



**POLICY AND RESOURCES SCRUTINY COMMITTEE –  
12TH MARCH 2019**

**SUBJECT: ALLOCATION OF NEW HOMES AND THE ROLE OF THE TENANCY  
ENFORCEMENT SECTION**

**REPORT BY: CORPORATE DIRECTOR FOR EDUCATION AND CORPORATE  
SERVICES**

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- 1.1 The attached report was presented to the Caerphilly Homes Task Group on 6th December 2018 as an information item, and was noted without discussion.
  - 1.2 The Policy and Resources Scrutiny Committee are asked to consider the report and its recommendation.

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Appendices:

Appendix Report to Caerphilly Homes Task Group on 6th December 2018 - Agenda Item 6



## CAERPHILLY HOMES TASK GROUP – 6TH DECEMBER 2018

**SUBJECT: ALLOCATION OF NEW HOMES & THE ROLE OF THE TENANCY ENFORCEMENT SECTION**

**REPORT BY: CORPORATE DIRECTOR – SOCIAL SERVICES AND HOUSING**

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### 1. PURPOSE OF REPORT

- 1.1 To provide members with information about the allocation of properties, the role of the Tenancy Enforcement Section and the obligations of tenants, prior to referral to the Policy and Resources Scrutiny Committee.

### 2. SUMMARY

- 2.1 Members have requested a report on the allocation of properties and the role of the Tenancy Enforcement Service in the management of Caerphilly Homes' tenancies. This report outlines the relevant legislative provisions and associated guidance associated with allocations and provides information on the Council's Common Allocation Policy. It includes information on:

- When an applicant can be considered as ineligible for an allocation or suspended from the Common Housing Register
- How low demand older persons accommodation is allocated
- The role and workload of the Tenancy Enforcement Section with some comparison with that of local Registered Social landlords
- The obligations of tenants to manage their tenancies in accordance with their tenancy agreement.

### 3. LINKS TO STRATEGY

- 3.1 ***The Well Being of Future Generations (Wales) Act 2015*** contains 7 well-being goals. When making decisions the act requires public bodies in Wales, including local authorities, to take into account the impact they could have on people living their lives in the future. This report would link most closely to the following Well-being Goals:

- *A prosperous Wales*
- *A resilient Wales*
- *A more equal Wales*
- *A Wales of cohesive communities*
- *A globally responsible Wales.*

- 3.2 **Improving Lives and Communities: Homes in Wales (Welsh Government, 2010)**, which sets out the national context on meeting housing need, homelessness, and housing-related support services.

- 3.3 **The Caerphilly We Want (CCBC, 2018-2023) - Well-Being Plan: Positive Places - Enabling our communities to be resilient and sustainable.**

- 3.4 **Corporate Plan (CCBC, 2018-2023): Well-being Objective 3:** “Address the availability, condition and sustainability of homes throughout the county borough and provide advice, assistance or support to help improve people’s well-being.”
- 3.5 The **Anti-Social Behaviour Act 2003 and Code of Guidance** provided by Welsh Government to assist social landlords in their development of a policy and procedure, encouraged and emphasised a 3-strand strategy for dealing with nuisance and anti-social behaviour – prevention, support and enforcement. The **Caerphilly Homes Statement of Policy and Procedure for Anti-Social Behaviour** is consistent with the overarching corporate aims and reflects the 3 strand strategy, emphasises an incremental approach to investigating and dealing with ASB and reflects good practice in this field.
- 3.6 The **Council’s Strategic Equalities Plan** has the following aim:  
Equality Objective 1 – Tackling Identity based hate crime: – To reduce the levels of real or perceived instances of identity based abuse, bullying, harassment and violence, hate crime and hate incidents in the county borough.

