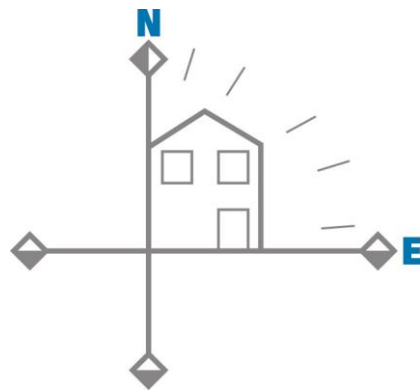


# North and East Housing Association

## Anti-Social Behaviour Policy



February 2013

# North & East HA Anti Social Behaviour Policy & Procedure

## 1 Introduction/ Policy statement

The aim of this policy and procedure is to detail North & East Housing Association's (hereafter 'N&EHA') commitment to preventing, and tackling Anti-Social behaviour (hereafter 'ASB') when it arises, in properties it manages and/or owns through good housing management practice, effective maintenance of property, development of partnerships with local agencies and through support to tenants in the development of a strong and tolerant community. N&EHA will investigate complaints of ASB made to it in order to protect, in line with tenancy and legal obligations, the interests of residents in the peaceful enjoyment of their dwellings.

N&EHA recognises the devastating effect ASB can have on individuals, families and the community. N&EHA will encourage the tenants to establish local resident associations to facilitate the provision of social events, the improvement of the environment and the provision of education courses.

## 2 Anti –Social Behaviour Definition

2.1 Anti-social behaviour has a legal definition and recognised in law under the Housing (Miscellaneous Provisions) Act 1997 (see appendix 1 for summary detail of the legal position of ASB in law).

N&EHA's policy and procedure is governed by the legal position: ASB is behaviours that cause disturbance, distress, harm and/or fear and which has a significant effect on people's lifestyles and routines

2.2 Examples of ASB. The type of conduct that can constitute ASB includes:

Intimidation, threats

Racial harassment or other hate behaviour

Actual violence against people

Sale or supply of drugs

Targeted vandalism, i.e. vandalism used to harass or intimidate

Trespassing or loitering outside properties

### **3 Anti Social Behaviour Procedure**

#### 3.1 Pre Tenancy:

Prior to agreeing to take on a new tenant N & EHA will do background checks to ascertain that the applicant or a member of his/her household has not been convicted of Anti Social Behaviour in the past. Such checks will include but are not limited to contacting past landlords, HSE Community Welfare Services and Local Authority Housing Services. If such checks result in information that the applicant or a member of his/her household has a history of ASB N & EHA will use its statutory powers (see appendix 2) to refuse to take that person on as a tenant. N & EHA will, however, be mindful of the rehabilitation of offenders and will work with partner agencies to support such people to live in the community. Once a person has been taken on as a potential tenant N&EHA will ensure the person understand the terms of the tenancy agreement. Where there is a number of properties being let at the same time N&EHA will run a pre-tenancy course.

#### 3.2 During Tenancy:

The Tenancy Agreement signed between the Association and the Tenant is the primary document that defines the respective responsibilities and rights of both parties. ASB constitutes a breach of the Tenancy Agreement and may result in the Association issuing a Notice to Quit and seeking eviction.

### **4 Investigation of complaints of ASB**

4.1 When a complaint has been received by the Housing Officer responsible he/she will take the following action:

- 4.1.1 Acknowledge receipt of the complaint within 3 days, and commence investigation within 3 days.
- 4.1.2 Ascertain the circumstances of the complaint with the complainant.
- 4.1.3 Establish whether the complainant has spoken with the person(s) they are complaining about in order to resolve the complaint.
- 4.1.5 Establish whether the Gardai have been involved and, if so request from the Gardai a report.

