

Short Term Private Lets – Review Findings

Health, Social Care and Housing Committee

11 September 2012

1 Purpose of report

- 1.1 At their meeting on 6 March 2012, Committee agreed a motion by Councillor Mowat to review the powers available to deal with the impact of short term private lets used as so-called “party flats” and to bring back a report detailing the results of these investigations, together with recommendations for a way forward.
- 1.2 This report will advise Committee of the review undertaken in response to this motion and outline future control options.

2 Summary

- 2.1 Concerns have arisen about disturbance and issues related to the use of flats as ‘party flats’ and these have been considered by a cross-service group led by Services for Communities (SfC).
- 2.2 All reported concerns have been considered and reviewed, along with current legislation available to address issues related to this type of property use.
- 2.3 This report will provide:
 - a background to the issues;
 - updated complaint and contextual information;
 - comment on effective enforcement of existing legislative controls; and
 - provide future control options.
- 2.4 The term ‘party flat’ in this report is a general term used to describe the use of a flat by a number of unrelated persons on holiday for a few days to go to ‘stag’ or ‘hen’ parties or large sporting/entertainment events.

3 Main report

Background

- 3.1 Neighbours of properties where short term holiday lets are being used as ‘party flats’ report ongoing issues with antisocial behaviour. The complaints focus on

behaviour which leads to late night noise from within the flat and unacceptable behaviour and littering of streets and common parts of properties.

- 3.2 The issue has been known for some years. In 2009, for example, a Public Petition was lodged calling on the Scottish Parliament to urge the Scottish Government to introduce a statutory duty on landlords managing “party flats” to register the property as such and comply with all necessary Houses in Multiple Occupation, noise, safety and environmental regulations.
- 3.3 Petition submissions were considered from local authorities, the police and MSPs. Chief Constables reported that current legislative powers under the Antisocial Behaviour etc (Scotland) Act 2004 and the common law were sufficient to address their concerns.
- 3.4 The Scottish Government consulted at a local and national level to assess the nature and scale of the issue to ask if existing powers were adequate to address the public’s concerns. All agencies agreed that, while seriously affecting some individuals, this was a relatively small scale problem. Edinburgh advised that out of around 11,000 noise complaints from 1 May 2008 to 30 April 2009, 41 complaints may have related to ‘party flats’ (or similar) and of these, 22 complaints related to only one property.

Current complaint and contextual information

- 3.5 It is acknowledged in Edinburgh that ‘party flat’ issues are, in relative terms, on a small scale. It is estimated that there are about two thousand holiday flats/apartments with twenty having given rise to complaint. However, when issues do occur, considerable distress and nuisance is caused to immediate neighbours, other residents nearby and on occasion the wider community. This is accepted as a significant matter which requires consideration of enforcement mechanisms and processes which will best mitigate the impact on neighbouring residents.
- 3.6 A survey of complaints and issues related to party flats has identified a set of common themes. These relate to five property locations. This information is collated and summarised in the following table.

Complaint/Issue	Number of Complaints/Issues 2011 - 12
Internal Flat Noise	12
Street Noise	5
Access and Exit Noise	15
Loud Music	50
Property Damage	2
Breach of the Peace	19
Vandalism	7
Crime	3
Rubbish	11
Other	4
Total	128

- 3.7 These complaints relate to five separate locations and three Neighbourhoods – City Centre, North and West. Since then three other locations have given rise to similar problems, one of which is in the South West Neighbourhood.
- 3.8 Although much is understood about the known complaint locations, it was felt that further community engagement and survey work should be undertaken by the South and City Centre Neighbourhood teams in order to inform our understanding of the potential wider impact of issues related to short term holiday let activities.
- 3.9 In order to do this a number of properties in the South and City Centre Neighbourhoods have been identified that are advertised on the internet as holiday lets, but have no reported 'party flat' issues. The local Community Safety Teams are carrying out door- to- door exercises to visit residents living adjacent to a sample of these flats to identify whether they are experiencing any problems with anti-social behaviour that has not been reported. This will help provide an improved understanding of whether problems with this type of let are being under reported.
- 3.10 Lothian and Borders Police have advised that 40 calls relating to this issue were logged in 2011/12; in relative terms to other matters the volume of complaint to the Police is low.
- 3.11 Community representatives have also raised the following general concerns:
- the erosion of neighbourhoods as a result of longer term residential accommodation being replaced by short term holiday lets;
 - the problems they are experiencing relate to very short term lets (1 or 2 days) rather than the longer lets (5 days or more) and this high turnover of unknown occupants gives rise to feelings of insecurity;
 - a reduction in property value estimated by them as in the order of 20%.

