

H6 - Anti-Social and Nuisance Behaviour Policy and Procedures

Title: Anti-Social and Nuisance Behaviour Policy and Procedures

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1. Policy Statement

1.1 This policy applies to all HAIL's tenants. The Policy has three core aims: (i) Prevention of Anti-Social Behaviour, (ii) Providing a sustainable community, and, (iii) HAIL's response if Anti-Social Behaviour is reported.

1.2 HAIL is committed to addressing nuisance and anti-social behaviour tenants at the earliest opportunity to encourage tenancy sustainment and to protect HAIL tenants, staff and property. HAIL staff will support tenants to take steps to deal with any issues as they arise.

1.3 HAIL recognises that as a landlord it must investigate and take action on all reports of anti-social behaviour and breach of tenancy and will give advice or take action where necessary.

1.4 It is HAIL's policy that wherever possible a conciliatory approach will be taken. In cases of harassment or victimisation however, action will be taken quickly to ensure the safety and security of the victim. By its action HAIL will demonstrate that it will not tolerate anti-social behaviour by its tenants or towards its tenants.

1.5 The grounds for any action taken by HAIL are based on the conditions stated in the Tenancy Agreements and in line with Residential Tenancies Act 2004 – 2020.

1.6 Tenants evicted will be regarded as having deliberately rendered themselves homeless and will not be re-housed by HAIL.

1.7 HAIL will issue letters for nuisance and anti-social behaviour in accordance with the precedent documents provided by the Residential Tenancies Board, subject to any changes required or proposed by HAIL's legal adviser.

2. Scope of the Policy

The scope of this policy relates to the terms and conditions of the Tenancy Agreement which apply to all members of the household/family of the Tenant, including children/young persons, and also to visitors to the dwelling let to the Tenant, and has been prepared with due regard to the Housing Legislation and applies to only HAIL properties.

3. Definition of Anti-Social Behaviour

A tenant's obligation in respect of anti-social behavior (ASB) is set out in section 16(h) of the Residential Tenancies Act 2004-2020 and under the terms of the relevant tenancy agreement, with a detailed definition of ASB set out in section 17 of the Act. A tenant is obliged not to behave within a dwelling, or in the vicinity of it, in a way that is anti-social. A tenant is also obliged to ensure other occupiers of, or visitors to, the dwelling do not behave within it, or in its vicinity, in a way that is anti-social.

To "*behave in a way that is anti-social*" means to;

- (a) *engage in behaviour that constitutes the commission of an offence, being an offence the commission of which is reasonably likely to affect directly the well-being or welfare of others,*

- (b) *engage in behaviour that causes, or could cause fear, danger, injury, damage or loss to any person living, working or otherwise lawfully in the dwelling concerned or its vicinity and without prejudice to the generality of the foregoing, includes violence, intimidation, coercion, harassment or obstruction of, or threats to, any such person, or*

- (c) *engage, persistently, in behaviour that prevents or interferes with the peaceful occupation*
 - (i) *by any other person residing in the dwelling concerned, of that dwelling,*
 - (ii) *by any person residing in any other dwelling contained in the property containing the dwelling concerned, of that other dwelling, or*
 - (iii) *by any person residing in a dwelling ("neighbourhood dwelling") in the vicinity of the dwelling or the property containing the dwelling concerned, of that neighbourhood dwelling.*

4.1 Examples of Anti-Social Behaviour

Tenants' obligations are set out in Section 16 of the Residential Tenancies Act 2004 – 2020 and the relevant tenancy agreement. Examples of breaches include, but are not limited to:

- tenants not allowing inspection of the property to be carried out;
- tenants not allowing repair work to be carried out;
- tenants using the property or causing it to be used for any purpose other than as a dwelling without the written consent of the Landlord (which consent the Landlord may, in its absolute discretion, withhold);
- causing damage to the property.

Some other examples are:

- The transmission of loud noise or loud music, or any other behaviour, which would be a source of inconvenience to occupants of this dwelling or any neighbouring dwellings or properties;
- Intimidation, racial harassment or hate behaviour;
- Violence or threats of violence against the person or property;
- Sale or supply of drugs or any other criminal offence;
- Targeted vandalism;
- Drunkenness;
- Trespassing or loitering outside properties;
- Obstructions of any common areas, doorways and other exits and entrances in the block and in an estate; and/or,
- Any act or omission which creates danger to the well-being of any neighbour or to his/her belongings.