## 4. THE REPORT

### Relevant Legislation and Guidance

- 4.1 Anyone over the age of 16 years may apply to the Council to be rehoused, regardless of their housing need, subject to them meeting eligibility criteria set out in its policy. Section 166 (3) of the Housing Act 1996 obligates the Council to consider all applications for social housing. It must, however, ascertain whether an applicant is eligible for accommodation or excluded from allocation.
- 4.2 Where it is satisfied that an applicant, or a member of their prospective household, is guilty of unacceptable behaviour serious enough to make them unsuitable to be its tenant, the Council may treat them as ineligible for an allocation of housing. However, the only behaviour which can be regarded as unacceptable is behaviour that would, if they had been a Council tenant, have entitled the Council to a possession order under defined discretionary grounds which include non-payment of rent, breach of tenancy conditions, conduct likely to cause nuisance or annoyance and use of the property for immoral or illegal purposes. The applicant has a right of review of this decision.
- 4.3 A policy of treating all applicants within specific categories e.g. those with a criminal history, as unsuitable to be a tenant would be considered a blanket approach and is unlawful. The following three stage test must be applied to prevent a blanket approach:
- **Whether a possession order would have been granted.** A court must have regard to the interests and circumstances of the tenant and their household, the Council and the wider public. If not satisfied that the court would decide it was reasonable to grant a possession order, the applicant cannot be guilty of unacceptable behaviour.
  - **Whether the behaviour is serious enough to make the person unsuitable to be a tenant.** It is the Welsh Government's view that to do this the Council needs to satisfy itself that if a possession order were granted it would have been an outright order. Where the Council believes that the court would have suspended the order, then such behaviour should not normally be considered serious enough to make the applicant unsuitable to be a tenant.
  - **If satisfied that the applicant is unsuitable to be a tenant by reason of unacceptable behaviour, the Council must have regard to the circumstances at the time the application is considered and must satisfy itself that the applicant is still unsuitable at the time of the application.** Previous unacceptable behaviour or even an outright possession order, may not justify a decision to treat the applicant as ineligible where that behaviour can be shown by the applicant to have improved.

- 4.4 Where the Council is satisfied that an applicant is unsuitable to be a tenant, they are not necessarily required to decide that he or she is ineligible for an allocation, they may instead proceed with the application and decide to give the applicant no priority. If it is decided that an applicant is ineligible for an allocation, after a period of ineligibility has elapsed, they may re-apply and their circumstances must be reviewed.
- 4.5 It is the Welsh Government's view (expressed in detail within its statutory guidance "Code of Guidance for Local Authorities on the Allocation of Accommodation and Homelessness 2015") that barriers to social housing should be minimised and that in developing policies on unacceptable behaviour Local Authorities should consider their role as social landlords and brokers of social housing. They consider that social housing is subsidised stock and that it is incumbent on councils to allocate tenancies primarily to meet housing need and keep restricted access measures to a minimum to ensure their statutory responsibilities are being met.
- 4.6 The three stage test is applied by the Council at the point of application and, where circumstances and evidence warrant it, e.g. for former tenants with compound issues of high arrears and serious anti-social behaviour, the applicant is classed as 'ineligible for an offer of accommodation'. However, it is not unusual to have insufficient evidence to be satisfied that an applicant is unsuitable to be a tenant as the burden of proof is high. The Council has, therefore, adopted additional criteria that allow for applicants or members of their prospective household to be registered on the Common Housing Register but suspended until such time as they have addressed current or past behavioural issues.

### **The Housing Assessment Panel**

- 4.7 All ineligibility decisions are made by the Housing Assessment Panel. Panel meetings are chaired by the Housing Solutions Manager and consist of housing managers from at least three of the housing provider organisations who are party to the Common Allocations Policy agreement: Caerphilly Homes, Charter Housing, United Welsh Housing Association, Linc-Cymru, Derwen Cymru, Wales & West, Cadwyn and Aelwyd Housing Association. The Housing Assessment Panel must apply the three stage test when considering eligibility for inclusion on the housing register. The Council can decide to treat an applicant as ineligible for an allocation, or suspend their application until such time that a sustained demonstrable change in behaviour has taken place, such that the suspension can be lifted. Applicants requesting a review of the Housing Assessment Panel decision can appeal to the **Housing Review Panel** which is chaired by the Chief Housing Officer and two senior housing managers from the aforementioned partner housing providers. The Panel's decision is final and any challenge of that decision can only be made through the Public Sector Ombudsman for Wales or a judicial review.

### **Homeless Applicants**

- 4.8 The Council has a legal duty to help secure accommodation for people if they become homeless and are eligible for assistance. Assessments and decisions are carried out under Part 2 of the Housing (Wales) Act 2014. It is, however, possible for the Council to determine an applicant is unintentionally homeless and in priority need but guilty of unacceptable behaviour serious enough to make them unsuitable to be a social housing tenant. The Council can decide to treat them as ineligible for an allocation, or suspend their application until such time that a sustained demonstrable change in behaviour has taken place, such that the suspension can be lifted. The applicant can request a review of this decision.
- 4.9 The Council does, however, still have a statutory duty to secure them accommodation. This need not be in its own stock as the Council now has discretion to accommodate them in the private rented sector or by some other means.

