



GUIDANCE NOTE C03

ANTI-SOCIAL BEHAVIOUR

Revised – January 2020

ARMA Standards

The Standards have been written to apply to residential long leasehold properties (a lease of a term in excess of 21 years when originally granted) in England and Wales where a service charge, which varies according to expenditure, is payable.

They represent the core of good practice for managing agents. We believe they are achievable by any well-run company. The applicable (if any) Standards related to this Guidance Note are stated below.

Standards in RED: An obligation to adhere to the Standard

Standards in GREEN: An obligation to adhere to the Standard unless there is a justifiable reason not to comply that the Managing Agent must be able to demonstrate

3.4 Breach of Covenant, Enforcement & Forfeiture Proceedings

Prior to and when dealing with any breach of covenant, enforcement or forfeiture proceedings the Managing Agent:

- a) Should take reasonable steps to monitor and record non-compliance with Lease covenants on an on-going basis;
- b) Should take reasonable steps to check the reliability of the relevant facts when dealing with reports of non-compliance with Lease covenants from third parties;
- c) Should bring any material breach of covenant to the Client's attention without delay, and seek Client Instructions as to any enforcement action required together with confirmation that the Client will be responsible for the costs unless these are recovered from the Leaseholder(s);
- d) Must have procedures in place, as agreed with their Client, to remedy any breaches of covenant in a timely manner;
- e) Must be aware of the doctrine of waiver and ensure that they do not compromise their Client's position to take forfeiture action.

6.2 Statutory Compliance

The Managing Agent Must have regard to and comply with:

- a) legislation relating to equality and discrimination;
- i) all other relevant legislation.

7.1 Disputes

Managing Agents Should also have clear written policies and procedures for handling disputes between occupiers, complaints of nuisance from neighbours or contractors.

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Overview

- **The Government has put in place a number of sanctions for dealing with anti-social behaviour.**
- **The ability of private landlords of long leaseholders to deal with anti-social behaviour is limited by the terms of leases and restrictions on forfeiture.**
- **There is however a range of other non-tenure specific remedies available for different types of anti-social behaviour which may be more effective.**
- **Managing agents should have procedures in place about how they will handle complaints from leaseholders about anti-social behaviour.**
- **Unless there are exceptional circumstances then ARMA recommends that the leaseholder suffering the anti-social behaviour should be advised to take initial action him/herself.**

Leases And Anti-Social Behaviour

Every lease should have at least a covenant by the leaseholder not to cause nuisance and annoyance to other residents. In the better leases, these covenants will spell out specific acts or omissions to be avoided (particularly regarding noise). For example, there may be restrictions on the hours when loud music may be played or noisy domestic machinery used.

Incidentally, it makes no difference in law (to the landlord or RMC or RTMC) if the flat is occupied by the leaseholder or a sub-tenant. The leaseholder is still responsible for the covenants; if the sub-tenant causes a breach of those covenants it is the leaseholder's duty to take action to bring the sub-tenant into line. The leaseholder will have the benefit of the sub-tenant's covenants under the tenancy agreement.

However, this will be different if you are looking to take steps outside of the lease. In such a case it will usually be necessary for the resident making the complaint or the landlord to take action against the occupier, whoever that may be.

Unless the lease has a clause that says the landlord will enforce the covenants of the other leaseholders, the landlord is under no obligation to take action. It is also the case that if leases do allow the landlord to enforce the covenants of other leaseholders, the complainant leaseholder normally has to indemnify the landlord against any costs that the landlord incurs, otherwise any costs the landlord incurs may be recharged to the service charge account, something other leaseholders may resist and challenge.

As managing agent you are not in a position to enforce a nuisance covenant yourself; you would need the instructions of your client. You should also advise your client that there are cost and practical difficulties in trying to use lease covenants to act against anti-social behaviour. It is much more effective for leaseholders to act themselves in most circumstances but you can offer them appropriate advice.

Practical Steps Before Using Remedies Arising From The Lease

There are a lot of alternative remedies to forfeiture that can be used to combat anti-social behaviour. Some of the main ones are set out below with sources of further information. Before using the remedies always think whether basic practical steps can be taken first.

