

Wigan Community Resilience Team

ASB Resolution Model

3-step framework for tackling anti-social behaviour

Version	Date	Amended by	Comments
V1	06/09/2019	M Fraser	5-step model introduced following restructure of ASB Services and formation of Community Resilience Team, cognisant with August 2019 Statutory Guidance updates.
V2	21/10/2019	M Fraser	Minor amendments following input from Legal Services
V3	01/07/2020	M Fraser	ASB Policy updated, signed off by P&CSP Board, document made public via Council website
V4	15/02/2021	M Fraser	Updated to include January 2021 Statutory Guidance updates. Model refined from 5-steps to 3-steps for improved clarity.

Background

Challenging and tackling anti-social behaviour within the Wigan Borough whilst building community resilience is the primary objective of the Community Resilience Team.

In January 2021 new Statutory guidance was issued by the Home Office to front line professionals:

<https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

The guidance is intended to support the police, local authorities, and social landlords in their use of powers conferred under the Anti-social Behaviour, Crime and Policing Act 2014 to address anti-social behaviour.

The changes in this guidance aim to ensure that there is a greater focus on the impact of anti-social behaviour on victims and on their needs, ensuring that the relevant legal tests are met before the powers are used, underlining the importance of ensuring that the use of the powers are focused on specific behaviour that is anti-social or causing nuisance, and ensuring that the issues of local consultation, accountability and transparency are addressed.

As a service is it essential that we deliver appropriate interventions, with partners, to all reports of anti-social behaviour.

To meet this purpose, we have developed our '**ASB Resolution Model**' This is an incremental staged 'framework' approach designed to build community resilience in attempting to resolve incidents of anti-social behaviour, initially through a restorative approach but subsequently leading to enforcement action if that approach is unsuccessful.

Application of the model will be on a case by case bases and recognises that some serious cases will go straight to urgent enforcement to safeguard individuals, families, and communities.

The model comprises of 3 steps:

1. Self Help
2. Initial investigation, Prevention, and Intervention
3. Full investigation and Enforcement (Legal Action)

Step 1 (Self Help):

Speak to your Neighbour.

If you become aware of a neighbour complaint, you should first encourage them to talk to their neighbour and try to resolve the matter if it is safe and they feel comfortable doing so. This is often the best way to sort out issues and can stop things getting worse. Reporting it straight away can cause resentment and make resolving the situation more difficult. The neighbour may not realise they are causing problems and may be happy to change their behaviour.

Reinforce that the conversation they have must be a friendly conversation with the other party **See our Good Neighbour guide** for how to advise them to approach this conversation.

If they do not feel able to have the conversation with the other party, why not get them to ask a friend or relative to speak in a friendly manner on your behalf.

Ensure that you advise the complainant to make a note of the time and date they had the conversation.

Write to your Neighbour.

If they are concerned about physically approaching their neighbour, advise them to consider writing them a friendly letter to outline the issues that are affecting them. Remember they may not be aware of the impact they are having.

Alternatively, advise them to send them one of our **Dear Neighbour Cards**, to highlight the issues they are concerned about. These can be downloaded from our website.

Ensure that you advise the complainant to make a note of the date that they sent the letter, and ideally retain a copy.

Signpost the resident to the correct department or our webpage.

Residents should be directed to the relevant department if the matter is not an aspect of anti-social behaviour dealt with by the Community Resilience Team, alternatively they should be signposted to the Council webpage www.wigan.gov.uk where there is lots of information about what is and what is not classed as anti-social behaviour, as well as which organisation different aspects on anti-social behaviour should be reported to.

The website also contains a copy of this model, as well as other documents that will assist residents in ensuring they are able to capture the right information and direct it to the correct department.

If the report has already opened a case file on our APP system, as well as advising the customer of the appropriate department to deal with their enquiry, a referral should also be forwarded by the CRT member of staff, and a note should be made on our case file to outline the action undertaken before closing our case file (using the NZ6 code – referred to other service)

Closure of Case

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If following conversation with the complainant, they indicate that they have not attempted the above steps to try and remedy the situation they should be encouraged to do so, and it should be highlighted that often intervention in an official capacity can antagonise a situation.

A note of your conversation should be attached to the case record.

However if the complainant indicates they are unwilling to attempt contact themselves for any reason, we should advise them that we will support them in attempting to resolve the situation and you should move to 'step 2' and agree a plan of action as to how you will attempt to support them in resolving the matter.

If the complainant is going to attempt resolution by themselves the case should be closed as a 'Step 1 outcome' (code V1Z) and the resident should be advised of the APP number for their case and asked to quote it, should they encounter further similar issues within the next 6 months.

