

Dealing with Racial Harassment



Policy and Procedure of Warwick District Council Housing Department

Revised November 2005

Warwick District Council

Definition of Racial Harassment

The definition used by the Commission for Racial Equality has been adopted by the Council. This describes harassment that is racially motivated as that which “may be verbal or physical and which includes attacks on property as well as the person, suffered by individuals or groups because of their colour, race, nationality or ethnic origin, when the victim believes that the perpetrator was acting on racial grounds and/or there is evidence of racism”.

Warwick District Council is committed to a policy of encouraging equal opportunity to all and reducing racial disadvantage. The Council will, therefore, abide by the Race Relations Act 1976 and the Race Relations (Amendment) Act 2000, and implement the provisions of the Commission for Racial Equality’s Code of Practice in Rented Housing. Staff are fully aware of the contents of the Code and their responsibilities under it.

It is the policy of the Council that it will not tolerate racial harassment of any tenant, any member of the tenant’s household or any person occupying the property with the tenant’s consent. Further, every tenant or applicant for the Council’s services should have equal access to those services regardless of their colour, race or ethnic origin.

The Council will use all powers and resources at its disposal in order to deal effectively with perpetrators of racial harassment and in order to assist victims of such harassment.

The Council will ensure that this policy will be made known to all Council tenants and applicants and that all housing staff are appropriately trained.

Warwick District Council

Procedure for Dealing with Cases of Racial Harassment

1. Identifying Racial Harassment

The Council may become aware of incidents of racial harassment in a number of ways:

- a) by a report to a member of staff or Housing Officer from a tenant, housing or homeless applicant, or anyone approaching the Council for a service
- b) by a letter to the Council
- c) by observation to Housing staff particularly
- d) by a report from another agency, neighbours or witnesses at an incident of racial harassment or discrimination.
- e) by email or via the Web Site

Regardless of how seriously staff perceive the situation, the person subjected to racial harassment must:

- a) be asked if they wish to make a complaint of racial harassment.
- b) ask if the complainant requires an interpreter.

It may be the case that an incident of possible racial harassment will arise out of an investigation into some other matter such as neighbour nuisance, anti-social behaviour, change in behaviour by friends or neighbours etc. In such a situation, this procedure must be adopted even if, after investigation, the decision is that no harassment has taken place.

2. Interviewing the Complainant

The initial interview should be undertaken by an appropriate Housing Officer or the Tenancy Enforcement Officer within 48 hours of the receipt of the complaint. In cases of physical assault or other excessive violence, the interview should be conducted within 24 hours.

The officer conducting the interview should ascertain as much detail as possible in order to find out:

- a) what has happened;

- b) how long the situation has existed;
- c) can the client identify anyone involved;
- d) are there any witnesses;
- e) are any other agencies involved;
- f) are the Police or Warwickshire Race Equality Partnership involved, or does the client want them to be involved;
- g) what would the client like the Council to do;
- h) are there any repairs necessary;
- i) is any work required to improve security.

The client should be assured that the Council will give support to them and advise what repair work will be undertaken. The removal of racist graffiti will be undertaken within 24 hours

Should it be clear that the client's safety is in danger, then appropriate immediate action should be taken with reference to the Housing Estates Manager or the Head of Housing Services.

3. **Deciding a Course of Action**

Once a report of racial harassment is received, then within three days a report will be submitted to the Housing Estates Manager or in their absence the Tenancy Enforcement Officer who will decide what action can be taken on the information provided or what further investigations are required.

In deciding on what further action is required, the Housing Estates Manager will:

- a) consider the statements of the client, the facts of the case and whether the client is prepared to support the Council in any County Court action that may be appropriate
- b) decide whether the case reported constitutes racial harassment;
- c) outline an immediate action plan which should give details of:
 - (i) what help the client will receive
 - (ii) what input is required from other agencies and which agencies will be approached.

The action plan must be time targeted in all instances.

It will be the responsibility of the Housing Estates Manager to monitor the progress in dealing with the instance of racial harassment and to ensure that the action plan is carried out.

The Housing Estates Manager will ensure that a notification is forwarded to the client as to the decision and what action is to be taken by the Council.

4. **Appealing against a Decision**

Should a client wish to appeal against a decision of the Housing Estates Manager, then an appeal should be lodged in writing to the Head of Housing Services within 14 days of the decision letter. The appeal will be considered in five working days at which time the Head of Housing Services will decide as to what further investigations are required and what action is to be taken.