The majority of anti-social behaviour complaints in blocks of flats arise from noise caused by DIY or refurbishment works, music at the wrong times of day or night, or dogs. Many complaints also arise from sub-tenants.

- Unless you are dealing with serious or violent behaviour e.g. racial harassment, it is often better to start with practical steps;
- Ask the complainant to approach the leaseholder or his/her tenant amicably. Give advice on remedies or refer to Citizens Advice Bureau (CAB) or local authority for specialist advice;
- Mediation works well for noise, dogs, parking and boundary disputes. There may well be a local scheme available for free or at low cost which the leaseholders can use. To find the nearest mediation service the Ministry of Justice has set up an online directory. Go to: <http://www.civilmediation.justice.gov.uk/> and
- If the landlord is not obliged under the terms of the lease to take action, give advice and assistance on the type of problem.

Complaints Handling

Be wary that when dealing with disputes that they may well escalate into complaints if not handled properly. So refer to your internal procedures and remember that customer service and care are your priorities. The complainant may well want you to deal with the

issue, so you need to fully explain the constraints that you will be working under and the action you are permitted to take.

The reality is that the root of most conflict is borne out of poor communication or the inability to control emotions. Therefore make sure you take the emotion out of the situation with your response and stick to the facts.

What The Leaseholder Can Do

- Take action themselves by approaching their neighbours unless there is a threat of violence;
- Suggest that both parties attend a local mediation service about the dispute;
- Approach the local authority directly to deal with noise nuisance or pet problems;
- Approach the local authority or police for assistance with anti-social behaviour in the local area and common parts; and
- Ask the local CAB for specialist advice.

What The Local Authority Can Do

- All local authorities must have anti-social behaviour policies and procedures which you can ask about and seek advice;
- In most areas there are Crime and Disorder Reduction Partnerships which include the police and local authority. Find out if they can help;
- In many areas there are ASB co-ordinators. Ask for their help;
- Apply to the court for an ASBO to stop behaviour (for any tenant, leaseholder or owner occupier);
- Use environmental health powers to tackle noise and other nuisances;
- Tackle harassment or intimidation because of race or disability or religion; and
- Many local authorities now have 'Envirocrime' units that are partnerships with the police to deal specifically with litter and street cleaning, graffiti, fly tipping, dog fouling, fly posting and abandoned cars.

What the Police Can Do

- Take action for any ASB which is a criminal offence including:
 - Someone who has attacked another person
 - Someone who has wilfully damaged another's property
 - Harassment or intimidation
 - Inciting racial hatred
- Close down properties being used by drug dealers.
- Apply to the courts for an ASBO at their discretion.
- If there is ASB in or near a scheme ask the police for help and advice. Local community support officers will assist and patrol more often or speak to residents about incidents.

Noise

Leaseholders should be encouraged to resolve neighbour noise themselves unless there is a threat of physical violence.

Local authorities can act to abate a statutory noise nuisance. There is no legal definition of what is a nuisance and leaseholders will need to keep records to provide evidence if the noise is infrequent. Most local authorities have emergency response teams to deal with complaints about late night parties and can issue warnings, seize offending equipment and issue fixed penalty notices.

Graffiti

A local authority officer or the police can issue fixed penalty notices in relation to minor graffiti and fly-posting offences.

Dogs

Incessant barking can be dealt with by the local authority as noise nuisance. It is also a crime to allow an animal to endanger or injure other persons. The RSPCA are also a useful partner that a leaseholder can contact for advice before approaching the local authority. See the leaflet (published for dog owners) on dog barking (see Further Information).

Hedges

Local authorities have powers to deal with complaints about high (over 2 metres) evergreen hedges which adversely affect a neighbour's enjoyment of his property. The local authority can issue a notice requiring action to be taken; failure to comply would be an offence. The local authority could then take the action itself. (See Further Information for a helpline and leaflets.)

Trees

The general effect of current common (unwritten) law is that a tree or hedge belongs to the owner of the land it is growing on and, under common law, that person is responsible for managing and maintaining it so that it is not a nuisance to anyone else - in the same way that they are responsible for looking after any other part of their property.