- 4.1.6 Identify and interview all interested parties.
- 4.1.7 Keep accurate written records of all complaints and action taken
- 4.1.8 Keep complainants informed of any developments relating to their complaint, incl. of decisions to close a case.
- 4.1.9 The Housing Officer will arrive at a provisional judgement to ascertain whether there has been a possible ASB breach of tenancy within 21 days, assuming all reports/statements have been received.
- 4.1.10 A meeting will then be arranged with the alleged perpetrator of the incident where it will be put to him/her that based on the evidence gathered it is the Association's belief that an incident of ASB has occurred. The evidence will then be presented and the person(s) asked for their response. Two members of the Association (one of whom must be the investigating Housing Officer) will attend this meeting, and one of them will keep a record of what is said. At the end of the meeting the recorded notes will be read back and both parties asked to sign as a true record of what took place. Following the meeting, the 2 Association representatives will discuss the outcome of the meeting and make a recommendation to the Manager.

4.2 Having investigated the complaint and having found it justified, depending on the gravity of the incident, the following course of action may be applied:

- 4.2.1 The issuing of a first formal Letter of Warning.
- 4.2.2 Where the behaviour persists, the issuing of a final formal Letter of Warning.
- 4.2.3 Where the behaviour continues to persist, the Manager will make a recommendation to the Board that a NTQ be issued. **In the event of extreme behaviour the Association reserves the right to issue an immediate Notice.**
- 4.2.4 The Association will pursue legal remedies including court orders for eviction/exclusion including Acceptable Behaviour Contracts and Parental Control Agreements.

4.2.5 Evictions will be carried out in all cases where tenants or members of their household/family have been convicted of breaches of tenancy for ASB.

## 5 Management of ASB which has not been subject to a complaint.

5.1 N&EHA will investigate persistent breaches of the tenancy agreement which may constitute ASB by maintaining a record of such breaches. The housing officer will initially speak to the tenant regarding the breaches and follow action outlined in 4.2 above.

5.2 N&EHA may move directly to issue a NTQ to a tenant where the tenant, or their family members, have been or are involved in criminal activities and have been convicted of such crimes and the Association has taken a reasonable view that such criminal activity is likely to impinge on the rights of other tenants under the tenancy agreement they have with N&EHA.

### 5.3 Rehousing of tenants evicted for ASB

Tenants evicted from a N&EHA house for anti-social behaviour will be regarded as having rendered themselves homeless and risk not being re-housed by N&EHA or the Local Authority.

## **6 Confidentiality**

Any information relating to ASB provided to N&EHA will be treated in confidence. It will not be passed to the person who is named in the information without the permission of the complainant. N&EHA will always ask the permission of the complainant should there be a need to disclose information to the perpetrator.

The Freedom of Information Act does not apply to housing associations at present. The identity of complainants will be protected by N&EHA as the information was given in confidence, its disclosure could place tenants at risk of retaliation and would discourage other tenants from complaining about ASB in the future.

## **7 Training and Protection of Staff**

Housing management staff must have the confidence and knowledge to identify and investigate incidents and reports of ASB. It is important that they have the skills to handle challenging situations and take appropriate action. In this regard the Association will ensure that housing management staff will receive training on our policy, procedure and practices for dealing with complaints of ASB. Furthermore they will be kept up to date on good practice and legislation by a combination of written information, in house and external training.

Housing management staff may be threatened in the course of their duties or when specifically tackling ASB. Any such activity will not be tolerated and consideration will be given to banning such persons from offices or from personal visits by staff.

Furthermore the Association will use legal remedies to protect staff and, where necessary, will support staff pursuing criminal charges against perpetrators. Section 18 of the Housing (Miscellaneous Provisions) Act 1997 creates a specific offence of intimidation against housing staff or any person providing evidence under the Act and sets out the penalties for such threat or intimidation.

## **8 Complaints**

Tenants have a right to complain about anti-social behaviour and to have their complaint dealt with in a prompt and fair manner, in accordance with the Association's procedures. If a tenant is not satisfied with the way in which his/her grievance was handled or with the outcome of the investigation, he/she can make a complaint as per the Association's Complaints Policy.

## **Appendix 1**

### **Definitions of ASB in law**

#### Housing (Miscellaneous Provisions) Act 1997

“Anti-social behaviour includes either or both of the following:

The manufacture, production, preparation, importation, exportation, sale, supply, possession for the purpose of sale or supply, or distribution of a controlled drug (within the meaning of the of the misuse of Drugs Act, 1977 and 1984)

Any behaviour which causes, or is likely to cause, any significant or persistent danger, injury, damage, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the Housing Acts, 1966 and 1997, or a housing estate in which the house is situated and, without prejudice to the foregoing, includes violence, threats, intimidation, coercion, harassment or serious obstruction of any person.”