The decision of the Head of Housing Services will be conveyed to the client within 14 days of the appeal.

5. **Support to the Victim**

Support to the victim can be via a number of routes and these would include:

Repairs and Graffiti

If it is clear from the initial interview that damage has been caused to the victim's home or that graffiti has been daubed on the property, the officer concerned will arrange for emergency repairs to be carried out in the following manner:

- a) photographic evidence of the damage will be taken, clearly identifying the location of the site
- b) Windows boarded and property secured immediately where practicable. Racist or abusive graffiti will be removed within 24 hours.
- c) re-glazing and other "non urgent" repairs will be undertaken within three working days.

In the case of persistent attacks on the victim's property, a range of security measures may be required including fitting safety glass, fire-proof letter boxes, better quality locks and doors, community alarm, etc.

Temporary Transfer

In some cases the victim may be in immediate personal danger or their property may have suffered extensive damage. In such cases, a client may need/wish to be moved to temporary accommodation immediately.

Every effort should be made to find alternative accommodation within 24 hours of the report of the incident should that be appropriate. When deciding on the offer of temporary accommodation, reference should not be made to housing need except where a letting would be to the detriment of the client.

Permanent Transfer

In some cases, it may be appropriate for a client to be transferred on a permanent basis where it is accepted that he/she is living in fear of continuing racial harassment and that they wish to move to another property.

A decision to arrange such a transfer will be made by the Head of Housing Services under the delegated powers provisions. Offers will take into account the client's stated area of preferences and housing need factors and no offer shall be made which is of an inferior type or quality to the accommodation presently occupied by the client.

Where alternative accommodation is offered but is refused, consideration will be given to making a second or third offer where it is accepted that the refusal was made on reasonable grounds.

Further Support

During the investigation the client should be asked whether any other organisation can be contacted in order to seek further assistance, such as the Police, Racial Equality Council, the Warwickshire Race Equality Partnership etc.

If the harassment alleged is of a continuing nature, then the client should be provided with a diary sheet to note any further incidents of racial violence or harassment and advised of the Council's policies regarding assistance that can be provided and action that can be taken against perpetrators should racial harassment be accepted. Audio logs as opposed to written diary sheets are also acceptable.

6. Action Against the Perpetrator

a) Interviewing the Perpetrator

Where perpetrators have been identified they should be interviewed (subject to the client's agreement) within five working days. In

addition, the Police should be advised and requested to investigate the matter in parallel.

In questioning the perpetrator the member of staff should:

- (i) advise the perpetrator of the reason for the interview
- (ii) allow the alleged perpetrator to have a friend or legal representative present.
- (iii) put the specific allegations to the alleged perpetrator
- (iv) ask the alleged perpetrator why he/she thinks allegations have been made
- (v) record all counter-complaints made by the alleged perpetrator and arrange for those to be investigated in the same manner as the original complaint.

Do Not

- (i) disclose the complainant's name and address where this is avoidable
- (ii) threaten the alleged perpetrator with any action being taken against them
- (iii) just note a resume of the interview – the report should be in full
- (iv) make any statement committing the Council to any course of action

b) **Confidentiality**

The Council subscribes to the County-wide "Sharing of Information Protocol". However, the source of complaints will not be disclosed to any third party without the express consent of the complainant and confidentiality will be respected at all times.

7. **Potential Solutions**

- 7.1 The legal and non-legal approaches available to tackle cases of racial harassment are set out below. They are not mutually exclusive. Crime & Disorder Act remedies are dealt with through the Magistrates' or County Court, and the possession/injunction remedies through the County Court only.

7.2 **Crime and Disorder Act 1998 : Anti-Social Behaviour Orders**

For tackling anti-social behaviour associated with Council properties the Act uses the following definition:

“that a person has acted in an anti-social manner – that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself”

Anti-Social Behaviour Orders can be used to address racial harassment.

It also enables anti-social behaviour to be tackled district wide, whether associated with Council properties or not, by providing:

“that an Anti-Social Behaviour Order is necessary to protect persons in the Local Government area in which the harassment, alarm or distress was caused or was likely to be caused from further anti-social acts by him”.

