

# Housing Services

*Legal action we can take  
against our tenants  
for anti-social behaviour*



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## Introduction

This guidance gives brief details of the main sorts of legal action that the housing service can take to stop people breaking the requirements of their tenancy agreements.

Legal action can be taken when a tenant breaks the tenancy agreement by:

- Engaging in disorderly, offensive, immoral or criminal behaviour in or near their home that has caused, or is likely to cause harassment, alarm or distress
- Engaging in behaviour in or near their home that causes nuisance or annoyance to someone
- Being convicted of a serious offence committed in the locality

The tenancy agreement also covers members of the tenant's household or visitors to the tenant's home. For example, if a tenant's child or visitor is causing nuisance or annoyance, the tenancy agreement has been broken.

## Do you need help?

If we are considering taking legal action against you for anti-social behaviour or for any other requirement in your tenancy agreement that we think you have broken, you *must* contact us. You have the right to be given a fair chance to respond to any allegation. If you need support to help you to respond or to stop you breaking your tenancy agreement, we may be able to get that support for you.

***Remember - we don't want to take legal action. We just want the problem to stop.***

## Acceptable Behaviour Contract (ABC)

An ABC is a voluntary written agreement between someone who has engaged in anti-social behaviour and one or more agencies whose role it is to prevent that behaviour.

Normally, the need for an ABC is agreed after discussion between any agencies concerned with the person - for instance, the council, the school, the police or social services.

The ABC will include conditions that will state:

- What the person must not do.
- What the person must do.
- What the agencies involved will do.
- The consequences of breaking the agreement.

The ABC is signed by the person and, if the person is aged under 16, by the person's parent or guardian.

If the ABC broken and we need to take legal action stop the anti-social behaviour, the court can take into account that we have made informal attempts to sort out the problem and it has not worked. This makes it more likely that the legal action will be agreed by the court.

## **Extended introductory tenancy**

An introductory tenancy normally lasts for 12 months before becoming a secure tenancy. If an introductory tenant is breaking the tenancy agreement, we can extend the period of the introductory tenancy for a further six months (making 18 months in total).

To extend an introductory tenancy, we need to serve a Notice of Extension at least eight weeks before the end of the 12 month period. This notice sets out the reasons for the extension. The tenant then has the right to ask for a review of the decision.

For example, we can extend an introductory tenancy if we want to allow more time for the tenant to behave acceptably, but we don't want it to be a secure tenancy yet. This is because it is much easier to evict an introductory tenant (see page 4)

## Demoted tenancy

When a secure tenant has broken the tenancy agreement by engaging in or allowing anti-social behaviour, we can serve a Notice of Demotion and apply to the court for a demotion order. If the court agrees to this, the tenancy will become a demoted tenancy, which lasts for 12 months. During that time, the demoted tenant will have fewer rights than a secure tenant. In particular, it becomes easier to evict a demoted tenant if the problems continue. Although we would still need to get a court order to evict the tenant, we would only need to prove that we have followed the proper process. We would not need to provide any more proof that the tenancy agreement has been broken.

A demotion order is normally used to give the strongest warning to a secure tenant that we will not tolerate their continued anti-social behaviour.

## Community Protection Notice (CPN)

A CPN is intended to stop someone from continuing with persistent or continuing unreasonable behaviour which affects the surrounding community. We can use these with our tenants or with householders who are not our tenants.

Before a CPN is issued, we must give the person a written warning telling them that a CPN will be issued if the behaviour does not stop.

The CPN gives instructions to the person about what they must and must not do to stop the problem. If the person does not comply with the CPN without a reasonable excuse, the following may happen:

- We may carry out work to make sure that the problem is sorted out (e.g., clearing rotting rubbish or dog fouling from a garden). The tenant will be charged for the cost of the work.
- We may issue a fixed penalty notice for a maximum of £100. If this is not paid within 14 days, we can prosecute.
- We may prosecute the person for a criminal offence, which carries a Level 4 fine.

- After a court warrant, we may seize any items involved in causing the criminal offence, or the person may be ordered to hand them over for destruction or disposal in some other way.

There is a right of appeal to the Magistrates Court against a CPN within 21 days of it being issued.

## **Action under environmental protection law**

Where someone's use or enjoyment of their home or health is unreasonably or substantially interfered with, this may be a statutory nuisance. The council's environmental health team can take action to stop statutory nuisance under environmental protection law.

This will involve issuing a notice to prohibit the activity that is causing the nuisance (known as an abatement notice). If the nuisance continues, the court can fine those responsible. The council has powers to confiscate

## **Notice of Possession Proceedings (introductory tenancy)**

If an introductory tenant has broken the tenancy agreement, we can serve a Notice of Possession Proceedings. The tenant has the right to appeal against this notice to a panel made up of borough councillors.

If the tenant does not appeal, or the appeal is turned down, we can apply to the court for a possession order (see page 6). We would only need to prove that we have followed the proper process. We would not need to provide any more proof that the tenancy agreement has been broken.

## **Notice of Seeking Possession (secure tenancy)**

If a secure tenant has broken the tenancy agreement, we can serve a Notice of Seeking Possession. This notice lasts for 12 months. It allows us to apply to the court for a possession order (see page 6). If we apply to the court for a possession order to evict a secure tenant, we would need to prove that the tenancy agreement has

been broken. We would also need to satisfy the court that eviction is needed to stop the problem and that eviction is reasonable and proportionate (i.e., that the seriousness of the problem deserves eviction).

## **Expiry date**

A date called “the expiry date” is given on a Notice of Possession Proceedings (for an introductory tenancy) and a Notice of Seeking Possession (for a secure tenancy). After this date, the council can apply to the County Court for a possession order to evict the tenant (see page 6).