## Offenders

- 4.10 If applicants declare on their application that they have any criminal convictions, the Common Allocations Policy is clear that we consider their offences in relation to whether they should be excluded from the housing register as a blanket exclusion for those with a criminal history is unlawful. Only those with a criminal history relative to their former housing history can be considered for exclusion, and their application is thoroughly explored and considered by the Housing Assessment Panel.
- 4.11 If an offender with a local connection to the County Borough has no accommodation available to return to on release, they are referred to the Council's Housing Advice Centre by the relevant prison. The Council are responsible for assessing whether the offender has a vulnerability that affords them a Priority Need status under the Housing (Wales) Act 2014, and is therefore owed a housing duty. Priority need status on the grounds of vulnerability such as a physical or mental health condition is assessed in the same way as for any other homeless person. Additionally priority need status can be granted to offenders who would not cope with the changes in society through having served a lengthy prison sentence.
- 4.12 Offenders owed a duty of housing after release from custody are usually provided with temporary accommodation in the first instance and then helped to secure settled accommodation, either within the social housing stock or in private rented accommodation. The Probation Service Offender Manager will then provide us with a housing risk assessment which is used to best manage the proposed tenancy.
- 4.13 Occasionally, offenders due for release are considered to be high risk and are referred to the Multi-Agency Public Protection Arrangement (MAPPA) process to plan for their release and management in the community. The Responsible Authorities for the MAPPA partnership are the Police, Probation and Prison Services however several other agencies are Duty to Co-operate agencies and these include Housing, Social Services, Health, Youth Offending teams and Education Authorities. Housing are required to assist with the housing needs of these offenders when required. These offenders are initially released to Approved Premises before being housed back into the community. We rely on the assistance of all housing partners to source suitable accommodation and all proposed accommodation options are reviewed by the Police before final approval.
- 4.14 Housing suitability checks are carried out by the Police for all MAPPA offenders who are owed a duty of housing in the County Borough. These are carried out by the Public Protection Unit and include the following aspects as part of an active risk management process:
- The proposed address location and its proximity to areas pertinent to the offending history: for example whether there are schools, playgrounds, youth clubs and similar if historical offences were against young people. Household checks are done to consider the potential risks to existing tenants in adjacent properties, for example, the names, ages and general nature of the households in a block of flats where the proposed property is situated. Details of any other offenders already residing in the vicinity who may come into contact with the offender.
  - The housing of offenders in the County Borough is limited to people originally from the area or who have a proven family connection to our area. Occasionally, offenders we have a duty to house cannot return to our area due to the location of former victims or their families and we seek assistance from our housing colleagues in the other Gwent areas. We also assist our Gwent partners to house offenders unable to return to their respective local authorities, usually on a reciprocal basis. This duty to assist with the housing of offenders from outside our area is a direction from the MAPPA panel Chair with whom we have a Duty to Cooperate.
  - The records of the offender, their offence, location and victims are controlled by the Chair of the MAPPA in Gwent and the disclosure of information outside of the MAPPA meeting has to be approved by the Chair of the MAPPA process.

## **Common Allocations Policy**

- 4.15 The Common Allocations Policy was developed by the Council in partnership with six housing associations to ensure that all applicants applying for social housing in the County Borough are provided with a single route of access and assessed using a single policy. It was introduced on 5<sup>th</sup> December 2016 along with the Common Housing Register. In addition to the three stage test of unacceptable behaviour, the policy allows for eligible applicants or members of their prospective household to be registered on the Common Housing Register but suspended for 12 months or until such time as they have addressed current or past behavioural issues.
- 4.16 Where it is determined that the applicant or a member of the applicant's household has failed to maintain their current or any previous social rented or private sector rented property within the terms of their tenancy agreement they are informed of the action(s) that they will need to demonstrate before the suspension will be lifted. Any suspension can be challenged and the action is required to be reasonable and proportionate, and to take into account the protected characteristics of the individual.

## **Lettings for Older Persons' Accommodation**

- 4.17 Whilst most of the Council's housing stock is designated for general needs a significant proportion is designated for accommodating older persons, which is currently defined as 60 plus. Most of the Council's partner landlords have a definition of 55 plus for their older persons' accommodation.
- 4.18 Such properties are first offered to applicants shortlisted from the Housing Register who have at least one member of the household who is 60 plus or otherwise have been awarded age dispensation to apply for older persons accommodation due to a specific need associated with a disability. Where there are no eligible applicants on the register aged 60 plus or with age dispensation new applicant shortlists are generated to include the oldest applicants on the register in reducing blocks of five year age bands i.e. over 55, then if no one eligible over 50 etc. This approach has been applied since the 1990s, although it has gradually been restricted to 5 year age bands to ensure consistency of approach across all Housing Offices, as previously within Local lettings Policies some low demand older persons' accommodation was routinely offered to applicants aged 40 plus.
- 4.19 In many areas there is normally sufficient demand from older persons for this stock and reduced age shortlisting is only required very infrequently, however some older persons stock is regularly in low demand, either due to location or limited accessibility for those with limited mobility, and the age reduction is applied regularly. It is partly for this reason that a review of some older persons' accommodation has recently been undertaken and Members have approved the re-designation of a limited amount of older persons' accommodation for general needs.