ASBOs can be obtained from both the Magistrates’ Court or the County Court by either the Police or the Local Authority, although there must be consultation with all agencies involved with the individual to whom the order will apply first. It is a preventative measure governing future conduct, rather than penalising past conduct. The standard of proof is civil, i.e. on the balance of probabilities. It is for the Court to determine the scope and duration of the Order, although it would usually be for 2 years. The applicant must also demonstrate other measures that have been taken to attempt to resolve the problem.

The maximum sanction of the Magistrates Court for a breach of an ASBO is a sentence of 6 months and/or a fine. In more serious breaches (dealt with by the Crown Court) the maximum penalty is 5 years and/or a fine. As an alternative, the Court can continue/strengthen the Order beyond the 2 year initial period. It is now possible for the County Court to attach an ASBO to a Possession Order.

The Anti-Social Behaviour Act 2003 (see below) now authorises local authorities to enforce as well as obtain Anti-Social Behaviour Orders.

7.3 **Housing Acts 1985 and 1996**

These acts contain the main provisions specifically aimed at Council tenants.

Council tenants are responsible not only for their own actions, but also for those of their families and visitors.

Nuisance, including racial harassment, is a breach of Contract (the Tenancy Agreement), as well as having a specific Ground for Possession attached to it under the Housing Act 1985.

There is a specific ground for possession in the Housing Act 1985 (as amended) which deals with nuisance (including racial harassment) by Council tenants their families and visitors.

This states:-

“The tenant or a person residing in or visiting the dwelling-house:-

- (a) has been guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality, or
- (b) has been convicted of –
 - 1. using the dwelling-house or allowing it to be used for immoral or illegal purposes, or
 - 2. an arrestable offence committed in, or in the locality of, the dwelling-house”.

Possession Proceedings

The traditional remedy and usually the most effective. The County Court Judge can make any Order he/she deems appropriate and the Council must pass a test of “reasonableness” before any Order can be made. Evidence is by other tenants, Housing Officers, Professional Witness (including the Police) and can include hearsay as well as direct evidence. However, the more hearsay evidence there is, the harder it is to persuade a judge to make an Order, unless the circumstances of the case are extreme. A further requirement of the Anti-Social Behaviour Act 2003 is that in exercising its discretion the Court must give particular consideration to the actual *or likely effect* which the anti-social behaviour has had or could have on others.

The Tenancy Agreement : Secure Tenancies

This is the contract between the Council as Landlord and its Secure Tenants. All Council tenants are Secure Tenants unless they are

Introductory Tenants or in temporary accommodation (e.g. under a homeless duty). It contains strenuous conditions designed to prevent anti-social behaviour and racial harassment.

The current tenancy agreement was revised in July 2002. The revised version significantly strengthened the Council's position when seeking to enforce its Conditions of Tenancy. The relevant sections of the tenancy agreement are Section 7 "Anti-Social Behaviour" and Section 8 "Respect for Others".

The Tenancy Agreement : Introductory Tenancies

This is the contract between the Council as Landlord and all new tenants whose tenancy commenced after 1st April 2000. It lasts for 12 months, after which it becomes a Secure Tenancy, unless steps are taken to terminate it before the 12 months expire.

The agreement allows the Council to apply for a mandatory possession order as long as the appropriate notice has been served under the terms of the Housing Act, 1996. The tenant has a right of appeal against the service of the notice and the appeal process is included in the terms of reference of the Housing Appeals and Review Panel.

7.4 Anti-Social Behaviour Act 2003

This Act extended the powers available to local authorities to tackle anti-social behaviour, including racial harassment, within the community.

In particular it strengthens the powers of landlords in the following ways:-

- A power of arrest can be attached to an injunction obtained through the Local Government Act 1972 if there is a threat of violence or use of violence or there is significant risk of harm.
- Proceedings for Possession:

The Act allows Courts to take the following issues into account when they are considering granting Possession Orders:-

- The effect on those in the locality if the nuisance is repeated.
- The effect of the nuisance on those in the locality.
- The continuing effects of the nuisance.

- Anti-Social Behaviour Injunctions:

The legislation gives Housing Associations and Local Authorities the power to obtain an injunction on anyone – not just tenants – who are causing a nuisance which affects the way the estates are managed and gives protection to those engaged in lawful activity on the estate or members of the landlord staff carrying out their duties.