If you are going to be undertaking further action, the case must not be closed as a 'step 1 outcome'.

Re-opening of the Case closed at 'Step 1'.

Should further complaints subsequently be received within a 6-month period of the initial complaint being closed then the case should be re-opened as a 'Step 2' investigation using the original APP code and endorsing on the Action log 're-opened at step 2' (code V2M)

If the further report has been reported on the APP system and generated a new APP reference, it will be necessary to cross reference these records and identify one of the records to be the 'MASTER report', on which all future actions will be recorded, ideally this should be the first opened record. The later record(s) should be endorsed in the 'category Field' on the front page of the record as 'VAF – Witness Complaint re existing case' and a link to the MASTER record should be added on the 'Action Page'.

Step 2 – Initial investigation, Prevention, and Intervention

When a resident who contacts us advises that they have already attempted to amicably resolve the situation with their neighbour and the issue is continuing it may be necessary for us to intervene in attempting to support the resolution. This will involve the requirement to engage with both parties, it is essential that such engagement is always conducted from a position of neutrality, and in the initial stages it will be necessary to agree a course of conduct that will work towards resolving the issue in the most informal approach possible for the given circumstances.

Part of this stage may have already been gleaned through the complainant contacting the Council through the Contact Centre or by another third-party contact.

This stage should initially commence with reviewing what we already know about the issue and take in to account any historic information we have which may indicate the persistence of the issue and necessitate a more immediate response to the highest level of the model. Even if such complaints are older than 6 months.

It will be necessary for the assigned investigating officer to make direct contact with the complainant to discuss their case to establish the extent of the issue being reported and agree a course of action to address the issue. Best practice would encourage that this meeting should wherever possible be conducted face to face, so it will be necessary to arrange a meeting at a mutually convenient time and location. However, if a face-to-face meeting is not possible, you should ideally seek an alternative method of meeting for example via a virtual platform (Microsoft Teams, Zoom etc), as a minimum such contact should be via telephone.

The stages of this element of the model include:

- Completion of Fact-finding sheet at point of reporting
- Research into previous allegations against the same subject.
- Meeting with complainant:
 - Discuss issue.
 - Obtain written consent.
 - Victims voice - Identify and document expectations / manage expectations.
 - Victim impact – Capture the initial impact score (1 – 5)
 - Identify and agree course of action (Action Plan), this may also necessitate an agreement for how the complainant will continue to gather further evidence to support your investigation, such as the completion of a ‘Nuisance Diary’ (see Appendix ‘A’) or utilising the ‘Noise App’ (see Appendix ‘B)
 - Establish if any other issues would require support – facilitate that support if appropriate by liaising/coordinating with services.
 - Emphasise importance of mediation.

The outcome of this meeting should be confirmed in writing and a copy of the outcome must be sent to the complainant, so that it is clear what the agreed outcome is, this ensures that that the complainant has a written record of the agreed action plan, the reference number of their specific case and the direct contact details of the investigating officer. A copy of this letter must be affixed to the relevant APP record.

Note:

Throughout the journey of a case you should continue to remind, encourage, and support residents to seek out their own informal resolutions and to continue to try to resolve issues amicably with their neighbours if possible – tolerance, understanding and expectations are all factors that we need to attempt to manage with complainants.

It is important that we encourage resilience within our residents, so that they are not always relying on Services to resolve their issues, the purpose of an 'Action Plan' is a two way 'Deal', in which we will agree to do certain undertakings, but they themselves must agree to do their part in what is asked of them.

Once the facts of the allegation have been outlined, it will be necessary as part of our role for us to engage with the identified alleged subject. At this time, the circumstances may only be an allegation with no corroboration of facts. Investigators must therefore ensure that they remain impartial when engaging.

However, the existence of an allegation is sufficient information for us to engage with the alleged subject and it is also sufficient for us to put to the alleged subject the circumstances of the complaint and the possible consequences should it be found to be true and there is no change in the future conduct, this is referred to as an 'Advisory Warning'.

Subject to the agreed wishes of the complainant and the agreed action plan, it will be necessary for the assigned investigating officer to contact the alleged subject, best practice would encourage that this meeting should wherever possible be conducted face to face. The conduct of the meeting must ensure that the below listed information has been obtained and discussed:

- Establish their status, e.g. homeowner, private rented, council tenant.
- Discuss issue, specifically making them aware of what is causing the issue.
- Discuss possible solutions including advice re being a 'good neighbour'.
- Identify and agree course of action (Action Plan), effectively an informal acceptable behaviour agreement.
- Establish if any other issues would require support – facilitate that support if appropriate by liaising with services.
- Emphasise importance of mediation.
- Outline potential consequences – 'Advisory Warning'.