Estate Management includes:

“the securing, or promotion of the interests of any tenant, lessees, owners or occupiers, whether individually or generally, in the enjoyment of any house, building or land provided by a housing authority under the Housing Acts, 1966 to 1997.”

The avoidance, prevention or abatement of anti social behaviour in any housing estate in which is situated a house provided by the local authority under the Housing Acts, 1966 to 1997.”

### Criminal Justice Act 2006

“A person behaves in an anti-social manner if the person causes or, in the circumstances, is likely to cause, to one or more persons who are not of the same household as the person

(a) Harassment

(b) Significant or persistent alarm, distress, fear or intimidation, or

(c) Significant or persistent impairment of their use or enjoyment of their property”

### Appendix 2

These powers exist under the Housing (Miscellaneous Provisions) Act 1997 Sections 14/15 a housing association may refuse or defer a letting where it considers that members of the applicant household have been engaged in ASB or where it would not be in the interests of good estate management.

### Appendix 3

#### **Nuisance behaviour**

ASB may be distinguished from a range of nuisance behaviours and other inappropriate conduct that can significantly affect neighbours and have estate management implications, but that do not constitute ASB. Such behaviour is likely to be one incident and should be resolved by the tenants speaking to each other. Incidents of this nature may include:

Noise nuisance (e.g. parties, dogs barking, alarms ringing)



Estate environment issues (e.g. litter, dog fouling, and abandoned vehicles)

Children's arguments, inappropriate play or behaviour

Occasional "one off" disturbances

The key determinant in deciding if such nuisance behaviour constitutes ASB is the impact of the behaviour on others. N&EHA staff will consider the frequency and severity of incidents, their effect on the victim and/or local community, location of the incident where the the behaviour was carried out. For example, there is a difference between occasional loitering by youths on a green space (not ASB) and persistent loitering on a neighbour's front garden wall with verbal abuse directed at the neighbour (ASB).

Persistence over a number of months is a crucial criterion.

ASB is also to be distinguished from neighbour disputes where both parties are responsible for the conflict. N&EHA will assist attempts to resolve the matter and seek to avoid escalation of neighbour disputes. However, it is not the role of the Association to mediate directly or resolve personal disputes.

## **Appendix 4**

### **1 Legal powers in relation to ASB – duplicate and further info**

#### **Housing Act 1966**

Under Section 62 of the Housing Act 1966 as amended, the N&EHA Housing Association can apply to the District Court for a warrant for possession of a dwelling let, or deemed to be let, under the Housing Acts, where there is no longer any tenancy in the dwelling. The Notice to Quit procedures as per N&EHA's Legal Action Policy (see Policy No. x) apply.

### **2 Housing (Miscellaneous Provisions) Act 1997**

#### **Section 1**

ASB is defined (see above)

Estate management is defined (see above)

#### **Section 2**

A Summons may be served by ordinary prepaid post; may be served by District Court clerk

#### **Section 3**

A tenant can apply to the District Court for an order, known as an 'Excluding Order', against the person (including a joint tenant) who he or she believes to be engaging in ASB. An Excluding Order directs the

person, if residing in the tenant's house, to leave the house and, whether the person is or is not residing at the house, prohibits him/her, for the period during which the order is in force (up to three years), from entering or being in the vicinity of that house, or in the vicinity of any specified housing estate.

An Excluding Order may also prohibit a person from causing, or attempting to cause, any intimidation, coercion, harassment or obstruction of, threat to, or interference with, the tenant or other occupants of the house.

N&EHA also has the power to seek an Excluding Order against a perpetrator of ASB, but only under the following conditions:

- i) The perpetrator/respondent is **not** a named tenant.
- ii) The perpetrator is an occupier of an Association property (e.g. a partner who is not a joint tenant)
- iii) The Association believes the tenant is deterred from applying for an Excluding Order by violence, threat or fear.
- iv) The tenant does not intend for whatever other reason to make such an application.
- v) It is in the interests of good estate management.
- vi) The tenant has been consulted and has consented.
- vii) The health authority has been consulted.

