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Designation	Head of Communities & Partnerships
Date	14/02/18

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Library Reference	21/18
Date Received	14/02/18
Bulletin	Feb18

**REPORT TO:** Members' Library Service

**DATE:**

**BY:** Depute Chief Executive – Partnerships and Community Services

**SUBJECT:** Antisocial Behaviour Policy

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## **1 PURPOSE**

- 1.1 To submit an updated version of the Antisocial Behaviour Policy attached as Appendix 1 to this report.

## **2 RECOMMENDATIONS**

- 2.1 That Members note the updated version of the Antisocial Behaviour Policy.

## **3 BACKGROUND**

- 3.1 The Antisocial Behaviour Policy was previously amended on 24 April 2012 (see Appendix 2).
- 3.2 The amendments were agreed following upon discussion at the Antisocial Behaviour Officers and Overview Groups. The Chair of the latter group sanctioned the amendments to be applied on 14 February 2018.
- 3.3 The policy lists, for the first time, the permanent membership of the Antisocial Behaviour Overview Group (see section 5.1 on page 13), introduces a right of appeal for perpetrators of antisocial behaviour made the subject of a warning issued under the policy (see section 9.2.5 on page 30 and section 9.3.6 on page 32) and adds an additional offence to the list of convictions referred to under paragraph 10.7 on page 34.
- 3.4 A number of other cosmetic amendments were made across the policy to reflect changes to the designation of various partner agencies and teams.

## **4 POLICY IMPLICATIONS**

- 4.1 The amendments update the policy version that was approved by East Lothian Council on 27 March 2007 and subsequently amended on 27 December 2007 and 24 April 2012.

## **5 INTEGRATED IMPACT ASSESSMENT**

- 5.1 The subject of this report has been through the Integrated Impact Assessment process and no negative impacts have been identified.

## **6 RESOURCE IMPLICATIONS**

- 6.1 Financial – None  
6.2 Personnel - None  
6.3 Other - None

## **7 BACKGROUND PAPERS**

- 7.1 None

<b>AUTHOR'S NAME</b>	Tom Shearer
<b>DESIGNATION</b>	Head of Communities and Partnerships
<b>CONTACT INFO</b>	Kenneth Black (Safer Communities Team Manager)
<b>DATE</b>	14 February 2018

# **East Lothian's Antisocial Behaviour Partnership's Antisocial Behaviour Policy**

**(As Amended at 14/02/18)**

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## **Introduction and Definition of Terms**

### **Introduction**

In East Lothian we believe that everyone is entitled to live, socialise and work without fear of antisocial behaviour and the existing East Lothian Antisocial Behaviour Strategy outlines the specific services that we provide. It also includes the ways in which we work with the perpetrators of antisocial behaviour and highlights that we should work together in partnership to prevent and tackle antisocial behaviour in all its forms.

The policy is divided into 12 main sections follows:

- [Section 1](#) explains the purpose of the policy.
- [Section 2](#) outlines the management framework that will administer the policy and highlights related strategies and policies that exist.
- [Section 3](#) describes the information sharing agreements in place between Police Scotland and members of the East Lothian ASB Partnership.
- [Section 4](#) identifies the partners implementing the policy.
- [Section 5](#) outlines roles and responsibilities.
- [Section 6](#) outlines the legal framework within which the policy will operate.
- [Section 7](#) sets out the commitment of the Partnership to the victims of antisocial behaviour.
- [Section 8](#) identifies partnership policy with regard to the strategic aim of preventing antisocial behaviour.
- [Section 9](#) identifies partnership policy with regard to the strategic aim of addressing antisocial behaviour via early intervention and diversion.
- [Section 10](#) identifies partnership policy with regard to the strategic aim of addressing antisocial behaviour via enforcement action.
- [Section 11](#) identifies partnership policy with regard to the strategic aim of addressing antisocial behaviour via rehabilitation.
- [Section 12](#) sets out service standards

## **Definition of terms**

### **Antisocial behaviour**

Is defined in section 143 of the Antisocial Behaviour (Scotland) Act 2004 as any behaviour “that causes, or is likely to cause, alarm or distress”. An individual can be described as behaving antisocially if he or she “pursues a course of conduct that is likely to cause alarm or distress” to persons out with their own household.

### **Child**

For the purposes of this policy, a child is defined as a person who is under the age of 16 years. In terms of this policy, any person who is over the age of 16, but who is the subject of a supervision requirement, will be treated as if they were a child.

### **Registered Social Landlord (RSL)**

The term “Registered Social Landlord” is defined in section 20 of the Housing (Scotland) Act 2010.

### **Notice of Proceedings**

A Notice of Proceedings is a statutory notice served by a social landlord who intends to initiate proceedings for possession of the house on one or more of the grounds specified in Schedule 2 of the Housing (Scotland) Act 2001.

### **Acceptable Behaviour Agreement (ABA)**

An Acceptable Behaviour Agreement (ABA) is a written agreement between an individual (adult or child/parent/guardian) engaging in antisocial behaviour and relevant partners working to prevent antisocial behaviour; for example, the police, local authority or RSL. An ABA is a clear statement of what the partnership would consider as acceptable behaviour and will be normally be put in place following the failure of written warnings. They can be used however at any time within the context of an antisocial behaviour investigation if the use of same is considered appropriate.

The aim of the Agreement is to make people responsible for their own actions, and the behaviour of those in respect of whom they have a vicarious responsibility. An individual *cannot be compelled* to enter into such an agreement.

ABAs are flexible enough to be used in relation to antisocial adults or children irrespective of their housing tenure. If the Agreement involves a child, then, in addition to obtaining his/her agreement and signature, the agreement and signature of the child’s parent or guardian will also be obtained. The signing of an Agreement by a child and his/her

parent/guardian will not prevent the reporting of that child to the Reporter where it is thought that he/she may be in need of compulsory supervision.

In the case of any individual who breaches the agreement, the ABA can be used to support an application for an ASBO and / or, in the case of a tenant, the raising of an eviction action. This will demonstrate to the Sheriff Court that the partnership has tried an alternative approach to tackling antisocial behaviour, thus strengthening the case against the person behaving antisocially.

ABAs are flexible and, by signing the agreement, the perpetrator admits that their behaviour is unacceptable. ABAs are quicker and more cost effective than the pursuit of judicial actions.

### **Antisocial Behaviour Order (ASBO)**

An ASBO is an order of the court that is intended to tackle, both behaviour that is likely to escalate, and patterns of behaviour that cause considerable alarm and distress to others (referred to in the Antisocial Behaviour etc. (Scotland) Act 2004 as “affected persons”). This behaviour may consist of a number of single acts. An ASBO is not intended to be a substitute for criminal proceedings where those are considered appropriate. An ASBO can be made against persons of all housing tenure types.

### **Interim Antisocial Behaviour Order (Interim ASBO)**

Interim Orders are intended to provide more immediate protection to complainers and can be applied for pending the determination of the substantive application for a full ASBO. Section 7 of the Antisocial Behaviour etc. (Scotland) Act 2004 sets out the conditions to be fulfilled before an Interim ASBO can be granted.

### **Criminal Antisocial Behaviour Order (CRASBO)**

A CRASBO is an Antisocial Behaviour Order made on conviction by a Sheriff or Justice of the Peace as part of a criminal sentence. Requests for CRASBOs will normally emanate from the Safer Communities Team.

### **Parenting Order**

Parenting orders are orders of the court designed to alter the behaviour of parents and to have them take responsibility for their child’s behaviour.

Parenting orders may compel parents to participate in; for example, parenting classes where they have been identified as needing help with their parenting skills.

Parenting orders will only be applied for where a parent has been offered support on a voluntary basis and has refused to engage with that support.



### **Warning Notice - Noise Nuisance**

Under section 43(2) of the Antisocial Behaviour etc. (Scotland) Act 2004, where a local authority receives a complaint that excessive noise is emitting from a residential property, and the complaint is found to be at a level that can be deemed to be antisocial, a warning notice may be served.

### **Fixed Penalty Notice**

A Fixed Penalty Notice is generally a financial penalty served by a council official or police officer on a member of the public as a result of them having committed an offence. Timely payment of the penalty removes the threat of criminal prosecution.

### **Scottish Secure Tenancy (SST)**

A SST is a contract that sets out both a social landlord's and tenant's legal rights and obligations when leasing / renting a dwelling house from a social landlord.

### **Short Scottish Secure Tenancy (SSST)**

In a relatively small number of cases, social landlords are entitled to offer a *prospective* tenant a SSST instead of the normal SST. This may be done where a tenant:

- has had order for repossession made against him/her in the UK on the grounds of antisocial behaviour in the previous 3 years
- where a member of the household of the prospective tenant is subject to a live ASBO

A SST will convert into a SSST where the landlord serves a Notice on the tenant to that effect, following the granting of a full ASBO. The conversion however is not mandatory. Where a SSST has been granted on the grounds of ASB, the landlord must make sure that support services are provided to the tenant to help them to convert successfully back to a SST. Support should also be provided where an SST has been converted to a SSST following upon the grant of a full ASBO.

### **Eviction**

A Scottish secure tenant can only be evicted from their tenancy by way of a court decree. A landlord must evidence a ground for eviction (a tenancy breach) to obtain such an order. Antisocial behaviour, on the part of the tenant, other occupiers or visitors to the tenancy, constitutes such a breach.

### **Houses in Multiple Occupation (HMO)**

An HMO is a property that is occupied by three or more persons (as their only or principal residence) who are not members of the same family and who share use of toilet, personal washing facilities or cooking facilities. HMO landlords must have a licence from the relevant local authority. This ensures that the property is managed properly and meets certain safety standards. The licence will be valid for up to three years.

### **Antisocial Behaviour Notice**

The Antisocial Behaviour etc. (Scotland) Act 2004 gives local authorities powers to regulate privately rented housing in Scotland. Under Part 7 of the Act, if a private tenant is engaging in antisocial behaviour at their home, and the landlord is not taking what could be considered to be appropriate and proportionate management action to address it, the local authority can serve an Antisocial Behaviour Notice outlining what actions the landlord requires to take. The Notice must describe the antisocial behaviour that has led to the Notice being served, stipulate what action is required to be taken by the landlord and within what timescale that action is required to be taken. If a landlord fails to comply with a Notice, the local authority can report the landlord for prosecution. The local authority can also apply to the Sheriff for either an “Order as to Rental Income”, which suspends the tenant's rent liability, a “Management Control Order”, which allows the local authority to assume the responsibilities of the landlord, or can take action to deal with the antisocial behaviour and can recover the costs from the landlord.

### **Private Landlords Registration**

Since April 2006, all private landlords in Scotland are required to register with their local authority. Registration ensures that landlords are “fit and proper” to be letting property. Members of the public will be able to view the register of private landlords on line and will be able to see whether a prospective landlord is registered. Registration will help local authorities to remove disreputable landlords from the market.

### **Closure of premises order (Closure Order)**

Such an order is granted via the Sheriff Court on application by Police Scotland where significant and persistent disorder or serious nuisance is regularly occurring. If an order is granted then premises are closed to all persons for the duration of the order and it becomes an offence to enter or remain on the premises.

### **Dispersion Notice**

A senior police officer (of the rank of Superintendent or above) can, in consultation with the local authority, designate an area, where significant, persistent and serious antisocial behaviour is being evidenced as an area in respect of which the police will be invested with powers of dispersals post-declaration.

## **Section 1: Purpose of the Policy**

It is the purpose of this policy to set out clearly and demonstrably how the East Lothian Antisocial Behaviour Partnership will deliver the aims of the current Antisocial Behaviour Strategy.

As agreed within the strategy document:

“East Lothian Council and Police Scotland will take the lead in reducing the number of people in East Lothian experiencing antisocial behaviour by delivering appropriate interventions”.

The strategy sets out that services will be designed to deal with antisocial with reference to four broad themes:

- Prevention
- Early Intervention and diversion
- Enforcement
- Rehabilitation

This policy reflects those themes and provides a structure and framework within which the partnership operates.

The East Lothian Antisocial Behaviour Partnership realises the way in which antisocial behaviour can affect individuals and communities and will work together to support victims of, and witnesses to, antisocial behaviour.

It is the *mission* of the partnership to prevent antisocial behaviour through both generic and tailored initiatives, to intervene at the earliest possible stage in all cases, and to support individuals in changing their behaviour.

## **Section 2: Management Framework / Related Strategies & Policies**

The Partnership acknowledges the existence of other independent policies, procedures and standards that exist within the Council and partner organisations, relating, in part, or in full, to antisocial behaviour. The Partnership also acknowledges that individual corporate members are independent organisations and, as such, can act independently to address antisocial behaviour complaints. For the avoidance of doubt, *this policy is not intended to preclude such independent action where a partner landlord considers it necessary.*

It is however accepted by all partners that, whilst independent action may be appropriate in dealing with low level neighbour nuisance and bespoke tenancy related matters, more serious forms of antisocial behaviour will be more effectively dealt with by the Partnership. A joint approach will also ensure consistent and fair treatment for all individuals involved in, or falling victim to, antisocial behaviour. In agreeing to adopt this policy, partners agree to work collaboratively in tackling antisocial behaviour within East Lothian.

Cognisance will be taken of all other relevant strategies and policies by the Antisocial Behaviour Case Monitoring Groups in reaching decisions within the context of individual cases.

### **Section 3: Information Sharing Protocols**

The appropriate flow of information between the partners involved in addressing antisocial behaviour is key to the successful implementation of a strategic approach to resolve recurring antisocial behaviour. The information that is shared must be *necessary and relevant* in addressing antisocial behaviour.

A structure of authorised information sharing protocols must be in place to allow the Partnership to meet its legal obligations and to ensure that actions taken by partners are predicated upon an evidential base.

#### **3.1 Signatories**

The signatories to the principal information sharing protocols currently in place in relation to antisocial behaviour are East Lothian Council, Police Scotland, East Lothian Housing Association and Homes for Life.

#### **3.2 Management of information**

All parties to the protocols agree to abide by the terms of the Data Protection Act 1998.

#### **3.3 In what circumstances can information be shared?**

Information can be shared:

- where East Lothian Council or any partner agency is investigating and gathering evidence of antisocial behaviour in relation to an individual or group, with a view to taking action to prevent or tackle that individual's or group's antisocial conduct
- where Police Scotland are seeking information to prevent or detect crime or disorder

### **3.4 Information the Police can share**

The protocols encourage the sharing of information between partners for the prevention and detection of crime and antisocial behaviour. Police Scotland can share information, both in response to a direct request in terms of these protocols and proactively with a view to supporting and assistance partners in addressing antisocial behaviour.

All information should be relevant and not excessive in relation to the purpose for which it is required. It should also be accurate. Each individual case should be considered on its own merits and in relation to the purpose for which the information is requested.

### **3.5 Direct requests for information**

In relation to requests for information about specific individuals, it is appropriate for the Police to provide the following kinds of information:

- details of charges brought, pending Court cases, convictions recorded at SCRO (Scottish Criminal Records Office) or information held on the PNC (Police National Computer)
- Police warnings and details of attendance at *loci* (command and control incidents) relating to antisocial behaviour.

### **3.6 Proactive sharing of information**

The Police can provide assistance to the Council or any other partner agency under protocol, by identifying and providing information in relation to individuals who are perpetrators of antisocial behaviour or criminal activity. For example, this may be done in pursuance of an ASBO or eviction of a convicted drug dealer.