Where the branches of a tree or hedge cause a nuisance by trespassing onto an adjoining property, the common law allows the neighbour to remedy this by cutting back to the boundary any overhanging branches - provided there are no other legal restrictions in place, such as a tree preservation order.

The other way of enforcing these common law responsibilities is through the civil courts, by pursuing an action against the owner of the tree or hedge for trespass, nuisance and/or negligence. The law on nuisance/negligence is complicated and so such a step is not to be taken lightly. Anyone considering such action would be well advised to seek specialist legal help. A middle route, pursued successfully by some, is to use the small claims procedure in the county court to seek recovery of the costs of engaging a professional to cut back overhanging branches of neighbouring hedges. Other ways of settling the matter should, of course, be tried before issuing a claim at court - for example, by writing to the hedge owner to ask for recompense. Hedgeline (see Further Information for contact details) have published on their website a procedure to help people who are considering pursuing such a course of action.

Drugs

If there is suspected drug dealing, police have a power to issue a closure notice on premises. The closure order will apply for 3-6 months and during this period the property will be sealed and entering will be an offence.

You may also wish to consider forfeiture proceedings if the property is being used in this way by a lessee or sub-tenant. See Further Information for contact details for the National Drugs Helpline.

Acceptable Behaviour Agreement

Acceptable behaviour agreements are used by local authorities to tackle early signs of anti-social behaviour by young people. They are relevant to issues such as graffiti, racist behaviour, threatening behaviour. Contact the police or local authority.

Anti-Social Behaviour Orders (ASBO)

Any member of the public can ask the police or local authority to apply to a magistrates' court for an ASBO against someone causing alarm, distress or harassment.

ASBOs are civil orders that prohibit a person from specific anti-social acts and from entering a defined area on a map. They are used to tackle more serious anti-social behaviour, including families with patterns of behaviour leading to verbal abuse and intimidation.

Injunction

Local authorities can use powers under the Local Government Act 1972 to obtain an injunction in a county court to prevent a public nuisance. These injunctions have been used to prevent begging, drug dealing and prostitution. Injunctions can be quicker than obtaining a criminal prosecution and use civil rules of evidence. Courts can also attach a power of arrest to the injunction.

Premises Closure Orders

The courts can temporarily close any premises, including common parts of blocks of flats, associated with significant and persistent disorder or nuisance. This power is for use as a last resort after other measures have failed and can be applied for by the police or local authority. The sort of problem it could help with would be prostitution, drinking dens or violent offences committed in the premises.

Abandoned Vehicles

See ARMA Guidance Note on this topic. Check if there is an Envirocrime unit at the local authority as a first point of contact.

Obstruction Of Common Parts

See ARMA Guidance Note on this topic.

Damange To Common Parts

Carpets and decorations can occasionally be damaged by leaseholders or their tenants in a number of ways, such as carrying prams/bikes up the stairs, misuse, or by stains as a result of leaving refuse behind. Most leases will contain clauses that provide that leaseholders will pay for any damage they cause to the common parts. Assuming that there is enough evidence to identify a culprit and you have checked the lease, then the managing agent could send the bill for the damage to the leaseholder as a one-off charge. If the cost of remedying the damage is high, it might be sensible to consider notifying insurers of a possible claim in case recovery was not possible.

Harassment Of Staff

Harassment of staff by leaseholders or their visitors may be dealt with in the same way as other anti- social behaviour by a direct approach and/or mediation unless there is a risk of physical violence. If there is a threat of violence the matter should be reported to the police. It is a criminal offence to make someone believe that violence will be used against them. An ASB order may be applicable.

A Traditional Approach Using The Lease

Step 1

Are you sure that the complaint made by the leaseholder is genuine? Consider asking other leaseholders to confirm facts. If there is not a threat of violence or harassment consider other alternatives above.

Step 2

Approach the leaseholder amicably if the complainant has already done so. It may simply be necessary to point out to them what their responsibilities are (too many

leaseholders only have a limited knowledge of their lease terms) or, if the flat is sub-let, to notify them what is going on and explain that they carry the responsibility. If a neighbour dispute is about noise then ask the parties to go to mediation if they do not agree.

