

Tackling Anti-Social Behaviour in HMO Properties

A Guide for Owners and Managing
Agents

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1.0 Introduction

2.1 Background

The Houses in Multiple Occupation Act (Northern Ireland) 2016 was introduced to enable better regulation of Houses in Multiple Occupation (HMOs) by introducing a new licensing system to be administered by local district councils, which will replace the existing Northern Ireland Housing Executive registration scheme.

HMO legislation and regulation in Northern Ireland has remained relatively unchanged in comparison to other jurisdictions. England, Wales and Scotland currently operate mandatory HMO licensing systems and have done so for some time. The proposed licensing framework for HMOs in Northern Ireland more closely aligns with the Scottish system.

HMOs are a source of relatively inexpensive housing for a variety of groups such as students and migrant workers. They also tend to house some of the most vulnerable groups in society who have multiple needs beyond housing (e.g. people who are homeless, people with addiction problems). HMOs are becoming a more prevalent form of accommodation due to the impact of welfare reform, particularly changes to housing benefit entitlement.

If effectively implemented and sufficiently resourced, a new HMO regulatory framework for HMOs in Northern Ireland has the potential to have a positive impact on the lives of those living in HMOs, the owners of HMOs, and the residents of the communities in which HMOs are located. It is acknowledged that responsible HMO landlords want to be good neighbours, take the behaviour of their tenants seriously and already endeavour to resolve any alleged anti-social behaviour linked to their properties. Councils will continue to support landlords in doing so

This guide sets out how anti-social behaviour is relevant to the new licensing regime and how owners and agents are expected to deal with allegations of anti-social behaviour. ...

2.2 Fit and Proper Person Test and anti-social behaviour

As part of the new licensing regime, councils must assess whether the applicant is a fit and proper person.

Section 8 of the Houses in Multiple Occupation Act (Northern Ireland) 2016 states that a council may only grant a HMO licence if it is satisfied that, amongst other things, the owner and any managing agent is a fit and proper person and that the proposed management of the HMO is satisfactory.

Section 10 of the Act sets out the matters which the council must take into account when assessing whether an owner or managing agent is a fit and proper person. The Council must have regard whether a person has committed certain offences or where an associate or former associate has done so if it appears that is relevant to whether the applicant is a fit and proper person.

The council must have regard to any anti-social behaviour engaged in by the owner and managing agent and how they have dealt with anti-social behaviour caused by, or adversely affecting, their tenants.

Section 10(6) defines “anti-social behaviour” as:

- i. acting or threatening to act in a manner causing or likely to cause a nuisance or annoyance to a person residing in, visiting or otherwise engaging in a lawful activity in residential premises or in the locality of such premises, or
- ii. using or threatening to use residential premises for illegal purposes.

2.2 Types of anti-social behaviour

Anti-social behaviour covers a broad spectrum of behaviour and ranges from incidents that cause concern, stress, disquiet and/or irritation through to incidents which have a serious adverse impact on peoples quality of life. It can affect individuals or the community at large. Anti-social behaviour might include, amongst other things-

- a) Violence or the threat of violence;

- b) hate behaviour that targets members of identified groups because of their perceived differences (e.g. race, religion, political affiliation, disabilities or sexual orientation);
- c) noise nuisance (rowdy parties, loud music/TVs etc.);

- d) environmental quality issues (e.g. litter, accumulation of rubbish in the curtilage of the HMO, fly tipping in alleyways);
- e) Offensive drunkenness;
- f) Using housing accommodation for selling drugs or drug abuse or other unlawful purposes; and
- g) Intimidation and harassment.

The above list includes typical types of behaviour which are likely to be relevant to the council's assessment of the fit and proper person test. It is not intended to be exhaustive or prescriptive.

3.2 Action to deal effectively with anti-social behaviour

HMO owners and managing agents have a number of powers at their disposal to tackle anti-social tenants or to assist those tenants who have been subject to anti-social behaviour.

The ultimate sanction where the anti-social behaviour is being caused by a tenant is the eviction of that tenant. However, councils recognise that most HMO owners and managing agents will seek to remedy the situation before it reaches that stage.

Whilst deciding on how to deal with anti-social behaviour is a matter of judgement for the owner and managing agent, the alleged behaviour might form the basis of an objection to their licence application or the Council may consider that the alleged behaviour is so serious as to warrant considering revocation of licence. It is therefore important that the owner or managing agent can justify the appropriateness of their action, or lack of action.

