Comhairle Contae Chill Dara
Kildare County Council

Anti-social Behaviour Strategy

Anti-social Behaviour Strategy as provided in Section 35 of the Housing (Miscellaneous Provisions) Act 2009

Adopted by Kildare County Council

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Introduction

Kildare County Council (council) is required in accordance with Section 35 of the Housing (Miscellaneous Provisions) Act 2009, as amended, to have an Anti-social Behaviour Strategy (strategy).

This strategy applies to:

a) Dwellings let by the council to tenants under the Housing Acts 1966-2014, as amended.
b) Dwellings which are the subject of Chapter 4 Tenancy Agreements (Rental Accommodation Scheme).
c) Sites provided for Traveller accommodation.
d) Dwellings in which relevant purchasers reside within the meaning of Section 1 of the Housing (Miscellaneous Provisions) Act 1997, as amended by the Housing (Miscellaneous Provisions) Act 2014.
e) Units leased by the council.

The principal objectives of this strategy are:

- The prevention and reduction of anti-social behaviour.
- The coordination of services within the council directed at dealing with or preventing or reducing anti-social behaviour.
- The promotion of cooperation with other persons and agencies, such as An Garda Síochána.
- The promotion of good estate management.

This strategy sets out the council's proposal to achieve the objectives of this strategy by outlining the:

- Initiatives for the prevention and reduction of anti-social behaviour.
- The procedures for the making of anti-social behaviour complaints.
- The provision of education and research into anti-social behaviour and its prevention and reduction.

The drawing up and adoption of, and the amendment of this strategy, is a reserved function of the Elected Members of the council.

This strategy takes account of the relevant housing acts and regulations and the council's Allocation Scheme for the Provision of Social Housing Support, Estate Management Strategy, and the council's Kildare County Council Tenancy Handbook: A Guide to Making the Most of your Tenancy.

The adoption of, and amendment of an anti–social behaviour strategy shall not confer any right in law, which a person would not otherwise have, to require a housing authority to exercise any power under the 1997 Act, the 2009 Act or the 2014 Act or to seek damages for a housing authority's failure to exercise any such power.

Public Sector Duty

Local authorities have a wide and significant influence on human rights and equality by virtue of their role in planning, housing, transport, services/utilities, and community development. Decisions on settlement planning, transport infrastructure, housing/accommodation, among many other functions of local government, are factors in the creation of conditions that either enhance or diminish human rights and equality. Section 42 of the Irish Human Rights and Equality Commission Act 2014 imposes a statutory obligation on public bodies in performing these functions to have regard to the need to eliminate discrimination, promote equality and protect human rights of people availing of their services.

The Public Sector Duty is a mechanism to ensure a positive contribution to the human rights obligations and equality objectives of the State. A review and analysis of data and policy development identified the following key human rights and equality issues within County Kildare:

- Socio-economic disadvantage
- Lone parents
- Member of the Traveller and Roma communities
- Black and Asian people
- Women
- People with disabilities

The council recognises that council tenants may be at particular risk of experiencing exclusion across any or all these issues identified. While housing policy is determined at central government level there is considerable scope through housing policy to influence outputs and outcomes across the issues identified. Embedding the public sector duty into these policies mitigates against the risk of the creation of or reinforcement of such exclusions.

The council is committed to the ongoing monitoring and assessment of this scheme under the Public Sector Duty, and to progressively developing and expanding policy responses to ensure the protection of human rights and the achievement of greater equality.

Consultation on the development of the Anti-social Behaviour Strategy

The council consulted with the following in the preparation of this strategy:

- The Housing Strategic Policy Committee.
- Consultation on this strategy has taken place with the Joint Policing Committee, established under Section 36 of the Garda Síochána Act 2005, in respect of the administrative area of Kildare County Council.
- The Health Service Executive.