- Demoted Tenancies:

Registered Social Landlords and Local Authorities can apply to the County Court for a Demotion Order. If a secure tenancy is demoted then, for a period of 1 year, the tenant has some rights reduced and repossession during the year becomes easier. This differs from non-demoted Secure Tenancies where the Court has to be satisfied that it is “reasonable in all the circumstances to make an order” which required proof of the allegations on the balance of probabilities.

In exercising its discretion the Court must give particular consideration to the actual *or likely effect* which the anti-social behaviour has had or could have on others i.e. the fear of crime within a local community.

Police Reform Act 2002

It is now possible for interim ASBO's to be granted for a fixed period of time to prevent further anti-social behaviour pending the full ASBO being obtained.

7.5 Injunctions

Injunctions can be obtained under various pieces of legislation.

An injunction can be either “ordinary” or with a power of arrest attached (difficult to get). The Court will often substitute an “undertaking” given by the Defendant to the Judge. Its breach will then be a contempt of Court. All injunctions are for a limited period (rarely for more than 12 months). Breach is punishable by a fine or a term of imprisonment. In a recent case a second breach of an injunction was punished by a term of 12 months in prison.

Injunctions can be used alongside possession proceedings, or be a temporary expedient to cover the period between lodging the papers and the trial. The burden of proof is the same as for possession proceedings, i.e. “on the balance of probabilities”.

The law relating to injunctions sought by local authorities has been widened and strengthened under the Anti-Social Behaviour Act 2003.

7.6 Non-Legal Remedies

7.6.1 Mediation

Usually by an external facilitator. Following the re-organisation of the County Court and the adoption of the Civil Procedure Rules this

approach is encouraged by Judges and goes towards discharging the “reasonableness” duty.

7.6.2 Negotiation

Usually by Housing Officers in cases where only 2 tenants or families are involved. Designed to achieve a workable solution without the need for Court action, which would probably be unsuccessful. The Housing Business Unit has designated officers who deal with racial harassment issues.

7.6.3 Acceptable Behaviour Commitments

An Acceptable Behaviour Commitment is not legally binding but good evidence of seeking to resolve the problem before a case proceeds to Court. Particularly appropriate as a precursor to pursuing an Anti-Social Behaviour Order or Possession Order.

8. Witness/Victim Support

This procedure is based on a commitment to working with witnesses to make estates a better place to live; often the witness will also be the victim. Successful support is the result of partnership working with local residents and other agencies such as the Police and the Warwickshire Victim and Witness Information Partnership or Warwickshire Race Equality Partnership.

Support Measures for Witnesses

Provision of better information designed to help witnesses through the Court process. This is provided by the following:

Provision of a Dedicated Officer who will keep in contact with the witness when they have been asked to attend Court, the officer will be on-hand to answer any questions or concerns they may have.

Before any Court Hearing, a visit may be arranged to show the witness around the Courtroom, explain what will happen at the Hearing and what their role will be.

On the day of the Hearing, transport is provided to and from the Court for all witnesses and the Dedicated Officer will support and stay with the witnesses for the duration of the Hearing.

If possible, a separate waiting room will be arranged with the Court for witnesses to use when they are waiting to give evidence.

After the Hearing the Dedicated Officer will keep in contact with the witness and offer continued support.

Home Security

The security of a witness/victim's home can be improved to give additional security by the provision of window locks, spy holes, letterbox covers, door chains, smoke alarms and, if necessary, environmental work around the property for example the provision of additional street lighting.

Police

Liaison with local Police to ensure they are aware of any potential problems for witnesses leading to possible prosecution for serious cases of witness intimidation.

Out of Hours Response

Service provided whereby witnesses can contact Council Officers or the Police in an emergency situation via an alarm system linked to a telephone line to their home. Victims of harassment can be offered reassuring advice and support with Police response if necessary. With agreement from the victim, evidence gained from the callout may be used as evidence against the perpetrator.

Witness Support Meetings

These are arranged at a location of the victims choice and are designed for witnesses and victims of Anti-Social Behaviour to meet with Housing Representatives, the Police and each other to discuss concerns, share information, allay fears and hopefully engender community empowerment.

9. Targets and Performance Indicators

- 9.1 The Council has adopted performance standards for dealing with incidents of racial harassment and will undertake benchmarking exercises with other similar organisations involved in tackling racial harassment.