HMO owners and managing agents' are required to commit to working in partnership with residents and other agencies to ensure the following:

- a) Preventative action
- b) Early intervention

- c) Provision of support and advice for those reporting anti-social behaviour and witnesses
- d) Provision of support for perpetrators where appropriate (for example where they are vulnerable or at risk)
- e) Where appropriate and there is sufficient evidence - legal action against perpetrators.

3.3 Preventative action

The HMO owner or managing agent should have systems in place to ensure that antisocial behaviour is minimised. They should have particular regard to:

- a) Requesting references from new tenants. They may then take into account any previous inappropriate behaviour when deciding to offer accommodation.
- b) The inclusion of clauses relating to behaviour in written tenancy agreements. This will help set the parameters and boundaries for behaviour at the outset. It is then possible for an HMO owner or managing agent to consider eviction on grounds of breach of the tenancy agreement should problem behaviour arise.
- c) Brief tenants at the commencement of the tenancy what is expected of them and the possible sanctions for inappropriate behaviour.

3.4 Early intervention

Except in very serious cases, HMO owners and managing agents initial intervention will aim to stop the problem behaviour, prevent re-occurrence and achieve effective and long-lasting solutions.

In many incidences, anti-social behaviour can be stopped when challenged early enough. Wherever possible, HMO owners and managing agents should use early non-legal remedy intervention measures.

Some of the steps owners and managing agents can take-

- a) Talk to your tenants
 - i. send them a letter, explaining what you've been told and ask them to modify their behaviour
 - ii. arrange a time to go and speak to them
 - iii. give advice and guidance as appropriate including noise reduction

- iv. highlight tenancy conditions that may have broken
 - v. agree what will change and record this, so you both have a copy
- b) Write to the guarantor(s) informing them that there has been anti-social behaviour emanating from within the curtilage of the house and asking them to use their influence on the tenants.
- c) Engage an independent dispute resolution and mediation service.
- d) Issue a valid Notice to Quit.

3.6 **Dispute resolution and mediation**

Mediation can help to resolve neighbour disputes for the following reasons:

- a) as the dispute handler can devote more time to the problem occupants and impacted neighbours feel that their complaints are being taken more seriously, and it reduces the time landlords or agents may have to spend trying to resolve the problem themselves;
- b) legal remedies are not appropriate for all cases, they are expensive and can often make disputes worse before they get better;
- c) officers of an independent organisation are seen as impartial and without conflicting interests;
- d) it can prevent a dispute from escalating into a more serious disturbance that may require court action; and

3.7 **Legal remedies**

Councils acknowledge that legal action, and in particular issuing court proceedings, is a remedy of last resort in most cases and should only be considered where informal action has failed and the problem persists or where the problems are considered sufficiently serious so as to warrant legal action.

Legal remedies can include reporting incidents to the PSNI or local authority depending on the nature of the behaviour. It also includes the possibility of evicting tenants where there has been persistent and/or serious instances of anti-social behaviour.

Where a landlord believes their tenant is being subjected to anti-social behaviour which presents a significant risk of harm, landlords are entitled to apply for an Injunction under the Housing (NI) Order 2003. The court can prohibit a person from engaging in conduct causing or likely to cause a nuisance, using the premises for immoral or illegal purposes, entering the premises or being found in the locality.

4.0 Demonstrating compliance

Good record keeping can be used by an owner or managing agent to demonstrate responsiveness to tenants and neighbours, and will assist to demonstrate that all reasonably practicable steps have been taken to minimise anti-social behaviour. As part of the standard conditions of licence, the licence holder must keep written records of complaints and how they are dealt with throughout the course of the tenancy for each occupant.

The licence conditions also require a landlord to keep the register of complaints and associated notes until the licence either lapses or is successfully renewed and those documents must be made available to the Council upon demand

Where a complaint has been received but could not be resolved, the licensee or managing agent must be able to demonstrate to the satisfaction of the Council that they took all reasonable steps to try to resolve the complaint and to mitigate against any future occurrence of the same type of complaint.

