. Receiving, acknowledging and allocating a complaint

- 4.1 Complaints about anti-social behaviour can be made in various ways.
- 4.2 Complaints may be made by tenants or by others, including staff.
- 4.3 All complaints will be triaged by the Community Safety Team in order to consistently categorise and risk assess the complainant. Complaints about anti-social behaviour (Category A&B detailed below) will be allocated to and managed by the community safety officers. Complaints about nuisance (Category C detailed below) will be allocated to and managed by the housing officer for the patch. The procedure for managing the complaint is the same for all categories.
- 4.4 Complaints where the complainant is known must be acknowledged using the standard acknowledgement letter (ICS001). The following timescales must be used when responding to complaints:

4.4.1 Category A: Allegations of Extreme Anti-Social Behaviour
Response time one working day

Some examples may be:

- Criminal activity involving violence
- Drug dealing
- Hate Crime & Hate related incidents
- Assault
- Threats of violence
- Harassment
- Domestic violence

4.4.2 Category B: Allegations of Serious Anti-Social Behaviour
Response time three working days

Some examples may be:

- Aggressive and abusive behaviour
- Frequent and persistent disturbances (including noise)
- Drug, solvent and alcohol abuse in communal areas
- Vandalism

4.4.3 Category C: Allegations of Nuisance
Response time five working days

Some examples may be:

- Pet nuisance
- Constant door slamming and arguing
- Operating noisy machinery for excessive amounts of time

Anonymous complaints

4.5 Sometimes, a complaint about anti-social behaviour will be made anonymously. Anonymous complaints should not be ignored. While it is sometimes difficult to act on the basis of an anonymous complaint alone, and it will be impossible to present sufficient evidence to be successful in a Court action, as much information as possible must be gathered. The Community Safety Officer must check the substance of the complaint. This may include writing to a number of other residents to gauge any issues in the neighbourhood (ICSREPASB)

Complaints about non-tenants

4.6 There is much less that we can do to resolve the situation with complaints about non-tenants. However, we can offer advice to the complainant about other agencies they can contact.

Complaints about leaseholders

4.7 If the alleged perpetrator is one of our leaseholders, the Home Ownership Officer should contact Legal Services and ask for a copy of the Lease Agreement. The regulations will normally be found in the First Schedule of the Lease. The Home Ownership Officer should discuss the complaint

with Legal Services. There are measures we can take to enforce breaches of covenants, such as 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 leaseholder admits the breach, we can serve a notice of forfeiture. Forfeiture means ending the lease and repossession by us because the lease conditions have not been met.

- 4.8 In practice, forfeiture would be an unlikely remedy. However, the Home ownership officer can consider other non-legal remedies to tackle anti-social behaviour by leaseholders as set out later in the procedure.

Sheltered and Supported housing

- 4.9 Where the anti-social behaviour involves supported housing residents, the Community Safety Officer must liaise with support staff about the complaints, whether the support is provided by Magna or by another agency such as Social Services. Not all of the investigative processes or remedies set out in these procedures will be appropriate. The Community Safety Officer must take particular care where the anti-social behaviour involves residents with learning disabilities or mental health problems.

- 4.10 For complaints received by the Sheltered Housing and Support Service on behalf of a resident, the referral form (available on Magnet/ Forms) should be used by the referring member of staff in order to ascertain any vulnerabilities and support already in place.

Complaints involving a Hate Related incident

- 4.11 Complaints involving a hate related incident must take into account Magna's Hate Incident, Crime and Harassment Policy and will be dealt with as a Category A case.

5. Logging the details of the complaint

- 5.1 The Community Safety Officer must log all the details and related paperwork. The Community Safety Officer must obtain as much relevant information as possible from the complainant. This will include:

- 5.1.1 Details of the complainant
- 5.1.2 Details of the specific incident being reported
- 5.1.3 Whether any other agencies are involved, such as the Police or Environmental Health. If they are, full details must be gathered, such as the name of any officers dealing with the case, incident numbers etc. and check what action is being taken
- 5.1.4 Details of any evidence the complainant has
- 5.1.5 Details of the alleged perpetrator who is causing the anti-social behaviour, and whether they are a tenant
- 5.1.6 What does the complainant expect us to be able to do about the problem now?
- 5.1.7 Have they spoken to the alleged perpetrator?