Note: *The above list is only used as an example and does not exhaust all forms of Anti-Social Behaviour.*

5. Prevention of Anti-Social Behaviour

It is HAILs policy to try and prevent Anti-Social Behaviour where and when possible. There are a number of techniques a Housing Association can employ to minimise the risk of Anti-Social Behaviour occurring:

Tenant references and background checks: As part of HAIL's Lettings Policy, necessary checks will have been carried out on all new tenants when they move into their property. Such checks include contacting past landlords, the HSE Community Welfare Services, An Garda Síochána and the Local Authority Housing



Services. Where appropriate, HAIL can rely on its rights to refuse an applicant a new tenancy. However, HAIL is mindful of the desire to provide accommodation for persons with specific needs and therefore any previous incidents of Anti-Social Behaviour will not necessarily disqualify an applicant where, for example, the incidents are of a less serious nature and HAIL is satisfied that appropriate supports will be in place to allow the tenant sustain the tenancy and meet their obligations under the tenancy. In this way, HAIL will, where appropriate, help with the rehabilitation of prior offenders and will seek to support them living in the community.

Training and Education: HAIL arranges pre-tenancy training for tenants to explain the roles and responsibilities of both the landlord and the tenant. In addition, guidance is given on the Tenancy Agreement and the expectations regarding behaviour.

A Good Neighbour Agreement will be signed by each new tenant (**Appendix 2**).

Neighbourhood Supports: Where necessary, and with the assistance of the local Gardaí, HAIL will meet with tenants and establish Security Working Groups to consider safety and security issues in their neighbourhood. An example of this is *Neighbourhood Watch*.

HAIL will work closely with the local Gardaí to endeavour to ensure that there is a regular 'Beat on the Street', i.e. regular Gardaí checks or 'Neighbourhood Watch'.

Where CCTV is deemed necessary and where approval is granted, there will be a proactive review of CCTV installation which will be in line with HAIL's Data Protection Policy.

HAIL will conduct *Tenant Satisfaction Surveys* to help gauge tenants' satisfaction levels and address issues that may arise.

As part of good estate management, HAIL will work closely with tenants to encourage participation in community events to promote good community relations and cohesion.

6. Dealing with Incidents of Anti-Social Behaviour

Incidents of Anti-Social Behaviour may come to the attention of HAIL by any number of means, such as:

- a) a complaint from another Housing Association tenant, a third party tenant or occupier, or anyone else who could be potentially affected by the tenant's behaviour; or,
- b) the Housing Officer or other representative of HAIL may become directly aware of the behaviour; or,
- c) notification from the support provider, An Garda Siochana, HSE Community Welfare Services.

The following procedures will be followed in each case:

6.1 Anti-Social Behaviour Investigative Procedures

In the event that the Housing Association receives an individual complaint against a HAIL tenant involving behaviour, which falls within the definition of Anti-Social Behaviour as per this Policy, the procedure is as follows:

Stage 1 – Receiving the complaint of anti-social behaviour

On receipt of a complaint of nuisance and/or anti-social behaviour, the Housing Officer will:

1. Assess, in general terms, where the complaint constitutes Anti-Social Behaviour;
2. Register the complaint on the Anti-Social Behaviour Register, which is held and monitored by HAIL;

3. Send a letter of acknowledgement to the complainant, within five working days; and,
4. Assess the seriousness of the complaint and the level of risk which the alleged behaviour poses to others and to property.
5. Check to see if the tenant has Part 4 rights.

The following procedures and steps will be adapted appropriately, depending on the potential level of risk identified at the outset or as it comes to light in the course of handling the complaint. This applies particularly in the case of behaviour which falls within paragraphs of the definition of Anti-Social Behaviour at paragraph 3 and 4.

In the event the alleged behaviour poses a potential risk to the individual themselves, the matter should be referred to the Line Manager for discussion to involve the Tenancy Sustainment Officer (TSO) or support provider, An Garda Síochana, or social services.

Stage 2 – Interviewing all parties

The Housing Officer will:

1. explore the circumstances surrounding the complaint;
2. enquire whether the complainant has spoken to or interacted with the person(s) involved;
3. enquire whether the Gardaí were called; and,
4. where deemed appropriate, attempt to resolve the matter amicably,
5. discuss with TSO if appropriate.