## **The Role of the Tenancy Enforcement Section**

- 4.20 The over-riding aim of the Caerphilly Homes' anti-social behaviour policy and procedure is to provide a framework to ensure that it responds to all incidents of anti-social behaviour in a manner, which is consistent and appropriate. The policy and procedure seeks to support the wider aims and objectives of related strategies and plans in order to create safe and cohesive communities and improve the quality of life for Council tenants, leaseholders, and residents within the County Borough. The policy endeavours to complement and support the efforts of the Safer Caerphilly Community Safety Partnership and other local agencies through effective partnership working in order to provide a collaborative response to anti-social behaviour.
- 4.21 The Tenancy Enforcement Section (TES), which comprises four Tenancy Enforcement Officers and a Manager, aims to effectively tackle anti-social behaviour and enable Council tenants, leaseholders and others to have quiet enjoyment of their homes and live in communities that are safe and cohesive. All complaints of anti-social behaviour made by or

about a tenant or leaseholder are referred to the TES. Complaints of a general nature and the less serious incidents of anti-social behaviour are referred on to the Area and Neighbourhood Housing Offices for investigation. The TES investigates all complaints of noise nuisance and the more serious/persistent incidents of anti-social behaviour.

4.22 The most common referrals to TES are for verbal abuse/ intimidation/ harassment and noise nuisance. The chart below provides details of the five most frequent complaint reasons for each recorded period, although up to three reasons can be recorded on the referral form. The table also details the total number of referrals received, for the last 5 1/2 years. The figures show a significant increase in the number of referral received during 2018 and could indicate a doubling of the referrals received the previous year. There is no explanation for this trend but other social landlords within Gwent have also experienced similar increases in levels of reporting. This increase has had a significant impact on the ability of the team to manage cases as resource levels have not changed. This may have had a knock on effect of how quickly an Officer could respond to a complainant due to the number of cases each officer has had to manage. During the period June – October each Officer had an average of 50 cases open that they were investigating.

<b>Case Type – Pre 31 March 2018</b>	<b>2013 - 2014</b>	<b>2014 - 2015</b>	<b>2015 - 2016</b>	<b>2016 - 2017</b>	<b>2017 - 2018</b>	<b>Case Type – Post 01 April 2018</b>	<b>1.4.18 - 31.10.2018</b>
<b>Noise</b>	213	252	288	244	244	<b>Noise</b>	263
<b>Verbal/ Harassment/ Intimidation</b>	170	213	223	188	231	<b>Harassment, Intimidation &amp; Threats</b>	119
<b>Drugs, Substance Abuse</b>	75	88	69	71	80	<b>Substance Misuse (includes drug and alcohol)</b>	51
<b>Vandalism/ Property Damage</b>	30	36	16	24	33	<b>Vandalism/ Property damage</b>	30
<b>Alcohol Related</b>	26	33	21	12	10	<b>Verbal &amp; Written Abuse</b>	45
<b>Total Cases</b>	<b>602</b>	<b>723</b>	<b>642</b>	<b>628</b>	<b>690</b>	<b>Total Cases</b>	<b>556</b>

4.23 Upon receipt of a referral it is assessed and graded. In order to determine whether actions constitute anti-social behaviour consideration is given to a number of factors, including the frequency and severity of the incidents, the length of time the incidents have been occurring, the effect of the incidents on the victim and the intentions of the perpetrator.

4.24 TES seeks to provide a complainant or victim centred approach and endeavours to provide a consistent, reactive and responsive service. All complaints are treated seriously and dealt with fairly without prejudice or preference. All responses to incidents of anti-social behaviour are considered to be proportionate, measured and reasonable. The principle of proportionality is the idea that an action should not be more severe than is necessary to remedy the issue. For example one incident of noise nuisance will not lead to legal action being taken to retake possession of someone's home, however many incidents of noise nuisance is likely to be sufficient for legal proceedings to be commenced. TES are fully committed to tackling both the causes and the effects in an effective and structured manner. Successful intervention requires engagement by the complainant which will include the accurate recording of incidents (keeping nuisance diary sheets) and a willingness to provide a witness statement if required. Independent evidence is also obtained if possible e.g. use of noise monitor and working with other agencies to gather evidence. If a complainant is not

willing to engage or assist in collection of evidence then this will seriously impact on the evidence gathered and may prevent action being taken.