5.2 It is vital from the outset that the complainant's expectations are managed effectively. The Community Safety Officer will discuss with the complainant what options are available to resolve their concerns. This will involve completing an action plan with them. The action plan (ICS024) will include:

5.3.1 Actions to be completed by the CSO and complainant

5.3.2 Agreed method and frequency of contact

5.3.2 The complainant's expectations, and what interventions are available

5.3 The action plan will be saved to the case, and a copy sent to the complainant upon completion.

Contacting other agencies

5.4 If there are any other agencies involved with the complainant or their household such as Social Services, Probation, health services or any other agencies, then the Community Safety Officer may need to contact the agency to gather further information or seek advice or help. Information sharing must be done in compliance with our Data Protection Procedure, and in line with the information sharing protocols in place.

6. Assessing Vulnerability

6.1 A Vulnerable Victims Risk Assessment (VVA) (ICSVVRA) must be completed for every opened case. This enables us to 'score' the vulnerability of the complainant, taking into account any mental or physical health problems, the effect the ASB is having on them and whether or not the wider the community is affected.

6.2 If a score of 25 or above is reached, an anti-social behaviour risk assessment conference (ASBRAC) must be organised by the Community Safety Officer (ICSASBCRAC). This should happen within 5 working days of the assessment being completed. Other agencies which must be invited are:

- Police;
- Childrens' Services if the ASB includes, or is affecting children
- Mental Health team if the complainant is already linked in with them
- The Local Authority ASB Team

6.3 Other agencies which should also be considered are the complainant's GP, social services, drug/ alcohol support services, tenancy support providers, or sheltered housing advisors. (ICS

6.4 The meeting must be minuted, detailing any agreed actions and timescales with the attending agencies in order to best safeguard the complainant.

6.5 If a safeguarding referral is deemed appropriate, this must be completed by the Community Safety Officer and sent to the relevant District Council Safeguarding team. A safeguarding alert (SAFEGUARDING ALERT

FORM) must also be sent to Magna's Safeguarding lead as per the Safeguarding Children and Adults Procedure.

- 6.6 A further VVA should be completed after 2 weeks to assess whether the risk has reduced. If the score remains over 25, fortnightly reviews must be undertaken in order to monitor the case progress, and identify any associated risks in order that these are managed effectively and by the appropriate agency.
- 6.7 The Community Safety manager will check compliance with this stage of the case management in order to ensure that the VVAs are taking place, and that any risk is considered, and managed effectively. VVAs will be checked on every case on a monthly basis.

7. Contacting the alleged perpetrators

- 7.1 Once the Community Safety Officer has gathered information about the anti-social behaviour, they should contact the alleged perpetrator where agreed with the complainant. This initial contact can be by letter (ICS003), email, telephone or by visit, but must detail the allegations being made. If evidence exists that the behaviour is proven, the Community Safety Officer must make clear to the perpetrator what they need to do to prevent any further action being taken. For example, this may involve stopping loud music or other noise at night, or keeping pets under control. In some cases, bringing the complaint to the attention of the alleged perpetrator will be enough to stop the behaviour.
- 7.2 If the complainant does not wish their name to be used, the Community Safety Officer must take great care when talking to the alleged perpetrator so that the identity of the complainant is not disclosed.
- 7.3 The Community Safety Officer must keep in regular contact with the complainant(s) for confirmation as to whether the behaviour has stopped, in which case no further action is required. The case can then be closed as set out in section 16.
- 7.4 If further complaints of anti-social behaviour are received, a home visit will be undertaken. At the home visit, the allegations will be discussed and where appropriate an action plan agreed (ICS029) detailing what measures the alleged perpetrator can/ should take in order to stop the ASB. A copy of any action plan will be sent to the alleged perpetrator. In cases of low level nuisance, a second warning letter may be more appropriate.
- 7.5 If monitoring shows that the behaviour has not improved, further action will need to be considered. These may be legal remedies or other solutions.

8. Gathering Evidence

Complaint logs

- 8.1 In most cases where anti-social behaviour appears to be of a regular nature, we will encourage the complainant to use the online reporting form on Magna's website, email us updates or incidents, or issue an incident diary to the individual residents complaining. It must be explained to the complainant that they must provide as much detail as possible, including;
- 8.3.1 Date of incident(s)
 - 8.3.2 Time and duration of incident(s)
 - 8.3.3 What has happened
 - 8.3.4 Names of the people involved (if known)
 - 8.3.5 Details of how it has affected them
- 8.4 Community Safety Officers must advise complainants of the importance of them maintaining records. The records have a dual purpose; detailing the nature, severity and frequency of the anti-social behaviour (and, therefore, the relevance of Court action) and where court action is pursued they will be used as evidence. They therefore need to be accurate, factual, recorded as soon after the incident as possible, and provided to us as agreed in the action plan.
- 8.5 Where complaint logs are not provided as requested, the Community Safety Officer must contact the complainants to ascertain why. If it is because the anti-social behaviour has ceased, then the case can be closed using the procedures set out in section 16. If the behaviour has not ceased, but the complainant is unwilling to provide the information, the Community Safety Officer should advise the complainant that without their evidence, it may not be possible to take any further action.
- 8.6 If complaint logs are received, but they do not provide evidence of anti-social behaviour the Community Safety Officer must advise the complainant that no further intervention by the CSO is appropriate (ICS006) and where applicable they may be signposted to another team or agency for support or advice.