#### **Section 4**

If the court believes there are reasonable grounds for believing there is an immediate risk to the tenant an 'interim excluding order' directing the respondent to leave the house or, whether the respondent is or is not living in the house, prohibit the respondent from being in the vicinity of the house or any other specified housing estate;

in exceptional cases the interim excluding order may be made 'ex parte'

the interim order shall cease to have effect on the determination of the court on the application of the excluding order

#### **Section 5**

any person who breaches an interim excluding order, or an excluding order, commits an offence. The penalty on conviction of such offences is a fine or imprisonment.

#### **Section 6**

the excluding order or interim order shall take effect on notification of its making being given to the respondent;

an oral communication together with production of a copy of that order is taken to be sufficient;

if the respondent is present in court when the order is made, that shall be taken to be sufficient

#### **Section 7**

the court shall cause a copy of the order to be sent to the applicant, the respondent, the housing authority, the Garda Siochana member in charge of the area;

the validity of the order shall not depend on the copy being sent to the above parties

**Section 8**

an appeal from an excluding order if the court determines, shall stay the order or terms imposed by the court;

an appeal from an interim order shall not stay the operation of the order

**Section 9**

When an order or interim order is made, the tenant or housing authority, or the respondent may apply to the court to have the order discharged

**Section 10**

the jurisdiction of the court w.r.t. the order shall be the District Court within whose area the house is situated

**Section 11**

Proceedings may be heard otherwise than in public

**Section 12**

where a garda has reasonable cause for believing an offence has been committed under section 5, the garda may, on complaint from the tenant or housing authority, arrest the respondent without warrant;

for the purposes of arresting the respondent the Garda may enter, incl. using reasonable force, and search any place where the respondent is or the garda suspects him to be

**Section 13**

Sections 3 - 12 shall apply shall apply to a house provided by an approved body in the same manner as apply to the housing authority

**Section 14**

the Association may refuse or defer the making of a letting of a dwelling to a person where it considers that:

The person is, or has been engaged in ASB

A letting to that person would not be in the interests of good estate management

The person has failed to provide, upon request, information necessary in connection with an application for the letting, including information relating to persons residing, or to reside with that person.

It is incumbent on the Association to have proper records and written confirmation from other agencies to support the fact that the prospective tenant is, or has been, engaged in ASB.

**Section 15**

the Association may request information in relation to any person who applies to it for housing, or any person residing or proposing to reside in a house provided by the Association or any person whom the Association considers may be or may have been engaged in ASB from:

a housing authority,

the Criminal Assets Bureau,

An Garda Síochána,

the Minister for Social, Community & Family Affairs,  
the Health Service Executive,  
an approved body under the Housing Act

#### **Section 16**

The Social Welfare (consolidated) Act 1993 is amended:

this applies to a person who has been required to deliver up possession of a dwelling provided by a housing authority or approved body because of ASB or GEM, a person to whom a letting has been refused or deferred, is a respondent to an excluding order, is a person who has been directed to leave a house under section 20;

the Health Board may direct that such a person shall not be entitled to a payment to supplement income w.r.t. rent or mortgage interest or may suspend or terminate payment or appropriately reduce the supplement if the person is living with another who receives a supplement;

the Health Board shall have regard to information by the housing authority or specified person re mortgage interest

#### **Section 17**

In the Social Welfare (consolidation) Act 1993 240a – the Minister may make regulations to provide that where rent due to a housing authority by a beneficiary is unpaid, on application by the housing authority to the Minister, an amount may be withheld by the Minister, not exceeding the amount of weekly rent payable

#### **Section 18**

a person who causes or attempts to cause any threat, harassment, coerce, obstructs an officer or employee of a housing authority or a health board or their family member, shall be guilty of an offence Sect 62 Housing Act 1966;

a person guilty of such an offence - €1500 or 12 months imprisonment;

proceedings for such an offence may be brought and prosecuted by the Health Board

#### **Section 19**

Where there is no tenancy in a dwelling, any payment offered to or accepted by a Housing Authority shall not be deemed to create or have a tenancy in the dwelling

#### **Section 20**

the Association can request An Garda Siochana to direct a person who is an illegal occupier of a dwelling owned by the Association and who is or has been engaged in ASB to leave that dwelling. This provision does not apply to tenants or persons who have failed to vacate dwellings on the termination of tenancies by notice to quit.