4.25 TES does not just enforce the conditions of tenancy through legal action. In accordance with requirements of Welsh Government guidance and the Caerphilly Homes policy of prevention, support and enforcement, TES provides support and assistance to both perpetrators and complainants. The team will provide support for complainants by making appropriate referrals for support if required, and providing target hardening items to help them feel safer in their home and community. We have access to 3 mobile CCTV cameras that can be located in areas of concern for a period of up to 12 months, and have 2 noise recording devices we use to capture evidence of unacceptable noise nuisance. We have a witness support scheme for those that have agreed to provide evidence and attend court. In relation to perpetrators, the team works with some of the most vulnerable and at risk members of society and recognises that we don't have to just stop the nuisance behaviour but also reduce and/or stop the actual cause of the nuisance behaviour in order to break the cycle. Perpetrators can be victims themselves and need support and assistance. The TES spend a lot of time discussing issues with the perpetrator to try and determine why they are behaving in an anti-social manner. This usually produces details of a raft of issues/ problems. An analysis of cases open during the week of 13 August 2018 indicated that in almost 53% of the cases the perpetrator either had a substance (alcohol and/or drugs) dependency, mental health issue/diagnosis or both. The Officer assesses the information and makes appropriate referrals to different organisations/ agencies to try to assist them to resolve the issues and thus improve their behaviour. However for some, these issues are long term and/or a lifestyle choice and require intensive support from appropriate agencies and commitment from the perpetrator to participate. Thus TES have to rely on the involvement of other agencies and support services to help resolve the issues a tenant may be causing. A full list of the Prevention, Support and Enforcement actions available to the Tenancy Enforcement Section are contained in Sections 6, 7 and 8 of the Policy and Procedure, which is available on the Council website. Case studies providing positive outcomes are attached as Appendix 1.

4.26 On occasion support and assistance will not prevent anti-social behaviour and legal action is required to be taken to enforce the conditions of tenancy. Over the past 5 ½ years the following legal actions have been taken by TES:

<b>Action</b>	<b>2013 - 2014</b>	<b>2014 - 2015</b>	<b>2015 - 2016</b>	<b>2016 - 2017</b>	<b>2017 - 2018</b>	<b>01.04.2018- 31.10.2018</b>
<b>Notice Of Seeking Possession</b>	17	21	18	9	22	13
<b>Undertakings</b>	1	1	0	1	1	0
<b>Injunctions – with/without power of arrest</b>	0	5	2	5	4	3
<b>Closure Order</b>	0	1	0	0	1	1
<b>Suspended Possession Order</b>	3	3	5	3	6	0
<b>Outright Possession Order</b>	9	6	5	0	1	0



- 4.27 The timeframe for the court dealing with a claim for possession can vary and the length of time will largely depend on whether a tenant is defending the proceedings. Where circumstances warrant it, the TES can serve an initial Notice of Seeking Possession and immediately commence possession proceedings without having to wait the usual 28 day period. The first hearing at court occurs generally around 28 days after the claim for possession is filed at court. If the matter is not defended it is usual for the TES to obtain the order that it seeks at the first hearing. If the tenant defends the matter, which is their right, then the court sets out a timetable for actions required before a final contested trial takes place. This timetable (which can on occasion cover an extended period of 6-8 months before the final trial) does not factor in any adjournments requested by either party, which can delay the process further. The TES and the Legal Section do everything they can to ensure that the process is carried out as quickly as possible within the Rules to minimise the timeframe and the distress delays can cause. At times the court will experience delays due to its fluctuating workload and inconsistent standards of administration which will cause delays beyond the control of the TES/Council.
- 4.28 An option open to TES to minimise the distress delays can cause is to consider filing, prior to or at the same time as the claim for possession, an application for a Civil Injunction (which were formerly called an Anti-Social Behaviour Injunction or ABSI). The court can generally look at these applications more quickly and the tenant would be obliged to comply with the terms of the Civil Injunction whilst possession proceedings are progressed.
- 4.29 Cases are determined on the evidential level of balance of probability. However there are other factors that a District Judge will need to consider in making their judgment. This will include whether the action is proportionate to the behaviour complained of, if it reasonable to grant an order, the likelihood of the behaviour recurring and the impact of the behaviour on others.
- 4.30 A further fast developing area for defendant housing lawyers is whether or not the legal proceedings brought are unlawful on account of being discriminatory to a tenant or occupier who has a protected characteristic under the Equality Act 2010. The Council in many cases would have the burden of proof to show that the action taken is not unlawful and no lesser option was available to it other than the steps taken. This area of law touches on all legal proceedings Housing may take against tenants and or occupiers. Those tenants with a diagnosed mental health condition, experiencing an episode of depleted mental health or dependent on drugs and/or alcohol, are likely to fall within the protected characteristics of the Equalities Act 2010. This needs to be carefully considered before any legal proceedings are commenced as it can and will make the legal proceedings more challenging and difficult if used as a defence. However it will not prevent us from taking legal action where appropriate.

