



Barnsley Metropolitan Borough Council

Dealing with Anti -social behaviour. A guide for Private landlords.

This document is provided for guidance only and not intended to be legal advice. Should you wish further clarification or advice please seek independent legal advice.

As the Landlord, how does Anti-Social Behaviour involve me?

As the landlord/ licence holder you are required to take all reasonable and practical steps for preventing and dealing effectively with anti-social behaviour (ASB) by persons occupying or visiting the house and the use of premises for illegal purposes.

If your house is within one of the designated Selective Licensing areas in Barnsley, then the licence conditions require you to take all reasonable and practical steps to prevent or minimise any anti-social behaviour by the occupiers. Failing to take steps to deal with ASB, you will be in breach of licence condition 16. (Management of ASB) and licence condition 10 (Terms of Occupation.) This can result in your licence being revoked and prosecution for breaching the licence conditions. In the most extreme circumstances, the Council has powers to take the property over if you ignore the problems.

Management of Anti- social behaviour – Licence Condition 16.

In order to assist with the management of ASB, the Licence Holder /landlord must:

Obtain valid pre-let references for persons wishing to occupy the house. References should include details of previous occupier history including conduct of the tenancy. Credit references in isolation are not adequate.

To provide an accurate reference relating to existing or past tenants and to respond within reasonable timeframes to reference requests.

Ensure that all written statement of terms and conditions on which the house is occupied include a clause holding the occupants responsible for any antisocial behaviour by themselves and/or their visitors.

Undertake an investigation of any complaints which have been made either directly to them, or via the Local Authority, regarding alleged actions of their occupiers or their visitors, which is likely to cause alarm, distress, nuisance or annoyance to other occupiers of the house, to anyone visiting or persons using any communal areas, including persons residing in, visiting or working in the locality of the house.

Cooperate with Barnsley MBC, the Police or any other agency involved with investigation of antisocial behaviour relating to the property or tenants of the property. This may include providing supporting information or evidence.

The licence holder must take steps to terminate the tenancy following advice and recommendation from the Council, should it be found that the property is being used for illegal or immoral use or where there is evidence of persistent and ongoing anti-social behaviour.

We recognise that Anti-Social Behaviour can take many forms and is often difficult to deal with whether you are a landlord or anyone else.

How can I prevent Anti-social behaviour taking place ?

You should include a clause in the tenancy agreement which makes clear that the tenancy can be ended early where Anti-Social Behaviour is established.

In the Selective Licensing Area, before the start of new tenancies, it is advisable to meet with the tenants to make sure that they understand their responsibilities and obligations, and so that you can provide them with all the information they need about the property.

Where the landlord uses a managing agent. They must ensure they are aware of the licence conditions and must advise the tenant verbally and include within the written agreement reference to causes of antisocial behaviour and the repercussions which may occur as a result of ASB.

At this meeting, you must make it clear to the new tenants, the importance of:

- not allowing anti-social behaviour,
- not causing nuisance or annoyance to neighbours
- not allowing overcrowding / subletting
- the correct presentation of waste and re cycling properly

You must ensure your tenants understand that you can apply to end the tenancy using correct legal procedures, if the tenants do not meet these obligations.

If the tenant does not speak English well enough you must ensure the tenancy agreement stipulates this and is provided in a language/ form they can understand. See licence condition 10. (Terms of Occupation)

You may wish to introduce yourself to neighbours of the property and let them know that you are the landlord and give them your name and contact details so that they can contact you at an early stage should your tenant cause a nuisance.

What should I do if I receive a complaint of Anti-Social Behaviour about my tenant?

Firstly, find out as much information before approaching the tenant, e.g. talk to those affected by the alleged behaviour, or if appropriate liaise closely with any investigating officer from the Safer Neighbourhood Service or South Yorkshire Police. Make notes and details of the incident.

You could encourage the complainant to contact the Council or Police to register a complaint about the behaviour of their neighbours. You should then keep in contact with the investigating officer or department to see how the case is progressing.

Verbal Warning

Speak to your tenant/s at an early stage. In some cases you may be able to deal with the situation by simply advising the tenant that their behaviour is causing problems. Draw their attention to the tenancy agreement and licence conditions. If required, point out the clause in the tenancy agreement and explain that if this behaviour continues they could

be evicted. Keep a record of all conversations. Alternatively, if you are unable to make contact verbally with your tenant you could consider sending an 'initial contact letter' asking your tenant to contact you to discuss the complaint of anti-social behaviour. (Appendix 1)

Written Warnings

If reasoning with the tenant does not help, and there is clear evidence of the problems continuing you could consider sending a warning letter to your tenants (Appendix 2). It is important to keep a copy of all correspondence sent, and a record of how and when you sent it. (Text messaging tenants is not advisable).