Definition of Anti-social Behaviour

Anti-social behaviour is defined in Section 1 of Housing (Miscellaneous Provisions) Act 2009, as amended. Anti -social behaviour is present when a tenant or member of their household's behaviour adversely affects the quality of life of those living in the locality of the disturbances up to and including the quality of life of the overall neighbourhood. Anti-social behaviour includes either or both of the following, namely-

a) "The manufacture, production, preparation, importation, exportation, sale, supply, possession for the purposes of sale or supply, or distribution of a controlled drug (within the meaning of the Misuse of Drugs Acts, 1977 to 2007).

b) Any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, alarm, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the Housing Acts 1966 to 2014 or Part V of the Planning and Development Act 2000, or a housing estate in which the house is situate and, without prejudice to the fore going includes:
    i violence, threats, intimidation, coercion, harassment, or serious obstruction of any person,
    ii behaviour which causes any significant or persistent impairment of a person's use or enjoyment of his or her home, or
    iii damage to or defacement by writing or other marks of any property, including a person's home".

Possession of illegal drugs solely for personal use does not come within this definition, nor does vandalism or damage to property unless the damage is serious or used to intimidate or threaten. The definition does not include noise and nuisance or other activities, which would not normally be associated with the serious problems towards which the Act is targeted. However, these lesser activities could represent breaches of the council's tenancy Agreement.

Definition of Nuisance Behaviour

Nuisance behaviour is behaviour which is not as serious or significant as anti-social behaviour but may be a breach of the council's tenancy agreement. Nuisance behaviour can develop into anti-social behaviour if the behaviour persists. Examples of nuisance behaviour include-

- Parking disputes. Particular parking rules may pertain in certain residential developments, monitoring of compliance with such rules falls to the relevant management company and the council will have no involvement in such cases.
- Making unreasonable noise.
- Obstructing a driveway.
- Trespassing.
- Boundary disputes

Definition of Estate Management

Estate Management is defined in Section 1 of the 1997 Housing (Miscellaneous Provisions) Act and includes-

(a) The securing or promotion of the interests of any tenants, lessees, owners or occupiers, whether individually or generally, in the enjoyment of any house, building, or land provided by a housing authority under the Housing Acts 1966 to 2002 or Part V of the Planning and Development Act 2000.

(b) The avoidance, prevention, or abatement of anti-social behaviour in any housing estate in which is situate a house provided by a housing authority under the Housing Acts 1966 to 2002 or Part V of the Planning and Development Act 2000".

Legal Framework

The following are the key pieces of legislation which are relevant to this strategy-

Section 10 of the Housing (Miscellaneous Provisions) Act 1992, as amended.
This gives powers to local authorities to remove unauthorised dwellings on public land.

Housing (Miscellaneous Provisions) Act 1997 as amended.
This Act introduced the definition of anti-social behaviour and estate management. The Act gives powers to local authorities to refuse or defer a letting of a property on these grounds and gives extensive powers to Local Authorities and Approved Housing Bodies to apply to the District Court for Excluding Orders. These Orders prohibit people from entering a particular house or estate with Garda powers of entry and arrest.

Housing (Traveller Accommodation) Act 1998, as amended.
The relevance of this Act to the strategy is that it extends the provision of the Housing (Miscellaneous Provisions) Act 1997 to Traveller accommodation sites.

Section 197 of the Residential Tenancies Act 2004, as amended.
This gives wider powers to Local Authorities to obtain Excluding Orders against ex-local authority dwellings.

Anti-Social Behaviour Provisions of Housing (Miscellaneous Provisions) Act 2009, as amended.
This Act requires local authorities to adopt an anti-social behaviour strategy.

Housing (Miscellaneous Provisions) Act 2014, as amended.
This Act introduces measures to deal with anti-social behaviour such as statutory tenancy warnings, and new possession proceedings. Tenants are given stronger rights to defend cases taken against them in the District Court.

Other Legislative Provisions

Domestic Violence
Cases of domestic violence do not come within the scope of this strategy. The Domestic Violence Act 2001 is the appropriate legislation for such cases.

Control of Dogs and Horses
Complaints relating to dogs and horses are referred to the Environment Section of the council and are dealt with under The Control of Dogs Act 1986, as amended and the Control of Horses Act 1986, as amended. The various forms of council tenancy agreements outline tenant obligations in relation to the keeping of pets and animals. A tenant or complainant can also make a personal application to the District Court, under the Control of Dogs Acts 1986, as amended, in relation to persistent nuisance caused by a barking dog.