### **Comparative Data**

- 4.31 Within Gwent there is a professional group comprising representatives from all social landlords in the area. It focuses specifically on anti-social/nuisance behaviour and has been meeting for a number of years, with meetings held every 3 – 4 months. The purpose of the group is to exchange good practice, discuss problems being experienced, raise issues as a group with other agencies such as Police and Welsh Government, Other professionals are also invited to these meetings to provide information on projects and or services available within Gwent that have a focus on antisocial behaviour.
- 4.32 As there is no benchmarking data available for this area of work Officers have attempted to compare the work of the Tenancy Enforcement Service with that of Registered Social Landlords (RSLs) local to the County Borough however this has proved to be problematic due to variations in operating and reporting practices between landlords. The table below shows comparative data for specific types of anti-social behaviour recorded by Caerphilly Homes and three RSL's within Gwent.

**2017/2018**

<b>Organisation</b>	<b>Stock No</b>	<b>New Cases</b>	<b>Noise Nuisance</b>	<b>Verbal abuse/ harassment/ intimidation</b>	<b>Drug/ substance abuse</b>	<b>Vandalism/ Property damage</b>
Caerphilly Homes	10,800	690	244	231	80	33
Newport City Homes (NCH)	10,000	1452	292	322	75	35
Tai Calon	6,300	166	76	0	17	7
Charter Housing (CCBC area only)	988	86	30	34	5	2

- 4.33 Whilst it appears that NCH have a much higher number of referrals it has been established that this is because NCH also include in their data complaints about animal nuisance, domestic abuse, garden nuisance and litter and rubbish which are not collated by Tenancy Enforcement as they are reported to and/or dealt with by other sections within CCBC. When these figures are deducted from the total, the figures are more comparative, with NCH total number of new cases being 841.

**2017/2018**

<b>Organisation</b>	<b>Civil Injunctions</b>	<b>Possession Orders (including Suspended PO's)</b>	<b>Closure Orders</b>	<b>Evictions</b>
Caerphilly Homes	4	7	1	1
Newport City Homes	11	14	1	4
Tai Calon	2	Not recorded	0	2

- 4.34 CCBC offers all new tenants a secure tenancy. Secure tenants can live in their homes for the rest of their life as long as they comply with their tenancy agreement. Secure tenancies can only be ended by a court order, following a court hearing to look at the reasons behind the breaches of tenancy. The court decides if it has been proved that the ground for possession applies and if it is reasonable for the tenant to lose their home. Rather than order eviction, the court could, and often does, make a suspended possession order and set terms for the tenant to comply with.

- 4.35 Most RSLs routinely offer new tenants a starter (introductory) tenancy. These usually last for 12 months and are like a 'trial' period. They require a tenant to prove they are a responsible tenant before they are offered an assured tenancy. The tenant becomes an assured tenant after 12 months, unless the RSL has either started action to evict them or extended the starter tenancy. The court must agree to [evict a tenant from a starter tenancy](#) if the landlord has followed the correct procedures. The RSL does not have to prove to the court that there's a reason they should have to leave. It is possible that the higher number of evictions by NCH is a reflection of their use of starter tenancies.
- 4.36 Proposals to introduce starter tenancies have previously been considered and rejected by Members. The implementation of the Renting Homes Act 2014, which will require all existing tenancy agreements to be replaced with new contracts, will provide a further opportunity for Members to review the types and content of agreements offered by Caerphilly Homes to both new and existing tenants. Welsh Government has recently indicated that this legislation will be implemented during 2019 and officers' proposals for implementation will be the subject of a future report.