Noise monitoring equipment

- 8.8 Where complaints involve alleged noise nuisance, it may be appropriate to use noise monitoring equipment.
- 8.9 Where this is considered, the Community Safety Officer must obtain a signed agreement (ICS008) that they will not tamper with, damage or move the equipment and that they understand that their own household noise including conversations will be recorded if they activate it. A copy must be left with or emailed to the complainant, the other stored electronically on the case file.
- 8.10 Installation guidelines kept with the noise monitoring equipment must be followed by the Community Safety Officer.

8.11 When Noise Monitoring Equipment is received back at the office, the information must be analysed and a report produced (ICS0029) within 5 working days. The recordings will be stored securely and in accordance with the Procedure for Implementing Data Protection.

8.12 The complainant will be notified of the outcome of the recordings, and can be sent the report if requested. The complainant and/ or the perpetrator can be offered the opportunity to listen to the recordings. This must be done at a Magna office.

Professional witnesses

8.13 Professional witnesses can provide a record of incidents and sometimes take video or photographic evidence. Such cases include those where no residents are willing to give evidence. Where this is felt to be a reasonable option, the Community Safety Officer should get advice from Legal Services.

CCTV evidence

8.14 We have our own CCTV equipment. This can be used to gather independent evidence about more serious ongoing anti-social behaviour. If the Community Safety Officer feels this may be appropriate, justified and proportionate they should discuss the option with the Housing Manager (Community Safety) and authorisation obtained (CCTV Assessment Form on Magnet) as per the Close Circuit Television (CCTV) Procedure.

Photographs

8.15 Photographs should be electronically time and date stamped. Where this is not possible, the date and time should be clearly noted.

Video evidence

8.16 Community Safety Officers must explain to complainants that any video evidence they supply must:

8.16.1 be time and date stamped

8.16.2 only record incidents of anti-social behaviour

8.16.3 comply with guidance in the Closed Circuit Television (CCTV) Procedure

8.17 Community Safety Officers will check the validity of any video evidence with Legal Services.

Information from the Police & other agencies

8.18 We have information sharing protocols in place with the Police forces in areas where we have properties. The protocols may be used to gather information where there is alleged criminal behaviour or fraudulent activity. The Housing Manager Community Safety is the authorised person to request formal disclosure from the police. Disclosures will be

stored securely and in accordance with the Procedure for Implementing Data Protection.

8.19 All members of the Community Safety Team have secure email addresses in order to share sensitive data (Criminal Justice Secure Mail). All requests of a sensitive nature must be made using CJSM.

8.20 In some cases, it may be possible to gather evidence from other agencies about the anti-social behaviour or its effect on the complaint. For example, Social Services, GPs, or other agencies may supply supporting information or evidence. There is a standard Authority to Disclose Information form (AUTH DISCLOSE 3RD PARTY) for this purpose.

9. Support for complainants

9.1 The best form of support for all complainants will be to deal with their complaint quickly and efficiently and to keep them informed at all stages. However, in cases of persistent or severe anti-social behaviour, the Community Safety Officer must consider what further support can be provided.

9.2 Examples of the sort of support that can be offered include referrals to our own tenancy advisor service (REFER TEN ADVICE) or visiting support officer, or to other agencies such as Victim Support; a specialist domestic abuse service; advice about rehousing if this is desired; target hardening; or advice from the Police about crime prevention.

10. Deciding which remedy is appropriate

10.1 There are a range of legal and non-legal remedies available. The Community Safety Officer must decide on the best approach, taking into account the nature and severity of the anti-social behaviour and its effect on the complainant. In general, non-legal remedies should be the first consideration, unless the behaviour is of a serious, persistent or criminal nature.

11. Non-legal remedies for tackling anti-social behaviour

Mediation

11.1 Mediation is a voluntary process in which trained, experienced mediators acting as a neutral third party help people who are in dispute to work together to solve their problem.