### **3.7 What Information *must* the Council, or other partner agency, share with the Police?**

The Police are responsible for the investigation and detection of crime and the apprehension of offenders. Partners *must* disclose all information that comes into their possession that is gathered through appropriate means, or that comes to its notice, where it suspects that a crime may have been committed. Depending on the importance or seriousness of the incident, all information, which falls into this category, and is, or comes into the possession of partners, must be passed on to the Police *immediately*.

### **3.8 What information can the Council and other partners share with each other?**

The council and other partners can share information in response to a direct request and can seek support and assistance from partner organisations in tackling crime and antisocial behaviour in East Lothian. The information should be relevant and accurate.

### **3.9 How should information be shared?**

This should be done in strict accordance with each individual protocol.

## **Section 4: Partner Organisations**

The East Lothian Antisocial Behaviour Strategy 2014-2017 recognises that antisocial behaviour is not the responsibility of any single partner. Each partner within the East Lothian Antisocial Behaviour Partnership, with an interest in dealing with antisocial behaviour, will apply this policy and follow protocol when exchanging information.

The partners that are members of the Antisocial Behaviour Partnership, who will apply this policy, are:

- **East Lothian Council**
- **Police Scotland**
- **East Lothian Housing Association**
- **Homes for Life**
- **Scottish Fire and Rescue Service**
- **Scottish Children's Reporter's Administration**
- **Scottish Court Service**
- **Crown Office and Procurator Fiscal Service**

In general terms, this means that named employees of the Police, the Council and other partners will be able to share information and implement *a co-ordinated approach* to address incidents of antisocial behaviour.

## **Section 5: Roles and Responsibilities**

### **5.1 Role of the Antisocial Behaviour Overview group**

The Antisocial Behaviour Overview Group will oversee:

- the implementation of the Antisocial Behaviour Policy
- the operation of the Case Monitoring Groups and the Antisocial Behaviour Officers Group
- all Information Sharing Protocols
- performance reporting
- financial monitoring

The Overview Group will also consider and agree actions, as restricted agenda items, for any case where the Case Monitoring Group cannot reach a consensus.

The permanent membership of the Overview Group shall be constituted by representatives drawn from the undernoted agencies -

- East Lothian Council (Safer Communities Team, Housing Services, Adult Wellbeing, Area Management, Children's Wellbeing, Protective Services, Legal)
- Police Scotland
- East Lothian and Tenants Residents Panel
- East Lothian Housing Association
- Homes for Life

The Overview Group will be chaired by the council's Head of Service responsible for antisocial behaviour.

The Chair of the Overview Group will have the power to extend the membership of the Group if a particular partner agency has an interest in a particular topic of concern.

### **5.2 Role of the Antisocial Behaviour Case Monitoring Groups**

The Antisocial Behaviour Case Monitoring Groups are cross-partner groups charged with ensuring that referred cases are considered from *all perspectives* and that actions agreed balance the needs of the individual with the needs of the community.



In East Lothian two separate case monitoring groups will meet.

An Adult Antisocial Behaviour Case Monitoring will meet every four weeks to consider adult cases referred by members of the Partnership.

Referred antisocial behaviour cases involving children or young adults who are the subject of a supervision requirement, will be considered by the four weekly Children's Antisocial Behaviour case Monitoring Group.

The membership of the two Case Monitoring Groups will be approved and kept under review by the Overview group.

The Case Monitoring Groups shall be chaired by the Manager of the council's Safer Communities Team.

The Chair of the Groups shall be authorised to make executive decisions within the context of individual cases that require to be made between meetings.

The Safer Communities Team will carry out the administrative duties attendant to the Groups; minutes shall be issued within five days of each meeting.

It is the role of the Antisocial Behaviour Case Monitoring Groups to:

- ensure that all relevant Council sections and external partners are involved in consideration of the case and their views are reflected and taken into account before any action is taken regarding a case
- instruct (further) intervention or diversionary action
- instruct a multi-partner case conference for specific cases if this has not happened and / or is considered appropriate
- provide advice to internal and external partners on cases in which there is doubt as to what course of action is considered the most appropriate
- instruct intervention action
- instruct appropriate enforcement action
- formally review all outstanding ASBOs on a monthly basis with a view to determining whether they remain necessary
- consider representations made by Police Scotland for the use of powers by other partners under the Antisocial Behaviour etc. (Scotland) Act 2004

The Case Monitoring Groups can co-opt representatives on to the group from other agencies when it is known that those agencies have intimate knowledge of a case that is going to be discussed.

### **5.3 Role of the Antisocial Behaviour Officers' Group**

The Antisocial Behaviour Officers Group is a cross-partner forum of senior officers charged with:

- maintaining the validity and currency of the Antisocial Behaviour Policy
- developing and maintaining relevant procedures and documentation
- maintaining the validity and appropriateness of performance monitoring information and reporting to the Overview Group thereon
- reporting to the Overview Group on information sharing arrangements
- monitoring and reporting quarterly to the Overview Group on the level of enforcement action
- implementing the decisions of the Overview group

The Officers' Group shall be chaired and administered by representatives drawn from the council's Safer Communities Team. Minutes will be issued within five days of each meeting.

### **5.4 Role of the Safer Communities Team**

The Safer Communities Team includes East Lothian Council and Police Scotland personnel. It is the role of the team to:

- support the Antisocial Behaviour Case Monitoring Groups
- establish the facts in individual cases, taking great care when considering complaints to avoid the possibility of discrimination/victimisation on the grounds of race, ethnicity, age, sex, sexual orientation, disability or religion
- confirm that the behaviour that forms the basis of the complaint constitutes antisocial behaviour
- where appropriate, establish what steps the complainer has taken to resolve matters themselves and consider whether further steps would be appropriate. These might include, *amongst other things*, a referral to East and Midlothian Resolution Service, formal noise monitoring or, in some cases, private civil action

- maintain full and accurate confidential records on open and referred cases
- advise partners in managing cases and preparing cases for referral to the Case Monitoring Groups
- share intervention action taken with relevant sections and partners in accordance with the existing information sharing protocols
- become involved *immediately* in cases of serious antisocial behaviour by supporting and assisting partners
- investigate and take action in serious antisocial behaviour cases in which the perpetrator is a Council tenant
- take a lead role in cases of antisocial behaviour where no clear lead partner role exists e.g. private sector housing antisocial behaviour
- act as the primary link, on behalf of the Partnership, with East And Midlothian's Resolution Service
- promote the Antisocial Behaviour Helpline and co-ordinate appropriate responses to complaints working closely with partners as required
- produce performance monitoring reports
- represent the Partnership in Court providing evidence and acting as professional witnesses when required
- ensure that a good audit trail of case information and evidence exists and that appropriate records are in place
- ensure that all Council sections, external partners and other appropriate agencies, are involved in consideration of the case and their views are reflected and taken into account before any action is taken regarding that case, ensuring that the partnership's approach is collaborative.
- maintain accurate minutes of the Antisocial Behaviour Overview Group, the Officers Group and the Case Monitoring Groups
- assist the Officers Group in developing detailed procedures and standard documentation
- intimate copies of all judicial orders to the relevant persons
- retain information regarding the use and effectiveness of ASBOs in order to support and evidence any monitoring and evaluation exercises that may be required

- take the lead in instituting and managing Problem Solving Partnerships in response to tackling group related antisocial behaviour occurring within public spaces

### **5.5 Role of East Lothian Council**

It is the role of the Council generally to:

- validate complaints received
- notify the Police immediately on the discovery of criminal activity
- initiate contact with any other partner or organisation, which may assist with the provision of information, intelligence or other evidence in the preparation of formal documentation e.g. an ABA or an ASBO Application
- formally request disclosure of information from the Police relevant to any investigation
- work with, challenge and support children exhibiting, or at risk of exhibiting, antisocial behaviour
- ensure suitable arrangements are in place so that each case is fully researched and the Council is in a position at all Antisocial Behaviour Case Monitoring meetings to update the Group as to the stage each case has reached
- prepare, draft and meet the costs of all ASBO applications or other significant enforcement action within East Lothian on receiving a request to do so that is consistent with this policy

### **5.6 Role of Police Scotland**

It is the role of Police Scotland to:

- have officers present at face-to-face meetings held with the perpetrators of antisocial behaviour on the request of a partner
- disclose all relevant information to the Council or a partner under the terms of the relevant information sharing protocol
- disclose all relevant information to East Lothian Council in support of the pursuance of legal action

### **5.7 Role of partner organisations**

It is the role of the lead partner when dealing with instances of ASB to:

- validate complaints received
- take action and meet the costs of any intervention and enforcement action for lower level antisocial behaviour under appropriate independent policy, set of local procedures or tenancy agreement
- gather and collate all necessary information relating to any antisocial behaviour investigation
- notify the Police immediately on the discovery of criminal activity
- make necessary contact and facilitate early interventions with the alleged perpetrators of antisocial behaviour
- ensure suitable arrangements are in place for the identification of new antisocial behaviour cases and ensure these cases are investigated and brought to the attention of the Antisocial Behaviour Monitoring Group
- ensure any tasks detailed in the Antisocial Behaviour Monitoring Group minutes are completed timeously
- disclose all relevant information to East Lothian Council in support of the pursuance of an ABA or ASBO application

### **5.8 Resource implications**

East Lothian Council will prepare, draft and meet the costs of all ASBO applications or other significant enforcement action within East Lothian on receiving a request to do so that is consistent with this policy. The Council and Police Scotland will also deploy appropriate resources to carry out accompanied warning visits and acceptable behaviour agreement visits.

Partners will take and meet the costs of action that they consider appropriate under independent policy, procedure or tenancy agreement. Partners will also meet the costs of their role and responsibilities under the requirements of this policy.

## **Section 6: Legal Framework**

### **6.1 Statutory references**

The *main* pieces of legislation in which this policy operates are as follows:

- [Antisocial Behaviour etc. \(Scotland\) Act 2004](#)
- [The Housing \(Scotland\) Act 2001](#)
- [The Environmental Protection Act 1990](#)
- [The Data Protection Act 1998](#)
- [The Children \(Scotland\) Act 1995](#)
- [The Housing \(Scotland\) Act 2010](#)

### **6.2 Equality and discrimination**

Enforcement action will only be considered where it is necessary to protect individuals, families or communities who are subject to the effects of antisocial behaviour. An application for an ASBO will not be made simply because individuals are different from their neighbours or because they engage in activities which are perceived as being different (for example they belong to a different religion, sex, race, sexual orientation, age or have a disability). When considering whether or not a particular case is appropriate for an ASBO application, the Council and its partners must satisfy themselves that the application has not been motivated by discrimination.

In addition, the Partnership must also consider the relevance of any mental disorder or physical disability and its impact in relation to an ASBO application as these matters may be provided for by the [Disability Discrimination Act 1995](#).

### **6.3 Human rights considerations**

The [Human Rights Act 1998](#) makes it unlawful for a public authority to act in a way that is incompatible with the European Convention on Human Rights (ECHR). East Lothian Council needs to be satisfied that:

- all procedural and substantive rights under the ECHR are complied with
- any interference with an individual's rights is necessary and in accordance with the provisions of ECHR legislation
- the proposed terms of any ASBO are reasonable and proportionate

#### **6.4 Information sharing**

Section 139 of the [Antisocial Behaviour etc. \(Scotland\) Act 2004](#) allows the disclosure and sharing of information between “relevant authorities”, which for the purpose of the Act, are the Council, Police Scotland, RSLs and any other partner involved in tackling antisocial behaviour. The provision allows disclosure of information between relevant authorities (Local Authority, Chief Constable and RSLs) where it is necessary and relevant for tackling antisocial behaviour. This removes any unnecessary obstacles to the sharing of information and ensures effective management of antisocial behaviour through information exchange.

#### **6.5 Management of information**

The [Data Protection Act 1998](#) restricts the sharing, storing and management of information. Section 29 contains an exemption when information is being sought for crime prevention and detection and the apprehension or prosecution of criminals.

#### **6.6 Regulation of Investigatory Powers (RIPSA)**

Some activities of the Council, including noise monitoring, are covered by the Regulation of Investigatory Powers (Scotland) Act 2000, hereafter described as RIPSA. These activities, which are deemed lawful if properly authorised, include carrying out covert surveillance or using covert human intelligence sources.

#### **6.7 Eviction**

Antisocial Behaviour is also a ground for re-possession of a Scottish Secure Tenancy (SST) in terms of paragraph 7 of schedule 2 to the Housing (Scotland) Act 2001. Before raising proceedings, a landlord has to serve on the tenant a Notice specifying the ground(s) on which proceedings are being raised and the date on which the landlord may raise proceedings. A Notice once effective remains in force for 6 months during which the landlord may raise proceedings.

#### **6.8 Application for an ASBO**

Only the Council or a Registered Social Landlord can apply for an ASBO; however, the Police *must* be consulted.

The Antisocial Behaviour Case Monitoring Groups will have considered all of the issues attendant to a case, particularly issues of support and vulnerability, before enforcement action is considered.

Prior to making an application for an ASBO in respect of a child, the Antisocial Behaviour Case Monitoring Group must consult the Children’s Reporter (who will be a core member of the Case Monitoring Group). If it is

thought that an ASBO is appropriate, the Council's Legal section will be instructed to prepare and lodge an application with the Court.

Where a child is involved, the Sheriff is required to have regard to advice provided by a Children's Hearing before determining the application for an ASBO. Therefore, before such an application can be determined, the Children's Reporter will be required to arrange a Children's Hearing for the purpose of obtaining their advice as to whether it agrees that an ASBO is necessary for protecting person(s) from further antisocial behaviour by the child.

Where an application for an Interim ASBO is made, and the Court is satisfied that it is necessary, an Interim ASBO can be granted pending the Hearing for a full ASBO. Before an Interim ASBO can be granted in respect of a child, the Court must have regard to any views expressed by the Children's Reporter. The question of whether the hearing of an ASBO application is held in private is a matter solely for the court.

Where an ASBO is granted against a child, it is important that not only is their behaviour tackled by the granting of the order but that the child is also supported to take positive steps to address its behaviour. It is envisaged that most children who are the subject of an ASBO will need a package of intensive support. When granting an ASBO (or an interim ASBO) in respect a child the Court has the power to require the Children's Reporter to refer the case to a Children's Hearing. It will be at the discretion of the Court whether to exercise this power or not.

#### **6.9 Court proceedings**

The Council will lodge an ASBO application with the Court requesting a warrant for service. When that is granted, the application must be served on the individual whose behaviour is the subject of the application. The individual will be informed in writing of the need to attend any hearing and, should they fail to attend, an Order may be granted in their absence. If an individual opposes the application, the Court will regulate the procedure accordingly. Where a hearing is fixed to hear evidence, normal Court rules and timescales will apply.

#### **6.10 Court appeals**

Either the Applicant or the Defender (in an ASBO case) can appeal against the Court's decision. The order remains in force pending the outcome of the appeal.

#### **6.11 Variation and revocation of Antisocial Behaviour Orders**

ASBOs may be varied or revoked on an application by the Council or RSL or on application from the person against whom the ASBO is made.



The terms of all ASBOs relate to the protection of a particular community or individual, and they cannot be “transferred” to another community if the recipient happens to move house. In these circumstances, an application to have the ASBO varied would need to be considered, and this would only happen if that individual continued to behave antisocially at their new address.

If an individual moves away from the area, consideration should be given as to whether or not the original ASBO is still required, a risk assessment should be undertaken as to whether it is feared that, despite moving from the area, the recipient may return to persist in behaving antisocially.