Depending on the circumstances, the Housing Officer will agree with the complainant an action plan on the way forward, which will include:

- The complainant being advised that should the Anti-Social Behaviour persist, they need to inform the Gardaí;

- The complainant and/or others may be asked to complete Incident Diaries (**Appendix 3**); should the Anti-Social Behaviour be persistent in nature;
- If other statutory bodies were involved (e.g. the Gardaí), the Housing Officer will write seeking information and confirmation of the allegations and any actions that have been taken;
- The Housing Officer will arrange a meeting with the alleged perpetrator(s) to take a Statement of Events. At this meeting, HAIL will have 2 representatives present and the tenant has the right to have an advocate present, this can include a support provider, an external witness or any other person whom the tenant decides. All parties in attendance at this meeting will sign the Minutes of the Meeting as a true record of events.
- Any non-attendance at the interview, (at any more than two attempts) by the alleged perpetrator without appropriate reason, will be deemed as a breach of tenancy if the complaint is of a serious nature or will have voided their right to issue their memory of events, should the complaint be of a less serious nature;
- The Housing Officer, with another staff member from HAIL, will interview any witnesses and ask for a Statement of Events. Once again, each statement will be signed by all parties present.
- The Housing Officer will produce a Housing Management Report detailing the findings of the investigations (**Appendix 4**) and present it and recommendations to the Head of Housing & Property Management.
- Should the alleged perpetrator have counter allegations, a new investigation and a new case is opened and Stage 1 commences with the new allegation.

Stage 3 – Choosing the most appropriate way forward

Following a review of the report, the Head of Housing & Property Management and Housing Officer agree an appropriate course of action. This could include:

1. Close the case if, for example, there is insufficient evidence to support the allegation of Anti-Social Behaviour. A letter will be issued to all parties involved informing them that the case has been closed.
2. Uphold the complaint and agree between the parties how the issue is to be resolved. In some cases, due to the nature of the complaint, it may be sufficient to bring the complaint to the attention of the alleged perpetrator, and agree to review the matter within a set period e.g. eight weeks. A letter will be issued to all parties involved to inform them of the outcome and that the case has been closed.
3. Initiate Inter-agency Supports:

Where the issue cannot be resolved directly or where alleged behaviour is of a more serious nature, the following steps, will be followed, where appropriate:

- **Mediation** (*if all parties agree*). Should one party not agree, a refusal letter will issue and points 4 to 8 (below) will be followed;
 - **State Advocacy** (e.g. HSE). Allow another support service to be involved in the case as an independent advocate for all parties;
 - **Other Advocacy Services** (e.g. SAGE). Allow another support service to be involved in the case for all parties involved. Sometimes this course of action allows dispute resolution to be taken into account.
4. Seek Acceptable Behaviour Contracts – normally 6-month contracts are issued and reviewed at agreed intervals (**Appendix 5**).
 5. When the issue has been decided and it is found that the person concerned has behaved in a way which is anti-social, a warning may be issued as follows:
 - a) If this is the first report of Anti-Social Behaviour, and upon investigation it is deemed a minor ASB, **issue a verbal warning.**
 - b) If this is a recurring report of Anti-Social Behaviour or if the Anti-Social Behaviour is of a more serious nature and upon investigation, the allegation is upheld, **issue a formal written warning.**

- c) If the Anti-Social Behaviour persists and another report is issued, or if the Anti-Social Behaviour is of a more serious nature, and upon further investigation the allegation is upheld, **issue a final written warning**.
6. If all courses of action are exhausted, or in cases requiring more immediate action such as violent or threatening behaviour, **issue a Notice of Termination** (i.e. the tenant is asked to leave the property within a period of seven or twenty-eight days, depending on the nature of the Anti-Social Behaviour).

Residential Tenancies Act 2020 and Notices of Termination

It is worth noting as per Appendix 8 guidelines; while Notices of Termination can be served at any stage during an emergency period, Notices of Termination which have been served by HAIL during an emergency period, can only take effect under the below circumstances:

1. Where a tenant behaves, or other occupiers/ visitors are allowed to behave, in an anti-social manner;
2. A tenant acts, or other occupiers/visitors are allowed to act, in a way that would invalidate a landlord's insurance;
3. Where a rental property is being used for a purpose other than as a dwelling without the landlord's consent; and
4. Where behaviour occurs that threatens the fabric of the dwelling.