11.2 Community Safety Officers who feel that mediation may work in a particular case should offer this solution to both parties involved, using an approved mediation specialist as included on Magna's approved supplier database. The referral must be made by the CSO.

- 11.3 Mediation will only be appropriate where two parties are unable to communicate effectively with each other, who cannot find the solution themselves, but who do wish to settle their dispute.

Community Initiatives Fund

- 11.4 In some cases, particularly if the anti-social behaviour is related to an environment it may be an option to consider a bid to the Community Initiatives Fund. For example applications could be submitted for extra lighting, dog fouling bins, communal fencing or other neighbourliness incentives. Applications should be submitted to the resident engagement officer for consideration.

Local authority dog wardens

- 11.5 Local authority dog wardens are able to issue Community Protection Notices or warnings, supply dog bins or signs, or give advice to residents.

Police advice and help

- 11.6 The Community Safety Officer should contact the Police where the anti-social behaviour is criminal in nature. They can provide advice and may on occasion agree to extra patrols in the area as a short-term measure.

Estate Services

- 11.7 Estate Services can assist in deterring or reducing some forms of anti-social behaviour. For example, they can clear away rubbish or needles dumped in communal areas, in order to improve the environment and remove focal points of anti-social behaviour. They can also carry out regular patrols of communal areas and carry out spot checks.

Environmental Health/ Community Safety Teams

- 11.8 In some cases where it is felt that an independent view would be useful, or where a perpetrator is not a Magna tenant, contact should be made with the local authority Environmental Health service for advice.
- 11.9 If the anti-social behaviour is viewed as a statutory nuisance by the Environmental Health Officer, then any Abatement Notice or subsequent successful prosecution provides good evidence should we need to pursue a legal case.

Acceptable Behaviour Contracts

- 11.10 Acceptable behaviour contracts (ABCs), can be an effective way of dealing with anti-social individuals, especially where there are a number of problem behaviours.

- 11.11 ABCs are written in agreement with the perpetrator, and set out terms which the perpetrator agrees to adhere to. The CSO should discuss the terms with the perpetrator in order to encourage compliance.
- 11.12 The ABC will make clear what further action will be considered if the terms are breached. This may include injunctive action, or in serious cases, possession action.
- 11.13 Further information on ABCs can be found at Appendix 1.

12. Legal remedies for tackling anti-social behaviour

- 12.1 In all cases where legal action is to be considered, it is imperative to consider:
- 12.1.1 Is the action proportionate to the scale of the behaviour?
 - 12.1.2 Have all non-legal remedies been considered where appropriate?

Solicitors Warning Letter

- 12.2 If the anti-social behaviour or nuisance continues, the CSO can instruct Legal Services to send a warning letter to the perpetrator (INST LEGAL INJ ABC). This letter will include remedies available to Magna if the behaviour doesn't improve.

Serving a Notice Seeking Possession (NSP)

- 12.3 If the threat of a NSP does not stop the anti-social behaviour, and if no other remedy is appropriate or has not worked, the Community Safety Officer should serve a Notice Seeking Possession (NSP). A request will be made to Legal Services to draw up the NSP using the Instruction Notice Request form. (INST LEGAL NOSP)
- 12.4 As many details of the types of nuisance being caused should be specified on the NSP, e.g. "shouting, banging, swearing, late at night on 'X' date". It is essential that these details are accurate and checked by the CSO prior to service of the NSP.
- 12.5 The Community Safety Officer should wherever possible serve the NSP by hand, so that the tenant can be advised of the implications, and should have an explanatory covering letter which is produced by Legal Services. If personal service is not possible, it can be put through the letterbox. The method of service should be noted on the certificate of service. A copy of the NSP and certificate of service must be saved to the electronic case file.
- 12.6 If the tenancy is a joint tenancy, a NSP must be served on both tenants.

Serving a Notice before Proceedings for a Demotion Order

- 12.7 A 'Notice before Proceedings for a Demotion Order' will be served on the perpetrator (Section 83 of the Housing Act 1985) which gives at least 28

days' notice of Magna's intention to seek a demotion order. A request will be made to Legal Services to draw up the Notice before Proceedings for a Demotion order using the Instruction Notice Request form (INST LEGAL NOSP).

12.8 The Community Safety Officer can consider applying for a demotion order alongside other measures including an injunction, or serving a NSP alongside the Notice before Proceedings for a Demotion Order. This will be considered if appropriate and depending on the seriousness of the case.

12.9 The notice period of the Notice before Proceedings for a Demotion Order must expire before application to demote the tenancy is lodged at the court.