Step 3

Follow up step 2 in writing. If that approach was written anyway, send a further copy by recorded delivery. Keep it simple, but make it entirely clear what the leaseholder has to do and that they will be held to their covenants if necessary. It may save time later to quote the relevant passage from the lease. Give specific (but reasonable) time limits and do not allow the matter to drift.

Step 4

Although a solicitor's letter has no more legal force than your own, it can still be effective and relatively inexpensive. Do be certain who will pay the fee before going ahead. Can the fee be charged to the service charge or not? Does your client approve the expenditure? It is advisable to employ for this task a solicitor who has a good understanding of Landlord & Tenant law: even if you do not use them to take the matter further, there are complexities in this field of law by which a case may easily be prejudiced by the wrong form of words. (Ask your solicitor about waiver of forfeiture - if they know what you are talking about you should be alright.)

Additionally, a bit of extra pressure may be brought to bear by reporting the situation to the leaseholder's mortgage lender (if any).

Step 5

If the problem has not been resolved yet, you need to consider whether legal proceedings would stand a good chance of success e.g. Is there sufficient independent evidence of the breach to convince a Judge or Tribunal? Will there be willing witnesses? Would the costs of proceeding be justified? If there is only one or a very few residents affected, the landlord may be entitled under the lease to insist on their taking responsibility for the costs.

The landlord will also need to bear in mind that it may have a duty under the lease to act upon complaints, or face action from the complainants.

Step 6

Assuming the decision is to take the matter further, you will need to consider the options:

- Embark upon a course which could lead eventually to forfeiture of the lease (forfeiture is rare in practice; the preliminary steps are likely to lead to a resolution);
- The lease may have an arbitration clause. Legal advice should be taken on whether this is applicable in the circumstances (particularly in the light of the Commonhold and Leasehold Reform Act 2002); and
- If the matter is urgent, it may be possible to go to the Court and seek an injunction (either on its own or as part of other proceedings).

Forfeiture

The implementation of Sections 168 to 170 of the Commonhold and Leasehold Reform Act 2002 means that no formal steps may be taken towards forfeiture for any breach of covenant (except non-payment of rent) by service of a S.146 notice or otherwise unless the leaseholder has admitted the breach or if it has been determined to exist by the court or the FTT. The FTT is not quick and there is an even bigger chance of being unable to recover costs. (See ARMA Guidance Note GNA03 Forfeiture.)

Subject to that determination of an FTT, the forfeiture procedure is generally as follows:

- Service of a notice under S.146 of the Law of Property Act 1925 (a "S.146 notice") is an essential preliminary to forfeiture for breaches of covenant of this sort. This

needs to be served by recorded delivery or personal service and must be copied to any lenders or sub-tenants; and

- If the breach has not been remedied by a reasonable time after service of a S.146 Notice, forfeiture can take place by issue of possession proceedings. It is very rare for a forfeiture action to be completed as the leaseholder can usually get relief; however, relief should be subject to terms which can correct the problem - for example, by the leaseholder taking possession against the sub-tenant and then agreeing to conditions on future sub-lettings.

Further Information

- The Government has a website devoted to anti-social behaviour issues <https://www.gov.uk/government/collections/anti-social-behaviour-crime-and-police-bill>
- You can search for a local mediation service on <http://www.civilmediation.justice.gov.uk/>
- There is an action help line on anti-social behaviour issues - the Respect action line - 0870 220 2000.
- Free Leaflets on high hedges include 'Over the Garden Hedge' and 'High Hedges: complaining to the council'. Download from www.communities.gov.uk/planningandbuilding/planning/treeshighhedges
- Hedgeline is an independent advice line on hedge problems. Go to www.hedgeline.org or tel. 0870 2400 627.
- Tree helpline is an independent advice line on tree problems but a charge is made per minute. Ring 09065 161147.
- Drugs - national drugs help line 0171 928 8900
- Find your local Citizens Advice Bureau at www.adviceguide.org.uk
- Dogs: www.dogstrust.org.uk
- Leaflet on barking dogs from <https://www.gov.uk/government/publications/is-your-dog-barking-too-much>
- Step by step guides on dealing with specific ASB problems. Click [here](#) to view.



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