Should the breach of tenancy not fall under the above 4 points; then a Notice of Termination; which has been served during an emergency period (i.e. in an area that is under 5km restrictions) cannot take effect until the emergency period has been lifted plus a further 10 day grace period.

Note: *At any stage, the tenant can seek advice from the Residential Tenancies Board and likewise ask for an investigation from the Residential Tenancies Board.*

Stage 4 – Terminating the Tenancy

When all of the above avenues have been exhausted or in cases requiring more immediate action, a **Notice of Termination** will be considered.

The Housing Officer will complete the final Housing Management Report (**Appendix 4**) outlining all of the actions taken and draw up a **Notice of Termination** to be authorised by the Head of Housing & Property Management (depending on the circumstances, see **Appendix 6 for an example** or go to the Residential Tenancies Board website,). The Head of Housing & Property Management will then determine whether the **Notice of Termination** should be served.

If the Head of Housing & Property Management decides that the **Notice of Termination** is to be served, then:

1. The Head of Housing & Property Management's report (**Appendix 4**) will be presented, agreed and signed by the CEO.
2. The Housing Officer and/or Head of Housing & Property Management will deliver the Notice of Termination by hand to all of the named tenants at either home or at work. If the tenant(s) are not at home or at work and the Housing Officer is unable to deliver the Notice of Termination by hand, it can be served to anyone at the property over the age of 16, and/or it can be sent by recorded postal delivery. In appropriate cases, a meeting may be arranged with the tenant before serving the termination notice to let them know the proposed course of action and to explore any alternative actions.
3. The delivery method must be recorded and an original copy of the **Notice of Termination** kept on file.
4. A copy of the Notice of Termination is then sent to the Residential Tenancies Board along with the Notice of Termination Return Form (See Appendix 9).
5. From the date upon which the tenancy is to be terminated in accordance with the Notice of Termination no rent should be accepted from a tenant. If payment is

received it is posted to the suspense account as 'mesne rates' (which essentially means compensation for trespass). See appendix 10 for a template letter.

6. In respect of a Notice of Termination, for counting purposes day 1 of the notice period begins on the day immediately following the date of service of the notice, please also refer to Appendix 8 which stipulates notice periods during Covid-19 restrictions.
7. A legal case file will then be forwarded by the Housing Officer to the Head of Housing & Property Management who will decide whether to refer it to the Company's legal advisers.
6. After the expiry of the Notice of Termination, a letter can be sent to the tenant demanding possession and informing the tenant that the matter will be referred to the Residential Tenancies Board if the tenant does not vacate the property and that they are overholding and that any funds received from them will be treated as mesne rates.
7. In more urgent cases, the matter will be referred to the Residential Tenancies Board without further notice to the tenant once the notice period has expired.

Note please always refer to Appendix 8 which refers to Covid 19 restrictions as notice period may vary depending when they were served.
8. All of the above steps must be documented. The Head of Housing & Property Management must be informed and must be in agreement. The Company's legal advisors, CEO and Property Committee will be updated accordingly.
9. Should the Head of Housing & Property Management decide that the case be referred to the Residential Tenancies Board to secure vacant possession of the property, then the Housing Officer will refer the case to the Residential Tenancies Board in accordance with their dispute resolution procedures.

7 Day Notice of Termination's

There is **no** requirement to provide a warning notice where the alleged anti-social behaviour equates to the definition at Section 3. (a) or (b) above or where the behaviour threatens the fabric of the dwelling or the property containing the dwelling. In such an instance the breach is deemed 'serious' and a 7 day notice of termination may be served.

In circumstances where HAIL is seeking to terminate a tenancy by providing a period of 7 days' notice, a high burden of evidentiary proof may be required to show that such a 7 days' notice period was appropriate having regard to the circumstances. Likewise, the above procedures are followed in stage 4 above with an additional report to go to the Chairperson of HAIL, to ensure that the severity of the outcome of the decision to issue the 7 days' notice has been evidenced and is warranted.

Stage 5 – Seeking and Enforcing Determination Orders by the RTB

As above, the Housing Officer will refer the case to the Residential Tenancies Board in accordance with their dispute resolution procedures, keeping in mind the notice periods as set out by the Residential Tenancies Act, 2020.