Effective enforcement of existing legislative controls

- 3.12 Current controls in Edinburgh are entirely reactive, making use of nuisance, anti-social behaviour, police and fire safety provisions.

Antisocial Behaviour (Scotland) Act Part 5 – Noise Nuisance

- 3.13 Part 5 of the above Act is effective in dealing with a wide range of anti-social noise complaints. It is most commonly used to provide a relatively quick response and short-term remedy to reported loud music from residential accommodation. However, it is perceived by affected neighbours as cumbersome and does not always provide suitable recourse against noise associated with "party flats". There are three restrictions that mean part 5 of the Act is not always suitable for dealing with these issues:-

- There is a requirement for the reported noise to be witnessed and measured. In "party flats" the noise disturbance is often sufficiently short lived and it is not always possible for officers to arrive at the flat in time to witness the extent of the noise.

- Secondly, Part 5 does not address noise in the street a point which is often given as a problem associated with "party flats".
- Enforcement actions under Part 5 must be taken against the person making the noise and cannot be taken against the landlord.

Antisocial Behaviour (Scotland) Act Part 7 - New provisions

3.14 New provisions, (The Antisocial Behaviour Notices (Houses used for Holiday Purposes)(Scotland) Order 2011, were specifically introduced to address problems of anti-social behaviour from the activity of short term holiday lets. Community Safety and Community Protection staff have developed policies and procedures to enforce these provisions following their introduction in August 2011. These have now been reviewed as part of this project and issues noted in relation to:

- The consistent application of assessment criteria;
- Decision-making processes in relation to the service of notices;
- There being a focus on the behaviour of a tenant or occupier, rather than the landlord and/or management agent.

Police Involvement

- 3.15 All Police enforcement is on a case by case basis, either under the Civic Government (Scotland) Act 1982 or as a common law 'breach of the peace'. A partnership approach is viewed by the Police as the best current practice using the existing 'tasking and co-ordinating' (TAC) process.
- 3.16 Calls received are logged, graded in relation to the details given and responded to on a case-by-case priority basis. This is often dependant on the priority of other calls in the system at the time. Calls related to noise from a house or flat are passed to the SfC Noise Team.
- 3.17 The TAC process provides a means of identifying and recording issues for joint consideration and maintaining an actions register. This will assist in informing a strategic and operational approach to coordinated working.
- 3.18 Police contacts in Glasgow, Stirling, Aberdeen, Newcastle and South Wales have been involved in this project. A desktop research (open source) of Met and Merseyside was completed; and specialist sites, including National Policing Improvement Agency, were checked. No significant differences from the Edinburgh approach were identified.
- 3.19 Responses to the effectiveness of current arrangements is unhelpful as case volume is too low to draw conclusions from the data obtained. However, all of the Police areas report of sound partnership approaches based on case-by-case management. Mediation is used on occasion and is considered as being effective.

