

Clare County Council

Anti- Social Behaviour Strategy 2020 - 2026

Social Housing in accordance with
S.35 Housing (Miscellaneous Provisions) Act, 2009

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1.0 INTRODUCTION

Clare County Council Anti-Social Behaviour Strategy 2020 – 2026_adopted by Clare Co Council and effective from 8th March 2021.

Clare County Council has a duty to manage and control dwellings let under the Housing Acts, with a view to securing and protecting the interests of tenants and their families in the peaceful occupation of their homes. Clare County Council developed its first Anti-social behaviour Strategy in 2005 and the second one on November 2010.

The Council's Strategy has now been reviewed to incorporate the necessary amendments to bring the policy into line with the legislative requirements in the Housing (Miscellaneous Provisions) Act 2014 and other relevant legislation.

This Strategy will apply to areas where the Council has Tenancy Dwellings and Chapter 4 Tenancy Dwellings (RAS & Social Leasing).

The Department of Housing, Planning and Local Government advised that housing authorities, when drawing up their Strategy, should have regard to good practice guidelines produced by the Housing Unit in 2003 – Preventing and Combating Anti-Social Behaviour. There are only some minor amendments required to bring the existing Strategy in line with the Housing (Miscellaneous Provisions) Act 2014. This Strategy is fair and robust to assist with the Council's six year plan in preventing and combating anti-social behaviour within the County Councils Housing stock.

In accordance with Section 35 of the Housing (Miscellaneous Provisions) Act 2009 this strategy has been subject to consultation with An Garda Síochána, the Health Service Executive, Tusla and the Joint Policing Committee.

2.0 MISSION STATEMENT

Clare County Council is committed to the preservation of the peaceful occupation of all dwellings for which it is responsible and will not tolerate anti social behaviour.

Clare County Council will investigate all complaints of anti social behaviour in an efficient, fair and impartial manner.

Clare County Council will take all appropriate steps, in accordance with best practice as set out in this strategy, to prevent anti social Behaviour.

3.0 PRINCIPAL OBJECTIVES

Section 35 of the Housing (Miscellaneous Provisions) Act 2009 stipulates that every Anti-Social Behaviour Strategy must contain the principal objectives set out below:

1. To prevent and reduce Anti-Social Behaviour
2. To coordinate services within the Council that are directed at dealing with, preventing or reducing Anti-Social Behaviour
3. To promote cooperation with other persons / bodies, including An Garda Síochana, in the performance of their respective functions in relation to preventing / reducing Anti-Social Behaviour, in order to avoid duplication of effort between Clare County Council and the other person / body in performing their functions (to adopt a multi-agency approach)
4. To promote good Estate Management (as defined by .1 of the 1997 Act)

The following sections set out the policies, procedures, initiatives and other actions the Council is taking to achieve these objectives.

4.0 PREVENTING AND REDUCING ANTI-SOCIAL BEHAVIOUR OBJECTIVE - 1

Measures to prevent, reduce and combat Anti-Social Behaviour are contained within the following policies and procedures. The implementation of these policies and procedures are the primary means by which Clare County Council intends achieving the first of its four principal objectives - *'To Prevent and Reduce Anti-Social Behaviour'*

However, aside from the above, all positive actions taken by Clare County Council in relation to Anti-Social Behaviour, regardless of what they are or the areas to which they are applied, will help to prevent and reduce such behaviour. Phase one in the Procedures, which immediately follows the Policies, deals specifically with procedures for making a complaint.

4.1 POLICIES

Clare County Council's policies in relation to addressing issues of Anti-Social Behaviour are detailed as follows:

4.1.1 Complaints

It is the policy of Clare County Council to investigate all complaints of Anti-Social Behaviour, and an investigation will be initiated within seven days of receipt of a written complaint

4.1.2 Challenging the Perpetrators

It is the policy of Clare County Council to investigate/interview /challenge / caution the alleged perpetrators of Anti-Social Behaviour.

4.1.3 Legal Remedies

Clare County Council will pursue legal remedies, including court orders for eviction and exclusion, where necessary. Clare County Council is aware that enforcement in serious cases can lead to the future prevention and / or reduction of Anti-Social Behaviour.