If this does not have any effect you should consider sending a final warning letter. (Appendix 3)

Warning letters should clearly state;

- What tenancy condition has been breached
- How occupiers have broken them
- What they should do to prevent further action being taken
- The consequences of continuing to breach the tenancy conditions.

Caution (Appendix 4)

A Caution falls somewhere between a warning letter and a Notice because it is a more formal warning about breach of tenancy conditions. This is not a legal document. The Caution lists the previous warnings they have received and specific incidents that have happened which have caused the breach of their tenancy conditions. Cautions should only contain factual information, for example:

"On 1st September 2016 you, your household members or guests, caused a disturbance to your neighbours by playing loud music between 9.35pm and 12.45am".

Cautions should be used in cases where a warning letter does not appear to have worked but you do not feel the case is serious enough to serve Notice. They should not be used in serious cases where Notice would be more appropriate.

Evidence

Even at an early stage of receiving a complaint of anti-social behaviour, it is advisable to keep records of the complaints you receive and to keep any evidence you have of bad behaviour by the tenants. This will help if you have to take any legal action described below. It is advisable to keep clear records of when and how you have tried to speak to your tenants in a reasonable way, before taking legal action. It is usually advisable to follow up conversations or attempts to contact the tenant, by emailing or writing as well, so that there is a clear record of your attempts to resolve things. (It's not advisable to use text messaging as a form of written warning)

Options other than getting the tenant to leave

Before thinking of applying to the Court for possession, you could consider whether there are any other ways of handling the problems the tenants are causing:

- If there is conflict or disagreement between **neighbours**, mediation is available via the SNS to work out mutually acceptable solutions. Contact 01226 773555

- Sometimes problems happen because the occupier cannot cope in the accommodation without support. If so, it can help to put them in contact with someone who could provide support and help. This sort of help for the occupier can have very positive benefits for you as a landlord. Assistance may be available with practical problems of looking after the property, budgeting or paying bills and getting Benefits and payment support. Also it can encourage a responsible approach from the occupier. One such support organisation is the Citizens Advice Bureau, contactable on 03444 111 444.
- Where a tenant appears to be having severe difficulties coping, perhaps because of mental health problems, or where there are concerns about the young or elderly, it might be appropriate for Social Services to be involved. Contact the Safeguarding Hub on 01226 773555.
- Where there is a specific problem for instance with noise or rubbish, you can contact the Council's Safer Neighbourhood Service on 01226 773555. They can investigate and sometimes take legal action against the people causing it.
- Where the anti-social behaviour of a tenant is creating problems in the wider community, and you have been unable to resolve these problems yourself, there may be broader powers which can be used e.g. Community Protection Notices (CPN), Closure Orders undertaken in conjunction with the Council and the Police. and in some cases Criminal Behaviour Orders (CBO). Problems can be reported to South Yorkshire Police on tel. 101
- You should also inform the **Police** if you think the tenant's behaviour or any of their actions might amount to a criminal offence(s).
- There may be some extreme cases, where the tenant is very disruptive or violent. If they may be a danger to others, you can consider asking the Court for an **injunction** against them. An injunction could, for instance, stop the tenant returning to the premises for a period of time or prevent them from behaving in a dangerous or threatening way. To get an injunction you need to seek further legal advice.

Ending the tenancy

If all else fails, you may need to consider taking action to get your tenants to leave by serving them with a Notice and applying to Court for a Possession Order.

There are two types of notices you could serve your tenants:

Section 21 Notice

This is the sort of Notice you can use in any situation where you want a tenant to leave. You cannot use this kind of Notice in the selective licensing area unless either there is a licence in place or a valid application has been received by the Council.

With a 'section 21 Notice' you do not have to prove anything, or show any evidence of the tenant having caused any problems.

Notice Seeking Possession ('Section 8' Notice)

You can serve a Notice Seeking Possession using a special form which should contain all of the legal information. You should also include in full grounds on which you are basing your notice. In the case of anti-social behaviour, Grounds 12 and 14 are the most likely

to apply but if you think that more Grounds apply, you should state them all. A full list of all grounds is attached (Appendix 5).

You need to provide details of the tenant behaviour that is causing the problem. You should describe the behaviour, its effect on others and the approximate dates or time period when the behaviour has taken place. At this early stage, you would not need to provide any witness statements or names of the people who have complained, but you may need this information at a later date.

Which Notice to give?