The outcome of this meeting should be documented in writing and a copy of the outcome must be sent to the alleged subject, so that it is clear what the allegation is, and the potential consequences should the conduct continue. A copy of this letter must be affixed to the relevant APP record.

Closure of Case

In most cases, intervention in this manner will result in an amicable outcome. Cases will be closed after 28 days of an intervention where:

- No further reports or information has been received.
- The complainant confirms that the situation has improved.
- The complainant no longer wishes to support the investigation.

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Prior to the point of closure a check should be undertaken with the complainant to confirm that the situation has improved or to explore why further information has not been received.

On deciding if the case is to be closed it will be necessary for the Investigating Officer to undertake an impact assessment with the complainant to determine if our interventions have resulted in an improved outcome for the complainant, this should be captured by asking the complainant what they perceive the impact score now to be (0 – 5). This outcome score should be recorded on the case file record using the appropriate action code.

Note:

The capturing of the initial impact score and the 'closure' impact score is mandatory in ALL cases commenced since 15th February 2021 and is important so that the Service can evaluate the impact that our interventions are having.

What if Complaints continue to be received?

If following the initial response complaints continue to be received indicating that the steps already taken have not been successful in resolving the issue, our approach should be to continue attempting to resolve the matter in as informal a manner as appropriate. One or more of the following tactics may be used and there does not necessarily have to be an order in which they are used as every case is different, neither is there a necessity to try all the tactics. Other forms of intervention may just be a further conversation with the other party and trying something different!

Possible informal interventions include:

Try something different!

Do not be afraid to think outside the box for an innovative solution, remember a solution that may cost us several hundred pounds but resolves the matter is a solution that will save considerable money if you consider the thousands of pounds it will cost to undertake a case involving legal action. Some innovative yet simple solutions that have been used in the past by way of example include: Purchasing wireless headphones for a noise complaint where it was the volume of the TV of one hard of hearing resident disturbing the neighbours. Another was paying to carpet a room to reduce the sound of general movement to the residents living below. A door closing device, where the complaint relates to banging doors. Clearly in each of these cases the ability to pay by the resident should first be considered if they can afford to pay for the remedy themselves.

Advisory Warning.

This could be verbal or written, but in the event of verbal should always be followed up in writing. This should inform the alleged subject of the reports that have been made against them but not give any presumption of finding of fact either way. Rather that investigation may continue into this matter and outline potential consequences should the incident(s) in question and/or any further incidents be reported and found to be true.

A verbal or written warning

In deciding whether to use a verbal or written warning, you should be satisfied that there is evidence that anti-social behaviour has occurred or is likely to occur. The warning should be specific about the behaviour in question and why it is not acceptable, the impact that this is having on the victim or community and the consequences of non-compliance.

Where appropriate, local agencies should alert each other when a warning has been given so that it can be effectively monitored, and a record should be kept so that it can be used as evidence in court proceedings later if matters are taken to that stage.

A community resolution/remedy (Only available as a Police Outcome)

Community resolutions are a means of resolving less serious offences or instances of anti-social behaviour through informal agreement between the parties involved as opposed to progression through the criminal justice process. A community resolution may be used with both youth and adult perpetrators and allows the police to deal more proportionately with less serious crime and anti-social behaviour, taking account of the needs of the victim, perpetrator, and wider community.

Community resolutions are primarily aimed at first time perpetrators where genuine remorse has been expressed, and where an out-of-court disposal is more appropriate than taking more formal action. The Community Remedy document discussed in Part 1 of the Home Office guidance must be used when dealing with anti-social behaviour or less serious offences out of court through community resolutions.

Mediation

In appropriate circumstances, mediation can be an effective way of resolving an issue by bringing all parties together. This can be effective in resolving neighbour disputes, family conflicts, lifestyle differences such as noise nuisance complaints and similar situations. However, mediation is unlikely to work if forced on those involved. All parties must be willing to come to the table and discuss their issues and engage in the process.

It is not for the mediator to establish a solution to the issue as, in most cases, they will have already tried this with each party unsuccessfully. For mediation to deliver long-term solutions, those in dispute should agree a solution. The mediator should facilitate the conversation and draw up any agreement if required for all parties to sign-up to if agreement is reached.

See Appendix 'C' for guidance relating to Mediation.

Acceptable Behaviour Contracts/Agreements (ABC)

An acceptable behaviour contract or agreement is a voluntary written agreement between a perpetrator of anti-social behaviour and the agency or agencies acting locally to prevent that behaviour. It can be an effective way of dealing with anti-social individuals, and particularly young people, to nip the problem behaviour in the bud before it escalates. They provide an opportunity to include positive requirements as well as prohibitions to help support the person tackle any underlying issues which are driving their behaviour.