Stockpiling Rubbish/ Unkept Gardens
The stockpiling of rubbish and unkempt gardens are a breach of the council's tenancy agreement. The storage of waste in gardens is also an offence under the Waste Management Act 1996-2015. Under the Waste Management Acts, the Environment Section of the council can prosecute tenants who store waste. Litter fines can also be issued for littering in front gardens or where littering is visible from a public place. Kildare County Council has bye-laws in place called Waste Management (Segregation, Storage and Presentation of Household and Commercial Waste) Bye Laws 2018 to deal with the management of household waste.

Boundary Disputes
Boundary disputes may arise which can include overhanging vegetation, hedges and disagreements over boundary walls and fences. If neighbours cannot resolve the issue, the council may intervene.

Noise
Noise complaints are difficult to investigate as they are subjective. They generally involve one person's word against another. Where such complaints are reported to the Housing Department, the council may speak to, or issue a notice to the person/household against whom the complaint is being made, they will have an opportunity to accept or deny the complaint. In the cases that the tenant/household denies the complaint, the complainant will in accordance with Section 108 of the Environmental Protection Agency Act 1992, be advised of their right to make a complaint to the District Court.

Squatters
Where there are unlawful occupants in a council owned property, the council will request An Garda Síochána to remove the occupants, this is in accordance with Section 20 of The Housing (Miscellaneous Provisions) Act 1997, as amended; in cases where this act does not apply, the council may commence proceedings under Section 13 of The Housing (Miscellaneous Provisions Act 2014, as amended.

Section 17 of the Housing (Miscellaneous Provisions) Act 2014, as amended, contains provisions which allows the council to repossess dwellings where in the event of the death of tenant somebody moves into or overholds in council owned or leased property.

Policy of Sharing Information with Other Agencies

Kildare County Council acknowledges the importance of sharing information with agencies such as An Garda Síochána, Health Service Executive, Tusla, other Local Authorities and Department of Education and Skills.

It is also important to share information within this organisation and the Tenant Liaison Officers regularly liaise with officers within the Local Authority who have a remit in this area, for example Community Workers, Social Workers, Homeless Outreach Workers, Revenue Collectors, Clerk of Works etc.

All records are retained in accordance with the council's Records Retention Policy, and Data Protection Act 2018 as amended.

Proposals to achieve the Prevention and Reduction of Anti-social Behaviour.

The most efficient method of combating anti-social behaviour is to prevent it from occurring in the first place. Kildare County Council will proactively prevent anti-social behaviour in the following ways:

- The employment of Tenant Liaison Officers who are responsible for day-to-day interaction with tenants. They investigate complaints or reports of anti-social behaviour/nuisance, breach of tenancy and are involved in pre-tenancy training and have an input into the allocation of social properties.
- New dwellings, regeneration or remedial works schemes, estates and halting sites will be designed in a manner that does not facilitate anti-social behaviour, crime or disorder.
- Pre-tenancy training may be offered to new tenants. The pre-tenancy course places particular emphasis on tenants and family members' obligations to their homes and to their community, the need to respect their neighbours and their property and on tenant's responsibility for the behaviour of their children and visitors.
- The employment of Community Development Officers who encourage tenant participation in community development of council estates. Tenants will be encouraged to set up or join existing Residents Associations and to take part in community development programmes with particular emphasis on education. The council also provides community houses at a number of locations.
- The Tenant Liaison Officers and the Housing Department will maintain an open and co-operative relationship with agencies such as the Health Service Executive, An Garda Síochána and other agencies involved in community development.
- Seeking to ensure a strategic balance and mix of tenants in so far as is practical to encourage social integration and minimise the potential for anti-social behaviour.
- Ensuring that all reports/complaints are addressed as soon as practicable and in strict confidence. This authority will ensure that all complaints are treated in a fair, impartial and objective manner pursuant to the relevant legislation.
- Garda checking all housing applicants prior to allocation. Certain criminal convictions may not be relevant in determining "suitability" to a housing allocation, see section titled Prevention of Anti-social Behaviour using Pre-tenancy Checks. The council may refuse to sell a dwelling to a tenant if it considers that they or a member of their household is or has been involved in anti-social behaviour. This decision may be re-considered if the council is satisfied that the behaviour has ceased.
- Providing a Tenant Sustainability Service who may have difficulty sustaining a tenancy.