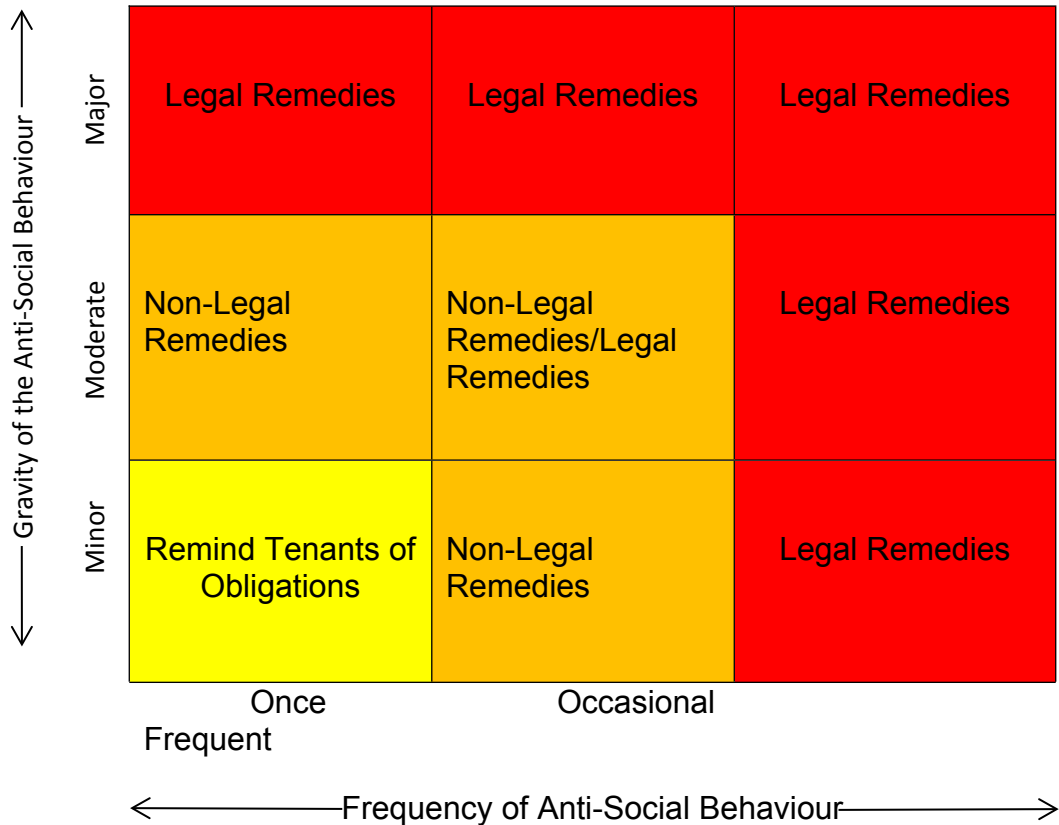
4.1 Intervention

The intervention(s) by the owner or managing agent will depend on the frequency and severity of any anti-social behaviour linked to their property. It is suggested that the following principles should be applied by landlords when assessing the level of intervention required:

- a) Suitability (the measure should be suitable for achieving the desired objective);
- b) Necessity (a less restrictive means should be used if it is equally effective); and

- c) Proportionality (the measure should not be disproportionate to the objective).

The diagram below represents the interventions which sets out the action which the council would expect to typically be considered depending on the prevailing circumstances:



It is important to bear in mind that this is illustrative and not prescriptive. The actions are those which the Owner or Managing Agent is expected to consider, not the steps which must be taken.

5.0 Anti-Social Behaviour Plan

Section 14(2) (b) of the Houses in Multiple Occupation Act (Northern Ireland) 2016 allows the council to include licence conditions requiring the taking of reasonable and practicable steps to prevent or reduce anti-social behaviour by persons occupying or visiting the HMO.

As an aid to owners and managing agents regarding the reasonable practical steps they need to take to tackle anti-social behaviour by the occupants of any relevant living accommodation, they should have in place an anti-social behaviour plan. Such a plan should include the following sections-

- a) Pre-Tenancy Checks – In this section you should outline your tenancy selection process.
- b) Tenancy Agreement – Your tenancy agreement should be clear and easy to understand. It should include provision in terms of how you will deal with anti-social behaviour and include a risk management plan if a high level of risk is identified.
- c) During Tenancy – In this section you should outline your procedures to deal with anti-social behaviour and how you monitor and record ASB and any remedial action taken.
- d) Post Tenancy – This section should include details of your processes for supplying references.

6.0 Conclusion

Through early intervention, HMO owners and managing agents can make a positive difference in tackling anti-social behaviour. It is recognised that each allegation of anti-social behaviour must be considered on its own facts and what works in one case may not work in another. The purpose of this document is to provide guidance as to how HMO landlords and managing agents can demonstrate that they have suitable policies and procedures in place to deal with anti-social behaviour and that those procedures are being implemented where appropriate.