Where the subject of an ASBO moves to another Local Authority area, every effort should be made to liaise with the relevant Local Authority’s Safer Communities Team and provide them with information about the fact that the individual in point is currently the subject of an ASBO. The Local Authority should also provide details of the antisocial behaviour that warranted the ASBO being applied for and granted. This information may need to be taken into account when assessing an individual’s suitability for housing in their new area.

If alerted by another Council that an individual, subject to an ASBO, is moving into East Lothian, the Case Monitoring Group will be made aware and agree appropriate action. This information will also be taken into account when assessing suitability of housing if appropriate.

## **6.12 Breach of an Antisocial Behaviour Order**

Under Section 9 of the Antisocial Behaviour etc. (Scotland) Act, 2004, any person who is the subject of an ASBO or an Interim ASBO who, without reasonable excuse, does anything that the order prohibits shall be guilty of an offence.

A person guilty of an offence under Section (1) of the Act above shall be liable, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both; or on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

Under Section 11 of the Antisocial Behaviour etc. (Scotland) Act 2004, where the Police reasonably believe that a person is committing, or has committed an offence under the terms of their ASBO, then they may arrest that person without warrant.

Breach of an ASBO by a child or young adult on a supervision requirement will be jointly reported to the Procurator Fiscal and the Children’s Reporter, as is appropriate in accordance with the Lord Advocate’s Guidelines. The Procurator Fiscal has the discretion to pass such cases to the Reporter where appropriate.

If criminal proceedings are taken against a child or young adult on supervision, for a breach of their ASBO and he/she pleads or is found guilty, the Court may seek advice from the Children's Hearing on how the child or young adult might be treated, or indeed it might remit the case to the Children's Hearing for disposal.

### **6.13 Review of enforcement action**

The partnership will review all current ASBOs and other enforcement action taken on a monthly basis. This review will confirm that all orders and actions in place remain necessary. Where it is deemed that there is no continuing need for an ASBO, an application should be made to the Sheriff to revoke the ASBO.

## **Section 7: Supporting Victims of Antisocial Behaviour**

Antisocial behaviour can generate alarm and distress, particularly to older people, members from minority ethnic groups and other vulnerable people living within our communities.

The Partnership recognises the importance of supporting victims of antisocial behaviour. The Partnership is committed to accessing appropriate support mechanisms to help the victims of antisocial behaviour.

East Lothian Council has reached an agreement with Victim Support (Scotland) who will provide specialist support to victims of and witnesses to antisocial behaviour. Partners can refer victims and witnesses to Victim Support via the Safer Communities Team.

## **Section 8: Prevention**

The Council, supported by the Partnership, will involve stakeholders and communities in the planning process for a range of generic and targeted diversionary activities and will adopt national standards for community engagement. The partnership will also attempt to engage with perpetrators of antisocial behaviour to understand why behaviours occur on a case-by-case basis to strengthen future preventative action.

### **8.1 Antisocial Behaviour Helpline**

The partnership will seek to prevent antisocial behaviour by publicising widely the Antisocial Behaviour helpline. The Partnership will seek to ensure that citizens are aware that antisocial behaviour will not be allowed to blight communities.

The Antisocial Behaviour Helpline will be managed by the council's Safer Communities Team.

### **8.2 Antisocial Behaviour Leaflet**

An antisocial behaviour leaflet outlining ASB policy will be widely circulated and accessible; this leaflet will set out service standards and reinforce the message about being a considerate and tolerant neighbour. The leaflet will provide key contact numbers, such as, the ASB helpline, how to access East and Midlothian Resolution Service, report abandoned cars, report fly-tipping and dog fouling, as well as providing other local contact information.

### **8.3 Publicity**

In addition to the leaflet and helpline, publicity about the partnership's policy will be maximised through the local press, including coverage of successful ASBO / Eviction court cases and diversionary activities. These, and other publicity vehicles, including social media, will also be used to communicate information about our performance in dealing with antisocial behaviour enabling a positive message to be disseminated regarding the partnership's performance in dealing with antisocial behaviour and improving public perception of the issue.

### **8.4 CCTV**

CCTV cameras are now located within the town centres of East Lothian. These have a deterrent effect in preventing antisocial behaviour and enhance the public's sense of well-being.

### **8.6 Environmental improvements**

Environmental improvements and "secured by design" initiatives can also assist in preventing incidences of antisocial behaviour by 'designing out'

problem features and will be utilised by the Partnership where opportunities and resources permit.

### **8.7 Estate management inspections**

The Council and its RSL partners will aim to prevent ASB by early identification of issues within communities through estate inspection programmes, linking partnership services to address issues of potential concern and, through engaging with the community, attempting to instil a sense of community pride.

### **8.8 Graffiti removal**

The partnership believes that a *zero tolerance* approach to graffiti delivers maximum results and adopts the view that, if all graffiti is removed quickly and effectively, less graffiti occurs and more general antisocial behaviour is accordingly discouraged.

Unless there are problems with access to private property, East Lothian Council undertakes to remove graffiti from all premises and street furniture promptly on identification.

Unless the costs of individual instances are prohibitive, or there are material health and safety considerations, e.g. on a railway bridge or motorway fly-over, the Council will not serve notices to require owners to remove graffiti, rather the Council will meet the costs of removal.

### **8.9 Housing allocations policy**

Through the Council's Allocations policy the Council and partner social landlords aim to let houses to those in housing need while also addressing the objective of ensuring balanced and sustainable communities. By monitoring incidences of antisocial behaviour by area, the Council will be able to develop local lettings initiatives to address a particular imbalance. RSL's also have their own allocations policies that make reference to problems relating to antisocial behaviour.

### **8.10 Tenancy agreement**

When a new tenant signs up to a tenancy with East Lothian Council or a RSL landlord, they will receive information contained within their tenancy agreement about acceptable standards of behaviour.

The East Lothian Scottish Secure Tenancy (SST) agreement states clearly under Section 3, 'Respect for others':

"You, those living with you, and your visitors, must not harass or act in an antisocial manner to, or pursue a course of antisocial conduct against, any person in the neighbourhood. Such people include

residents, visitors, our employees, agents and contractors and those in your house.”

Each new Council tenant is issued with a Tenants Handbook and a follow-up ‘settling-in’ visit to all new tenants takes place approximately six weeks after the sign-up visit; this allows the Housing Officer to reinforce these points.

### **8.11 Housing support**

If a tenant of the Council or RSL is identified as having support requirements to assist them in sustaining their tenancy and complying with the terms of their tenancy agreement, they can be referred for additional housing support services via their landlord. A prospective tenant who has a history of antisocial behaviour (evidenced as outlined in the definition of terms contained on page 6), may be offered a SSST with support to enable the landlord to ensure that previous behaviour does not continue.

### **8.12 Prevention and children**

A large amount of effort and resources are directed towards prevention activities, facilities and programmes of work involving children. The Partnership recognises and values the huge contribution the Voluntary Sector makes in jointly providing such services. The Partnership will support such initiatives and projects.

#### **8.12.1 Programmed prevention**

The Partnership is committed to building sustainable communities and to social inclusion both now and in the future. Programmed provision action for children aims to include as many participants as possible in positive educational and/or recreational experiences. The Partnership recognises that this provision helps to promote inter-generational community harmony.

#### **8.12.2 Active citizenship**

The Partnership will endeavour to engage with children to improve local democratic processes and a feeling of community worth.

The partnership will work in schools to reinforce the importance of active citizenship and will provide information and advice supporting initiatives.

The Partnership is committed to Youth Parliaments and the inclusion of children in planning sporting facilities and clubs.

The Partnership will work with all relevant agencies to improve perceptions and remove prejudices between children and their communities.

## **Section 9: Early Intervention and Diversion**

### **9.1 General**

Sections 9.2, 9.3 and 9.4 set out the specific formal intervention framework as defined by this policy.

The Partnership recognises that other intervention and diversionary work or actions can be happening alongside and be complimentary to the intervention framework as set out within this policy. If such other work is ongoing, the Antisocial Behaviour Case Monitoring Groups will consider this before determining further agreed action in any particular case. The Case Monitoring Group may also instruct further intervention or diversionary aspects if the group feels that this is appropriate.

Over and above the framework set out in sections 9.2 - 9.4, general intervention and diversionary measures include:

#### **9.1.1 Resolution**

All partners should make use of East and Midlothian's Resolution Service, where appropriate, as an effective method of resolving neighbour disputes and addressing antisocial behaviour; however, it is extremely important that a referral to the Resolution Service is done early in the process as that way there is more chance of the intervention being effective.

The Partnership recognises the critical role that the Resolution Service has to play in preventing antisocial behaviour occurring in East Lothian.

#### **9.1.2 Noise**

Where an antisocial behaviour complaint revolves mainly around measurable noise, a referral should also be considered to have noise monitoring equipment installed. This should be done through the Council's Safer Communities Team in the first instance.

The Partnership will promote the work of East Lothian's Night Time Noise Service.

#### **9.1.3 Private landlords registration**

Where intervention is required in cases where antisocial behaviour is emanating from the property of a registered private landlord, intervention warnings against the occupants of the property may be shared with the landlord.

#### **9.1.4 Diversionary activities**

The Partnership will endeavour to implement targeted diversionary programmes or specific activities with the aim of reducing the likelihood of the re-occurrence of antisocial behaviour.

## **9.2 Intervention Framework - Adult Sector**

The following intervention stages have been agreed between partners working together to tackle antisocial behaviour within East Lothian in relation to adults:

### **9.2.1 First Warning**

The Partnership will attempt to secure behavioural change by initially issuing a verbal warning. This will take the form of a meeting, or visit, and, depending on circumstances, may be a joint visit with the Antisocial Behaviour Police Liaison Officer. All verbal warnings will be recorded and confirmed in writing to the party concerned. Monitoring arrangements will be put in place to evidence whether behaviour has changed as a result of the warning being issued.

The appropriate partner should, upon being made aware that a complaint has been made, and once they have satisfied themselves that the complaint is valid (this may include the taking into consideration of uncorroborated reports of similar types of behaviour from different complainers on separate occasions), take the lead and issue the perpetrator with a face-to-face verbal warning. Most commonly, this will be the responsibility of the landlord of a property. Private landlords will be given advice by the Safer Communities Team if this is requested. Once a verbal warning has been issued, the lead partner will then be expected to follow this up by issuing a verbal warning confirmation letter.

### **9.2.2 Second Warning**

If problems persist, the appropriate partner will issue a written warning letter. The letter should contain brief details of the type of complaints being made against the perpetrator, it should also request that the perpetrator refrain from engaging in the type of behaviour detailed within the letter. Where appropriate, this letter will also refer to the conditions of the tenancy agreement under which the property has been let.

### **9.2.3 Third Warning**

If problems persist, the appropriate partner will issue a further written warning letter. The letter will again contain brief details of the type of complaints being made against the perpetrator and will again request that the perpetrator refrain from engaging in the type of behaviour detailed within the letter.



***If an adult is involved in serious antisocial behaviour or offending, their case may be considered immediately at the third intervention stage by-passing stages 1 and 2.***

At this stage, the lead partner will present the details of any cases that have gone beyond final written warning stage to the Antisocial Behaviour Case Monitoring group for discussion.

#### **9.2.4 Fourth Warning**

If problems nevertheless persist, following discussion at the Antisocial Behaviour Case Monitoring group, a final face-to-face warning will take place. At this stage a member of the Council's Safer Communities Team, together with an appropriate staff member from the lead partner and the Antisocial Behaviour Police Liaison Officer, will undertake a face-to-face meeting with the perpetrator. An Acceptable Behaviour Agreement (ABA) will have been drawn up by the Council's Safer Communities Team after it has been provided with all of the documented relevant interventions already made by the lead partner involved in the case. This ABA will be discussed with the perpetrator and the agreement offered for signature. During the meeting, the antisocial behaviour process will be explained to the perpetrator, and they will be officially warned of the consequences of not altering their behaviour.

If, following all interventions, antisocial behaviour is still evidenced, the Antisocial Behaviour Case Monitoring Group will consider appropriate enforcement action.

*If an adult is involved in serious antisocial behaviour, their case may be introduced directly to the Case Monitoring Group without having to progress through the preceding stages. The Group, at that stage, can direct the most appropriate action to be taken under the policy.*

#### **9.2.5 Appeals against Warnings**

An adult who has been made the subject of any warning issued by East Lothian Council under the policy can ask for the circumstances that led to the issuing of same to be reviewed via the Council's corporate complaints process. Any such complaint should be registered within 6 months of the date of the issuing of the warning.

### **9.3 Intervention Framework - Children's Sector**

The following intervention stages have been agreed between partners working together to tackle antisocial behaviour within East Lothian involving children.

It should be noted that details of every Warning issued to a child, including the issuing of an Acceptable Behaviour Agreement, shall be made to the Key Worker from East Lothian Council's Children's Services Department allocated to the child or his or her family.

#### **9.3.1 First Warning**

The partnership will, on being satisfied that an antisocial behaviour complaint against a child is valid (this may include the taking into consideration of uncorroborated reports of similar types of behaviour from different complainers on separate occasions), attempt to secure behavioural change of that child by issuing a verbal warning. This will take the form of a meeting or visit to the child and the child's parent or guardian by a member of the lead agency and a member of the Safer Communities Team. All verbal warnings will be recorded and confirmed in writing to the child and his or her parent or guardian.

#### **9.3.2 Second Warning**

If problems continue to persist, a second warning letter will be sent from the Council's Safer Communities Team to the child and to the child's parent or guardian.

#### **9.3.3 Third Warning**

If problems continue to persist thereafter, a third warning letter will be sent from the Council's Safer Communities Team to the child and to the child's parent or guardian.

It will be the responsibility of the Safer Communities Team to monitor the behaviour of the child after the third warning. The case will be presented to the Children's Antisocial Behaviour Monitoring Group for discussion on the issuing of the Third Warning.

*If a child is involved in serious antisocial behaviour or offending, their case may be considered immediately at the third intervention stage by-passing stages one and two.*

#### **9.3.4 Fourth Warning**

The Case Monitoring Group will sit on a four weekly basis. The Group will decide what further intervention and diversionary activity and/or enforcement action it considers appropriate. This may include asking a child

to consider signing an Acceptable Behaviour Agreement. It may also include the issuing of a Final Warning to the child in the context of a home visit by the appropriate agencies.

### **9.3.5 Acceptable Behaviour Agreement**

If the Antisocial Behaviour Case Monitoring group consider that an ABA is warranted and appropriate then the Safer Communities Team will draw this up after consultation with all the partners involved with the child. The Safer Communities Team will, after confirming agreement on the contents of the ABA, co-ordinate an ABA meeting for the ABA to be signed off. The child, plus their parent or guardian must be invited to attend the ABA meeting. However, if a parent or guardian refuses to attend another person (a supportive adult preferably a relative of the child, or an appropriate adult previously identified from the child's case notes) may stand in for the parent. If the child fails to attend the ABA meeting but their parent or guardian does attend, another meeting should be organised, and it should be emphasised to the parent / guardian of the child that their son/daughter/charge must attend at the re-scheduled ABA meeting.

If the child fails to attend the second ABA meeting the ASBT will send out a letter to the child's parent nor guardian advising them that their son/daughter/charge will be subject to further review by the Antisocial Behaviour Case Monitoring Group for it to decide how best to proceed with the case.

If after an ABA has been signed by the child or if the child decides not to sign an ABA, and they continue to exhibit antisocial behaviour, an application for an ASBO may be considered by the Children's Case Monitoring Group.