#### **Section 21**

Under Sect 62 Housing Act 1966, where a Garda or officer of a Housing Authority or Health Board states they believe a person is engaged in ASB, then if the court believes there are reasonable grounds for such belief and that another person may be deterred by intimidation or violence, the statement shall be seen as evidence of ASB

### **3 Criminal Justice Act 2006**

All powers under this legislation are vested in An Garda Siochana and cannot be directly pursued by N&EHA.

However, the Association can seek the assistance of An Garda Siochana in obtaining Anti-Social Behaviour Orders against adults and children. Only senior Gardai (Superintendent or higher) are empowered to apply to the Courts for orders. The Gardai are first required to formally warn a person to cease the offending behaviour. The Court will consider if the order is a reasonable and proportionate remedy and whether the behaviour is “significant and persistent” enough.

In case of children, in addition to the written warning, there will also need to be a meeting with parents, a good behaviour contract or a possible referral to the Garda youth diversion programme before a behaviour order can be sought by the Gardai from the Children’s Court.

Sections 113 to 117 here refers to persons over 18 years

Sections 160 to 166 refers to person aged 12 to 18 years

#### **Section 113**

defines behaviour warning, a civil order, a senior member of An Garda Siochana, behaving in an anti-social manner, similar to the 1997 act;

Specifies that this part does not apply to persons under 18 years of age when the behaviour took place or that this part does not apply to behaviour that took place before the act came into force:

this warning may be issued orally or in writing, and if given orally, it shall be recorded as soon as practicable and the written record shall be served on the person personally or by post;

the behaviour warning shall include a statement that the person has behaved in an anti-social manner and indicate what the behaviour is and where and when it took place;

demand that the person cease the behaviour or otherwise address the behaviour specified;

include notice that failure to comply with the demand may result in an application being made for a civil order.

The Garda may require the person to give his or her name and address for the purpose of a written record of the warning;

#### **Section 114**

States that a member of An Garda Siochana may issue a behaviour warning to a person who has behaved in an Anti-Social manner;

The behaviour warning may be issued orally or in writing;

If served orally it shall be recorded in writing as soon as practicable and served on the person personally or by post;

The behaviour warning shall include a statement that the person behaved in an anti-social manner and indicated where and when it took place;

The behaviour warning shall demand that the person cease the behaviour or address the behaviour in a manner specified in the warning

The warning shall include notice that failure to comply with the demand may result in an application being made for a civil order;

The Garda may request the person to give his or her name and address;

The warning may not be issued more than one month after the time that the behaviour, or its most recent instanced, took place;

A warning remains in force against the person for 3 months from the date it was issued;

If an application is made to the District Court, the warning remains in force until the court hearing;

### **Section 115**

On application, the District Court may make an (civil) order prohibiting the person from doing anything specified in the order;

If the court is satisfied the person behaved in an anti-social manner;

That the order is reasonable and proportionate in the circumstances;

The application for an order may only be made by a senior member of the Gardai;

The senior member must be satisfied that the person has previously been issued with a warning and has not complied with the warning;

The person has been issued 3 or more warnings in less than 6 consecutive months;

The person may not be charged for an offence if the act or omission is the same that constitutes the subject of the application for an order;

The order remains in force for no more than the lesser of 2 years from the date of the order or a specified period;

The court may vary or discharge the order on application of a senior member of the Gardai;

The standard of proof is that applicable to civil proceedings;

### **Section 117**

A person commits an offence who fails to give a name and address or one that is false or misleading or, without reasonable excuse, does not comply with the order;

For the former the penalty is a fine not exceeding €500;

For the latter, a fine not exceeding €3000 or 6 months imprisonment;

### **Section 160**

States that a member of An Garda Síochána may issue a behaviour warning to a person who has behaved in an Anti-Social manner;

The behaviour warning may be issued orally or in writing;

If served orally it shall be recorded in writing as soon as practicable and served on the person personally or by post;