## **Grounds for possession**

The law gives particular reasons to apply for a possession order (see page 6). These are called grounds for possession (i.e., reasons to evict the tenant). Some are called discretionary grounds, where even if they are proved, the court has a choice about whether to agree to a possession order. Others are called absolute grounds, where the court should agree to a possession order if the ground is proved. Details of which grounds are being used and why are given on the Notice of Possession Proceedings (see page 4) and the Notice of Seeking Possession (see page 4).

## **Anti social behaviour injunction (ASBI)**

This is an order made by a court. It normally instructs a person (normally aged 18 or over) not to do something (for instance, not to behave in a certain way or not to enter a certain area). It lasts for a period that is specified in the ASBI. An ASBI normally relates to a breach of a tenancy agreement.

If we have evidence that the behaviour is serious enough, we can apply for an interim (temporary) ASBI at very short notice. The person responsible does not need to be in court. This interim ASBI lasts for a short period to allow a full hearing to be arranged. We would only apply for an interim ASBI for the most serious cases, such as stopping violence, threats, intimidation or domestic abuse.

If someone breaks the terms of an ASBI, we can go back to the court. If the judge is satisfied that a term has been broken, this can be treated as “contempt of court”, which is a serious offence. The judge can fine the person or give a prison sentence of up to six months or more in very serious cases.

If someone’s behaviour is violent, threatening or intimidating, the injunction can have a power of arrest. This means that if a condition in the ASBI is broken, the police can arrest the person, who may then be kept in prison until another court hearing is arranged.

## **Closure notice and closure order**

Where premises (e.g., a house or a flat) are being used, or are soon likely to be used to cause nuisance or disorder and closure of the premises is necessary to prevent the problem, we can issue a closure notice. This closes the premises for up to 48 hours to everyone except the owner and anyone who normally lives there. Breaking the requirements of the closure notice is a criminal offence.

A closure order can then be made by the court if it considers this is necessary. This closes the premises completely for up to three months, which can be extended by a further three months.

A closure order is an absolute ground for possession (see page 5). This means that as long as we show that the closure notice was correctly issued, the court must permanently evict the tenant.

## **Possession orders, court hearings and warrants of possession**

“Possession” means the council takes back the home by evicting the tenant. An “order” is given by a court. A “possession order” is an order given by a court to allow a tenant to be evicted (i.e., forced to leave their home).

All possession orders must be considered by a judge in the County Court. This is called a court hearing. In all cases, the tenant is given



notice of the court hearing and may choose to attend to put their case against a possession order.

Depending on the type of tenancy and the reasons that the council is applying for eviction, the judge may have wide discretion about whether to give a possession order. Under some circumstances (e.g., with absolute grounds for possession following a closure order or where an injunction has been granted), the judge has only very limited discretion to turn down the application for a possession order.

### **Outright possession order**

An outright possession order means that the tenant must leave the home by a certain date. If the tenant is still in the home after this date, the council must apply to the court for a warrant of possession (see below) to evict the tenant.

### **Suspended possession order**

For secure tenancies where eviction is applied for on a discretionary ground (see below), the judge may decide to give a suspended possession order. This means that the tenant can stay in the tenancy so long as they meet certain obligations specified in the order (e.g., not to cause any more nuisance). If the tenant does not meet these obligations, the council can apply to court for a warrant for possession (see below) without telling the tenant.

### **Postponed possession order**

A postponed possession order is similar to a suspended possession order. It means the tenant can stay in the home as long as certain conditions specified in the order are met (e.g., not causing nuisance). If the tenant does not meet these obligations the council can ask the court for permission to evict the tenant. The council will first need to apply to the court for a possession date and if the judge agrees, apply for a warrant of possession (see below).

### **Warrant of possession**

A warrant of possession is the authority given by the court for the

bailiff to evict a tenant. The warrant gives the time and date of the eviction. The bailiff also gives the tenant notice of the eviction. If the tenant has not left by the date of the eviction, the bailiffs will force the tenant to leave.

The tenant may apply to the court to postpone the warrant of possession to give more time to find other accommodation.

If the tenant believes that they have a good reason, they can apply to the court to suspend the warrant.

If the tenant believes that there was a relevant error in the processes, or the council deliberately gave wrong information to the court or did not give relevant information they were aware of, or did not follow procedures, the tenant can apply to the court to stop the eviction and for the warrant to be suspended or set aside.

## Independent expert advice

If the council is taking legal action against you, you can seek independent expert advice from several sources, including:

- A solicitor
- The Derbyshire Law Centre  
1 Rose Hill East  
Chesterfield S40 1NU  
Phone: 01246 550674  
Text phone: 18001 01246 550674  
Text message: 07781 482826
- Citizens' Advice Bureau  
6 - 8 Broad Pavement  
Chesterfield S40 1RP  
Phone advice: 0300 456 8437  
Reception: 01246 209164

# **ARE WE ACCESSIBLE TO YOU?**

## **IF NOT - ASK US!**

- **We want everyone to be able to understand us.**
- **We want everyone to be able to read our written materials.**
- **We aim to provide what you need for you to read, talk, and write to us.**

### **On request we will provide free -**

- **Language interpreters, including for sign language.**
- **Translations of written materials into other languages.**
- **Materials in Braille, large print, on tape or Easy Read.**

**Please contact us:**

**Voice telephone - 01246 345345 Fax - 01246 345252**

**Mobile text phone SMS - 079609 10264**

**E-mail - [eoinfo@chesterfield.gov.uk](mailto:eoinfo@chesterfield.gov.uk)**