- Employing a social work team who assist with welfare issues and more complex cases.
- Holding regular Welfare Forum meetings, this is a cross-department collaborative approach to deal with complex welfare cases, anti-social behaviour may be a feature of these cases.

Prevention of Anti-social Behaviour using Pre-tenancy Checks

In accordance with the Housing (Miscellaneous Provisions) Act 1997, as amended, the council may refuse to allocate or defer the allocation of a dwelling to a household. The following is an extract from the council's Allocation Scheme for the Provision of Social Housing which deal with pre-tenancy checks and suspension from consideration for allocation:

If the council considers that a member of the household is or has been engaged in anti-social behaviour or that the allocation would not be in the interest of good estate management or;
The household fails to provide information requested by the council, including information relating to other household members residing together or proposing to reside together, which the council considers necessary in connection with an allocation.

Please refer to the information under the heading of Definition of Anti-social Behaviour for behaviour which will impact on allocations.

The period of deferral will be up to five years, depending on the nature and severity of the offence.

Garda vetting and other relevant pre-tenancy checks will be carried out on all household members aged 18 and over.

Complaints Procedure

Collecting/Recording of Complaints

Kildare County Council is committed to investigating every complaint in a fair, impartial, and objective manner. The investigation of complaints may involve interaction with other agencies and this is provided for in Section 15 of the Housing (Miscellaneous Provisions) Act 1997, as amended.

Complaints by members of the public and elected representatives must be submitted in the correct format. From time-to-time complaints will be accepted from other departments of the council or from other agencies such as An Garda Síochána.

Anonymous complaints will only be investigated in exceptional circumstances where there is corroboration from other agencies and at the discretion of the Tenant Liaison Officer.

Investigation of Complaints

Complaints are logged and investigated by the relevant Tenant Liaison Officer. Investigations may involve:

- Liaison with the complainant and issuing official complaint form where necessary.
- Where the complaint is in relation to a criminal matter it will be formally referred to An Garda Síochána.
- If deemed appropriate, the Tenant Liaison Officer may visit the tenant in their home to investigate a complaint, or if the matter is deemed serious enough the tenant may be required to attend the relevant office where he/she is interviewed by the Tenant Liaison Officer and in some cases another staff member.

At the conclusion of the investigation the Tenant Liaison Officer will decide on the next course of action, this may involve consultation with the management of the Housing Department.

Confidentiality of the Complaints System

The complaints system is confidential, and every effort is made to protect the identity of complainants. Kildare County Council assumes that a complainant requires the complaint to be dealt with in a confidential manner unless notified otherwise by the complainant. If the nature of the complaint is likely to compromise the identity of the complainant, an investigation will not proceed unless the complainant gives written authorisation to do so. It is noted that some complaints are so specific, that to investigate a complaint, it is impossible to protect the identity of the complainant, this fact will be communicated to the complainant.

Impact of the Freedom of Information Act 2014
The council complies with its statutory obligations in relation to the Freedom of Information Act. The Freedom of Information Act 2014 enables members of the public to obtain access, to the greatest extent possible consistent with the public interest and the right to privacy, to information in the possession of public bodies and to enable persons to have personal information relating to them in the possession of such bodies corrected and to provide for related matters. However, the Acts also provide for necessary exceptions to that right, in cases where the disclosure of information would put a complainant at risk, or where information was given in confidence.

Data Protection Act 2018
Records are retained in accordance the Data Protection Act 2018 and the council data and retention policy.

Actions Arising from the Submission of a Complaint

All of or some of the following actions may be the result of the investigation of anti-social behaviour:

No Further Action
If the Tenant Liaison Officer has reasonable grounds for believing that the complaint is unfounded or malicious, vexatious, or trivial then no further action will be taken against the respondent.