The terms of an acceptable behaviour contract or agreement should be discussed with the perpetrator before they are drafted and signed to help encourage compliance. However, there is no

formal sanction associated with refusing to sign, although in such circumstances, this may suggest that a Civil Injunction or a Criminal Behaviour Order should be considered.

In the event of a refusal to sign we should ensure that we document in writing and send a further warning letter or 'advisory notice' outlining that we have sought agreement through an acceptable behaviour agreement, the fact they have declined to agree to such a contract and the consequences of what may happen should they continue to behave in an anti-social manner.

Similarly, there are no formal sanctions associated with breaching an acceptable behaviour contract or agreement, and where this occurs, consideration can be given to taking further steps, such as seeking a Civil Injunction, if the circumstances warrant this. Where this is the case, the work undertaken as part of drafting the acceptable behaviour contract or agreement can form part of the evidence pack for the court.

Formal warning

As with the Acceptable Behaviour Contract, a Formal Warning is a voluntary written agreement and is the last informal method of intervention before utilising enforcement powers. There is no obligation to conduct a Formal Warning meeting, but it may be a useful opportunity to provide a final warning to an individual, offering one last chance to amend their behaviour before enforcement action is sought. If an ABC has previously been signed a copy should be provided and referred to and the contents of this should be discussed again. The consequences of any further incidents of anti-social behaviour should be repeated and it should be made clear that no other informal interventions will be utilised after this point.

As with the ABC, as this is an informal intervention there is no sanction for refusing to attend a Formal Warning meeting or sign the document. However, in these circumstances the refusal should be clearly documented, and a letter sent out to the individual, explaining that a refusal does not prevent any agency from taking any further action and that the situation is now at a serious level and any further incidents may result in Legal Action.

As with the ABC, there is no expiry date of a Formal Warning document, but it is generally accepted that this is applicable for a 12-month period. However, common sense should be applied and if there has been a considerable time gap between incidents, or if incidents are of a very different nature then this may need to be revisited and consideration given to attempting further intervention methods.

Parenting contracts

Where informal interventions are used with a young person under 18, his or her parents or guardians should be contacted in advance of the decision to act. In many cases, they may be able to play an important part in ensuring the individual changes their behaviour. While there are formal routes such as parenting orders, at this stage it will be expected that the parent will have a voluntary role to play in any acceptable behaviour contract. However, where the behaviour of the parent or guardian is part of the issue (either because they are a bad influence or are failing to provide suitable supervision) we could consider a parenting contract. These are like an acceptable behaviour contract but are signed by the parent or guardian. They could also be considered where the child in question is under 10 and where other interventions are not appropriate for the perpetrator themselves. This

could also be a good opportunity to explore any additional support that could be offered to parents that are struggling, including parenting courses.

Support and counselling

The anti-social behaviour powers allow professionals to respond to the underlying causes of anti-social behaviour, for example through positive requirements attached to a Civil Injunction or Criminal Behaviour Order. However, providing positive support does not have to wait for formal court action, and can be given as part of any informal intervention, for example by providing support around overcoming substance misuse or alcohol dependency that may be linked to the person's anti-social behaviour.

Conclusion

In many cases, informal and early intervention can be successful in changing behaviour and protecting communities. Such interventions may be included in local plans to deal with anti-social behaviour but should not replace formal interventions where these are the most effective means of dealing with anti-social behaviour.

Step 3 - Full investigation and Enforcement (Legal Action)

Case Investigation / Evidence gathering for potential enforcement.

The aforementioned activity will include an element of evidence gathering and case investigation, so this element is not exclusive but is designed to ensure a focus on evidence gathering with the intention of undertaking more formal enforcement through the Courts. Equally the fact that we are moving towards enforcement action may bring about a voluntary change in behaviour of the alleged perpetrator and if this is the case, then resolution through an informal process may be more appropriate.

Prior to undertaking expensive and time-consuming evidence gathering, especially involving technical deployments, liaison should occur with other agencies and departments to ascertain any work they are already undertaking. This will also ensure that we are not seeking to undertake enforcement action where another part of the Council is investing heavily in support that may remedy the situation, or another agency or team is already seeking a prosecution (for example, police or the rent arrears team). To that end it will be necessary to hold a multi-agency meeting to discuss the most appropriate way forward.

If there is a difference of opinion between Council Departments regarding the most appropriate method of tackling the issue, then this must be escalated for resolution at management level.