### **9.3.6 Appeals against Warnings**

A child or parent or guardian of a child who has been made the subject of any warning issued by East Lothian Council under the policy can ask for the circumstances that led to the issuing of same to be reviewed via the Council's corporate complaints process. Any such complaint should be registered within 6 months of the date of the issuing of the warning.

## **9.4 Intervention Framework - Adults Subject to Supervision Requirement**

Persons aged 16 and over and still subject to a supervision requirement remain within the jurisdiction of the Children's Hearing system. Intervention action for such persons will be as per the children's sector and at the appropriate stage their cases will be referred to the Children's Case Monitoring Group.

## **Section 10: Enforcement**

This section of the policy sets out the enforcement action that the partnership can ultimately take if required. Enforcement action will be applied with *appropriateness and proportionality* being the driving consideration.

### **10.1 Antisocial Behaviour Orders (including Interim Orders)**

East Lothian Council *will* apply for an ASBO on behalf of the partnership in the following circumstances:

- on a request being made by Police Scotland to the Antisocial Behaviour Case Monitoring Groups
- on an instruction being issued by the Antisocial Behaviour Case Monitoring Groups

The Council cannot apply to the Court for an ASBO in relation to a child under 12 years of age.

### **10.2 Criminal Antisocial Behaviour Orders**

East Lothian Council will request that the Procurator Fiscal make a request of the Court to include a Criminal Antisocial Behaviour Order (CRASBO) as part of a sentence following conviction. This this will be:

- on request from Police Scotland
- on request from one of the Antisocial Behaviour Case Monitoring Groups

### **10.4 Parenting orders**

Where a parent has been offered support on a voluntary basis and has refused to engage with that support, and where their behaviour, or lack of parental intervention, is having a negative impact on their child, the Council can consider applying to the court for a Parenting Order.

### **10.5 Warning notices - Noise Nuisance**

Officers from East Lothian Council's Protective Services department have the authority to issue statutory warning notices for daytime (07.00 hours - 19.00 hours), evening (19.00 hours - 23.00 hours) or night time (23.00 hours - 07.00 hours) in relation to the commission of noise offences.

### **10.6 Fixed Penalty Notices**

East Lothian Council may issue a Fixed Penalty Notice for:

- non-compliance with a warning notice for noise offences
- littering
- dog fouling
- fly-tipping

### **10.7 Evictions for drug related incidents**

Partner landlords will *normally* seek to evict tenants on evidence of drug related incidents where the property has been used for any of these purposes. These will include:

- supply of drugs
- being concerned in the supply of drugs
- possession with intent to supply
- cultivation within the property or the grounds of the property
- second or subsequent conviction for possession
- allowing a tenancy to be used for the commission of offences under the Misuse of Drugs Act 1971

### **10.8 Evictions for other antisocial behaviour**

Housing providers within the Partnership will *normally* seek to evict tenants who:

- breach an Interim or full ASBO
- exhibit, or allow others to knowingly exhibit, significant antisocial behaviour within their tenancy, or within the locality thereof, and who do not alter their behaviour, despite having been warned regarding same
- are convicted of a serious crime of a violent or threatening nature within the property or in the locality of the tenancy

### **10.9 Short Scottish Secure Tenancy (SSST)**

Housing providers within the Partnership may consider restriction to a SSST on evidence of antisocial behaviour in temporary or previous accommodation. This may be done where a tenant:

- has had order for repossession made against him/her in the UK on the grounds of antisocial or similar behaviour in the previous 3 years
- a member of household is subject to an antisocial behaviour order (ASBO).

Partner landlords *may* convert a SST to a SSST when an ASBO has been granted. A recommendation shall be issued by the Case Monitoring Groups to the relevant Housing Manager in these circumstances.

#### **10.11 Antisocial Behaviour Notice**

If a landlord fails to comply with an antisocial behaviour notice then the Council can take action to deal with the antisocial behaviour and pursue the landlord for expenditure incurred as a consequence of the landlord's failure to comply. The Council can also refer the matter to the Procurator Fiscal for prosecution of the offence of failure to comply with the notice.

The council's Safer Communities Team will instruct the issuing of Notices under this section.

#### **10.12 Order as to rent payable**

The Council can apply to the Sheriff for an Order as to Rent Payable in respect of a property in relation to which an antisocial behaviour notice has been issued. If granted, this has the effect of stopping rent payments being received by the landlord for the property concerned. Careful consideration must be given as to the details of each individual case to ensure that serving an Order as to Rent Payable is not seen by a tenant as a reward for antisocial behaviour.

#### **10.13 Management Control Order**

Where tenants of private landlords are behaving in an antisocial manner and the landlord has failed to address that behaviour effectively as specified within the Antisocial Behaviour Notice, the Council can apply for a Management Control Order via the Sheriff Court. If granted, the Council can then intervene and take over the management of the tenancy in question such that it can take actions that the private landlord should have taken but did not. When a Management Control Order is in force the Council will have the sole right to claim any rent or other income due on the property. A Management Control Order is in practice an alternative to the Order as to Rent Payable.

#### **10.14 Private landlords de-registration**

East Lothian Council will submit an application to the Licensing Sub-Committee to deregister a private landlord who no longer meets the "fit and

proper person” test. It is a criminal offence to operate as a private landlord and not be registered.

#### **10.15 Closure of Premises Orders**

A senior police officer (of the rank of Superintendent or above) can, in consultation with East Lothian Council, take action through the Sheriff Court to close premises where significant and persistent disorder or serious nuisance to the local community is regularly occurring.

#### **10.16 Dispersal Notice**

A senior police officer (of the rank of Superintendent or above) can, in consultation with East Lothian Council, designate an area where significant, persistent and serious antisocial behaviour is occurring and the behaviour of groups is contributing to this problem, and utilise the power of dispersal post-declaration.

#### **10.17 Seizure of vehicles**

Police Scotland have the power to deal with individuals who cause alarm, distress or annoyance to members of the public through the antisocial use of vehicles on public roads or off road. The police can stop and seize or remove motor vehicles that are being used in such a manner.

#### **10.18 Seizure of noise making equipment**

Where a warning notice has been served in respect of antisocial noise, and an authorised officer has reason to believe that noise emitting is above a permitted level, the equipment producing the noise may be seized and removed.

#### **10.19 Vexatious complainers**

Following investigation, the Partnership may declare unjustified, repeated, unfounded or frivolous complainers as vexatious and may decide to take no further action as a result of those complaints. This decision will be made by the Adult Case Monitoring Group.

### **Section 11: Rehabilitation**

Successful rehabilitation of the perpetrators of antisocial behaviour depends on many facets and each case has its unique characteristics.

The Partnership, through either its own resources or through accessing other resource, will endeavour to rehabilitate antisocial behaviour offenders.

Support mechanisms and resources that can deliver successful rehabilitation include:

- users with dependencies engaging with treatment and rehabilitation centres
- sensitive re-housing through East Lothian Council's Rehousing Panel or management transfers through other partnering landlords
- East Lothian Council Community Housing / Tenancy support and Homelessness Prevention Team



## **Section 12: Service Standards**

### **12.1 Principles**

The Partnership will:

- aim to take early action to prevent disputes and behaviour from escalating
- seek to act in a manner that is consistent with accepted good professional practice
- ensure that it does not act in a discriminatory manner when dealing with antisocial behaviour complaints.

### **12.2 Framework for prioritisation**

To provide a framework for prioritisation and to help indicate how types of behaviour will be acted upon, agreed priority groups for specific examples of antisocial behaviour are set out below. Note that this list is not exhaustive:

#### **Group 1:**

*More serious antisocial behaviour* where the involvement of the Police is present or necessary; for example:

- violence or aggression displayed towards a member of staff
- violent or threatening behaviour towards members of the public
- the use of weapons
- drug related incidents
- racial harassment and other forms of hate crimes
- sectarian behaviour
- damage to property
- fire-raising
- prostitution

#### **Group 2:**

Antisocial behaviour is of a more minor, but persistent nature; for example:

- noise nuisance (including DIY and the use of electrical appliances)
- shouting and swearing
- noise associated with motor vehicles
- Obscene or offensive gesticulation

Group 3:

Disputes solely between two neighbours; for example,

- misuse of common areas
- sporadic noise

**12.3 Target response times**

Partnership members will accept complaints by letter, email, phone, via the receipt of any bespoke on line form, via social media platforms or by way of interview.

Anonymous complaints will be recorded, but it will not normally be possible to act on such complaints unless that complaint can be subsequently verified.

The Partnership is committed to responding to complaints of antisocial behaviour as quickly as it can but will prioritise complaints such that it can also ensure that it investigates the most serious complaints it receives immediately. Target response times for complaints received by the Council (initial response) are outlined below:

Group 1: visit / interview complainer within two working days.

Group 2: contact complainer, undertake initial investigation and assess appropriate action within five working days of receipt of complaint.

Group 3: contact complainer, undertake initial investigation and assess appropriate action within ten working days of receipt of complaint.

Target timescales relate to initial response to a complaint. Timescales for further action and involvement should be included in any action plan drawn up to resolve the case.

**12.4 Information Sharing Requests**

Partnership members will respond to formal information sharing requests within 5 working days.

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**East Lothian Antisocial Behaviour Partnership**  
**Antisocial Behaviour Policy**

**(As amended at 24/4/12)**

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## **Introduction and Definition of Terms**

### **Introduction**

In East Lothian we believe that everyone is entitled to live, socialise and work without fear of antisocial behaviour and the East Lothian antisocial behaviour strategy outlines the specific services that we provide. It also includes the ways in which we work with the perpetrators of antisocial behaviour and highlights that we should work together in partnership to tackle antisocial behaviour and to support everyone to live in safe and secure communities.

The East Lothian Antisocial Behaviour Strategy 2005-2008 was published in May 2005 and is built around six key principles:

- Personal responsibility
- Building on what has gone before
- Prevention is better than cure
- Not stigmatising particular groups of people
- Joined-up action at local level, within a national framework
- Using the Children's Hearing System

The Antisocial Behaviour Policy has been developed to allow the East Lothian Antisocial Behaviour Partnership to deliver strategy aims. The implementation of this policy will also assist the specific obligation that

“by March 2007 Council's should develop a shared strategy for addressing concerning behaviour within families and in the community, schools and residential homes”

as set out by the Scottish Executive in the Youth Justice Improvement Programme.

The policy is divided into 12 main sections follows:

[Section 1](#) explains the purpose of the policy.

[Section 2](#) outlines the management framework that will administer the policy and highlights related strategies and policies that exist.

[Section 3](#) describes the information sharing agreements in place between Lothian & Borders Police and the East Lothian ASB Partnership.

[Section 4](#) identifies the partners implementing the policy.

[Section 5](#) outlines roles and responsibilities.

[Section 6](#) outlines the legal framework within which the policy will operate.

## Appendix 2

[Section 7](#) sets out the commitment of the Partnership to the victims of antisocial behaviour.

[Section 8](#) identifies partnership policy with regard to the strategic aim of antisocial behaviour prevention.

[Section 9](#) identifies partnership policy with regard to the strategic aim of antisocial behaviour early intervention and diversion.

[Section 10](#) identifies partnership policy with regard to the strategic aim of antisocial behaviour enforcement action.

[Section 11](#) identifies partnership policy with regard to the strategic aim of antisocial behaviour rehabilitation.

[Section 12](#) sets out service standards

## **Definition of terms**

### **Antisocial behaviour**

Is defined as ‘acting in a manner that causes, or is likely to cause, alarm or distress’ or ‘pursuing a course of conduct that is likely to cause harm or distress’.

Antisocial behaviour has been categorised by the Scottish Executive as covering four main areas. These are:

- Category A: Disregard for Community / Personal Wellbeing
- Category B: Acts Directed At People
- Category C: Environmental Damage
- Category D: Misuse of Public Space

These categories are expanded in more detail in Appendix A.

### **Child**

For the purposes of this policy, a child is defined as a person who is under the age of 16 years. In terms of this policy, any person who is over the age of 16 but who is the subject of a supervision requirement will be treated as if they were a child.

### **Parent**

A parent is any individual who is a relevant person as defined in section 93(2)(b) of the Children’s (Scotland) Act 1995.

"relevant person" in relation to a child means:

- (a) any parent enjoying parental responsibilities or parental rights under Part I of this Act;
- (b) any person in whom parental responsibilities or rights are vested by, under or by virtue of this Act; and
- (c) any person who appears to be a person who ordinarily (and other than by reason only of his/her employment) has charge of, or control over, the child."

### **Registered social landlord (RSL)**

Registered Social Landlords are those bodies that are registered in the register maintained under section 57 of the [Housing \(Scotland\) Act 2001](#). Such bodies can be in the form of Local Housing Organisations, Community Based Housing Associations or larger social landlords.



## **Notice of proceedings**

A notice of proceedings is a statutory notice in a prescribed form served by a landlord who intends to begin proceedings for possession of the house on one or more of the grounds specified in the notice and as set out within the [Housing \(Scotland\) Act 2001](#).

## **Acceptable behaviour agreement (ABA)**

An Acceptable Behaviour Agreement (ABA) is a written agreement between an individual (adult or child) involved in antisocial behaviour and relevant partners working to prevent antisocial behaviour, for example the police, local authority or RSL. An ABA is a clear statement of what the partnership would consider as acceptable behaviour and will be put in place following failure of written warnings.

The aim of the Agreement is to make people responsible for their actions. The Agreement will cover the responsibilities of the person in relation to antisocial behaviour activities committed by them. An individual cannot be compelled to enter into such an agreement.

Acceptable Behaviour Agreements are flexible enough to be used in relation to antisocial adults or children irrespective of their housing tenure. If the Agreement involves a child then in addition to obtaining his/her agreement and signature, the agreement and signature of the child's parent will also be obtained. The signing of an agreement by a child and his/her parent will not prevent the reporting of that child to the Reporter where it is thought that he/she may be in need of compulsory supervision.

In the case of any individual who breaches the agreement, the ABA can be used to support an application for an ASBO and / or, in the case of a tenant, the raising of an eviction action. This will demonstrate to the Sheriff Court that the partnership has tried an alternative approach to tackle antisocial behaviour, thus strengthening the case against the antisocial person.

ABAs are flexible and by signing the agreement, the perpetrator admits that their behaviour is unacceptable. ABAs are quicker and cheaper than Court actions.

## **Antisocial behaviour order (ASBO)**

An ASBO is an order of the court that is intended to tackle both behaviour that is likely to escalate and patterns of behaviour that cause considerable alarm and distress to the community. This behaviour may consist of a number of single acts. An ASBO is not intended to be a substitute for criminal proceedings where these are appropriate. An ASBO can be made against persons of all housing tenure types i.e. owner/occupier, private sector tenants or tenants of public sector landlords.

## **Interim antisocial behaviour order (Interim ASBO)**

Interim Orders are intended to provide more immediate protection and can be applied for pending the substantive application for a full ASBO. Section 7 of the Antisocial Behaviour etc (Scotland) Act 2004 sets out the conditions to be fulfilled before an Interim ASBO will be granted.

### **Criminal antisocial behaviour order (CRASBO)**

A Criminal Antisocial Behaviour Order is an Antisocial Behaviour Order made on conviction by a Sheriff or Justice of the Peace as part of a sentence.

### **Parenting order**

Parenting orders are orders of the court designed to alter the behaviour of parents and to have them take responsibility for their child's behaviour. Parenting orders may compel parents to participate in, for example, parenting classes where they have been identified as needing help with their parenting skills.