### **Garden Conditions**

- 4.37 Breaches of tenancy other than antisocial behaviour are investigated by officers within the Local Housing Office rather than the TES. This includes the monitoring and enforcement of garden conditions in accordance with the garden monitoring procedure. Breaches may be identified by planned inspection or on receipt of a complaint or referral from other staff members. The procedure comprises four formal timed stages of intervention, including serving a notice of seeking possession (NOSP), prior to instituting legal action to seek possession of the property. In order to comply with evidential requirements should breaches result in service of a notice of seeking possession the garden procedure has to be followed in full, which, of necessity, takes some time. In addition to this pre-existing procedure an additional step has very recently been introduced to attempt to engage with the tenant in resolving the breach prior to seeking legal intervention. This involves a referral to a Homeless Prevention Officer who will also try to engage with the tenant and provide relevant support.
- 4.38 Throughout the procedure consideration must be given to the individual circumstances of the tenant e.g. age, physical disability, mental health, vulnerability. If appropriate and available, officers are able to refer to a supporting agency for gardening assistance and in exceptional cases the Community Environmental Warden service may be used to assist with removal of unwanted items.

<b>Date</b>	<b>Stage 1 – Inspection</b>	<b>Stage 2 – Identified</b>	<b>Stage 3 – Persists</b>	<b>Stage 4 - NOSP</b>	<b>Referred to Legal</b>	<b>Orders</b>	<b>Evictions</b>
16/17	1035	366	192	59	20	5	0
17/18	758	345	168	88	24	12	0
18/19	532	256	132	47	13	4	0

### **Obligations of Tenants**

- 4.39 All tenants have a secure tenancy agreement which they sign when accepting the offer of a tenancy. This document lists their rights and responsibilities in the form of terms and conditions of the tenancy and failure to adhere to these may constitute a breach of their tenancy agreement.
- 4.40 Obligations within the tenancy agreement include a number relating to use of the property including:
- Occupation of the property as only or principal home for residential purposes and responsibility for the behaviour of any person residing in or visiting the property.
  - Not using the property for a trade or business or other non-residential purpose without firstly obtaining the Council's written consent.

- Not doing anything, or permitting anyone residing in or visiting to do anything, that causes or is likely to cause a nuisance, annoyance or disturbance to any person engaging in a lawful activity in the locality. Examples of include but are not restricted to loud music, arguing and door slamming, dog barking, offensive drunkenness and rubbish dumping.
- Not using the property or the common parts or the locality for illegal or immoral purposes and not permitting any person residing in or visiting the property to use it or its locality for illegal or immoral purposes. Examples include, but are not restricted to: the cultivation or production, possession or supply of a controlled drug, the storage or sale of stolen goods, prostitution and other sexual offences.
- Not deliberately damaging the property or the common parts nor permitting any person residing in or visiting the property to do so deliberately.
- Not harassing, nor inviting or inciting any other person to harass any person residing, visiting or otherwise engaging in a lawful activity in the locality, nor permit any other person residing in or visiting the property to do so. Examples of harassment include but are not restricted to: Intimidation on the grounds of a protected characteristic, violence or threats of violence, abusive or insulting words or behaviour, damage or threats of damage to property, writing threatening, abusive or insulting graffiti.

4.41 When TES become aware of an existing tenant being investigated for a criminal offence the tenant is contacted to advise them we are aware they have been arrested pending further enquiries. Once they are charged TES advise them that we know they have now been charged and depending on the outcome of the court proceedings we may take action that could affect their security as a tenant. Once the person is convicted (or not) a Notice of Seeking Possession (NOSP) would be served and a decision taken as to whether possession proceedings are proportionate, based on the offence they have been convicted of and the sentence they have received. For example cultivation of cannabis usually results in a Police caution, so a NOSP would be served then, depending on the number of plants, consideration would be given for proceedings for a Suspended Possession Order (SPO) as the Court will not award a possession order just for cultivation.

## 5. WELL-BEING OF FUTURE GENERATIONS

5.1 **Long Term** – supports the sustainability of cohesive communities for tenants and residents; providing a fair and transparent service for tenancy sustainment.

**Prevention** – supports tenants and assists in the prevention of eviction and homelessness. It supports the well-being of tenants and residents.

**Integration** – improved standards of housing and stable community environments.

**Collaboration** – joined up working arrangements within the organisation and with outside agencies to support tenancy sustainment.

**Involvement** – Engages tenants, residents and support agencies in relation to sustainment of tenancies.

## 6. EQUALITIES IMPLICATIONS

6.1 This report is for information purposes only. There are, therefore, no equalities implications arising from the report.