The Fire and Rescue Service

- 3.20 There is little evidence to suggest that short term lets have been the source of significant numbers of fire emergencies. However, the character of the usage of **some** such premises gives cause for concern. Experience indicates that there may be a higher risk due to a combination of the following:
- The unsupervised nature of the accommodation;
 - The large numbers of occupants in each room;
 - Those staying in the flat having been drinking heavily;
 - A lack of knowledge of the dangers of fire, the layout of the premises and escape routes or how to contact the emergency services;
 - The occupation by those who have not been specifically considered in the risk assessment process (e.g. in relation to language of fire safety instructions/directions).
- 3.21 There is a significant number of short term holiday lets in Edinburgh and, although subject to enforcement under the Fire (Scotland) Act 2005, they are not within a category of core premises targeted for inspection and audit. When a complaint is received the premises are visited where possible and any fire safety concerns dealt with through 'action planning' and / or 'enforcement action'. Where there is serious risk to life a Prohibition Notice may be served. However, prohibition measures are only used where there is no other alternative to reduce the risk to a more acceptable level. The approach is always to aim to work in partnership with 'duty holders' (occupiers/landlords/agents) to ensure compliance.
- 3.22 Premises let out for short term use, like stag and hen breaks, are difficult to access as they are vacant most of the time. The preferred route to inspection is by arrangement with the owner, but generally owner details are not available and, from experience, letting/advertising agents have been unwilling to pass this information on to due to stated confidentiality issues and their interpretation of the Data Protection Act. This is preventing intervention taking place and makes it difficult to communicate with the correct person/s (duty holders). The current situation can make intervention extremely time and resource intensive with no positive outcome / no inspection of premises carried out.

Planning

- 3.23 The current planning position is that short term holiday lets are residential uses within the authorised use of residential properties. As no material change of use has taken place, such uses are out with the control of the Planning authority and can not be added to a list of activities which could not be carried on in a flat without consent. A Planning authority has no power to change the situation set out in the legislation, or more specifically in the Use Classes Order. Any such change would be a matter for the Scottish Parliament. It is understood that the Scottish Government is not currently considering a review of the Use Classes Order.

- 3.24 Glasgow Planning Authority requires consent for 'short-stay serviced apartments' on the basis that they are no longer residential flats but are quasi-hotel accommodation. Enforcement action in relation to this has been limited with no legal precedent having been established. Enforcement action is currently being taken and the progress of this will be monitored.
- 3.25 A number of advertisements for these uses have been examined recently and the only service to which reference is made is the provision of towels and linen. In all other respects the occupants cater for themselves and, in Planning terms, are considered as short residential occupation as opposed to hotel, apart-hotel or bed and breakfast operations.
- 3.26 Edinburgh's position is based partly on Planning principles as set out in the legislation and on the legal case regarding such a use in Blackpool. This is the only case, so far as this authority is aware, which deals with this issue in relation to the Planning use of self-catering holiday flats. In the circumstances of that case, the judge concluded that there had not been a material change of use in planning terms although he also made it clear that each case required to be dealt with on its individual merits and that the case before him did not necessarily establish a principle.
- 3.27 Contact has been made with enforcement staff in a number of other cities in the UK which are known 'stag and hen' weekend destinations. None of these authorities, which have responded, deal with the antisocial and nuisance issues under planning powers.
- 3.28 Information in relation to a report from Westminster Council has recently been considered in relation to their Short Term Letting Planning Policy. This relies on the Greater London Council (General Powers) Act 1973 which contains a clause that the short term letting for less than 90 days of any residential premises in Greater London involves a material change of use. As a result Westminster are able to specify in their enforcement notices that the breach of planning control is a contravention of section 25 of the 1973 Act. The 1973 Act therefore underpins the policies which they have in their development plan. This legislative provision only applies to London.
- 3.29 Issues of anti-social behaviour were either a lesser or non-existent issue in most of the Westminster cases reviewed.
- 3.30 Other Councils' use of planning control is based on short term lets which include in their definition periods of operation for "90 days or less". This captures short let activities which are not perceived as a particular problem.

Licensing

- 3.31 There are no current legal provisions which will allow the licensing of short term holiday lets.

Future control options

- 3.32 A number of approaches are given for consideration. These relate to:

- revised procedures under the new ASB(S)A Part 7 provisions;
- revised procedures under existing planning provisions;
- the possible introduction of new licensing provisions; and
- a new joint working recommendation.

ASB(S)A Part 7 - new provisions

- 3.33 New comprehensive procedures have been developed in order to address the issues identified in paragraph 3.14. These are given in Appendix 1. Appropriate training in these new procedures has commenced and will continue to be delivered.