Parenting orders will only be applied for where a parent has been offered support on a voluntary basis and has refused to engage with that support.

### **Warning notice - noise nuisance**

Under section 43(2) of the Antisocial Behaviour etc (Scotland) Act 2004, where a local authority receives a complaint that excessive noise emitting from a property and the complaint is found to be valid on investigation, a warning notice may be served. The notice is in prescribed form and must state particular information.

### **Fixed penalty notice**

A fixed penalty notice is generally a financial penalty or fine served by a Local Authority or Police force on a member of the public as a result of an offence. Payment of the penalty removes the threat of a criminal conviction. Generally, notices are in a prescribed form and have a prescribed manner of service.

### **Scottish secure tenancy**

A Scottish secure tenancy is a legal document that sets out a tenant's legal rights and obligations when renting a dwelling house from a social landlord. The tenancy will cover aspects such as the use of the house, payment of rent, sub-letting, repairs and will specifically state that the tenant, those living with the tenant or any visitors must not act in an antisocial manner.

### **Short Scottish secure tenancy**

In a relatively small number of cases, social landlords are entitled to offer a prospective tenant a short Scottish secure tenancy instead of a Scottish secure tenancy. This may be done where a tenant:

- has had order for repossession made against him/her in the UK on the grounds of antisocial or similar behaviour in the previous 3 years;
- or member of household is subject to an antisocial behaviour order (ASBO).

A full Scottish secure tenancy (SST) will convert into a short SST where the landlord serves a notice on the tenant to that effect following the granting of an ASBO. Where a short SST has been granted on the grounds of ASB, the landlord must make sure support services are provided to the tenant to help them to convert successfully back to a full SST. Support will also be provided where an SST has been converted to a short SST.

### **Eviction**

A Scottish secure tenant can only be evicted from their tenancy by court order. A landlord must have a ground for eviction to obtain such an order. This is most commonly an evidenced breach of the tenancy agreement. Anti social behaviour on the part of the tenant, other occupiers or visitors to the tenancy is a breach of the tenancy agreement.

### **Houses in multiple occupation (HMO) licence**

An HMO is a property that is occupied, as their only or principal residence, by three or more persons who are not members of the same family and who share use of toilet, personal washing facilities or cooking facilities. HMO landlords must have a licence from the relevant local authority. This ensures that the property is managed properly and meets certain safety standards. The licence will be valid for up to three years and will then have to be renewed.

### **Antisocial behaviour notice**

The Antisocial Behaviour etc. (Scotland) Act 2004 (the Act) gives local authorities additional powers to regulate privately rented housing in Scotland. Under Part 7, if residents are engaging in antisocial behaviour at their home and the landlord is not taking normal management action to address it, the local authority can serve an antisocial behaviour notice setting out actions the landlord must take. The notice must describe the antisocial behaviour that has led to the notice being served, and require the landlord to take specified action to deal with it within a specified period. If a landlord fails to comply with an antisocial behaviour notice, the local authority can report the landlord for prosecution. The local authority can apply to the sheriff for either an order as to rental income which suspends the tenant's rent liability, a management control order which allows the local authority to assume the responsibilities of the landlord, or can take

action to deal with the antisocial behaviour and can recover the costs from the landlord.

### **Order as to rent payable**

An Order as to Rent Payable is an order granted by the Sheriff in respect of a property on which an antisocial behaviour notice has been served. This has the effect of stopping rent payments being received by the landlord for the property concerned.

### **Management control order**

Under a management control order, the rights and responsibilities of the landlord are transferred to the local authority. The authority is able to meet normal day-to-day running costs including routine maintenance and management costs. These costs are recoverable from the landlord.

### **Private landlords registration**

Since April 2006, all private landlords in Scotland are required to register with their local authority. Registration ensures that landlords are "fit and proper" to be letting property. Members of the public will be able to view the register of private landlords on the Internet and will be able to see whether a prospective landlord is registered. Registration will help local authorities to remove disreputable landlords from the market, thereby removing landlords who provide poor housing or inadequate management.

### **Closure of premises order**

If a closure order is granted to the Police then premises are closed to all persons for duration of the order and it becomes an offence to enter or remain on the premises. Such an order is granted through the Sheriff court, on application by the police where significant and persistent disorder or serious nuisance is regularly occurring.

### **Dispersal notice**

A senior police officer (of the rank of Superintendent or above) can, in consultation with the local authority, designate an area where significant, persistent and serious antisocial behaviour is occurring and the behaviour of groups is contributing to this problem, and can utilise the power of dispersal. Police officers can then disperse groups of two or more persons from the designated area. Should an individual not to disperse they will be deemed to have committed an offence and can be arrested.

## **Section 1: Purpose of the Policy**

It is the purpose of this policy to set out clearly and demonstrably how the East Lothian Antisocial Behaviour Partnership will deliver the aims of the agreed [East Lothian Antisocial Behaviour Strategy 2005-2008](#).

As agreed within the strategy document:

“East Lothian Council and Lothian and Borders Police will take the lead in working with partner agencies and the people of East Lothian to sustain and, where possible, improve the quality of life of those who live and work in the county. Partners will work together to address the various forms of antisocial behaviour that negatively impact on that quality of life. Partners share one clear aim, which is:

To root out and reduce the incidence of antisocial behaviour in East Lothian.”

The strategy sets out that services will be designed to deal with antisocial behaviour taking account of four broad themes:

- Prevention
- Early Intervention and diversion
- Enforcement
- Rehabilitation

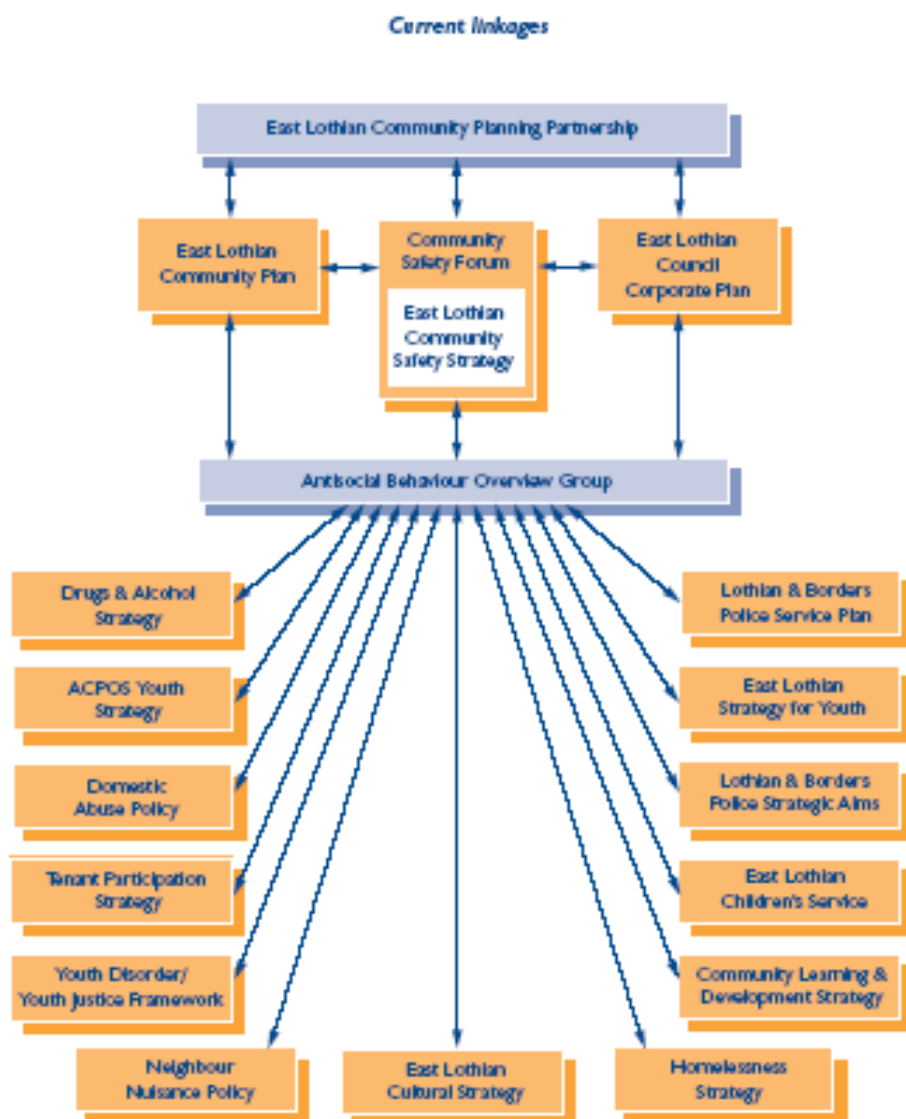
This policy reflects these four broad themes and provides a structure and framework within which the partnership operates.

The East Lothian Antisocial Behaviour Partnership realises how antisocial behaviour can affect individuals and communities and will work together to support victims of and witnesses to antisocial behaviour.

It is the mission of the partnership to prevent antisocial behaviour through initiatives, to intervene at the earliest possible stage, and to support individuals to change their behaviour. The partnership aims to rehabilitate and provide opportunity for change for individuals within the context of enforcement action that the partnership will invoke to protect and sustain its community.

## Section 2: Management Framework / Related Strategies & Policies

The [East Lothian Antisocial Behaviour Strategy 2005-2008](#) links to a wide range of other strategies and plans. The strategy document sets out specific links between the East Lothian Community Planning Partnership, the East Lothian Community Plan, the East Lothian Council Corporate Plan, the Community Safety Forum, the Antisocial Behaviour Overview Group and other strategy documentation.



Whilst the above diagram is taken directly from the strategy document, this policy recognises further specific links with the Criminal Justice Strategy, the Community Justice Authority Strategy, the Community Care Plan and the Local Housing Strategy.

## Appendix 2

The Partnership acknowledges the existence of other independent policies, procedures and standards that exist within the Council and partner organisations relating in part or in full to ASB. The Partnership also acknowledges that individual members are independent organisations and, as such, can act independently to address issues arising from antisocial behaviour. For the avoidance of doubt, this policy is not intended to preclude such independent action where a partner landlord considers it necessary.

It is however accepted by all partners that whilst independent action in accordance with partners' own policies and procedures may be appropriate in dealing with low level neighbour nuisance, more serious incidents of antisocial behaviour will be more effectively dealt with by the Partnership. A joint approach will also ensure consistent and fair treatment for all individuals involved in, or falling victim to, antisocial behaviour. In agreeing to adopt this policy, partners accept its content in full, agree to refer cases appropriately and to work collaboratively to tackle antisocial behaviour in East Lothian.

### **Section 3: Information Sharing Protocols**

The appropriate flow of information between the partners involved in addressing antisocial behaviour is key to the successful implementation of a strategic approach to resolve recurring antisocial behaviour. The information that is shared must be necessary and relevant to tackling antisocial behaviour.

A structure of authorised information sharing protocols must be in place to allow the Partnership to meet its legal obligations and to ensure that information is available to the people that need it to enable the correct decisions to be made.

The introduction of information sharing protocols through this policy will assist the Council in meeting its specific obligation that

“by June 2007, using national guidance, Councils will agree and implement local protocols for sharing information and making decisions about how to tackle offending promptly and appropriately”

as set out by the Scottish Executive in the Youth Justice Improvement Programme.

#### **3.1 Signatories**

The principal signatories to the information sharing protocols in place are East Lothian Council (various departments and sections), Lothian and Borders Police, East Lothian Housing Association, Homes for Life, NHS Lothian and the Ambulance Service.

#### **3.2 Management of information**

- all parties to the protocols agree to abide by the terms of the [Data Protection Act 1998](#).

#### **3.3 In what circumstances can information be shared?**

Information can be shared:

- where East Lothian Council or an partner is investigating and gathering evidence of antisocial behaviour in relation to an individual or group with a view to taking action to prevent or tackle that individual's or group's antisocial conduct.
- where Lothian and Borders Police are seeking information to prevent or detect crime or for the purposes of investigating suspected criminal conduct.



### **3.4 Information the Police can share**

The protocols encourage the proactive sharing of information between partners for the prevention and detection of crime and antisocial behaviour. Lothian and Borders Police can share information both in response to a direct request in terms of these protocols and proactively to seek support and assistance in tackling crime and antisocial behaviour in East Lothian (e.g. present evidence and request that an antisocial behaviour order be prepared).

All information should be relevant and not excessive in relation to the purpose for which it is required. It should also be accurate. Each individual case should be considered on its own merits and in relation to the purpose for which the information is requested.

### **3.5 Direct requests for information**

In relation to requests for information about specific individuals, it is appropriate for the Police to provide the following kinds of information:

- details of charges, pending cases, convictions recorded on SCRO (Scottish Criminal Records Office) or PNC (Police National Computer).
- Police warnings and details of attendance and call outs (command and control incidents) relating to antisocial behaviour.

### **3.6 Proactive sharing of information**

The Police can seek assistance from the Council or any other partner under protocol, by identifying and providing information in relation to individuals who are perpetrators of antisocial behaviour or criminal activity. For example, this may be done in pursuance of an ASBO or eviction of a convicted drug dealer.

### **3.7 What Information must the Council, or other partner share with the Police?**

The Police are responsible for the investigation and detection of crime and the apprehension of offenders. The Local Authority or other partner must disclose all information that comes into their possession that is gathered through appropriate means or that comes to its notice where it suspects that a crime may have been committed. Depending on the importance or seriousness of the incident, all information, which falls into this category and is, or comes into the possession of the Local Authority or other partner, must be passed onto the Police immediately.

### **3.8 What information can the Council and other partners share with each other?**

The Local Authority and other partners can share information in response to a direct request and can seek support and assistance from partner organisations in tackling crime and antisocial behaviour in East Lothian. The information should be relevant and accurate.

### **3.9 How should information be shared?**

In all instances of information sharing an audit of requests and disclosures will be maintained by the ASB team.

Information should be exchanged prior to the commencement of enforcement action. This information gathering exercise will allow the partnership to establish whether or not there is sufficient justification for legal proceedings.

#### **Section 4: Partner Organisations**

The East Lothian Antisocial Behaviour Strategy 2005 - 2008 recognises that antisocial behaviour is not the responsibility of any single partner. Each partner within the East Lothian Antisocial Behaviour Partnership, with an interest in dealing with antisocial behaviour, will apply this policy and follow protocol when exchanging information.

The partners that are members of the Antisocial Behaviour Partnership, who will apply this policy, are:

- **East Lothian Council (all departments)**
- **Lothian and Borders Police**
- **East Lothian Housing Association**
- **Homes for Life**
- **NHS Lothian**
- **Scottish Ambulance Service**
- **Lothian and Borders Fire and Rescue Service**
- **East Lothian Tenants and Residents Panel**
- **Scottish Children's Reporter Administration**
- **Procurator Fiscal Service**
- **Sheriff Clerk's Service**

In general terms, this means that named employees of the Police, East Lothian Council and other partners will be able to share information and implement a co-ordinated approach to address incidents of antisocial behaviour.

## **Section 5: Roles and Responsibilities**

### **5.1 Role of the antisocial behaviour overview group**

The Antisocial Behaviour Overview Group will oversee:

- the implementation of the antisocial behaviour policy
- the operation of the case monitoring group and officers group
- information sharing arrangements
- performance reporting
- financial monitoring

The overview group will also consider and agree actions, as restricted agenda items, for any case where the Case Monitoring Group cannot reach a consensus.