Advice Given
In some cases, the TLO may advise both parties to resolve the issue and no further action will be taken, especially when the complaint is of a trivial nature. If a complaint relates to the conduct of children, the parent or guardian of the child/children will be notified.

Referral to other Agencies such as An Garda Síochána / Health Service Executive / Tusla
Some complaints are so serious the complaint is immediately referred to An Garda Síochána, the Health Service Executive or Tusla. All complaints regarding drug dealing are referred to An Garda Síochána for investigation.

Mediation
Kildare County Council may offer, where appropriate, mediation services.

Verbal Warning
Usually reserved for instances of first offences of a trivial nature.

First Breach of Tenancy Letter
The tenancy agreement breach is detailed in the letter, the tenants(s) are asked to cease the breach and made aware of the consequences should the breach continue.

Second Breach of Tenancy Letter
If the behaviour persists a second breach letter is issued.

Statutory Warning Letter
In accordance with Section 7, Section 9 and Section 10 of the Housing (Miscellaneous) Provisions Act 2014, as amended, statutory warnings relating to anti–social behaviour and other breaches of tenancy will be issued if prior written warnings are ignored and ineffective. The statutory warning letter will:

- Set out the specified term(s) that has or have, in the housing authority's opinion, been breached.
- State the nature of the breach, including the name of the household member (if that name is readily available to the housing authority)
- State who caused the breach,
- State the occasion of the breach and, where relevant, the significant or persistent detrimental effect of the breach on the quality of life of those in the locality of the dwelling to which the tenancy agreement relates.

It will require the tenant to ensure that the household member who caused that breach ceases or does not repeat specified actions or undertakes specified actions.
The letter will indicate that if the breach continues, or is repeated within 12 months of the tenancy warning coming into effect, then the authority may either:
(a) apply under Section 12 to recover possession of the dwelling or
(b) where appropriate, apply to the District Court (under section 3 of the Act of 1997) for an excluding order against the household member who caused that breach.

A tenant is entitled to seek a review of a statutory warning, this is known as a review request. The review request must be in writing and must be received by the council within 10 working days of the warning being issued.

In the three-year period following the issuing of a statutory warning letter the council can refuse a transfer, refuse to sell a house to a tenant and refuse an allocation to household where members have engaged in anti-social behaviour.

In some cases, the local authority may proceed to legal action for recovery of the dwelling without first issuing a statutory warning. This would be relevant in cases of extreme urgency where a Statutory Warning might be of little or no effect.

Excluding Orders

Excluding orders are sought in accordance with Section 3 of the Housing (Miscellaneous Provisions) Act 1997, as amended. An excluding order is an order granted by the District Court to a local authority to stop a person from entering a particular property or entire estate. When seeking an order, the council must prove that the person was involved in anti-social behaviour, and that the granting of an order would be in the interests of good estate management. An order may be sought by a tenant, a local authority, or an Approved Housing Body. Excluding orders are valid for period of up to three years. Excluding orders target the behaviour of individuals and avoids situation where entire households are evicted.

Where the council has obtained an exclusion order it will report breaches of the order to An Garda Síochána, it will also advise householders and neighbours to report breaches.

Legal Action/Possession Orders

In accordance with Section 12 of the Housing (Miscellaneous Provisions) Act 2014, as amended, the council may seek possession of a property where a tenant or members of his or her household breaches the tenancy agreement or rent-related obligations. A breach of tenancy includes anti-social behaviour. The District Court deals with applications for possession. Council tenants are entitled to be present in court to defend the case. The council shall have due regard to protecting the identity of the persons who informed it of tenancy breaches, if to disclose their identity would render them liable to violence, threat or fear, or prevent them from making the complaint. However, complainants can be required to give direct evidence. The decision to grant a possession order is made by the Judge of the District Court.

Transfer on the Grounds of Good Estate Management

The council's Allocation Scheme for the Provision of Social Housing allows for transfer on the ground of estate management. Strict qualifying criteria apply.

Research, Publicity and Consultation

- The council will publish this strategy and promote it among tenants and seek to educate all in relation to this matter.
- The local authority will publicise where legal action has been taken in relation to antisocial behaviour.
- Research into the occurrence of anti-social behaviour will be encouraged where resources allow.