There is nothing to stop you giving both kinds of Notice which means that you can keep your options open if you have to think about applying to Court for a Possession Order. Remember that if the tenancy contract has quite a few months to run, a section 21 Notice will not give you the property back before the end of the original tenancy. A Notice seeking possession enables you to apply to court straight away instead of having to wait for at least two months.

However, the Section 21 procedure, unlike the Section 8 / Notice Seeking Possession procedure, provides you with a definite outcome, if you have followed the procedure correctly. The Court procedure following a Section 21 Notice is quite straight forward.

Applying to Court

If you do need to take the next step of applying to court to get the tenant to leave, the law recognises that these claims for possession need to be considered urgently, and, if you have given a Notice Seeking Possession, you can apply to Court for possession as soon as you have served the Notice. You have to pay a fee when you apply to Court, but if you are successful, you can ask the court to make the tenant pay this back to you in 'costs'. (However, the tenant will only be required to reimburse you at a rate they can afford).

Applying to Court - Section 21

If you are applying to Court following a Section 21 Notice, you can use the Accelerated Possession Procedure. You do this using court form number N5B.

Further information on the accelerated possession procedure and Form N5B can be found on Her Majesty's Courts and Tribunals Service website:

www.justice.gov.uk/about/hmcts/. This procedure is quicker than other applications to Court in that, so long as you have followed the right procedure, there may not be a need for a Court hearing.

Applying to Court - Section 8

If you are applying for possession following a Notice Seeking Possession (section 8), you can use court form N5, which can also be found on Her Majesty's Courts and Tribunals Service website: www.justice.gov.uk/about/hmcts/.

Alternatively, you can use the **Possession Claim On-Line service (PCOL)** if you are seeking possession of the property together with any rent arrears.

PCOL allows you to access court forms online to make, issue, view and progress a possession claim electronically. For further information see:
www.possessionclaim.gov.uk/pcol/.

To Note: You cannot use the **Possession Claims On-line** (PCOL) service if you are seeking possession under Section 21 or if you are using the accelerated possession procedure.

For a Court to grant possession, the judge would have to be satisfied that there was enough evidence against the tenant, and that their behaviour is serious enough, to make it reasonable for them to have to leave their home. Getting this sort of evidence is not straight forward and the Court procedure using Section 8 is not very straight forward. You may therefore, need to take specialist legal advice before beginning any Court action using this procedure.

Appendix 1 – Example Initial Contact Letter

Name & Address of Occupier

Date

Dear

Re: Anti-social Behaviour / nuisance

I/we have received complaints of anti-social behaviour regarding this address. I would like to discuss this with you. As your landlord(s) I/we take seriously all complaints of anti-social behaviour and will investigate the complaints until I am satisfied that there are no further problems.

Please be assured that I am keen to hear your account of things before deciding what further action to take. Please therefore contact me/us on (tel number) to discuss this further.

Yours sincerely

Landlord

Landlord/s Contact Address.

Appendix 2 – Example 1st Warning Letter

Name & Address of Occupier

Date

Dear

Re: Anti-social Behaviour / nuisance

I/we have received complaints that your behaviour *is causing harassment, alarm and/or distress to others* **or** *is a nuisance and annoyance to others*.

It is alleged that **or** *It was reported that* (details of the allegation/incident that has taken place) took place on (date) at (time) at (location). This kind of behaviour breaks your tenancy conditions and would be a breach of the following conditions; (List tenancy conditions which have been breached)

I /we hope that having received this letter you understand that your behaviour is causing distress to other people and you will stop such activities in future. I/We will continue to monitor the situation and should I/we receive further complaints, I/we may consider taking legal action against you. For example: applying for possession of your home.

If you would like to discuss this further with me/us, please do not hesitate to contact me/us on (tel number)

Yours sincerely

Landlord

Landlords contact details.

Example 3 Final Warning letter.

Name & Address of Occupier

Date

Dear

Re: Anti-social Behaviour / nuisance

Despite previous warnings on (Date) we have received further complaints/information that you have continued to behave in an anti-social manner.

It is alleged that or It was reported that (details of the allegation/incident that has taken place) took place on (date) at (time) at (location). This kind of behaviour breaks your tenancy conditions and would be a breach of the following conditions; (List tenancy conditions which have been breached)

I/we hope that having received this letter you understand that your behaviour causes harassment, alarm or distress to other people and I/we expect you to stop this behaviour immediately. Please take this as a final warning that your behaviour is being monitored and should we receive further complaints we will consider starting legal action against you, and apply for possession of your home.

