

Note: One of ARMA's key roles is to provide its members with technical support. However, from time to time, technical or other issues arise where guidance for lessees as well as their property manager is deemed appropriate. Such guidance is contained in these Lessee Advisory Notes (LANs) which ARMA members can copy and distribute to their clients and lessees as appropriate.

SUMMARY

- The ability of private landlords of long leaseholders and their agents to deal with anti-social behaviour as landlords is limited by the terms of leases and legal restrictions on the action landlords can take.
- There is however a range of other remedies available to lessees for different types of anti-social behaviour.
- Unless there are exceptional circumstances ARMA recommends that the lessee suffering the anti-social behaviour is better advised to take initial action him/herself.
- This advice note gives information on practical ways for lessees to tackle anti-social behaviour (ASB).

WHAT CAN YOU EXPECT FROM YOUR LANDLORD OR AGENT?

Many lessees believe that agents have a big stick to wave at anti-social behaviour in blocks of flats. This is not so. Most leases will contain covenants which say leaseholders shall not cause say nuisance and annoyance to neighbours. There may be more specific restrictions such as no loud music between say 11pm and 7.30am or that floors should be carpeted.

These clauses are all well and good but in practice difficult to enforce for several reasons. The meaning of the covenant should be clear before considering enforcement. Any benefit of doubt over the meaning will always be given to the lessee.

The lease may not contain a clause that requires the landlord to enforce the covenants; if it does not there is no obligation on the landlord to take any action. Even if the lease does contain a clause requiring the landlord to enforce the covenants against other lessees, a mutual enforceability covenant, there is usually a catch; the catch is that the complainant leaseholder suffering the noise will have to pay the landlord's costs of enforcing the covenant.

So how does the landlord enforce a covenant against anti-social behaviour?

First of all the agent would want to check that there was a genuine problem. If yes then a reminder letter to the offending lessee may work. If it does not, then the legal remedies open to the landlord are an injunction or forfeiture.

Forfeiture (a procedure to seize the flat from the lessee) is not an easy route for landlords requiring a tribunal and then, if successful, a court appearance. It will be extremely costly; and will not produce quick results. However, the threat of forfeiture may well produce a response to some problems.

Injunctions may be a quicker remedy but will be very costly.

For all the above reasons the more practical route for a managing agent faced with distressed lessees complaining about anti-social behaviour from neighbours is to offer advice on how they can take better and cheaper action themselves as set out below.

Finally remember that your agent is just that, an agent. The agent must take instructions from the client landlord or resident management company or right to manage company before taking any action.

PRACTICAL FIRST STEPS

The majority of anti-social behaviour complaints in blocks of flats arise from noise, from DIY, music at the wrong times of day or night or dogs. Many 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 yourself.
- Approach the other lessee or his/her tenant causing the problem amicably. He/she may not be aware that their behaviour is causing you a problem.

- Mediation works well for noise, dogs, parking and boundary disputes. There may well be a local scheme available free or at low cost you can use.

WHAT LESSEES CAN DO

- Take action themselves by approaching their neighbours unless there is a threat of violence.
- Suggest that the neighbour goes with the lessee to a local mediation service about the dispute.
- Approach the local authority direct 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.
- Ask the local Citizens Advice for specialist advice.
- As a last resort consider his/her own legal action against the ones causing the anti-social behaviour.

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 on behalf of any tenant, lessee or owner occupier.
- Use environmental health powers to tackle noise and other nuisances.
- Tackle harassment or intimidation because of race or disability or religion.
- 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.

And the police can also apply to the courts for an ASBO at their discretion.

And 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

Lessees are encouraged to resolve neighbour noise themselves unless there is a threat of physical violence - see ARMA LAN06 on noise problems.

Local authorities can act to abate a statutory noise nuisance. There is no legal definition of what is a nuisance and lessees 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 is also a useful partner that a lessee can contact for advice before approaching the local authority. See the leaflet for dog owners on dog barking listed below.

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 below for a helpline and leaflets.)

DRUGS AND IMMORAL BEHAVIOUR

If there is suspected drug dealing, police have a power to issue a closure notice on premises. The closure order will apply for from 3-6 months and during this period the property will be sealed and entering will be an offence. If you suspect there is drug dealing in a flat in your block tell the police first of all and then do tell your agent.

ACCEPTABLE BEHAVIOUR AGREEMENTS

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 and 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.

INJUNCTIONS

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 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

Please report an alleged abandoned vehicle to your agent. Remember that an agent has to be cautious about removing abandoned vehicles; they often turn out not to be.

OBSTRUCTION OF COMMON PARTS

Report this to your agent. Please get the facts first about who caused the obstruction.

DAMAGE TO COMMON PARTS

Lessees or their tenants may damage carpets and decorations by misuse leaving stains and refuse behind. Most leases will contain clauses that provide that lessees will pay for any damage they cause to the

common parts. There would have to be clear evidence to identify a culprit not circumstantial.

HARASSMENT

Harassment 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 you should report it 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.

FURTHER INFORMATION

- The Government has a website devoted to anti-social behaviour issues www.respect.gov.uk
- There is an action help line on anti-social behaviour issues - the Respect action line - 0870 220 2000.
- Together = a guide to the Anti-social Behaviour Act 2003. Home Office publication.
- Free Leaflets on high hedges include 'Over the Garden Hedge' and 'High Hedges: complaining to the council'. Download from www.communities.gov.uk/treesandhedges.
- Hedgeline is an independent advice line on hedge problems. Go to www.hedgeline.org or tel. 0870 2400 627.
- Drugs - national drugs help line 0171 928 8900
- Find your local CAB Citizens Advice at www.adviceguide.org.uk.
- Dogs: www.dogtrust.org.uk.
- Leaflet on barking dogs from www.defra.gov.uk/environment/noise/pdf/barkingdog.pdf
- To find the nearest mediation service the Ministry of Justice has set up an online directory – www.civilmediation.justice.gov.uk.
- ARMA's LAN 06 Noise from www.arma.org.uk

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Association of Residential Managing Agents Limited (ARMA)
178 Battersea Park Road, London SW11 4ND
Tel: 020 7978 2607 Fax: 020 7498 6153
Email: info@arma.org.uk Website: www.arma.org.uk

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