Planning

- 3.34 Thus far it has not been possible to identify any current cases with planning considerations which would enable us to identify any material change of use. However, research carried out by the working group has discovered that the nature of the use of certain short term holiday lets indicates this may be possible. For example, the numbers of people accommodated in such flats can far exceed the original design capacity of the premises. Some have been found to have 6-8 single beds in each room. In these cases it is suggested that such an intensification of the use could amount to a 'material change of use' in planning terms. Appeal and court decisions on the issue of intensification of use are varied in their outcomes, but this is an argument which would be worthwhile for a legal opinion to be sought.

- 3.35 An opinion should also be sought on a Planning definition for the category of accommodation considered to constitute a material change of use. A suggested Edinburgh definition is:

SHORT-STAY HOLIDAY / "PARTY" FLATS: Residential flats used as self catering holiday accommodation for short periods of occupation (often, but not exclusively, for "stag" and "hen" weekends or on the occasion of major sporting events), which are generally less than 5 days duration, and where services such as a concierge and/or cleaning and laundry are provided, either on a daily basis or between periods of occupation and where the numbers of people in occupation generally exceed the original design capacity.

- 3.36 For comparison purposes, the Glasgow definition is:

SHORT-STAY SERVICED APARTMENTS: Residential flats used as quasi hotel accommodation, where periods of occupation are generally less than 90 days, and services such as cleaning and laundry are provided, either on a daily basis or between periods of occupation.

- 3.37 Should the outcome of that opinion be that there are situations where a material change of use in planning terms could be established, there would be no need to create any new policy to deal with such uses. The Edinburgh City Local Plan already has a policy which deals with inappropriate uses in residential areas. This could be used to control the appropriate location of such uses.

Licensing

- 3.38 Section 44 of the Civic Government (Scotland) Act 1982 permits the Scottish Government to designate new activities which would require to be licensed under that Act. These powers have been used in the past to introduce the licensing of house in multiple occupation (HMO), skin piercing and Taxi Booking Offices. These new activity categories can be created quite quickly by Statutory Instrument.
- 3.39 The Council will have to approach the Scottish Government to require the owners of "Designated Premises" to have a licence and it would then be for the Government to decide if they wished to introduce a new licensing regime. Consultation would be required before any such regime could be introduced. This could be an optional licensing regime with each council in Scotland able to decide whether it wished to licence these activities.
- 3.40 A council would consult with all interested parties and, if it decided to proceed, would probably be required to make a resolution. The licensing regime would come into effect nine months or longer thereafter.
- 3.41 A licence could be required by the owner (relevant person) of 'Designated Accommodation' within the local authority area and any agent to be identified in the application. Both owner and agent would have to be 'fit and proper' to hold the licence, which would have appropriate conditions attached.
- 3.42 In describing a category of licensable activity it is important to avoid the inclusion of activities other than those for which control is justifiable. It is therefore necessary to clearly define 'designated accommodation' and the following is an attempt to do so.
- 3.43 'Designated Accommodation' would mean any premises, or part of a premises, occupied for accommodation by any persons who pay money, or moneys worth, to the relevant person, or to any other party, to occupy the premises.
- 3.44 An example of appropriate exemptions is as follows:
- 'Designated Accommodation' would not include:
- categories such as care homes, independent health care, school care accommodation, secure accommodation;
 - where the relevant person also occupies the premises as their only or main residence or where 24 hour staffing is present;
 - any premises where the accommodation only has a direct and exclusive entry for persons to a "public place". (Public place would be defined so as to exclude a stair where other persons have access.);
 - any properties licensed as a house in multiple occupation (HMO);
 - where occupancy does not exceed 2 adults per room;
 - where the persons occupying the premises have a right to occupy the premises for a continuous period of more than 14 days; and
 - any "detached" properties.

- 3.45 A licensing regime has to operate in a way which does not infringe on an owner's property rights under the Human Rights Act 1998. Any interference with these rights has to be proportionate and as necessary in a democratic society in the interests of public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.
- 3.46 The Provision of Services Regulations 2009 also require that any licensing scheme has to be justified by an overriding reason relating to the public interest and that the objective pursued cannot be attained by means of a less restrictive measure. The regulations also require that any the terms of any licensing scheme must not be dissuasive, or unduly complicate or delay the provision of the service.
- 3.47 An alternative approach could be to create a more re-active registration/licensing system which would allow councils to designate particular problem properties as requiring registration/licensing, following verified complaints. This would be more targeted and less obtrusive to the remainder of holiday accommodation sector.
- 3.48 It is recommended that a legal opinion should be sought on the potential for licensing control of short term let activities.