You should also be aware that if you lose your home because of anti-social behaviour, then this is likely to affect any right you may have to be rehoused by the Council. If you would like to discuss this further with me/us, please do not hesitate to contact me/us on (tel number)

Yours sincerely

Landlord

Landlord Contact details :

Appendix 4 – Example Caution

CAUTION FOR BREACH OF TENANCY CONDITIONS

Name of Tenant:

Address:

As a tenant of (insert landlord name(s)) you signed a tenancy agreement with us/me. You have an obligation to abide by these conditions. If you break the conditions you may lose your home.

Despite warning you previously; (include date and details of behaviour)

by Letter

by

I/We believe that you are continuing to breach the conditions of your tenancy.

THE CONDITION(S) BREACHED ARE:

(Insert the relevant conditions)

Details of Alleged Breach(es)

It is alleged that:

- 1.
- 2.
- 3.

This is a formal warning to notify you that unless the breach(es) stop. I/we (insert landlord(s) name) may commence legal proceedings against you.

Signed: (landlord) Date:

Appendix 5 – Grounds for Possession

Grounds for possession - Assured Shorthold Tenancies and non-shorthold Assured Tenancies.

You need to quote the full text in a Notice Seeking Possession. See below

The 'Mandatory' Grounds for Possession are as follows: The most common useful 'mandatory ground' is

Ground 8 - Rent Arrears

Both at the date of the service of the notice under section 8 of this Act relating to the proceedings for possession and at the date of the hearing-

- (a) if rent is payable weekly or fortnightly, at least [eight weeks'] rent is unpaid;*
- (b) if rent is payable monthly, at least [two months'] rent is unpaid;*
- (c) if rent is payable quarterly, at least one quarter's rent is more than three months in arrears; and*
- (d) if rent is payable yearly, at least three months' rent is more than three months in arrears; and for the purpose of this ground "rent" means rent lawfully due from the tenant.*

The most usual useful 'Discretionary Grounds' are:

Ground 10 - Rent Arrears

Some rent lawfully due from the tenant-

- (a) is unpaid on the date on which the proceedings for possession are begun; and*
- (b) except where subsection (1)(b) of section 8 of this Act applies, was in arrears at the date of the service of the notice under that section relating to those proceedings.*

Ground 11 - Rent Arrears

Whether or not any rent is in arrears on the date on which proceedings for possession are begun, the tenant has persistently delayed paying rent which has become lawfully due.

Ground 12 - Tenant has broken a term of the Tenancy Agreement

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

Ground 13 - Damage to the Premises

The full text is:

The condition of the dwelling house or any of the common parts has deteriorated owing to acts of waste by, or the neglect or default of, the tenant or any other person residing in the dwelling house and, in the case of an act of waste by, or the neglect or default of, a person lodging with the tenant or a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant. For the purpose of this ground, "common parts" means any part of a building comprising the dwelling house and any other premises which the tenant is entitled under the terms of the tenancy to use in common with the occupiers of other dwelling house in which the landlord has an estate or interest.

Ground 14 - Nuisance

The tenant or a person residing in or visiting the dwelling house-

- (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality,*

(aa) has been guilty of conduct causing or likely to cause a nuisance or annoyance to the landlord of the dwelling-house, or a person employed (whether or not by the landlord) in connection with the exercise of the landlord's housing management functions or

(b) has been convicted of-

*(i) using the dwelling house or allowing it to be used for immoral or illegal purposes, or
(ii) an arrest able offence committed in, or in the locality of, the dwelling house.*

Ground 14ZA

The tenant or an adult residing in the dwelling-house has been convicted of an indictable offence which took place during, and at the scene of, a riot in the United Kingdom.

In this Ground—

“adult” means a person aged 18 or over;

“indictable offence” does not include an offence that is triable only summarily by virtue of section 22 of the Magistrates’ Courts Act 1980 (either way offences where value involved is small);

“riot” is to be construed in accordance with section 1 of the Public Order Act 1986. that is directly or indirectly related to or affects those functions.”

Ground 15- Condition of furniture:

The full text is:

The condition of any furniture provided for use under the tenancy has, in the opinion of the court, deteriorated owing to ill-treatment by the tenant or any other person residing in the dwelling house and, in the case of ill-treatment by a person lodging with the tenant or by a sub-tenant of his, the tenant has not taken such steps as he ought reasonably to have taken for the removal of the lodger or sub-tenant.

Ground 17 - False statements by tenant

The full text is:

The tenant is the person, or one of the persons, to whom the tenancy was granted and the landlord was induced to grant the tenancy by a false statement made knowingly or recklessly by-

(a) the tenant, or

(b) a person acting at the tenant's instigation.