Evidence gathering may include any of the below:

- Liaison with Legal Services to agree levels of evidence required to move to enforcement.
- Deployment of Noise Monitoring Equipment – in cases of noise nuisance we can install our noise monitoring equipment to help capture evidence of the noise nuisance.
- Other technical equipment deployments – such as Cameras (ensure appropriate authority in place to ensure compliance with RIPA / HRA)
- Obtaining of witness statements to support future enforcement.
- House to House resident engagement
- Letter drops.
- Covert deployments – such as Professional Witnesses (with appropriate authority)
- Evidence from partner agencies, for example Court proceedings undertaken by the police.
- Evidence from other services/organisations – for example CCTV, witness testimony from other professionals who may have witnessed issues.
- Evidence captured on Social Media.

Enforcement

Undertaking enforcement through the Courts is an expensive process, and each case must be considered on its own merits, in most cases enforcement will only be undertaken after attempts to resolve the matter through informal methods have been tried. However, it is accepted that on occasion the presenting facts are so serious that the requirement for enforcement is paramount, whether that is to safeguard an individual or to curb an individual's behaviour. Where this is the case, there should be a documented clear rationale as to why immediate enforcement action is the most appropriate course of action. Enforcement has several different approaches which may be the most suitable outcome for the presenting facts of a case, Officers considering enforcement must ensure they have gathered evidence that proves all the evidential 'Test' criteria for the behaviour in question as laid down in the relevant Statutory Guidance for frontline professionals. Enforcement tactics include:

Note:

No enforcement action requiring legal enforcement through the Courts must be undertaken without authorisation of a manager, who will need to establish that there is potentially sufficient evidence to justify enforcement through the Courts.

This also applies in respect of **any** notice that needs to be served, which must be signed off by a manager within the team. This applies in respect of a:

- Community Protection Notice
- Noise Abatement Notice
- Closure Notice
- Notice of Possession Proceedings
- Notice of Seeking Possession
- Extension to Introductory Tenancy

This should ensure that we have a robust system for double checking the necessity and proportionality for the serving of a notice and that the relevant thresholds have been met and appropriate evidence is available to support the need for this action.

If you are in a position where you feel that the service of a notice may be required, speak to one of your managers so that any relevant advice and guidance can be given.

Issue of Fixed Penalty Notice

Council Officers can issue Fixed Penalty Notices for certain offences within ASB legislation, notwithstanding, consideration needs to be given to ensure that the evidence exists should the recipient decline to pay the fixed penalty and their right to have the matter taken to Court. In addition, we need when considering issuing a fixed penalty ticket the ability to pay of the individual and the consequence if that would have a disproportionate outcome.

Civil Injunction

The injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 is a civil power to deal with anti-social individuals. The injunction can offer fast and effective protection for victims and communities and set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating. For anti-social behaviour in a non-housing related context the test is that the conduct concerned has caused, or is likely to cause, harassment, alarm, or distress to any person. For anti-social behaviour in a housing context the conduct must be capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises or the conduct is capable of causing housing-related nuisance or annoyance to any person. A court may grant the injunction against anyone who is 10 years of age or over. Applicants must consult the local youth offending team if the application is against someone under the age of 18. In very serious cases, especially those involving violence or a threat of violence, a Power of Arrest can be applied for and obtained if the appropriate test is met.

Criminal Behaviour Order (CBO)

Obtained primarily by the Police but supported by Local Authority a CBO is issued by any Criminal court against a person who has been convicted of an offence to tackle the most persistently anti-social individuals who are also engaged in criminal activity. There must be a criminal conviction, but this does not necessarily need to relate directly to the ASB that the CBO is being sought for. The application for the CBO is made by the Crown Prosecution Service.

Dispersal Powers (Police only)

The dispersal power is a flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to the local community. The power is preventative, allowing an officer to deal quickly with someone's behaviour and nip the problem in the bud before it escalates.

Gang Injunctions

A gang injunction is a civil tool that allows the police or a local authority to apply to the County Court, High Court or Youth Court for an injunction against an individual to prevent gang-related violence and gang-related drug dealing. By imposing a range of prohibitions and requirements on the respondent, a gang injunction aims:

Anyone seeking to apply for an injunction must have evidence that the respondent has engaged in, encouraged or assisted gang-related violence or gang-related drug dealing; and will need to be able to prove this on the balance of probabilities at court. Applicants will also need to convince the court that the gang injunction is necessary to prevent the respondent from being involved in gang-related violence and gang-related drug dealing and/or to protect the respondent from such violence or drug dealing activity.

Both the Police and a Local Authority can apply for a gang injunction.

A gang injunction can include any reasonable prohibition or requirement.