Short Let Task Force

- 3.49 It is recommended that a Short Let Task Force be formed to review activity across the city, lead on enforcement and develop future policy and practice. The important consideration at this stage is that the handling of complaints and decision-making is limited to a group of experienced multi-disciplinary enforcement staff, acting with a city-wide remit, in order to ensure consistent application of the new ASB procedures and all other relevant provisions. Decision-making must be robust to ensure appropriate precedents are set for future actions taken or avoided.
- 3.50 It is important that this group operates in a flexible way, is able to respond as and when the need arises, and has access to a range of expertise and Services. As case numbers are low, it is considered that this function will best be delivered by staff from various Services being allocated the necessary time to perform this function as part of their remit.
- 3.51 It is proposed that:
- Management; decision-making; communications; reporting; forward planning; should be undertaken by a Task Force Manager, SfC Senior Officers (one each from the Neighbourhood, Community Protection and Planning functions) and representatives from the Police and Fire Services.
 - Frontline operational case investigations and enforcement work be undertaken by two Neighbourhood and two Community Protection staff, specifically identified as having expertise in this area and significant enforcement experience. Police and Fire Service officers will be deployed as considered appropriate by their operational line management.

- Input from Legal Services be sought as the need arises.
- The Task Force will initially consider: a formal 'terms of reference'; inter-agency communications and joint-working protocols; communications with Community Councils; an action plan in relation to all known 'party flat' locations; staff training needs; case information to be recorded; and the appropriate content of reports to committee.
- Activity of the Task Force be reviewed and reported to this committee on a regular basis, e.g. every 6 months. The first of these reports to outline the: terms of reference; staffing and line management arrangements; and operating procedures.
- A meeting was hosted by Councillor Day on 7 August 2012 with Old Town, Tollcross and West End Community Councils to discuss the options presented in this report. There was acknowledgement that what was required was a more effective response using existing powers, as well as examining new powers to regulate this use. There was a commitment given to continuing this group as a reference group as the work progresses.

Counsel Opinion`

- 3.52 It is recommended that the future control options form the basis of a submission for Counsel Opinion. This is considered an essential part of the review into this matter to ensure any future proposals are tested with a legal opinion and any future actions have a reasonable prospect of success.

4 Financial Implications

- 4.1 It is expected that obtaining Counsel Opinion will cost in the region of £1,000.
- 4.2 It is a feature of any licensing regime that fees should recover costs of implementation.
- 4.3 Enforcement under the planning regime is likely to incur additional spend on planning enforcement work.
- 4.4 The financial impact, if any options are to be progressed, will be reported as appropriate.

5 Equalities Impact

- 5.1 There is no relationship to the public sector general equality duty to the matters described in this report.

6 Environmental Impact

- 6.1 There is no environmental impact arising from this report. A further report to Health, Social Care and Housing committee will have relevance to environmental issues.

7 Conclusions

- 7.1 That 'party flat' issues are, in relative terms, on a small scale. However, when issues do occur, considerable distress and nuisance is caused to immediate neighbours, nearby other residents and on occasion the local community.
- 7.2 This is accepted as a significant matter which requires consideration of what enforcement mechanisms and process will best mitigate the impact on neighbouring residents.
- 7.3 New ways of working, revised procedures and staff training can be implemented to ensure existing legislative provisions are more effectively enforced. The formation of a 'Short Let Task Force' is considered to be the best mechanism for achieving an immediate improvement.
- 7.4 Potential changes to legislation are described and these should be considered further. Obtaining Counsel Opinion on proposals should be part of this process.