Accelerated possession proceedings

12.10 The 1996 Housing Act introduced special rules for NSPs served under Ground 14 as described above. Immediately the notice has been served, we can begin possession proceedings rather than have to wait for the normal 28 day expiry period.

Action on expiry of the notice period

12.11 When the 28 day notice expires the Community Safety Officer must consider whether the nuisance still exists and/or whether the case should proceed to Court. The case should be discussed with the Community Safety Manager to agree action.

12.12 The NSP has a life of 12 months and, therefore, further action can be delayed for a period if substantial improvements have occurred with the 28 day notice period.

12.13 If, for any reason no further action is to be taken or action is being delayed due to improvements in the behaviour, the Community Safety Officer must contact the complainants to explain why.

Injunctions

12.14 An injunction is a court order which requires a person to either do a specific act or acts, or to refrain from doing a specific act or acts. Positive requirements should always be considered in order to address the underlying cause of the anti-social behaviour; this may include attendance at an alcohol or drugs misuse course, or attending dog training classes.

12.15 Details of the different types of injunction available and penalties on breach are set out in guidance developed by the Home Office at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf. The breach of an injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 can mean that an absolute ground for

possession can be considered. Information is also available at Appendix 1.

Demoted tenancies

- 12.16 Demotion is an alternative option to requests for possession orders and may be considered appropriate for more low-level forms of anti-social behaviour where possession proceedings are not deemed appropriate. Demotion orders therefore serve as a last chance incentive for the perpetrator to improve his/her behaviour before possession proceedings are taken.
- 12.17 For a demotion order to be instigated the following grounds from the Housing Act 1996 must be evidenced:
- 12.17.1 that the tenant or a person residing or visiting the dwelling-house has engaged or has threatened to engage in conduct to which section 153A or 153B of the Housing Act 1996 (anti-social behaviour or the use of premises for unlawful purposes) applies; and
 - 12.17.2 that it is reasonable to make the order.
- 12.18 Section 153A of the Housing Act 1996 applies to conduct which is capable of causing nuisance or annoyance to any person and directly or indirectly relates to or affects the housing management function of the landlord. Section 153B of the Housing Act 1996 applies to when the tenant has used or threatened to use their property for an unlawful purpose.
- 12.19 Once a demotion order is granted the tenancy will last for a period of 12 months (demotion period) unless possession proceedings are started. If the behaviour of a demoted tenant has noticeably improved and is considered satisfactory after the 12 month period, then the demoted tenancy ends and reverts to the original tenancy; either an assured or fixed term tenancy
- 12.20 An assured or fixed term tenancy, if demoted will become a demoted assured short hold tenancy with the usual termination and possession requirements.
- 12.21 At court, there will usually be four possible outcomes of the claim:
- 12.21.1 If the court is satisfied that the grounds of the Tenancy Agreement have been breached and possession is the most suitable outcome then either a suspended or outright order will be granted
 - 12.21.2 Possession is not the most appropriate outcome and a demotion order would be more suitable then this will be granted
 - 12.21.3 The proceedings could be adjourned if the court feels that further consideration is required based on the need to receive additional evidence

12.21.4 The court could refuse to grant an outright/ suspended possession order, or demotion order.

12.22 The Community Safety Officer will confirm the outcome of the hearing in writing to the perpetrator. If a demotion order is granted then a statement of the terms of the demoted tenancy will be provided to the tenant with information about the demoted tenancy.

13 Possession for assured, assured shorthold and fixed term tenancies

13.1 The Community Safety Officer should only consider Court action where all reasonable efforts to resolve the problem by other means have failed; where there is statutory nuisance held as such by a Court; where there are multiple complaints supported by evidence; or where individual complaints of nuisance are serious and third party evidence is available (e.g. from the Environmental Health Officer or similar).

13.2 Three of the grounds for possession (Housing Act 1988) relate to anti-social behaviour and associated breaches of tenancy, of which two are discretionary (grounds 12 & 14 and one is mandatory (ground 7a)

13.3 Grounds 12 and 14 of the Housing Act 1988 are the most commonly used grounds for possession in anti-social behaviour cases against assured and fixed term assured shorthold tenants. Before making a possession order, the court must be satisfied that it is reasonable to make a court order.