The role of the Antisocial Behaviour Overview Group will assist the Council in demonstrating that it meets the specific obligation that

“by March 2008 Council’s will develop management structures and funding models that support an integrated approach to the efforts of ASB units, the police, schools and youth justice / children’s social work teams”

as set out by the Scottish Executive in the Youth Justice Improvement Programme.

An Antisocial Behaviour Case Monitoring Group will meet regularly to monitor referred cases and agree actions. The monitoring group will report to the Overview Group which will meet at least quarterly.

### **5.2 Role of the antisocial behaviour case monitoring groups**

The Antisocial Behaviour Case Monitoring Group is a cross-partner group charged with ensuring that referred cases are considered from all perspectives and that actions agreed balance the needs of the individual and the needs of the community.

In East Lothian two separate case monitoring groups will meet.

An Adult Antisocial Behaviour Case Monitoring will meet regularly to consider adult cases.

Referred antisocial behaviour cases involving children or young adults with a supervision requirement, will be considered as part of the Youth Justice / Antisocial Behaviour Case Monitoring Group which will also monitor persistent offenders and undertake the function of pre-referral screening for referrals to the Scottish Children’s Reporter Administration service where children are alleged to have committed offences.

Links between the adult case meeting and the child case meeting will be relevant for particular cases.

The membership of the two Case Monitoring group meetings will be approved and kept under review by the Overview group.

The roles of the Antisocial Behaviour Case Monitoring Groups will assist the Council in meeting the specific obligation that

“by March 2007 Council’s will identify the extent of young people’s offending and antisocial behaviour and its impact on communities; identify the mental health, addictions, parenting and other needs of young people; plan to meet needs and manage the risks and realign resources to these ends”

as set out by the Scottish Executive in the Youth Justice Improvement Programme.

It is the role of the Antisocial Behaviour Case Monitoring Groups to:

- ensure that all relevant Council sections and external partners are involved in consideration of the case and their views are reflected and taken into account before any action is taken regarding a case, ensuring that the partnership’s approach is collaborative. This could include the Community Care staff, the Homelessness team, Children and Families, Criminal Justice, Youth Justice and the authority’s Legal Services department amongst others. In some cases, it may also be appropriate to include a GP or other relevant health professional’s views on how best to progress a case.
- instruct further intervention or diversionary action.
- instruct a multi-partner case conference if this has not happened and / or is considered appropriate.
- provide advice to internal and external partners on cases in which there is doubt as to what course of action is the most appropriate.
- instruct escalating intervention action.
- instruct appropriate enforcement action.
- where intervention and diversionary remedies are not appropriate, or have failed, and the Case Monitoring Group is satisfied that an individual has acted in an antisocial manner, and continues to act in an antisocial manner, the Case Monitoring Group may deem it necessary for an ASBO to be applied for against that individual.
- act as a task and co-ordinating group in appropriate case circumstances e.g. group related ASB.
- the Case Monitoring Group can co-opt other people onto the group when it is known that these people have intimate knowledge of a case that is going to be discussed, so that they can inform a decision as to how to best progress that case.

- the group has an ongoing remit to review current ASBOs quarterly. If, after a period of 6 months, a person subject to ASBO has not come to the notice of the partnership within East Lothian, it is the duty of the Group to make a decision whether that recipient requires to be kept on an ASBO or not. If a significant period of non-offending has passed, there is a presumption that the Group should begin proceedings to have that individual's ASBO revoked.

### **5.3 Role of the antisocial behaviour officers group**

The Antisocial Behaviour Officers Group is a cross partner forum of senior officers that are charged with:

- maintaining the validity of the ASB policy and keeping it up to date
- developing and maintaining procedures and documentation
- maintaining the validity and appropriateness of performance monitoring information and reporting to the Overview Group thereon.
- reporting to the ASB Overview Group on information sharing arrangements
- monitoring and reporting quarterly to the Overview Group on enforcement actions in place.
- implementing the decisions of the Overview group.

### **5.4 Role of the antisocial behaviour team**

The Antisocial Behaviour Team includes Council and Lothian and Borders Police staff. It is the role of the team to:

- support the Antisocial Behaviour Case Monitoring Group
- establish the facts, taking great care when considering complaints to avoid the possibility of discrimination/victimisation on the grounds of race, ethnicity, age, sex, sexual orientation, disability or religion.
- confirm that the behaviour that has caused the complaint or concern does constitute antisocial behaviour.
- where appropriate, establish what steps the complainer has taken to resolve matters themselves and consider whether further steps would be appropriate. These might include mediation, noise monitoring or in some cases - civil action.
- maintain full and accurate confidential records on referred cases.
- advise partners in managing cases and preparing cases for referral to the Case Monitoring Group.
- establish a monitoring system to record intervention actions taken in accordance with the framework set out in section 9 of this policy.
- share intervention action taken with relevant sections and partners in accordance with information sharing protocols.
- become involved immediately in cases of extreme antisocial behaviour supporting and assisting partners.

- take a lead role in cases of antisocial behaviour where no clear lead partner role exists e.g. private sector housing ASB.
- represent the Council on the Mediation Advisory Group.
- promote the ASB helpline and co-ordinate response to cases working closely with partners as required.
- attend regular ASB meetings with partners.
- produce performance monitoring reports.
- represent the Partnership in Court providing evidence and acting as professional witnesses when required.
- ensure that a good audit trail of case information and evidence exists and that appropriate records are in place to ensure appropriate information sharing.
- ensure that all Council sections, external partners and other appropriate agencies, are involved in consideration of the case and their views are reflected and taken into account before any action is taken regarding that case, ensuring that the partnership's approach is collaborative. This is particularly important where children are involved.
- maintain accurate minutes of the Antisocial Behaviour Officers Group
- assist the Officers Group in developing detailed procedures and standard documentation and in generally carrying out its role.
- when an ASBO is granted by the court, ELC's legal services will provide the ASB team with a copy. The ASBT will pass a copy of this onto the police, so that they can update their computer database with details of the Order, and disseminate the contents of the Order to relevant localities. In addition, other relevant partners involved in the application should be provided with a copy of the Order by the ASBT.
- when an ASBO is granted, inform and provide feedback to the victims of the anti social behaviour.
- retain information regarding the use and effectiveness of ASBO's in order to support and evidence any monitoring and evaluation exercises that may be required.

### **5.5 Role of East Lothian Council**

It is the role of the Council generally to:

- validate complaints received.
- notify the Police immediately on the discovery of criminal activity.
- initiate contact with any other partner or organisation, which may assist with the provision of information, intelligence or other evidence in the preparation of formal documentation e.g. an ABA or ASBO.
- formally request disclosure of information from the Police relevant to the investigation, where there is evidence to suggest an element of criminality and that subsequent non-adherence to these processes may result in an application for an ASBO.
- work with, challenge and support children exhibiting or at risk of exhibiting antisocial behaviour.

- ensure suitable arrangements are in place so that each case is fully researched and the Council is in a position at all Antisocial Behaviour Case Monitoring meetings to update the Monitoring Group as to the stage each case has reached.
- keep accurate minutes of all Antisocial Behaviour Case Monitoring Group. Within 5 days of any Antisocial Behaviour Case Monitoring Group meeting, the Council will circulate to all members of the group a copy of the minutes; these will include tasks to be completed by individual partners.
- Prepare, draft and meet the costs of all ASBO applications or other significant enforcement action within East Lothian on receiving a request to do so that is consistent with this policy.

## **5.6 Role of the Police**

It is the role of the Police to:

- be present at face to face, or ABA meetings on the request of a partner.
- disclose all relevant information to the Council or a partner under the terms of the information sharing protocol.
- disclose all relevant information to East Lothian Council, in support of the pursuance of enforcement action.

## **5.7 Role of partner organisations**

It is the role of the lead partner when dealing with instances of ASB to:

- validate complaints received
- take action and meet the costs of any intervention and enforcement action for lower level ASB under appropriate independent policy, procedure or tenancy agreement.
- gather and collate all necessary information relating to any antisocial behaviour investigations.
- notify the Police immediately on the discovery of criminal activity.
- make necessary contact and early interventions with the alleged perpetrator of ASB
- ensure suitable arrangements are in place for the identification of new antisocial behaviour cases and ensure these cases are investigated and brought to the attention of the Antisocial Behaviour Monitoring Group in accordance with the policy.
- ensure any tasks detailed in the Antisocial Behaviour Monitoring Group minutes are completed timeously.
- conduct all necessary investigations and gather evidence that can be used to lead towards the preparation of an ABA or ASBO.
- observe confidentiality when obtaining and retaining information gathered from any source.
- ensure that any information provided by the Police is secured in such a manner so as to prevent any unauthorised access or theft.



- disclose all relevant information to East Lothian Council, in support of the pursuance of an ABA or ASBO.
- be responsible for arranging a suitable time, date and venue for an ABA meeting to take place. The partner will also be responsible for sending a letter to its tenant inviting them to attend the ABA meeting.
- undertake a leading role at any face-to-face meetings.

### **5.8 Resource implications**

East Lothian Council will prepare, draft and meet the costs of all ASBO applications or other significant enforcement action within East Lothian on receiving a request to do so that is consistent with this policy. The Council and Lothian & Borders Police will also deploy appropriate resources to carry out accompanied warning visits and acceptable behaviour agreement visits.

Partners will take and meet the costs of action that they consider appropriate under independent policy, procedure or tenancy agreement. Partners will also meet the costs of their role and responsibilities under the requirements of this policy.

## Section 6: Legal Framework

### 6.1 Statutory references

The main legislation in which this policy operates is as follows:

- [Antisocial Behaviour etc \(Scotland\) Act 2004](#)
- [The Crime and Disorder Act 1998](#)
- [The Housing \(Scotland\) Act 2001](#)
- [The Civic Government Scotland Act 1982](#)
- [The Environmental Protection Act 1990](#)
- [Race Relations Act 1976 \(as amended 2003\)](#) and the [RRAA Race Relations \(Amendment\) Act 2000](#)
- [The Data Protection Act 1998](#)
- [The Children \(Scotland\) Act 1995](#)

### 6.2 Equality and discrimination

Enforcement action will only be considered where it is necessary to protect individuals, families or communities who are subject to antisocial behaviour. An application for an ASBO will not be made simply because individuals are different from their neighbours or because they engage in activities which are perceived as being different (for example they belong to a different religion, sex, race, sexual orientation, age or have a disability). When considering whether or not a particular case is appropriate for an ASBO application, the Council and its partners must satisfy themselves that the application has not been motivated by discrimination.

In addition, the Partnership must also consider the relevance of any mental disorder or physical disability and its impact in relation to an ASBO application as these matters may be covered under the [Disability Discrimination Act 1995](#).

### 6.3 Human rights considerations

The [Human Rights Act 1998](#) section 6 makes it unlawful for a public authority to act in a way, which is incompatible with the European Convention on Human Rights (ECHR). East Lothian Council need to be satisfied that:

- all procedural and substantive rights under the ECHR are complied with
- any interference with an individual's rights is necessary and in accordance with the provisions of ECHR legislation
- the proposed terms of the ASBO are reasonable and proportionate and that any ASBO being applied for is not worded in such terms that the recipient is bound to breach it.

#### **6.4 Information sharing**

Section 115 of the [Crime and Disorder Act 1998](#) gives power to any person to disclose information to the Police and / or the local Authority to support action being taken under the Act. It should be noted that the Act confers a power to disclose but does not impose a duty to exchange information.

Section 139 of the [Antisocial Behaviour etc \(Scotland\) Act 2004](#), extends the provisions of the [Crime and Disorder Act 1998](#) and allows the disclosure and sharing of information between “relevant authorities”, which for the purpose of the Act are the Local Authority, the Chief Constable, RSLs and any other partner involved in tackling antisocial behaviour. It allows disclosure of information between relevant authorities (Local Authority, Chief Constable and RSLs) where it is necessary and relevant for tackling antisocial behaviour. This removes any unnecessary obstacles to the sharing of information and ensures effective management of antisocial behaviour through information exchange.

#### **6.5 Management of information**

The [Data Protection Act 1998](#) restricts the sharing, storing and management of information. Section 29 contains an exemption when information is being sought for crime prevention and detection and the apprehension or prosecution of criminals.

#### **6.6 Regulation of Investigatory Powers (RIPSA)**

Some activities of the Council, including noise monitoring, are covered by the Regulation of Investigatory Powers (Scotland) Act 2000 hereafter described as RIPSA. These activities, which are deemed lawful if properly authorised, include carrying out covert surveillance or using covert human intelligence sources.

#### **6.7 Eviction**

Antisocial Behaviour is also a ground for re-possession of a Scottish Secure Tenancy (SST) in terms of paragraph 7 of schedule 2 to the Housing (Scotland) Act 2001. Before raising proceedings, a landlord has to serve on the tenant a Notice specifying the ground(s) on which proceedings are being raised and the date on which the landlord may raise proceedings. A Notice once effective remains in force for 6 months during which the landlord may raise proceedings at any time.

#### **6.8 Application for an ASBO**

Only the Council or a Registered Social Landlord can apply for an ASBO, however, the Police must be consulted.

The Antisocial Behaviour Case Monitoring Group will have considered all of the issues around a case, particularly issues of support and vulnerability, before enforcement action is considered.

Prior to making an application for an ASBO in respect of a child, the Antisocial Behaviour Case Monitoring Group must consult Children's Reporter (who will be a core member of the Case Monitoring Group). If it is thought that an ASBO is appropriate, the Council's legal services will be instructed to prepare and lodge an application with the Court.

Where a child is involved, the Sheriff is required to have regard to advice provided by a Children's Hearing before determining the application for an ASBO. Therefore, before such an application can be determined, the Children's Reporter will be required to arrange a Children's Hearing for the purpose of obtaining their advice as to whether it agrees that an ASBO is necessary for protecting person(s) from further antisocial behaviour by the child.

Where an application for an Interim ASBO is made and the Court is satisfied that it is necessary, an Interim ASBO can be granted pending the Hearing for a full ASBO. Before an Interim ASBO can be granted in respect of a child, the Court must have regard to any views expressed by the Children's Reporter. The question of whether the hearing of an ASBO application is held in private is a matter for the court.

Where an ASBO is granted against a child, it is important that not only is their behaviour tackled by the granting of the order but that the child is also supported to take positive steps to address its behaviour. It is envisaged that most children who are the subject of an ASBO will need a package of intensive support. When granting an ASBO (or an interim ASBO) in respect a child the Court has the power to require the Children's Reporter to refer the case to a Children's Hearing. It will be at the discretion of the Court whether to exercise this power or not.

## **6.9 Court proceedings**

The Council will lodge an ASBO application with the Court requesting a warrant for service. When that is granted, the application must be served on the individual whose behaviour is the subject of the application. The individual will be informed in writing of the need to attend any hearing and that should they fail to attend, an Order may be granted in their absence. If an individual opposes the application, the Court will regulate the procedure accordingly. Where a hearing is fixed to hear evidence, normal Court rules and timescales will apply.

## **6.10 Court appeals**

Either the applicant or the recipient can appeal against the Court's decision. The order remains in force pending the outcome of the appeal. It

is also possible to apply for an order to be varied or revoked while an appeal is pending.

### **6.11 Variation and revocation of antisocial behaviour orders**

ASBOs may be varied or revoked on an application by the Council or RSL or on application from the person against whom the ASBO is made. Changing circumstances can thus be taken into account.

