



HOUSING AND REGENERATION SCRUTINY COMMITTEE – 26TH NOVEMBER 2019

SUBJECT: UPDATE ON THE ROLE OF THE TENANCY ENFORCEMENT SECTION

REPORT BY: CORPORATE DIRECTOR – SOCIAL SERVICES AND HOUSING

1. PURPOSE OF REPORT

- 1.1 To provide members with an update on the role of the Tenancy Enforcement Section and the obligations of tenants.

2. SUMMARY

- 2.1 Following consideration of a report on the role of the Tenancy Enforcement Section in the management of Caerphilly Homes' tenancies in March 2019, Members of the Policy and Resources Scrutiny Committee requested an update report be provided. This update report outlines the relevant legislative provisions and associated guidance. It includes information on

- 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. RECOMMENDATIONS

- 3.1 It is recommended that Members note the contents of the report.

4. REASONS FOR THE RECOMMENDATIONS

- 4.1 The purpose of the report is for information only.

5. THE REPORT

The Role of the Tenancy Enforcement Section

- 5.1 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. *The Anti-Social Behaviour Policy and Procedure is attached at Appendix 1.*

5.2 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.

5.3 The most common referrals to TES are for noise nuisance and verbal abuse/ intimidation/ harassment. 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 6 1/2 years. The figures show a significant increase in the number of referrals received during 2018/19 compared to the previous years. There is no explanation for this trend but other social landlords within Gwent have also experienced similar increases in levels of reporting. The current figure for 2019/20 indicates that this trend seems to be continuing. This increase has had a significant impact on the ability of the team to manage cases. This has had a knock on effect of how quickly an Officer can respond to a complainant due to the number of cases each officer has had to manage. During the period May - September 2019 each Officer had an average of 45 - 50 cases open that they were investigating.

Case Type – Pre 31 March 2018	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	Case Type – Post 01 April 2018	2018 - 2019	01/04/ 2019 – 30/09/ 2019
Noise	213	252	288	244	244	Noise	384	204
Verbal/ Harassment/ Intimidation	170	213	223	188	231	Harassment, Intimidation & Threats	182	143
Drugs, Substance Abuse	75	88	69	71	80	Substance Misuse (includes drug and alcohol)	80	39
Vandalism/ Property Damage	30	36	16	24	33	Vandalism/ Property damage	40	15
Alcohol Related	26	33	21	12	10	Verbal & Written Abuse	55	7
Total Cases	602	723	642	628	690	Total Cases	809	445

- 5.4 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 victims and the intentions of the perpetrator.
- 5.5 TES seeks to provide a complainant a 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 the collection of evidence then this will seriously impact on the evidence gathered and may prevent action being taken.
- 5.6 TES does not just enforce the conditions of tenancy through legal action. In accordance with 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. The team has 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 used to capture evidence of unacceptable noise nuisance. A witness support scheme is available 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 it doesn'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.
- 5.7 For all cases open from 01 April 2019 – 30 September 2019, the TEO's made an informed decision as to whether the complainant and/or perpetrator had drug, alcohol or mental health issues or a combination of issues and this has been recorded. This is based solely on information they have been given, what they witness, information from support providers and their own perception of the individual. The table below show the levels recorded during this period. The total number of TES referrals received during this period is 445.

Complainant Issues	Number	Perpetrator Issues	Number
Drug	3	Drug	55
Alcohol	10	Alcohol	27
Mental Health	44	Mental Health	70
Number of complainants with at least one issue	52	Number of perpetrators with at least one issue	105

The above figures equate to 35% of all referrals where either the perpetrator or the complainant has a drug, alcohol, mental health issue or combination of these.

- 5.8 The Officer assesses the information and makes appropriate referrals to different organisations/agencies to try to assist the perpetrator and/or complainant to resolve the issues and thus change their behaviour. For some, these issues are long term and/or a lifestyle choice and require intensive support from appropriate agencies and commitment from the person 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. In addition, some instances of anti social behaviour reported by tenants are not instigated by our tenants, whereby we then need to liaise with other agencies, including the Police, to take action. *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 attached at Appendix 1.*
- 5.9 The TES are preparing to take part in a project which is likely to last for 2 years with Aneurin Bevan University Health Board. The remit of the project is Community Psychology. The project offers a three tier model of consultation, training development and reflective practice. TES officers will meet a psychologist on a monthly basis to discuss cases involving children aged up to 18 years. They will be able to discuss behavioural issues of concern and receive advice about how to best approach the situation, with the aim being to upskill the officers to better understand children's difficulties within a normative, developmental and contextual framework. In addition Caerphilly Homes are planning to recruit to a new post of Mental Health Assessment Officer. Whilst the officer's primary role will be the undertaking of mental health assessments of housing applicants applying for accommodation through the Common Housing Register, it is anticipated that they will also be able to provide specialist support and guidance to TES support in relation to complex cases.
- 5.10 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 6 ½ years the following legal actions have been taken by TES:

Legal Actions

Action	2013 - 2014	2014 - 2015	2015 - 2016	2016 - 2017	2017 - 2018	2018 - 2019	1/4/2019 – 30/09/2019
Notice Of Seeking Possession	17	21	18	9	22	27	13
Injunctions – with/without power of arrest	0	5	2	5	4	6	2
Closure Order	0	1	0	0	1	2	2
Demotion Order	0	0	0	0	0	1	1
Suspended Possession Order	3	3	5	3	6	2	3 (1 – breach – eviction warrant executed)
Outright Possession Order	9	6	5	0	1	1	1

- 5.11 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.
- 5.12 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.
- 5.13 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 is reasonable to grant an order, the likelihood of the behaviour recurring and the impact of the behaviour on others.
- 5.14 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

- 5.15 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 anti-social behaviour.
- 5.16 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 for 2017 - 2018. Data for 2018 – 2019 is not available from all the

RSL's due to two of the organisations currently undergoing significant structural changes at all levels of the organisation.

- 5.17 Whilst it appears in 2017/2018 that Newport City Homes (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's total number of new cases being 841.

2017 – 2018 – Types of ASB Reported

Organisation	Stock No	New Cases	Noise Nuisance	Verbal abuse/ harassment/ intimidation	Drug/ substance abuse	Vandalism/ Property damage
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 (Pobl) (CCBC area only)	988	86	30	34	5	2

2018 – 2019 – Types of ASB Reported

Organisation	Stock No	New Cases	Noise Nuisance	Verbal abuse/ harassment/ intimidation	Drug/ substance abuse	Vandalism/ Property damage
Caerphilly Homes	10,800	809	384	183	80	40
Newport City Homes (NCH)	10,000	1221	178	114	38	24
Charter Housing (CCBC area only)	988	76	30	25	9	2

- 5.18 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.

2017 - 2018 – Legal Actions Taken

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

2018 - 2019 – Legal Actions Taken

Organisation	Civil Injunctions	Possession Orders (including Suspended PO's)	Closure Orders	Evictions
Caerphilly Homes	6	3	2	1
Charter Housing (Pobl) (CCBC area only)	0	1	0	0

5.19 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.

5.20 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. Recently Welsh Government has indicated that this legislation will not now be implemented until April 2021. Officers' proposals for implementation will be the subject of a future report.

Obligations of Tenants

- 5.21 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.
- 5.22 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.
- 5.23 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.

Conclusion

- 5.24 The Tenancy Enforcement Section (TES) 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. It investigates all complaints of noise nuisance and the more serious/persistent incidents of anti-social behaviour, which are assessed and

graded to determine a proportionate, measured and reasonable response. There is a trend of increasing numbers of referrals and complexity of cases and in some instances TES have to rely on the involvement of other agencies and support services to help resolve the issues a tenant may be causing.

- 5.25 TES seeks to provide a complainant a 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 and TES provides support and assistance to both perpetrators and complainants. 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.
- 5.26 All tenants have a secure tenancy agreement which they sign when accepting the offer of a tenancy. It 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.

6. ASSUMPTIONS

- 6.1 No assumptions have been made or thought necessary.

7. LINKS TO RELEVANT COUNCIL POLICIES

- 7.1 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.
- 7.2 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.
- 7.3 **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.
- 7.4 **Corporate Plan 2018-2023.**

The report content contributes towards and impacts the Corporate Well-being Objectives:

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

Objective 6 - Support citizens to remain independent and improve their well-being

8. WELL-BEING OF FUTURE GENERATIONS

- 8.1 The report contributes to the Well-being Goals:-
- A prosperous Wales*
 - A resilient Wales*
 - A healthier Wales*
 - A more equal Wales*
 - A Wales of cohesive communities*

- A globally responsible Wales*

It is consistent with the five ways of working as defined within the sustainable development principle in the Act. The five ways of working of the sustainable development principle, listed in the Act are:

- **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.

9. EQUALITIES IMPLICATIONS

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

10. FINANCIAL IMPLICATIONS

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

11. PERSONNEL IMPLICATIONS

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

12. CONSULTATIONS

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

13. STATUTORY POWER

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

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