4.1.4 Dwellings Used for Drug Dealing

Clare County Council may seek repossession of any dwelling managed by the Council where the dwelling itself has been used for the manufacture, production, preparation, importation, exportation, sale, supply, possession for the purpose of sale or supply, or distribution of a controlled drug. In certain circumstances it may be deemed more appropriate to consider an excluding order, see 4.1.5 below.

4.1.5 Excluding Orders

Clare County Council will consider the provisions of Section 3 of the 1997 Act, as amended, where a member of a tenant's/ relevant purchaser's/ chapter 4 tenant's household is or has been engaged in Anti-Social Behaviour, particularly relating to criminal activity.

4.1.6 Refuse / Deferral of an Allocation of the Grounds of Anti- Social Behaviour

Clare County Council will refuse to make an allocation or will defer an allocation to any housing applicant where it considers the applicant has been involved in anti-social behaviour. The refusal or deferral will include any person proposing to reside in the dwelling and each case will be considered on its merit. The applicant will be informed of the reasons for the refusal / deferral. A housing applicant whose application has been refused or deferred will be notified in writing and can appeal this decision in writing within 21 days. An applicant can also apply in writing to have a decision reviewed on an annual basis. If the Council is satisfied that the applicant has desisted from such behaviour, and sufficient time has elapsed to substantiate this, the decision may be reconsidered.

4.1.7 Refuse to Sell a Dwelling on the grounds of anti-social behaviour

Clare County Council may refuse to sell a dwelling to an applicant, including under the Incremental Purchase Scheme (part 3), the Affordable Dwelling Purchase Arrangements (part 5), and the Tenant Purchase of Houses Scheme where it considers the applicant is or has engaged in Anti-Social Behaviour, and / or if it is not in the interests of good estate management.

4.1.8 Refusal/Deferral of an Allocation on the Grounds of Good Estate Management

Clare County Council may refuse to make an allocation or will defer the making of an allocation to any housing applicant where it considers there is good reason for doing so on the grounds of good estate management. This may include any person proposing to reside in the dwelling. In determining this, each case will be considered on its merit and the applicant will be informed of the Council's decision. A housing applicant whose application has been refused or deferred may appeal the decision in writing within 21 days. An applicant can apply in writing to have the decision to refuse/defer his/her application reviewed every twelve months. The decision is subject to review and may be reconsidered.

4.1.9 Information Sharing

Section 15 of The Housing (Miscellaneous Provisions) Act 1997 and the Housing Traveller Accommodation Act 1998 enables local authorities to request information on persons it believes are or have been engaged in anti social behaviour from other local authorities, from An Garda Siochana and other agencies.

The Council will comply with GDPR regulations in processing personal information.

4.1.10 Rehousing Following Eviction / Exclusion

Any persons who are the subject of an excluding order, or eviction on grounds of Anti-Social Behaviour will not be considered for rehousing for a period of two years and / or until such time as Clare County Council is satisfied that he / she is capable of living, and agreeable to living in the community without engaging in such behaviour.

4.1.11 Alternative Methods of Recovery

Clare County Council will consider alternative methods of recovering possession of dwellings in accordance with appropriate legislation as and when necessary.

4.2 PROCEDURES

Clare County Council's procedures in addressing issues of Anti-Social Behaviour, from the making of the complaint to the final resolution of the case, are detailed as follows:

□ Phase One - Making the Complaint

4.2.1 The Complaint

Clare County Council will accept and deal with complaints of Anti-Social Behaviour against tenant(s) within its area of responsibility.

4.2.2 The Complainant

The person making the complaint will be known as the complainant.

4.2.3 The Respondent

The person against whom the complaint is made will be known as the respondent.

4.2.4 Where to Make the Complaint

If a person is a victim of Anti-Social Behaviour they should make contact immediately with the Estate Management Unit to make a complaint. This complaint must be in writing or can be submitted via email at asb@clarecoco.ie. Alternatively an anti social behaviour complaint form can be completed. Complainants will be advised to refer complaints relating to crime and criminal behaviour to an Garda Síochana for investigation.

4.2.5 Complainant's Interview

A person who makes contact for the purpose of making a complaint of Anti-Social Behaviour is requested to attend for interview, usually, but not necessarily, at the offices of Clare County Council.

4.2.6 Confidentiality

The Council will fully comply with the provisions of the Freedom of Information Act 2014. Information given to the Council by persons complaining of Anti-social behaviour is protected by Section 32(1) and Section 35 of the 2014 Act.