The terms of all Anti Social Behaviour Orders relate to the protection of a particular community and they cannot be “transferred” to another community if the recipient happens to move house. In these circumstances, an application to have the ASBO varied would need to be considered, and this would only happen if that individual continued to behave antisocially at their new address.

If an individual moves away from the area, consideration should be given as to whether or not the original ASBO is still required, a risk assessment should be undertaken as to whether it is feared that despite moving from the area the recipient may return to persist in antisocial behaviour.

Where the subject of an ASBO moves to another Local Authority area every effort should be made to liaise with the relevant Local Authority’s Antisocial Behaviour team and provide them with information about the fact that the individual is currently the subject of an ASBO. The Local Authority should also provide details of the Antisocial Behaviour that warranted the ASBO being granted. This information may need to be taken into account when assessing an individual’s suitability for housing in their new area.

If alerted by another local authority that an individual, subject to an ASBO, is moving into East Lothian, the ASB Case Monitoring Group will be made aware and agree appropriate action. This information will also be taken into account when assessing suitability of housing if appropriate and the notification is received in time.

### **6.12 Breach of an antisocial behaviour order**

Under Section 9 of the Antisocial Behaviour etc (Scotland) Act, 2004: any person who is the subject of an ASBO or an Interim ASBO who without reasonable excuse, does anything that the order prohibits shall be guilty of an offence.

A person guilty of an offence under Section (1) of the Act above shall be liable, on summary conviction, to imprisonment for a term not exceeding 6 months or to a fine not exceeding the statutory maximum or both; or on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both.

Under Section 11 of the Antisocial Behaviour etc (Scotland) Act 2004, where the Police reasonably believe that a person is committing or has

committed an offence under the terms of their ASBO then they may arrest that person without warrant.

Breach of an ASBO by a child or young adult on a supervision requirement will be jointly reported to the Procurator Fiscal and the Children's Reporter, as is appropriate in accordance with the Lord Advocate's Guidelines. The Procurator Fiscal has the discretion to pass such cases to the Reporter where appropriate.

If criminal proceedings are taken against a child or young adult on supervision, for a breach of their ASBO and he/she pleads or is found guilty, the Court may seek advice from the Children's Hearing on how the child or young adult might be treated, or indeed it might remit the case to the Children's Hearing for disposal.

### **6.13 Review of enforcement action**

The partnership will review all current ASBOs and other enforcement action taken quarterly. This review will confirm that all orders and actions in place remain relevant. Where it is deemed that there is no continuing need for an ASBO, an application should be made to the Sheriff to revoke the ASBO.

## **Section 7: Supporting Victims of Antisocial Behaviour**

Antisocial behaviour can generate fear and distress, particularly to older people, people from minority ethnic groups and other vulnerable people within our communities.

The Partnership recognises the importance of supporting victims of antisocial behaviour. The Partnership is committed to accessing appropriate support mechanisms to help the victims of antisocial behaviour.

East Lothian Council has reached an agreement with Victim Support Mid and East Lothian who will provide specialist support to victims of and witnesses to antisocial behaviour. Partners can refer victims and witnesses to Victim Support through the Antisocial Behaviour team.

## **Section 8: Prevention**

East Lothian Council's Antisocial Behaviour Strategy identifies prevention measures as crucial in minimising the occurrence of antisocial behaviour. The strategy states "prevention is better than cure" and amongst its key strategic aims that the Council will achieve this by:

- "Putting in place measures that will create a physical and social environment where antisocial behaviour is less likely to arise in the first place. We will deal quickly with the first signs, for example, vandalism and graffiti.
- Putting in place and developing services and productive programmes to help young people avoid getting drawn into antisocial behaviour."

By adopting a wide range of practices, the Council supported by the Partnership will seek to influence people's behaviour positively and prevent antisocial behaviour and this will in turn impact positively on the wider community.

The Council supported by the Partnership will involve stakeholders and communities in the planning process for a range of activities and will adopt national standards for community engagement. The partnership will also attempt to engage with perpetrators of antisocial behaviour to understand why behaviours occur on a case-by-case basis to strengthen future preventative action.

### **8.1 Antisocial behaviour helpline and graffiti helpline**

The partnership will seek to prevent ASB by publicising widely the ASB helpline and graffiti helpline. The Partnership will seek to ensure that citizens are aware that antisocial behaviour will not be allowed to blight communities.

### **8.2 Antisocial behaviour leaflet**

An antisocial behaviour leaflet outlining ASB policy will be widely circulated and accessible, this leaflet will set out service standards and reinforce the message about being a considerate and tolerant neighbour. The leaflet will provide key contact numbers such the ASB helpline and graffiti helpline, how to access mediation, report abandoned cars, report fly-tipping and dog fouling, as well as providing other local contact information.

### **8.3 Publicity**

In addition to the ASB leaflet and ASB helpline, publicity about the partnership's policy will be maximised through the local press, including coverage of successful ASB court cases and diversionary activities. These and other publicity vehicles will also be used to communicate information about



our performance in dealing with ASB enabling a positive message to be disseminated regarding the partnership's performance in dealing with ASB and improving public perception of the issue.

#### **8.4 Good neighbour agreement**

A good neighbour agreement will be extensively circulated. This document sets out the standard of behaviour that is reasonably expected of someone residing within East Lothian. The agreement is designed to be used in all housing tenures.

#### **8.5 CCTV**

CCTV cameras are now located in High Streets in the main towns of East Lothian. These have a deterrent effect in preventing ASB incidents in these areas and improve the public's sense of well-being.

#### **8.6 Environmental improvements**

Environmental improvements and "secured by design" initiatives can also assist in preventing incidences of ASB by 'designing out' problem features and will be utilised by the Partnership where opportunities and resources permit.

#### **8.7 Estate management inspections**

The Council and its RSL partners will aim to prevent ASB by early identification of issues within communities through estate inspection programmes, linking partnership services to address issues of potential concern and through engaging with the community trying to instil a feeling of community pride.

#### **8.8 Graffiti removal**

The partnership believes that a zero tolerance approach to graffiti delivers maximum results and adopts the view that if all graffiti is removed quickly and effectively, less graffiti occurs and other ASB such as vandalism is discouraged.

Unless there are problems with access to private property, East Lothian Council undertakes to remove graffiti from all premises and street furniture promptly on identification.

Unless the costs of individual instances are prohibitive or there are material health and safety considerations e.g. on a railway bridge or motorway flyover, the Council will not serve notices to require owners to remove graffiti rather the Council will meet the costs of removal.

#### **8.9 Housing allocations policy**

Through the Council's Allocations policy the Council aims to let houses to those in housing need while also addressing the objective of ensuring balanced and sustainable communities. By monitoring incidences of ASB by area, the Council will be able to develop local lettings initiatives to address a particular imbalance. RSL's also have their own allocations policies that make reference to problems relating to ASB.

### **8.10 Tenancy agreement**

When a new tenant signs up to a tenancy with East Lothian Council or RSL landlord, they will receive information contained within their tenancy agreement about acceptable standards of behaviour. The East Lothian Scottish Secure Tenancy (SST) agreement states clearly under Section 3, 'Respect for others':

“You, those living with you, and your visitors, must not harass or act in an antisocial manner to, or pursue a course of antisocial conduct against, any person in the neighbourhood. Such people include residents, visitors, our employees, agents and contractors and those in your house.”

Each new tenant is issued with a Tenants Handbook and a follow-up 'settling-in' visit to all new tenants takes place approximately six weeks after the sign-up visit, which allows the Housing Officer to reinforce these points.

### **8.11 Housing support**

If a tenant of the Council or RSL is identified as having support requirements to assist them in sustaining their tenancy and complying with the terms of their tenancy agreement, they can be referred for additional housing support services via their landlord. A prospective tenant who has a history of ASB (evidenced as outlined in the definition of terms on page 7), may be offered a Short Scottish Secure Tenancy agreement with support to enable the landlord to ensure that previous behaviour does not continue.

### **8.12 Prevention and children**

A large amount of effort and resources are directed towards prevention activities, facilities and programmes of work involving children. The Partnership recognises and values the huge contribution the Voluntary Sector makes in jointly providing such services.

The Partnership will support initiatives and projects such as those included in appendix B. It believes that these will give participants genuine interests and values that will in turn have a positive effect on reducing ASB and the perception of ASB within our communities.

#### **8.12.1 Programmed prevention**

The partnership is committed to building sustainable communities and to social inclusion both now and in the future. Programmed provision action for children aims to include as many participants as possible in positive educational and/or recreational experiences. The Partnership recognises that this provision helps to promote community harmony, health, well-being and builds community spirit.

#### **8.12.2 Specific prevention action**

The Partnership is committed to compliment a programme of provision with provision specifically designed to prevent antisocial behaviour.

#### **8.12.3 Active citizenship**

The Partnership will endeavour to engage with children to improve local democratic processes and a feeling of community worth.

The partnership will work in schools to reinforce the importance of active citizenship and will provide information and advice supporting initiatives.

The Partnership is committed to Youth Parliaments and the inclusion of children in planning sporting facilities and clubs.

The Partnership will work with all relevant agencies to improve perceptions and remove prejudices between children and their communities.

## **Section 9: Early Intervention and Diversion**

### **9.1 General**

Sections 9.2, 9.3 and 9.4 set out the specific formal intervention framework as defined by this policy.

The Partnership recognises that other intervention and diversionary work or actions can be happening alongside and complimentary to the intervention framework as set out within this policy, such as the current policy on Staged Assessment and Intervention for Children, or partner landlords applying a neighbour nuisance policy. If such other work is ongoing, the Antisocial Behaviour Case Monitoring Group will consider this before determining further agreed action in any particular case. The Case Monitoring Group may also instruct further intervention or diversionary aspects if the group feels that this is appropriate.

Over and above the framework set out in sections 9.2 - 9.4, general intervention and diversionary measures include:

#### **9.1.1 Mediation**

All partners should make use of East Lothian Community Mediation Service where appropriate as an effective method of resolving minor neighbour problems, however it is extremely important that a referral to the Mediation Service is done early in the antisocial process as that way there is more chance of it being effective.

#### **9.1.2 Noise**

Where an Antisocial Behaviour complaint revolves mainly around noise, a referral should also be considered to have noise monitoring equipment installed by East Lothian Council's Environmental Health Section. This should be done through the Council's Antisocial Behaviour team, as it is required to prepare a RIPSAs authorisation for cases where noise-monitoring equipment is to be used.

#### **9.1.3 Private landlords registration**

Where intervention is required in cases where antisocial behaviour is emanating from the property of a registered private landlord, intervention warnings against the occupants of the property will be notified / copied to the landlord.

#### **9.1.4 Notice of proceedings**

A landlord, who is seeking to recover their property on the grounds of a breach of tenancy with regard to antisocial behaviour, can serve a notice of proceedings. The notice is statutory, must be in a prescribed form, and must be properly served.

### **9.1.5 Diversionary activities**

The Partnership will endeavour to implement targeted diversionary programmes or specific activities, such as those identified in Appendix B, with the aim of reducing the likelihood of the re-occurrence of antisocial behaviour.

## **9.2 Intervention Framework - Adult Sector**

The following intervention stages have been agreed between partners working together to tackle antisocial behaviour within East Lothian for adults:

### **9.2.1 First Intervention - verbal warning**

The partnership will attempt to secure behavioural change by issuing a verbal warning. This will take the form of a meeting or visit and depending on circumstances may be a joint visit with the ASB Police Officer. All verbal warnings will be recorded and confirmed in writing to the party concerned. Monitoring arrangements will be put in place to evidence whether behaviour has changed. In cases where ASB is emanating from owner/occupied premises, the Council's Antisocial Behaviour team will be responsible for these duties.

The appropriate partner should, upon being made aware that a complaint has been made and once they have satisfied themselves that the complaint is valid (this may include the taking into consideration of uncorroborated reports of similar types of behaviour from different complainers on separate occasions), take the lead and issue the perpetrator with a face-to-face verbal warning. Most commonly, this will be the responsibility of the landlord of a property. Private landlords will be given advice if this is requested. Once a verbal warning has been issued, the Landlord will then be expected to follow this up by issuing a verbal warning confirmation letter.

Where the Council's Environmental Health team are involved, a verbal warning will be delivered to repeat noise offenders who have offended on more than two occasions in one calendar month. Depending on the tenure of the property, the landlord of the property will also be notified of the warning.

### **9.2.2 Second Intervention - first written warning**

If problems persist, the appropriate partner will issue a first written warning letter. The letter should contain brief details of the type of complaints being made against the perpetrator, it should also request that the perpetrator refrain from engaging in the type of behaviour detailed within the letter. Where appropriate this letter will also refer to the conditions of the tenancy agreement under which the property has been let.

### **9.2.3 Third Intervention - final written warning**

If problems persist, the appropriate partner will issue a final written warning letter. The letter will again contain brief details of the type of complaints being made against the perpetrator and will again request that the perpetrator refrain from engaging in the type of behaviour detailed within the letter. The letter will make clear that this is a final warning.

***If an adult is involved in serious antisocial behaviour or offending, their case may be considered immediately at the third intervention stage by-passing stages 1 and 2.***

At this stage, the lead partner will present the details of any cases that have gone beyond final written warning stage to the Antisocial Behaviour Case Monitoring group for discussion.

### **9.2.4 Fourth Intervention - face-to-face accompanied final warning / ABA**

If problems nevertheless persist, following discussion at the Antisocial Behaviour Case Monitoring group, a final face-to-face warning will take place. At this stage a member of the Council's Antisocial Behaviour team together with an appropriate staff member from the lead partner and the local police will undertake a face-to-face meeting with the offender. An Acceptable Behaviour Agreement (ABA) will have been drawn up by the Council's Antisocial Behaviour team after it has been provided with all of the documented relevant interventions already made by the lead partner involved in the case. This ABA will be discussed with the perpetrator and the agreement signed. During the meeting, the antisocial behaviour process will be explained to the perpetrator, and they will be officially warned of the consequences of not correcting their behaviour.

If, following all intervention, Antisocial Behaviour is still evidenced, the Antisocial Behaviour Case Monitoring Group will consider appropriate enforcement action.

If an adult is involved in serious antisocial behaviour or offending, their case may be introduced directly to the Case Monitoring Group without having to progress through the preceding stages.

### **9.3 Intervention Framework - Children's Sector**

The following intervention stages have been agreed between partners working together to tackle antisocial behaviour within East Lothian involving children.

It should be noted that details of every Warning issued to a child, including the issuing of an Acceptable Behaviour Agreement, shall be made to the Head Teacher of the educational establishment at which the child is a pupil as well as any Key Worker from East Lothian Council's Children's Services Department allocated to the child or his or her family.

#### **9.3.1 First Intervention - verbal warning**

The partnership will, on being satisfied that an antisocial behaviour complaint against a child is valid (this may include the taking into consideration of uncorroborated reports of similar types of behaviour from different complainers on separate occasions), attempt to secure behavioural change of that child by issuing a verbal warning. This will take the form of a meeting or visit to the child and the child's parent by a member of the lead agency and a member of the Antisocial Behaviour Team. All verbal warnings will be recorded and confirmed in writing to the child and his or her parent.

#### **9.3.2 Second Intervention - 2<sup>nd</sup> warning Letter**

If problems continue to persist, a second warning letter will be sent from the Council's Antisocial Behaviour team to the child and to the child's parent/s.