13.3.1 Ground 12 (discretionary)

We may seek possession if an express clause in the tenancy agreement is broken, under the Housing Act 1988 Schedule 2, Part II, ground 12. This states that:

13.3.1.1 Any obligation of the tenancy (other than one related to the payment of rent) has been broken or not performed.

13.3.2 Ground 14 (discretionary)

We may seek possession under the Housing Act 1988 Schedule 2, Part II, ground 14 as amended and extended by the Housing Act 1996 section 148. This states that:

13.3.2.1 The tenant or a person residing in or visiting the dwelling-house has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaged in a lawful activity in the locality of the dwelling or has been convicted of using the dwelling or allowing it to be used for immoral or illegal purposes or an arrestable offence committed in or in the locality of the dwelling house.

13.3.2.2 This means that with Ground 14 it is not necessary to prove a nuisance has actually been caused, just likely to cause a nuisance and annoyance is sufficient. It also means that if

a tenant has been convicted e.g. of supplying drugs or assaulting a neighbour, we can seek possession.

13.3.3 **Ground 7a (mandatory)**

The Anti-social Behaviour Crime and Policing Act 2014 introduced a new absolute ground for possession of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court. Ground 7a is intended only for the most serious cases of anti-social behaviour.

13.3.3.1 Unlike grounds 12 & 14, Magna will not be required to prove to the court that it is reasonable to grant possession. The test which must be met for relying on Ground 7a is that a tenant, or a member of the tenant's household or a person visiting the property has met one of the following conditions:

- Convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985);
- Found by a court to have breached a civil injunction;
- Convicted for breaching a criminal behaviour order;
- Convicted for breaching a noise abatement notice; or
- The tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour.

13.3.3.2 The offence/ breach needs to have happened in the locality of the property or affected a person with a right to live in the locality or affected the landlord

13.3.3.3 Ground 7a is to be used only in exceptional circumstances and has a right of appeal.

Proportionality assessments

13.4 If action is being taken under a mandatory ground (Ground 7a on a Section 8 NSP, or Section 21 or a NTQ) or where we know the tenant to have a disability and therefore protected under the Equality Act 2010, a proportionality assessment must be completed by the Community Safety Officer.

13.5 If we have no information or are unsure whether the tenant might be protected under the Equality Act 2010, a proportionality assessment will be completed (PROPORTION ASSESS).

Witness statements & preparing witnesses

13.6 Where complainants are prepared to give evidence in Court then the Community Safety Officer will need witness statements from each complainant. Legal Services will help with this process and will take the witness statements. It is imperative that the witnesses are informed that these statements will be used in any proposed court action. A template witness statement letter is available if required (ICS023)

- 13.7 Where the complainants are not prepared to give evidence in Court, a hearsay statement can be produced and the Community Safety Officer can give evidence on behalf of the complainant. Hearsay statements, whilst admissible, do not carry the weight that identifiable evidence does. However, there are times when the complainant is fearful of reprisals and this must be taken into consideration.
- 13.8 Special measures can be requested from the court in cases where the complainant is willing to attend, but is particularly vulnerable or anxious. This might include requesting a screen so that they do not have to see the Defendant, or asking for a separate waiting room.
- 13.9 If the complainant has never been to court, the CSO can offer a pre-hearing visit to the court so that they can familiarise themselves with things such as where to park, where to wait, the layout of the court room and witness etiquette. The CSO will contact the court and make these arrangements, and can attend with them.
- 13.10 The CSO will arrange transport if the witnesses have no means to get to court. Any reimbursement of costs for transport or other expenses will be paid in line with the Procedure for the Reimbursement of Approved Expenses to Volunteers.

Attending court

- 13.11 If the decision is made to proceed with Court action, the Community Safety Officer should refer the case to Legal Services using an Instruction to Issue Court Proceedings Form (ICS033A). Legal Services will draw up the Particulars of Claim.
- 13.12 A CSO and a member of Legal Services will represent Magna in court. Costs and legal fees will be charged to the tenant, using a separate sundry account (R3).
- 13.13 Officers attending court should ensure they:
- 13.13.1 observe appropriate dress code (suit or other smart clothing). Dark colours are preferable;
 - 13.13.2 are not late;
 - 13.13.3 take all relevant information;
- 13.14 If the judgment is for Magna to gain possession of the property, the judgment will stipulate when this should occur. It will either be:
- 13.14.1 28 days from the date of the judgment. In this case, the Community Safety Officer will then need to instruct Legal Services to apply to the County Court for a Warrant for Possession.