8 Recommendations

- 8.1 It is recommended that Health, Social Care and Housing committee:
- a) note the contents of this report regarding the review findings;
 - b) note the development and introduction new comprehensive ASB procedures given in Appendix 1;
 - c) agree that a Short Let Task Force be formed in accordance with paragraphs 3.49 to 3.51 of this report;
 - d) agree that Opinion of Counsel be sought to clarify and explore the legal position in relation to future planning and licensing control of short term let activities as described in this report; and
 - e) note that this report will form the basis of a further report to HSC&H Committee, following the receipt of Counsel Opinion and further consideration by the review group.

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Appendices Appendix 1 – ASB(S)A Part 7 - new procedure

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Wards affected All

Single Outcome
Agreement

Supports National Outcome 4 – Edinburgh’s communities are safer
and have improved physical and social fabric.

Background
Papers

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Appendix 1 - ASB(S)A Part 7 - new procedure

Procedures and step by step guide

June 2012

Dealing with reluctant private landlords and serving an Antisocial Behaviour Notice (ASBN)

1. Purpose

- 1.1 The purpose of the procedures is to inform Community Safety Officers (CSO) of steps to take when considering issuing an ASBN on a landlord whose tenant(s) is/are engaging in antisocial behaviour.
- 1.2 The procedures have been reviewed by the Council Solicitors and accepted as a true interpretation of the amendment made to Part 7 of Antisocial Behaviour etc. (Scotland) Act 2004 ("the 2004 Act").

2. Background

- 2.1 In March 2011 an amendment was made to Part 7 of the Antisocial Behaviour etc. (Scotland) Act 2004 ("the 2004 Act") which enables a local authority to serve an ASBN on a private landlord where an occupant of, or visitor to, a house engages in antisocial behaviour at or in the locality of the house.
- 2.2 The modification gives local authorities enforcement powers for dealing with landlords of holiday/weekend lets, which **focuses on the responsibilities of the landlord rather than that of the particular tenant or occupier**. The notice is served on the landlord of the offending property and would describe the antisocial behaviour already taken place and the landlord requirements to deal with anticipated future antisocial behaviour.

3. Procedures

- 3.1 The procedures outlined in this document can be followed when dealing with landlords of holiday/weekend lets or with landlords who have longstanding tenants in their property that are causing antisocial behaviour.
- 3.2 An ASBN is drafted by the Council solicitor on your instruction and directs the landlord or letting agent of the antisocial tenant to act in a certain way in their capacity as a landlord. Note that the landlord of the property is person with responsibility for the lease or occupancy arrangement and may not necessarily be the owner of the property.
- 3.3 The legislation covering serving ASBNs in respect of holiday/weekend lets and longstanding tenants may be enacted in the same way

although the instructions for addressing the antisocial behaviour are likely to differ.

- 3.4 For longstanding tenants an additional measure may be applied in that you may, if necessary, apply to the Sheriff Court for an antisocial behaviour order (ASBO) in respect of the antisocial tenant; an option unsuitable for holiday/weekend let short term visitors.
- 3.5 Where a landlord fails to comply with an ASBN, the local authority can:
 - Apply to the sheriff for an order as to rental income (a rent penalty)
 - Apply to the sheriff for a Management Control Order
 - Take action to tackle the antisocial behaviour and pursue the landlord for any expenses incurred in doing so i.e. cost of carpeting or to engage a responsible letting agent.
 - Refer the case to the PF for prosecution that carries a fine of up to £5000.

4 Step 1:

Investigate

- 4.1 After one or more reported incidents of antisocial behaviour, carry out an investigation as you would with any other case speaking with the police and other relevant parties to establish if the property in question is a long-term private let or a holiday/weekend let before you meet with the landlord.
- 4.2 In order to identify if the property is a holiday let or a registered private let you can:

Private let:

 - Visit Landlord Registration site www.landlordregistrationscotland.gov.uk

Holiday let:

 - Advertises for holiday lets (party flats) – internet, etc.
 - Council Tax registers.
 - Lists from organisations such as student accommodation services.
 - HMO registers.
 - Information from tenants or neighbours.
 - Information from other council departments that may come across rented property.
- 4.3 Use of any information must comply with Data Protection requirements, but there is specific provision in the 2004 Act to allow for information

sharing across local authority departments on the issue of antisocial behaviour, in order to facilitate partnership working.