Prior to the Residential Tenancies Board hearing, the Housing Officer must keep all parties and all witnesses informed as to the hearing date, time, location, etc.

The Housing Officer must ensure that all witnesses have made the necessary arrangements to attend the hearing.

The Housing Officer must ensure that:

- all evidence and the legal file is up to date;
- all necessary witnesses are available;
- events and dates are highlighted;
- reports are readily accessible for the hearing; and,

- copies of the file are maintained - one by the Housing Officer, the Head of Housing & Property Management, and the legal advisor.

Where a Determination Order is obtained, the Order will be served on the tenant by the Residential Tenancies Board. If the tenant does not comply with the Order, either the Residential Tenancies Board or the HAIL can apply to the District Court for a Court Order directing the tenant to comply with the Determination Order.

Should the tenant not comply with the District Court Order, the local Sheriff can be asked to enforce the Order. A date is agreed to go to the property to regain possession of the property and forced entry can be used, if necessary.

Whenever the tenancy is terminated, the statutory agencies should be informed whether there are any health and welfare issues concerning the former tenant/household.

6.2 Procedure in the event of an ASB complaint in the community and perpetrator is not a HAIL tenant:

1. Inform the Management Company, as required
2. An Action Plan put in place with the Head of Housing & Property Management which could include other statutory agencies, such as the Gardaí, HSE, etc.;
3. A Project/Focus Group put in place to discuss an Action Plan, and amend if appropriate and as necessary;
4. Call a Tenants' meeting to discuss the Action Plan, and amend if appropriate;
5. Ensure that the Action Plan is followed through and ensure that the tenants are updated on progress; and,
6. The Housing Officer is to source any additional funding, if necessary.

6.3 Monitoring Anti-Social Behaviour

1. HAIL maintains an Anti-Social Behaviour Register/log.
2. The Anti-Social Behaviour Register is reviewed regularly and every quarter statistic's around ASB cases are reported to the Irish Council for Social Housing (ICSH) through HAPM and also to the Board.
3. The Housing Officer puts an action plan/strategy in place if a pattern of Anti-Social Behaviour is recurring. The Head of Housing & Property Management authorises the plan accordingly.

7. Confidentiality

Any information relating to Anti-Social Behaviour provided to HAIL will be treated in the strictest confidence. It will not be passed to the alleged perpetrator without the permission of the complainant. HAIL will always seek the permission of the complainant if there is a need to disclose information to the perpetrator.

In the event that the information concerns the welfare or safety of others or alternatively is of a criminal nature, then HAIL has an obligation in certain circumstances to pass the information to the appropriate authorities such as An Garda Siochana or Social Services.

Likewise, HAIL will comply with Data Protection legislation and any data access requests, as per HAIL's Data Protection Policy.

The identity of complainants will be protected by HAIL. As the information was given in confidence, its disclosure could place tenants at risk of retaliation and would discourage other tenants from complaining about Anti-Social Behaviour in the future.

8. Complaints

Tenants have a right to complain about Anti-Social Behaviour and to have their complaint dealt with in a prompt and fair manner, in accordance with HAIL's procedures.

If a tenant is not satisfied with the way in which his/her grievance was handled or with the outcome of the investigation, he/she can make a complaint as per HAIL's Complaints and Compliments Policy (C2). Alternatively, they can lodge a Dispute case against HAIL with the Residential Tenancies Board.

HAIL also has a duty to any person who could be potentially affected by anti-social behaviour to enforce the obligations of its Tenancy Agreement. If HAIL fails in this duty, the person affected can make a complaint to the Residential Tenancies Board.

9. Appendices

Appendix 1 - Legislation

- *Residential Tenancies (Amendment) Act, 2004 - 2019 and all amendments forthwith*
- *Residential Tenancies Act, 2020*

Appendix 2 - Good Neighbour Agreement

Appendix 3 - ASB Incident Report / Diary Sheet

Appendix 4 - Housing Management Report

Appendix 5 - Acceptable Behaviour Contract

Appendix 6 - Notice of Termination example letter

Appendix 7 – Housing Officers Checklist for ASB and Nuisance Behaviour

Appendix 8 - Residential Tenancies Act, 2020 (Guidance Note)

Appendix 9 - Notice of Termination Return Form to RTB

Appendix 10 – Letter on overholding and mesne rates