OR

- 13.14.2 Forthwith (immediate possession). In this case, the Community Safety Officer will instruct Legal Services to make an immediate application for a Warrant for Possession.
- 13.15 When a Warrant for Possession is issued it is the Court who arranges and notifies both the tenant and Magna of the eviction date.
- 13.16 The Community Safety Officer must notify the relevant local authority housing advice/homeless service where an eviction is to take place involving a child or vulnerable adult (LAEVICT TEN).
- 13.17 The Community Safety Officer must notify the complainants of the outcome of the Court Hearing if they are not in attendance.
- 13.18 If possession is not granted, there should be a review of the case to establish why our intended outcome wasn't successful. Legal action is costly, and it is important that any opportunities to prevent unnecessary costs or learn any lessons why something may have gone wrong are considered.

14. Possession action: assured shorthold tenants (including Starter tenancies)

- 14.1 Where there is serious, continuing nuisance involving an assured shorthold tenant, court action for possession can be taken in the same way as described above for assured tenants. This should be the usual procedure to follow, whenever the desired outcome is to stop the anti-social behaviour.
- 14.2 Alternatively, a notice may be served under section 21 of the Housing Act 1988. Under section 21, a court must grant possession if it is satisfied that we have complied with the correct process.
- 14.3 The option of serving a Section 21 notice should only be used where the desired outcome is to evict the tenant. It should therefore only be used in severe cases of persistent anti-social behaviour, where all other reasonable approaches and attempts to stop the behaviour have been tried without success. Where this option is used, it must be authorised by the Community Safety Manager.
- 14.4 A Section 21 notice will usually be the most appropriate step where a demoted tenant is involved.
- 14.5 If the tenancy is still in the starter period refer to the Starter Tenancy Procedure to bring the tenancy to an end. For a fixed term tenancy still in the starter period refer to the Fixed Term Tenancy Procedure.

15. Possession action: licence holders

- 15.1 Where there is serious or continuing anti-social behaviour from a licence holder in supported housing, then a written 28 day notice to quit may be

served. However, in exceptional circumstances, where there is seriously disruptive or violent behaviour, less notice can be given. Where less notice is considered necessary, this must be discussed with Legal Services.

16. Action by other agencies

16.1 There are a number of measures that the Police, local authorities and other agencies can take to tackle some forms of anti-social behaviour. These measures may be useful in addition to remedies we can take. They may also be useful in cases where the anti-social behaviour is not caused by our tenants.

16.2 Some of the actions available to partner agencies such as the Police are:

16.2.1 **Dispersal powers:** which allow the police to direct people to leave a public place and not return for a specified time.

16.2.2 **Community Protection Notices:** designed to deal with particular on-going instances of environmental ASB and can be used against individuals or organisations.

16.2.3 **Public Space Protection Orders:** these deal with a particular nuisance or problem in a specific public area.

16.2.4 **Closure of premises:** which prevents people from using a residential property for 3 to 6 months because they have committed ASB there

16.2.5 **Criminal Behaviour Orders:** made on conviction to prevent ASB

16.3 It is crucial that a multi-agency approach is adopted; several of the actions available to partner agencies such as the Criminal behaviour Order and Closure Powers can mean a mandatory ground for possession if breached.

17. Closing a Case

17.1 A case may be closed for a number of reasons:

17.1.1 The complainant or perpetrator may move home

17.1.2 The complainant and perpetrator may come to their own amicable solution, through mediation or some other means

17.1.3 The complainant may confirm that the anti- social behaviour has ceased

17.1.4 The perpetrator may be evicted

17.1.5 There may be no further meaningful intervention that Magna can provide

17.1.6 Another agency may be better placed to deal with the issues, so the complainant is signposted to the appropriate agency.

17.2 When a Community Safety Officer close a case, this must be discussed with the complainant. A standard letter must be sent to the complainant (ICS007), and if appropriate to the alleged perpetrator, to confirm this. A satisfaction survey is included in the letter. This is to ensure that we gather feedback from complainants about how we dealt with their case and their experiences of the process.

18. Monitoring & Satisfaction

18.3 Details of all closed cases are reported to the Policy Governance and Research Team (PGR Team) on a quarterly basis. The Community Safety Administrator will liaise monthly with the PGR Team to ascertain which complainants have returned their surveys and will attempt to make contact with those who have not in order to gauge satisfaction and team performance information.

18.4 Each Community Safety Officer must provide details monthly on their current caseload on Covalent. This includes numbers of open, closed, and carried over cases and how many cases were resolved within our target timeframe. It will also include activities undertaken such as preventative/ enforcement action.

18.5 The results of the satisfaction survey will be logged by the PGR Team and will be included in the quarterly performance information under Customer Contact in order to monitor performance.

Acceptable Behaviour Contracts (ABCs)

Acceptable behaviour contracts (ABCs), can be an effective way of dealing with anti-social individuals, especially where there are a number of problem behaviours. They can also be very effective at dealing with young people early, to nip problem behaviours in the bud before they escalate.