Community Protection Notice (CPN)

A Community Protection Notice may be issued (following a written warning) to deal with any problem negatively affecting a community such as noise, graffiti, littering etc. The purpose is to stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life. The behaviour must be persistent and ongoing.

Public Spaces Protection Order (PSPO)

A PSPO is designed to stop individuals or groups committing anti-social behaviour in a public place. A local authority can issue a Public Space Protection Order (after consulting with the police and other relevant bodies) to impose conditions on the use of an area to deal with a problem or nuisance. Wigan Council currently has 2 PSPO's in place covering Wigan and Leigh Town Centres.

Closure Notice/Orders

The power to close a property is a fast, flexible power that can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder. The power comes in two stages: The Closure Notice and the Closure Order which are intrinsically linked.

Practically, we can utilise a partial closure notice when we are seeking to safeguard an individual who is unable to restrict persons attending their address and causing anti-social behaviour due to their vulnerabilities. A partial closure order can also be used to protect those affected within the community by anti-social behaviour at an address by excluding others from the tenant's address, i.e. frequent large gatherings/parties.

We may utilise a full closure notice when we are seeking to prevent anyone from entering the address, this would include the tenant. This is used in the most serious of cases, i.e. where there is evidence a tenant and their associates are dealing drugs from an address.

This power can be used for both Council and private properties, including those which are owner occupied.

Noise Abatement Notice

Section 80 of the Environmental Protection Act 1990 allows a local authority to serve a 'noise abatement notice' where it is satisfied that a statutory noise nuisance exists or is likely to occur or recur. This requires the abatement of the nuisance and prohibits a recurrence by execution of whatever works are necessary within a timeframe specified within the notice.

Noise nuisance is not specifically defined in the 1990 Act. It is, however, generally regarded as something which could be construed as such by an 'average' person. One case recently established that normal, everyday residential use of premises would not constitute a common law nuisance and therefore could not constitute a statutory nuisance. However, it may be observed that what is normal and every day for one person may not be for another because of the differing lifestyles of neighbours.

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What is very clear, however, is that a statutory, or indeed common law, noise nuisance is not defined purely by measured noise level but by its likely effects on an average person. As well as locality and of course noise level, several other factors are considered including:

- time of day of disturbance; sleep disturbance is important in this respect, as well as relaxation during the evenings, even outdoors, but special provision for shift-workers, or other people with specific needs, is usually not made because of the focus on the 'average' person.
- frequency - how often the noise occurs; something which happens only rarely would normally be less of a nuisance than something which happens every night or day.
- duration – how long the noise goes on for; a short-term effect would normally be considered less of a nuisance than one which extends for several hours or even days.
- convention – how 'normal' is the noise; a neighbour mowing their lawn once a week would normally be considered acceptable but a neighbour regularly listening to music outside at the same level for the same time would not.
- avoidability; a noise disturbance which is easily avoidable can easily be perceived as more of a nuisance simply because it can be avoided.

A statutory nuisance is not simply something that annoys you. It is something that causes a serious and unreasonable interference with your right to enjoy your property or damages your health in terms of the threat of disease, rather than risk of injury. Statutory nuisance is a criminal offence and therefore the standard of proof similarly must be to the level of the criminal courts (proving beyond reasonable doubt).

Extension of an Introductory Tenancy or Issue of a Notice of possession proceedings (NOPP)

For Council owned properties where an introductory tenant has broken one of the conditions of their tenancy, we may consider extending the period of the tenancy for a further 6 months to allow the tenant time to correct their behaviour (must be no less than 8 weeks before the end of the 'trial' period. A Notice must be served on the tenant to extend the period of the Introductory Tenancy. A tenant has a right to seek a review of a decision to extend the period of the Introductory Tenancy.

Alternatively, or at any time during the introductory period of the tenancy, we can serve the tenant with a 'Notice of Possession Proceedings', this notice will outline the legal action we may take which could result in them losing their home. A tenant has the right to seek a review of the issue of the Notice.

Demotion of Tenancy

A secure tenancy can be demoted to a 12-month probationary tenancy if the tenant has engaged in housing related anti-social conduct or has used the property for unlawful purposes. If a demotion order is granted by the Courts and the tenant remains in occupation, then on a specified date the secure tenancy will end and a demoted tenancy will begin.

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The equivalent powers apply to registered providers of housing for assured tenants under the Housing Act 1988 (HA 1988).

Conduct necessary to be able to seek a demotion of tenancy is:

- behaved antisocially or caused nuisance in the area, or
- threatened to do so, or
- used your home for illegal activities such as drug dealing.