## **7. FINANCIAL IMPLICATIONS**

7.1 There are no financial implications arising from this information report.

## **8. PERSONNEL IMPLICATION**

8.1 There are no personnel implications arising from this information report.

## **9. CONSULTATIONS**

9.1 There are no consultation responses that have not been reflected in this report.

## **10. RECOMMENDATIONS**

10.1 It is recommended that Members note the contents of the report.

## **11. REASON FOR RECOMMENDATIONS**

11.1 The purpose of the report is for information only.

## **12. STATUTORY POWER**

Housing Act 1996  
Anti-Social Behaviour Act 1996  
Housing (Wales) Act 2014.

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Robert Tranter - Head of Legal Services and Monitoring Officer  
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Background Papers:  
Caerphilly Homes Statement of Policy and Procedure for Anti-Social Behaviour

Appendices:  
Appendix 1 Case Studies

### Case Study 1

A number of residents reporting a tenant to be causing noise nuisance;

- dog barking,
- parties,
- foul and abusive language
- excessively loud music.

Problems reported have been sporadic in nature but have been historically happening on a yearly basis predominantly during the summer time. The tenant was receiving support for substance misuse issues.

Various visits made to both complainants and tenant, suitable advice and warnings offered and the situation improved for a time. Further visits and written warning issued following reports of the behaviour reverting, diaries from residents provided, noise recording equipment used.

A Notice of Seeking Possession and Notice before proceedings for a Demotion Order served. No further issues of Anti-social behaviour have been reported.

### Case Study 2

A single woman in her 30s was allocated sole tenancy of an upstairs flat in a quiet cul-de-sac. Within 2 weeks of the tenancy commencing, a total of 9 separate complaints had been received from residents of the area. Complaints included incidents of alleged anti-social behaviour such as loud music at all hours, offensive drunken behaviour, allegations of drug use, fighting, the use of foul and abusive language at volume and at all hours, callers to the address at all hours causing nuisance and upset, and public nudity. Concerns were also raised about the unacceptable condition of the garden attached to the property, which had reportedly deteriorated since the tenant moved in.

Loud music and foul language had been professionally witnessed by Tenancy Enforcement Officers whilst visiting the area.

Police were contacted by TES to request a formal Section 115 Information Sharing meeting, to bring together all agencies to discuss how best to deal with matters. Agencies who attended included Social Services who were working with the tenant concerned, Environmental Health as consideration had been given to seeking either Community Protection or Closure Order on the property, CCBC Housing were represented both by the local Housing Office and Tenancy Enforcement, CCBC Legal team, and representatives of Heddli Gwent Police.

The tenant was visited jointly with Social Services, Housing Estate Management Officer and Tenancy Enforcement several times with all appropriate warnings and guidance issued. The tenant agreed to sign a voluntary contract with TES, confirming there would be no further problems and also their understanding that their home would be at risk if there were.

Complainants have advised the situation to be much improved, and matters are being closely monitored currently.

### Case Study 3

A noise nuisance complaint was received from a private tenant who wanted to remain anonymous about a council tenant who lived in a flat. The complaint was that the council tenant was playing loud explicit music during the day and also into the evening on a frequent basis.

Prior to Tenancy Enforcement Section's (TES) involvement the Police attended and warned the council tenant to turn the music down, however the anti-social behaviour continued. The private tenant was asked to keep a diary of incidents and regular contact was maintained by the TES officer

via email and telephone calls at the victim's request. The council tenant was visited and issued with verbal and written warnings and a referral for support was put in place. Recording equipment was utilised and captured sufficient evidence which was supported by the private tenant's diaries.

From commencement of the case to serving the council tenant with a Notice of Seeking Possession and a Noise Abatement Notice (supported by the Environmental Health department) it took approximately four weeks. The situation was monitored for a significant period of time and there wasn't any further noise issue and the matter was resolved.

#### **Case Study 4**

Serious concerns surrounding the behaviour of a group of youths on a Housing Estate. The 2 main offenders identified were brothers. Issues included taunting, abusing and threatening other residents, throwing stones and items at properties, lighting fires and shining laser pens at residents and properties. Issues became so severe that a council vehicle was damaged and Fire Service refused to answer non-emergency calls.

TES worked alongside Police, YOS and Community Safety and the brothers were subject to Acceptable Behaviour Contracts, which they subsequently breached.

The Tenant of the property where the brothers' live did not take an active role in helping to modify their behaviour and reduce problems on the Estate. As a result of their on-going behaviour TES served a NOSP on the Tenant.

The brothers continued to cause problems on the Estate where they lived which resulted in Anti-social Behaviour Injunctions being obtained against them at Court.

As a result of their continuing behaviours an application has been made to the Court for Possession Proceedings against the Tenancy.