#### **9.3.3 Third Intervention - 3<sup>rd</sup> warning letter**

If problems continue to persist thereafter, a third warning letter will be sent from the Council's Antisocial Behaviour team to the child and to the child's parent/s.

It will be the responsibility of the Antisocial Behaviour Team to monitor the behaviour of the child after the third warning. If further verified reports of antisocial behaviour are received, the case will be presented to the Antisocial Behaviour / Youth Justice Case Monitoring Group for discussion.

#### **9.3.4 Fourth Intervention - face-to-face accompanied final warning**

The Case Monitoring Group will sit on a four weekly basis. The Group will decide what further intervention and diversionary activity and/or enforcement action it considers appropriate. This may include asking a child to consider signing an Acceptable Behaviour Agreement. It may also include the issuing of a Final Warning to the child in the context of a home visit by the appropriate agencies.

If a child is involved in serious anti social behaviour or offending, their case may be considered immediately at the third intervention stage by-passing stages one and two.

### **9.3.5 Acceptable behaviour agreement**

If the Antisocial Behaviour Case Monitoring group consider that an ABA is warranted and appropriate then the Antisocial Behaviour Team will draw this up after consultation with all the partners involved with the child. The ASBT will, after confirming agreement on the contents of the ABA, coordinate an ABA meeting for the ABA to be signed off. The child, plus their parent/s must be invited to attend the ABA meeting. However, if a parent refuses to attend another person (a supportive adult preferably a relative of the child, or an appropriate adult previously identified from the child's case notes) may stand in for the parent. If the child fails to attend the ABA meeting but their parent does attend, another meeting should be organised, and it should be emphasised to the parent of the child that their son/daughter must attend at the re-scheduled ABA meeting.

If the child fails to attend the second ABA meeting the ASBT will send out a letter to the child's parent/s advising them that their son/daughter will be subject to further review by the Antisocial Behaviour Case Monitoring Group for it to decide how best to proceed with the case.

If after an ABA has been signed by the child or if the child decides not to sign an ABA, and they continue to exhibit antisocial behaviour, an application for an ASBO may be considered.

## **9.4 Intervention Framework - Adults Subject to Supervision Requirement**

Persons aged 16 and over and still subject to a supervision requirement remain within the jurisdiction of the Children's Hearing system. Intervention action for such persons will be as per the children's sector and at the appropriate stage their cases will be referred to the children's Case Monitoring Group.



## **Section 10: Enforcement**

This section of the policy sets out the enforcement action that the partnership can ultimately take if required. Enforcement action will be applied with common sense, appropriateness and proportionality.

### **10.1 Antisocial behaviour orders**

East Lothian Council will apply for an Antisocial Behaviour Order (ASBO) on behalf of the partnership in the following circumstances:

- on request from the Police.
- on request from the one of the ASB Case Monitoring Groups.
- where an Acceptable Behaviour Agreement (ABA) is breached.
- where a notice of proceedings has been served on the grounds of antisocial behaviour and there is a further incident of ASB.
- where repeated ASB is being evidenced such as threats of violence and significant neighbour dispute.
- where persons exhibit behaviour causing or likely to cause alarm or distress to partnership staff in the performance of their duties.

The Council cannot apply to the Court for an ASBO in relation to a child under 12 years of age.

### **10.2 Interim antisocial behaviour orders**

East Lothian Council will apply for an Interim Antisocial Behaviour Order where it is necessary:

- on request from the Police.
- on request from the Council's ASB team.
- on request from one of the East Lothian Antisocial Behaviour Case Monitoring Groups.

Interim Orders are intended to provide more immediate protection and can be applied for pending the court granting a full ASBO.

### **10.3 Criminal antisocial behaviour orders**

East Lothian Council will provide information and assistance to the Procurator Fiscal to request that the Sheriff attach a Criminal Antisocial Behaviour Order (CRASBO) as part of a sentence following conviction, this will be:

- on request from the Police.
- on request from one of the East Lothian Antisocial Behaviour Case Monitoring Groups.

### **10.4 Parenting orders**

Where a parent has been offered support on a voluntary basis and has refused to engage with that support and where their behaviour is having a

negative impact on their child the Council can consider applying to the court for a Parenting Order.

### **10.5 Warning notices - noise nuisance**

East Lothian Council will issue a statutory warning notice for daytime (07.00 hours - 19.00 hours), evening (19.00 hours - 23.00 hours) or night time (23.00 hours - 07.00 hours) noise offence.

### **10.6 Fixed penalty notices**

East Lothian Council will issue a fixed penalty notice for:

- non-compliance with a warning notice for noise offence
- littering
- dog fouling
- fly tipping.

### **10.7 Evictions for drug related incidents**

Partner landlords will normally seek to evict tenants on evidence of drug related incidents where the property has been used for any of these purposes. These will include:

- supply of drugs
- being concerned in the supply of drugs
- possession with intent to supply
- cultivation within the property or the grounds of the property
- 2<sup>nd</sup> or subsequent conviction for possession

### **10.8 Evictions for other antisocial behaviour**

Housing providers within the East Lothian Antisocial Behaviour Partnership will normally seek to evict tenants who:

- breach an ASBO
- evidence significant ASB within the property or in the locality of the tenancy and who do not alter their behaviour when their tenancy agreement is enforced.
- allow ASB in the property or in the locality of their tenancy by those living with or visiting the tenant and who do not alter their behaviour when their tenancy agreement is enforced.
- are convicted of a serious crime of a violent or threatening nature within the property or in the locality of the tenancy.

### **10.9 Short Scottish secure tenancy**

Housing providers within the Partnership may consider restriction to a Short Scottish Secure Tenancy (SSST) agreement on evidence of ASB in temporary or previous accommodation. This may be done where a tenant:

- has had order for repossession made against him/her in the UK on the grounds of antisocial or similar behaviour in the previous 3 years;
- or member of household is subject to an antisocial behaviour order (ASBO).

Partner landlords may convert a full Scottish Secure Tenancy (SST) agreement to a Scottish Short Secure Tenancy (SSST) agreement when an ASBO has been granted.

#### **10.10 Revoke licence - houses in multiple occupation (HMO)**

East Lothian Council may submit an application to the Licensing Sub-Committee to revoke an HMO licence where the conditions of licence award no longer exist including:

- the licence holder is no longer a “fit and proper person”
- deterioration of property standards

#### **10.11 Antisocial behaviour notice**

If a landlord fails to comply with an antisocial behaviour notice then the Council can take action to deal with the antisocial behaviour and pursue the landlord for expenditure incurred as a consequence of the landlord’s failure to comply. The Council can also refer the matter to the Procurator Fiscal for prosecution of the offence of failure to comply with the notice.

#### **10.12 Order as to rent payable**

The Council can apply to the Sheriff for an Order as to Rent Payable in respect of a property in relation to which an antisocial behaviour notice has been issued. If granted, this has the effect of stopping rent payments being received by the landlord for the property concerned. Careful consideration must be given as to the details of each individual case to ensure that serving an Order as to Rent Payable is not seen by a tenant as a reward for antisocial behaviour.

#### **10.13 Management control order**

Where tenants of private landlords are behaving in an antisocial manner and the landlord has failed to address that behaviour effectively as specified within the antisocial behaviour notice, the Council can apply for a Management Control Order through the Court. If granted, the Council can then intervene and take over the management of the tenancy in question such that it can take actions that the private landlord should have taken but did not. When a Management Control Order is in force the Council will have the sole right to claim any rent or other income due on the property. A Management Control Order is in practice an alternative to the Order as to Rent Payable.

#### **10.14 Private landlords de-registration**

East Lothian Council will submit an application to the Licensing Sub-Committee to deregister a private landlord who no longer meets the “fit and proper person” test. It is a criminal offence to operate as a private landlord and not be registered.

#### **10.15 Closure of premises orders**

A senior police officer (of the rank of Superintendent or above) can, in consultation with East Lothian Council, take action through the Sheriff Court to close premises where significant and persistent disorder or serious nuisance to the local community is regularly occurring.

#### **10.16 Dispersal notice**

A senior police officer (of the rank of Superintendent or above) can, in consultation with East Lothian Council, designate an area where significant, persistent and serious antisocial behaviour is occurring and the behaviour of groups is contributing to this problem, and utilise the power of dispersal.

#### **10.17 Seizure of vehicles**

Lothian and Borders Police have the power to deal with individuals who cause alarm, distress or annoyance to members of the public through the antisocial use of vehicles on public roads or off road. The police can stop and seize or remove motor vehicles that are being driven in such a manner.

#### **10.18 Seizure of noise making equipment**

Where a warning notice has been served in respect of noise and an authorised officer has reason to believe that noise emitting is above a permitted level, the equipment producing the noise may be seized and removed.

#### **10.19 Vexatious complainers**

Following investigation, the Partnership may declare unjustified, repeated, unfounded or frivolous complainers as vexatious and may decide to take no further action as a result of those complaints.

### **Section 11: Rehabilitation**

The East Lothian Antisocial Behaviour Strategy 2005-2008 defines rehabilitation as “putting in place measures that will break the cycle of repeated antisocial behaviour”.

Successful rehabilitation depends on many facets and each case is case specific.

The Partnership, through either its own resources or through accessing other resource, will endeavour to rehabilitate antisocial behaviour offenders.

Support mechanisms and resources that can deliver successful rehabilitation include:

- users with dependencies engaging with treatment and rehabilitation centres
- safeguarding Communities, Reducing Offending (SACRO)
- ELC Youth Justice
- ELC Criminal Justice
- ELC Community Care Mental Health team
- sensitive rehousing through East Lothian Council’s Rehousing Panel or management transfers through other partnering landlords.
- ELC Community Housing support and homelessness prevention.

## **Section 12: Service Standards**

### **12.1 Principles**

The Partnership will

- aim to take early action to prevent disputes and behaviour from escalating
- seek to act in a manner that is consistent with accepted good professional practice
- ensure that it does not act in a discriminatory manner when dealing with antisocial behaviour complaints.

### **12.2 Framework for prioritisation**

To provide a framework for prioritisation and to help indicate how types of behaviour will be acted upon, agreed priority groups for examples of ASB are set out below:

#### **Group 1:**

More serious antisocial behaviour where the involvement of the Police is necessary. For example:

- violence towards a neighbour or staff member
- threatening behaviour
- drug related incidents
- vandalism
- racial harassment

#### **Group 2:**

Antisocial behaviour is of a more minor but persistent nature. For example:

- noise nuisance
- threats
- disturbance

#### **Group 3:**

Disputes solely between two neighbours. For example:

- use of common areas
- maintenance or use of boundaries
- noise

#### **Group 4:**

Breach of tenancy conditions. For example:

- not keeping garden tidy
- parking persistently in unauthorised areas
- failing to control pets

### **12.3 Target response times**

Partnership members will accept complaints by letter, email, phone or interview.

Anonymous complaints will be recorded but it will not normally be possible to act on such complaints unless that complaint can be subsequently verified.

The Partnership is committed to responding to complaints of antisocial behaviour as quickly as it can but will prioritise complaints such that it can also ensure that it investigates the most serious complaints it receives immediately. Target response times for complaints received by the Council (initial response) are outlined below:

- Group 1: visit / interview complainant (organised through the ASBT) within 2 working days.
- Group 2: undertake initial investigation and assess appropriate action. Contact complainant by phone call / letter or visit within 5 working days of complaint.
- Group 3: Investigate complaint and contact complainant by phone / letter or visit within 10 working days of complaint.
- Group 4: Investigate complaint and update complainant by phone / letter or visit within 10 working days.

Target timescales relate to initial response to a complaint. Timescales for further action and involvement should be included in any action plan drawn up to resolve the case.

### **12.4 Information sharing arrangements**

Partnership members will respond to formal information sharing requests within 5 working days.

**Categories of Antisocial Behaviour**

**Category A: Disregard for Community / Personal Wellbeing**

- A1 Ordinary Breach of Tenancy Conditions  
Not keeping garden tidy, stair cleaning, rubbish dumping  
Parking in unauthorised areas  
Failure to control pets
- A2 Noise  
Noisy Neighbour  
Noisy cars/motorbikes  
Loud music  
Alarm (persistent ringing / malfunction)
- A2 Rowdy Behaviour  
Shouting and Swearing  
Fighting  
Drunken Behaviour  
Hooliganism / Loutish Behaviour
- A3 Nuisance Behaviour  
Urinating in Public  
Setting Fires  
Inappropriate use of Fireworks  
Throwing Missiles  
Climbing on Buildings  
Impeding Access to Communal Areas  
Games in Restricted / Inappropriate Areas
- A4 Hoax Calls  
False calls to Emergency Services
- A5 Animal Related Problems  
Dog Fouling

**Category B: Acts Directed at People**

- B1 Intimidation / Harassment  
Groups or Individuals Making Threats  
Verbal Abuse  
Sending Nasty / Offensive Letters  
Obscene / Nuisance Phone Calls and Text Messages  
Menacing Gestures  
Intimidation and threats to emergency services personnel  
(Can be on the grounds of; Race, Sexual Orientation, Gender, Religion, Disability, Age)



**Category C: Environmental Damage**

C1 Criminal Damage / Vandalism  
Graffiti  
Damage to bus shelters  
Damage to phone kiosks  
Damage to furniture  
Damage to buildings  
Damage to trees / plants / hedges

C2 Litter / Rubbish  
Dropping Litter  
Dumping Rubbish  
Fly-Tipping  
Fly posting

**Category D: Misuse of Public Space**

D1 Drugs / Substance Misuse and Dealing  
Taking Drugs  
Sniffing Volatile Substances  
Discarding Needles / Drug Paraphernalia  
Presence of Dealers or Users

D2 Street Drinking

D3 Prostitution  
Soliciting  
Discarded Condoms

D4 Kerb Crawling  
Loitering  
Pestering Residents

D5 Abandoned Cars

D6 Vehicle Related Nuisance and Inappropriate vehicle use  
Setting Vehicles Alight  
Racing Cars  
Off Road Motorcycling / Quad Bikes

**Examples of Prevention Initiatives and Diversionary Activities**

**Prevention**

- Centre-based provision - universal opportunities for participants to engage in activities and with professionals through organised building-based provision. Examples would include youth clubs, projects and drop-ins.
- Street, detached or outreach provision - engagement with members of the community outwith centre-based provision with a major aim of communicating with 'harder to reach' individuals and groups.
- Publicity and information initiatives - promotion of services available or help offered which ultimately aim to develop stronger safer communities. Examples include Dump the Dealer initiative, promotion of teen play areas, litter initiatives.
- Community-based education programmes - programmes designed to educate participants with the aim of reducing anti-social behaviour. Examples would be drug and alcohol education, education around housing.
- Active Citizenship - initiatives or projects engaging with participants in order to improve local democratic process. Examples include Dialogue Youth.
- Sports and outdoor education/pursuits - opportunities for participants to engage in healthy and active lifestyles.
- 'Street or Midnight sports' activities - opportunities for participants to engage in locally-based informal sports programmes

**Diversion**

- Individual or one to one diversion programmes - designed to challenge and address an individual's behaviour. Examples would include work performed in the Youth Justice field.
- Group-work based diversion programmes - mixture of activity and issue based programmes designed to engage, develop participants with the ultimate aim of reducing adverse behaviour. This can take the form of referrals to established provision, for example Cooldown Crew, Bridge Centre Motorcycle Project or a bespoke programme designed specifically around locality, common issues or group behaviour.

## Appendix 2

- Activity-based group diversion programmes - designed to give referred participants opportunities to take part in positive activities. Examples include Active Steps.