Notice of Seeking Possession (NOSP)

This is a notice served on a secure tenant of the intent to seek possession of their property.

Grounds for Possession (Eviction)

The Housing Act 1988 as amended by the Housing Act 1996 lays down certain circumstances (grounds) under which a landlord may successfully apply to court for possession.

The grounds for possession fall into two categories: mandatory, where the tenant will be ordered to leave if the landlord can prove breach of contract, and discretionary, where the court can decide one way or the other.

These grounds for possession apply to tenancies entered after 15 January 1989. The terms of the tenancy agreement must make provision for termination on these grounds.

Absolute Grounds for Possession (Eviction)

In exceptional cases where anti-social behaviour (or criminality) persists and it becomes necessary to seek possession, the processes for evicting anti-social tenants can be lengthy and expensive, prolonging the suffering of victims, witnesses, and the community. The absolute ground for possession was introduced to speed up the possession process in cases where anti-social behaviour or criminality has already been proven by another court. This strikes a better balance between the rights of victims and perpetrators and provides swifter relief for those victims.



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Appendix 'A'

Complete Nuisance Diary Sheets

Keeping a record of the times, dates, and a description of what has happened is essential to show the type of problem complainants are having especially if it is occurring on a regular basis and should be completed to support an investigation. This will ensure that we have a full appreciation of the problems they are encountering and will assist us in agreeing with them the next and most appropriate course of action.

They can download a nuisance/noise diary from our website (www.wigan.gov.uk), Please ensure that they are advised to follow the instructions on the diary sheets on how to complete as this may become important evidence for a case in the future.

Note: *If a resident is unable to read/write for any reason, including additional vulnerabilities. Dictaphones can be loaned instead of completing Diary Sheets.*

How long should they complete Diary Sheets for before reporting it?

Diary Sheets should be completed for the following periods:

7 days – if alleging a daily occurrence

14 days – if alleging several times, a week

28 days – if alleging several times, a month.

Appendix 'B'

Noise Monitoring App

Wigan Council have also commissioned the 'Noise App'.

The Noise App is available for [Apple](#) and [Google Play](#) devices. It instantly records noise nuisance on a smartphone to create an accurate record of the problem and how it affects the complainant. Residents can also keep a personal 'Noise Diary' in the app, which will assist a review of the recordings.

Once a resident has recorded their evidence, they can send it directly to Wigan Council to investigate. When creating an account on the app, the resident needs to be advised to select Wigan Council as the service provider/investigator when prompted.

The recordings are uploaded directly onto a secure site for us to access and decide what action is necessary. Residents can make up to 10 recordings in any 24-hour period and each recording lasts for up to 30 seconds.

Please ensure that you advise complainants that if they are making recordings via their mobile phone, that they place their phone down on a suitable surface rather than keeping hold of it and be aware that it will also record noises in their own home, including speech.

Procedure for dealing with Noise App submissions

To ensure consistency in our approach to managing submissions made via the Noise App and improve customer satisfaction, staff are to operate the following process in respect of received Noise App submissions:

Noise App recording received, and we have an identified corresponding APP case.

Actions for Business Support

1. Each working day access the Noise App and identify any new submissions received.
2. Research Civica APP and identify the corresponding case – this may need a few searches as the Noise App records against the subject's address.
3. If the case is already closed, re-open at step 2 using code V2M, remove closed date from front of record and assign back to the Investigating Officer.
4. Update the Noise App record with the APP Case reference in the format 'APP XXXXXX'
5. Update the Noise App record with the assigned case officer.
6. Update the noise app with the following message, so that it is returned to the client submitting the recording.

Wigan Community Resilience Team - ASB Resolution Model

Noise App recordings received, thank you. These have been assigned to the Investigating Officer **insert full name** to review the content (APP reference **XXXXXX**). Please note due to the current impact of Covid-19 there may be a delay in undertaking this task. The Investigating Officer will discuss with you the content of the recordings and proposed action once they have been assessed.

If the comments above are not appropriate in the context of the submission it will be necessary to modify the message.

7. On the APP record enter an Action scheduled for +1 working day using code **V1H – Review returned Noise App recordings: in addition, insert in the field all the recordings received so that it is clear which recordings are to be reviewed**. Please see any of the following APP records as an example for how I want this to be presented to the officer: 741527, 760396, 770061, 759853, 770329

Actions for Investigating Officer

8. You are expected to review the noise app recordings submitted and endorse within the APP record your assessment of each of the recordings.
9. You are then expected to contact the submitting client and discuss your assessment and agree a course of action, all of which **MUST** be documented within the APP record.

Noise App recording is received but we have no corresponding APP case.