- 4.4 It is necessary to try and identify the status of the property in question as different actions may be taken depending on property type. For example, with a registered private let as well as serving a notice on the landlord you may advise the landlord that their registration as a 'fit and proper landlord' may be in jeopardy if they do not take steps to tackle the antisocial behaviour (holiday/weekend lets do not have to register).
- 4.5 When dealing with a long standing tenant of a private let you may in tandem with serving an ASBN on the landlord, send a letter to the tenant informing them of your intention to raise legal proceedings and pursue an ASBO against them.

Inform

- 4.6 Meet with the landlord and show them the evidence of antisocial behaviour that you have collected. Discuss the situation with them and how they propose to tackle the behaviour. You should at this point inform them of the new legislation and the powers of a local authority to serve a notice if antisocial behaviour continues.
- 4.7 If the landlord decides to issue a warning letter to his/her long standing tenant, ask for a copy to be sent to you. Similarly, where the landlord decides to issue any guidance to visitors to holiday/weekend lets regarding acceptable behaviour, ask for a copy.

Document

- 4.8 You must document and confirm with the landlord in writing that you met to discuss the antisocial behaviour complaints and looked at ways to rectify as well as inform him/her that you will review the situation over a few weeks. You do not need to be prescriptive at this point and neither do you need to outline the measures agreed as this will be included if a more detailed warning letter becomes necessary (see step 2).

Update

- 4.9 You should inform the complainer(s) that you have met with the landlord and of the importance that they continue to report any instances of ongoing antisocial behaviour so that you can monitor the case effectively. This should include filling out diaries, completing online antisocial behaviour reporting forms and encouraging the complainers to phone the police and or the Night Noise team in order to gain as much corroborated evidence as possible.
- 4.10 This is especially true for those cases where only one tenant is affected by the antisocial behaviour. As well as contacting the Night Noise

team and the police you may also if deemed necessary request the usage of sound monitoring equipment (Norsonics) in order to collect corroborated independent evidence to build your case upon.

5. Step 2:

Warning

- 5.1 If the initial approach does not resolve the situation and you have further evidence that there is ongoing antisocial behaviour, you should consider what reasonable steps the landlord could take to tackle the problem. You should give the landlord advice and offer assistance about taking those steps as this is a legal requirement that should precede any ASBN. The Council's Private Rented Services team may also be able to offer further advice or signposting to the landlord.

Some of the reasonable management actions (steps) that may be taken are:

- Laying carpets or rugs/floor coverings
 - limit the number of persons who can occupy the premises at any one time
 - display posters and supply leaflets in the flat requesting that they adhere to the flats guidelines on antisocial behaviour
 - supply residents with the letting agents or landlords direct phone number
 - mediation
 - Issue a warning letter to tenant – long term occupants only
- 5.2 You are also required to tell the landlord that you are considering issuing an ASBN if the antisocial behaviour incurred by the visiting tenants does not stop.
- 5.3 Following the meeting with the landlord issue them with a formal warning letter outlining what was discussed and specifically what measures were agreed to alleviate the antisocial behaviour within a set timeframe.
- 5.4 You should also request that the landlord on completion of the management actions put in writing that he/she has carried out the requirements and forward this confirmation to you.
- 5.5 The regulations do not specify any timescales for carrying out the agreed management actions, since circumstances can vary so widely. Therefore, timescales set should be reasonable given the requirements specified.

- 5.6 If it is a private long term let and you have not been able to meet with the landlord then** you should meet with the occupant and inform them that you will consider pursuing an ASBO if the problem does not desist. Follow existing guidelines for dealing with private tenants in those cases.
- 5.7 If you have been unable to trace or contact a landlord, continue to deal with their agent if one exists or the tenant (if long standing) and gather evidence in the normal way to build a case as an ASBN may still be issued to an absentee landlord via media publications (see 8. Step 5) or recorded delivery to the landlords address (if known).