ABCs are a written agreement between a perpetrator of anti-social behaviour and the agency or agencies acting locally to prevent that behaviour. The terms of an ABC can be discussed with the perpetrator before they are drafted and signed to encourage compliance. There is no formal sanction associated with refusing to sign an ABC, so if an individual does not wish to sign, they cannot be forced to do so. However, refusal to sign an ABC may persuade a court that only a civil injunction or a criminal behaviour order will prevent the anti-social behaviour.

While there are no formal sanctions associated with breaching the conditions of an ABC, agencies should consider further steps if the individual does not change their behaviour. Potential further action should be made clear in the ABC so that the perpetrator is aware of the consequences of failing to comply. This may include injunctive action, or in serious cases, possession action.

In cases where court proceedings are subsequently deemed necessary, the work undertaken as part of drafting an ABC can form part of the evidence pack. For instance, any discussion with victims and communities to assess the impact of the behaviour could form the basis of a community impact statement for the court.

Civil Housing Injunction

The injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 is a civil power which can be applied for to deal with anti-social individuals. The injunction can offer fast and effective protection for victims and communities and set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating.

Although the injunction is a civil power, it is still a formal sanction and many professionals will want to consider informal approaches before resorting to court action, especially in the case of under 18s. However, where informal approaches have not worked or professionals decide that a formal response is needed more quickly, they should be free to do so.

Test

For anti-social behaviour in a housing context the nuisance or annoyance test will apply, that is, where the conduct is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises or the conduct is capable of causing housing-related nuisance or annoyance to any person. Only social landlords, local councils or the police will be able to apply for an injunction under these provisions in the legislation. In the case of social landlords only, "housing-related" means directly or indirectly relating to their housing management function.

The injunction can be applied for by the police, local councils and social landlords against perpetrators in social housing, the private-rented sector and owner-

occupiers. This means that it can be used against perpetrators who are not even tenants of the social landlord who is applying for the order.

The injunction can also be used in situations where the perpetrator has allowed another person to engage in anti-social behaviour, as opposed to actively engaging in such behaviour themselves. For example, in a case where another person, such as a visitor or lodger, is or has been behaving anti-socially, the injunction could be used against the problem visitor, lodger or owner if applicable. An agency seeking to apply for the injunction must produce evidence (to the civil standard of proof, that is, 'on the balance of probabilities') and satisfy the court that it is both 'just and convenient' to grant the order

When can injunctions be used?

The injunction can be used to deal with a wide range of behaviours, many of which can cause serious harm to victims and communities in both housing-related and non-housing related situations. This can include vandalism, public drunkenness, aggressive begging, irresponsible dog ownership, noisy or abusive behaviour towards neighbours, or bullying. Agencies must make proportionate and reasonable judgements before applying for the injunction. Injunctions should not be used to stop reasonable, trivial or benign behaviours that have not caused, or are not likely to cause, anti-social behaviour to victims or communities. Failure to make such reasonable and proportionate judgements will increase the likelihood that an application will not be successful.

What to include:

The injunction will include relevant prohibitions to get individuals to stop behaving anti-socially. It can also include positive requirements to get the individual to deal with the underlying cause of their behaviour. Agencies will have the discretion to tailor the positive requirements in each case to address the respondent's individual circumstances, behaviour and needs. Positive requirements could include the following:

- The respondent attending alcohol awareness classes for alcohol-related problems;
- Irresponsible dog owners attending dog training classes provided by animal welfare charities; or
- The respondent attending mediation sessions with neighbours or victims

Power of arrest:

The court can attach a power of arrest to any prohibition or requirement in the injunction, except a positive requirement, that is, a requirement that the respondent participates in a particular activity. The court can only attach a power of arrest if:

- the anti-social behaviour in which the respondent has engaged, or threatens to engage, consists of or includes the use, or threatened use, of violence against other persons; or
- there is a significant risk of harm to other persons from the respondent.

Penalty on breach

The breach of the injunction is not a criminal offence. However, due to the potential severity of the penalties which the court can impose on respondents, the criminal standard of proof – ‘beyond reasonable doubt’ – is applied in breach proceedings.

For adults, breach is dealt with by a civil contempt of court, which is punishable by up to two years in prison and/or an unlimited fine. The imprisonment is for contempt of court, not for the conduct. For the under 18s, breach proceedings are dealt with in the youth court and could result in a supervision order with a supervision, curfew or activity requirement.