The behaviour warning shall include a statement that the person behaved in an anti-social manner and indicated where and when it took place;

The behaviour warning shall demand that the person cease the behaviour or address the behaviour in a manner specified in the warning

The warning shall include notice that failure to comply with the demand may result in an application being made for a civil behaviour order;

The Garda may request the person to give his or her name and address;

The warning may not be issued more than one month after the time that the behaviour, or its most recent instanced, took place;

A warning remains in force against the person for 3 months from the date it was issued;

If an application is made to the Children's Court, the warning remains in force until the court hearing;

### **Section 161**

The superintendent (or, if asked, an Garda not below inspector rank) in charge of a district, on receipt of a report from a Garda concerning the behaviour of the child, shall convene a meeting to discuss the child's behaviour if satisfied the child has behaved in an anti social manner and is likely to continue doing so; or the child has previously behaved in anti-social manner but has not received a warning for the previous behaviour and that holding such a meeting would help prevent further anti-social behaviour;

A report shall be prepared only after a behaviour warning has been given to the child by a Garda;

The report shall include details of the warning;

The following persons shall be asked to attend the meeting: the child, parents/guardians, the Garda who issued the warning, if the child is in the programme, a Juvenile Liaison Officer;

The superintendent may request the attendance of such other person the superintendent considers would be of assistance to the child or parents/guardians;

The meeting shall discuss the child's behaviour;

The superintendent shall explain in simple terms to the child and the parents/guardians what the offending behaviour is and its effect;

The child shall be asked to acknowledge the behaviour has occurred and undertakes to stop it;

The parents/guardians shall be asked to acknowledge the child's behaviour and to undertake steps to stop it;

If the child and the parents/guardians agree to give undertakings, a document – a Good Behaviour Contract, shall be prepared, and where practicable, be signed by the child and the parents/guardians;

The GBC shall expire at the end of a period not exceeding 6 months from the date of the meeting but may be renewed by the child and parents/guardians for a further 3 months;

The Superintendent may review the child's behaviour in the light of the undertakings given;

If the child has behaved in breach of the undertaking, or is, in the opinion of the superintendent, is likely to do so, the superintendent may reconvene the meeting and renew the contract;

This renewal shall be for a period not exceeding 6 or 9 months from the date of the original contract, whichever is shorter;

Where the superintendent does not consider that convening a meeting would help prevent anti-social behaviour by the child or that a GBC was not prepared because the child or parents/guardians refused to give the necessary undertakings or if the child is in breach of undertakings given by him, the child shall be admitted to The Programme (?) in which case Part 4 (?) shall apply or the superintendent, if satisfied that the child's participation in the Programme would not be appropriate in the circumstances, shall apply to the Children's Court for a Behaviour Order in respect of the child.

#### **Section 162**

The Children's Court may, on the application of the Superintendent, make an order prohibiting a child of or above the age of 12 years from doing anything specified in the order if the court is satisfied that the child has continued and is likely to continue to behave in an anti-social manner, the order is necessary to prevent the child from continuing to behave in an anti-social manner, the order is reasonable and proportionate in the circumstances;

The order may, for the purpose of protecting a person or persons from further anti-social behaviour by the child, prohibit a child from behaving in a specified manner, and so doing in a specified place, require the child to comply with specified requirements, including, school attendance, reporting to a Garda, a teacher or other person in authority in a school and provide for the supervision of the child by a parent/guardian or other specified person or authority with an interest in the child's welfare;

The child may not be charged with, prosecuted or punished for an offence if the act or omission of the offence is the same behaviour that constitutes the application to the court;

Unless discharged, a behaviour order remains in force for no more than 2 years, or a period specified in the order;

The order may be discharged by an application by the child, the parents/guardians or the Garda;

The standard of proof is that applicable to civil proceedings;

#### **Section 164**

A child commits an offence who fails to give a name and address or one that is false or misleading or, without reasonable excuse, does not comply with the order;

For the former the penalty is a fine not exceeding €200;

For the latter, a fine not exceeding €800 or 3 months detention in a children's detention school;

If a child is ordered to pay a fine and costs on conviction of an offence the aggregate of fine and costs shall not exceed €1500