Monitoring intermediate stage

- 5.8 Whilst the landlord is carrying out the specific actions that were agreed upon, inform the complainer(s) of the current agreement and ask that they keep you informed of any ongoing antisocial behaviour and to continue to report problems to the services available.
- 5.9 Once the agreed implementation time period is up, request that the landlord put in writing confirmation of all the management actions that have been carried out to alleviate the situation if he/she has not already done so.
- 5.10 If after giving advice and assistance, the landlord has not followed through with what was agreed the CSO should meet with the Council Solicitor to discuss the possibility of serving an ASBN (see step 3).

6. Step 3:

Serving an ASBN

- 6.1 If during the review period the request for proportionate and reasonable action is ignored, or you consider that the landlord has not taken appropriate management actions you can serve an ASBN. Meet with the Council Solicitor to discuss an ASBN notice and proposed content.
- 6.2 There is no laid down form for the notice but it must under section 68(3) of the 2004 Act:
- describe the ASB that is to be addressed;
 - specify the actions that the landlord should take for the purpose of dealing with that behaviour and the timescales for doing so;
 - state the consequences of failing to take those actions in the time specified (see 12.1); and
 - inform the landlord of his/her right to review under Section 69(1) and judicial review.
- 6.3 Through the ASBN you may request, for example, that the landlord or agent:

Both private long term let and weekend/holiday lets:

- supply their contact details to all neighbours of the offending property
- employ a reputable letting agent to manage the property
- remove an ineffectual letting agent

Private long term let - you can also include that the landlord:

- issue a written warning to their tenant
- evict their tenant and recover possession of their property on the basis that the tenancy agreement has been breached

Weekend/holiday lets - you can also include:

- an instruction to limit the number of persons who can occupy the premises at any one time
- a request to ensure onsite staff attendance and supervision
- an instruction to carry out other measures such as laying carpets or rugs to help reduce impact noise

7 Step 4:

- 7.1 The Council solicitor drafts the ASBN incorporating your instruction

8. Step 5:

- 8.1 ASBN is served by Sheriff Officer on landlord/agent/all joint owners on instruction of Council solicitor. Where a landlord is not contactable but you have an address, the ASBN would be sent recorded delivery to that address with a copy sent to the landlord's agent. Similarly, where you are aware of the landlord's identity but unable to ascertain their current address, the ASBN should be served at the relevant house and at the landlord's last known address.

- 8.2 Where you have been unable to identify the landlord, the ASBN may be served by publishing it in two or more newspapers (at least one to be a local newspaper) circulated in the locality of the relevant house.

9 Timescales

- 9.1 The timescales given for compliance with the instructions in the ASBN must be reasonable. The setting of timescales should be discussed between the case officer and the solicitor and will vary depending on the actions to be undertaken and any considerations relevant to the particular case.

10. Monitoring ASBN

- 10.1 You are able to monitor the situation and contact the landlord to give further advice and assistance as appropriate but you are not permitted

to follow up formally on the notice until the period allowed for compliance has expired.

11 Internal and judicial review of ASBN

- 11.1 The landlord must be notified that they have a right to request a review of the decision within 21 days of the service of the ASBN.
- 11.2 The person who carries out the review should be senior to the person who made the decision that is under review, and should also have had no involvement in the making of the initial decision to serve an ASBN.
- 11.3 Applicants unhappy with the internal review can also seek a judicial review.

12. Compliance and non compliance

- 12.1 If complied with, the ASBN becomes redundant. If failure to comply, the following consequences apply:
 - This is a criminal offence and should be reported to the Procurator Fiscal
 - The Council can apply to the Sheriff for an “Order as to Rental Income” under Section 71-73 inc. of the ‘2004’ Act. In effect, this means that no rental income would be payable on the property and therefore directly affects landlord income for a specified period
 - The Council may also apply to the Sheriff for a “Management Control Order” under Section 74-77inc. of the ‘2004’ Act to allow transfer of the management of the property away from the landlord/letting agent/owners
 - The Council may take such steps as it considers necessary to deal with the antisocial behaviour described in the ASBN and charge the landlord for costs incurred as a result of their failure to take action. The Council would then claim those costs as a debt in the normal way.

Serving an ASBN on reluctant landlords who let out their properties for Holiday Let purposes