Actions for Business Support

1. Create a record on APP using all the information provided in the Noise App recording.
2. Create an action that a noise app submission requires review using the V1H code as detailed above at point 7, (at this stage this will not have an assigned officer – but it will be an action for the allocated investigating officer)
3. Assign the case to the CRT, so that it appears in the ULO for allocation and assignment to an investigating officer by management.

Actions for Investigating Officer

4. Review the submitted Noise App recording and endorse within the APP record your assessment of each of the recordings.
5. Contact the complainant and commence initial investigation as appropriate.

Appendix 'C'

Mediation

What is Mediation?

The need to mediate has been around for as long as people have been fighting and most of us pick up mediating skills from our everyday experiences.

One of the amazing things about Mediation is that it is so many things:

- Mediation is a schoolyard intervention - from nursery to sixth form, mediation is part of the education community and is supervised by schoolteachers and conducted by specially trained peer group mediators in the same classes as the parties in conflict.
- Mediation is part of family counselling for people separating – it is a way for families who are splitting into parts to learn to deal with changes in roles, duties, and opportunities and to face those changes in emotional balance.
- Mediation is part of community action and conflict resolution - a place where Mediators help disputants resolve neighbourhood disputes; and
- Mediation is what diplomats do to prevent countries from going to war or to help countries at war to find peace.

Mediation offers an alternative process (not instead) to conflict resolution allowing parties to resolve problems, let go of their sense of grievance and mend broken relationships.

Does it really help?

Mediation is an **alternative dispute resolution** strategy; it is not the answer to every conflict as in some cases, formal investigations are the only course of action available. However a mediation session can create a turning point in conflicts that have festered for years.

How? Mediation gives people the chance to air their wounds.

Intense conflict tends to generate misunderstanding and suspicion. Many of these evaporate when the parties can talk directly and as mediation is not bound by the rules of a formal proceeding, the parties can bring up whatever concerns them most; they are not restricted to those issues that are subject of the dispute.

The final written agreement helps, even if a mediated agreement does not end a conflict it can protect the parties from further friction and misunderstandings so that the conflict can fade away.

Success lies partly with the mediator's skills, but also with the readiness of the parties. If someone is bent on keeping the conflict going, even the most obvious solution(s) will not work. If everyone wants to see a conflict end, mediation can be a graceful and efficient way to do so.

What Mediation is not?

Mediation is not an attempt to decide who was at fault.

Assessment of fault may or may not be done by investigators or judges, but mediators will not do it. Mediation is a structured, assisted process to bring the dispute to an end, not to declare winners or losers. Mediation does not produce a one-sided victory; it produces a permanent cease-fire.

Mediation is not designed to establish the true facts of what happened.

Fact-finding is the role of an investigation process, which is in place to look at evidence and “prove the facts”. Mediation is quite the opposite - it looks to the present and to the future. The question in mediation is “What could now be done that would be better than this dispute?”

Mediation is not designed to find out what the mediator thinks about the situation.

The mediator’s role is to lead and guide the disputants toward a truce. If a truce is not achieved and mediation is halted, sometimes a mediator may be asked to give an opinion on what should be done, but this is rare. There are usually no witnesses in mediation.

Disputants are not trying to prove their case. In fact, everybody involved - both sides and the mediator, are all trying to prove the same thing:

What does mediation look like?

The structure of a mediation session may look like this. **Session Outline**

1. First Contact with First Party by Mediator
2. First Contact with Second Party by Mediator
3. Preparing to work on the Dispute - location, dates, times.
4. Opening Statement
5. Uninterrupted Time
6. The Exchange
7. Setting the Agenda
8. Building the Agreement
9. Writing the Agreement
10. Closing statement

Conditions for Mediation

Most favourable

- On-going relationships are important.
- Those involved wish to retain control of the outcome.
- There is no great difference in power between disputants.
- Speed is important.
- Confidentiality is important.
- Both parties need to let off steam
- The parties have stopped communicating with each other and are prepared to use an impartial third party to help them communicate.
- People have neither the skill nor desire to negotiate effectively without some outside help.
- People cannot find a solution to the dispute but want to settle.
- Not dealing with the dispute is unacceptable to both parties.
- The personal safety of either party does not depend on the outcome of the agreement.
- The people are participating voluntarily and
- The parties perceive the mediator as unbiased.

Least favourable

- There is a great power imbalance between parties.
- A higher authority judgement is required.
- Investigation or legal action is already being carried out.
- Matters of basic rights are at stake, such as personal safety, harassment.
- The parties are not willing to participate.
- One or both parties feel unsafe.
- The parties are not willing to negotiate, and
- Positions on both sides are extreme and have hardened.