Section 32 provides, inter alia, that a request for information may be refused if access to the record could reasonably be expected to:-

(a) Prejudice or impair

- (i) The prevention, detection or investigation of offences, the apprehension or prosecution of offenders or the effectiveness of lawful methods, systems, plans or procedures employed for the purposes of the matters aforesaid,
- (ii) The enforcement of, compliance with or administration of any law,
- (iii) Lawful methods, systems, plans or procedures for ensuring the safety of the public and safety or security of persons and property

(b) Endanger the life or safety of any person.

(c) Facilitate the commission of an offence.

Section 35(1) provides that a request for information shall be refused if:

- (a) The record concerned contains information given to an FOI body, in confidence and on the understanding that it would be treated by it as confidential (including such information as aforesaid that a person was required by law, or could have been required by the body pursuant to law, to give to the body) and, in the opinion of the head, its disclosure would be likely to prejudice the giving to the body of further similar information from the same person or other persons and it is of importance to the body that such familiar information as aforesaid should continue to be given to the body.

4.2.7 Anonymous Complaints

Anonymous complaints are treated with caution and generally may not warrant investigation, but they will be recorded. However, if a series of separate anonymous complaints are received against one person / household then it is reasonable to assume that there may be substance to the complaints and an investigation may be initiated on that basis.

□ Phase Two - Investigating the Complaint

4.2.8 Vexatious Complaints

In deciding whether or not to investigate complaints, preliminary inquiries may be made to ensure that complaints are not vexatious or without substance and to establish, where possible, the reliability and credibility of the complaint.

4.2.9 Categorising the Complaint

Some of the complaints will come within the definition of Anti-social behaviour as defined within the 1997 Act as amended and some will be outside the definition but may entail breaches of the Tenancy Agreement.

Nuisance complaints, which do not fall within the definition of Anti-Social Behaviour can, and often do, constitute a breach of the letting agreement, therefore these complaints may be investigated to ascertain if a breach of tenancy has occurred.

4.2.10 Noise

The complaint of unreasonable noise from a dwelling is a common problem, where a resolution cannot be agreed between parties then a complainant can make an application to the District Court for a Noise Abatement Order in accordance with Section 108 of the Environment

Protection Act 1992. If the noise is significant and persistently occurs the Estate Management Unit may investigate the matter as it may constitute a breach of the tenancy agreement.

4.2.11 Investigating the complaint

Clare County Council will carry out such investigations and inquiries as it considers necessary to establish whether there is substantive evidence to suggest that the respondent is or has engaged in Anti-Social Behaviour.

4.2.12 First Letter to Respondent

The respondent is written to and requested to attend for interview within seven days. This can be done early in the investigation particularly if there is no reason to doubt the reliability and credibility of the complainant.

In the case of Chapter 4 tenancies the landlord is notified of the investigation and the reasons for it. In Chapter 4 tenancies the landlord will also be asked to contact the tenant directly and inform the tenant of the process under the Residential Tenancy Board. The tenant should be advised by the landlord and Clare County Council that should they engage in Anti-Social Behaviour they risk losing all social housing support in the event that a Termination Notice is served and upheld by the Residential Tenancy Board.

4.2.13 Second Letter to Respondent

If there is no response within seven days a second letter is sent indicating that failure to present for interview could result in termination of tenancy and /or legal proceedings, should investigation substantiate the complaint.

4.2.14 Respondent's Interview

The respondent is interviewed and informed that the interview is exploratory and part of a process of investigation. The definition of Anti-Social Behaviour is explained to them as is the nature of the

complaint. The relevant clause in the tenancy agreement (if appropriate) is also outlined. They are given an opportunity to respond to the complaint. They may also submit any rebutting material or information, and for this purpose a second interview can be arranged. They are informed of the possible consequences should Clare County Council form the belief that there is substance to the complaints of Anti-Social Behaviour, including termination of tenancy. Third parties and representatives may make submissions and representations in writing in relation to any respondent; this is at the discretion of the Council and is subject to compliance with GDPR.

4.2.15 Rebutting Evidence / Further Inquiries

If, at the second interview, the respondent submits rebutting material then further inquiries may be carried out. They are again informed of the possible consequences should Clare County Council form the belief that there is substance to the complaints of Anti-Social Behaviour.

4.2.16 Additional Complaints

Any additional complaints received after the initial interview will be subject to similar inquiries.

□ Phase Three - Deciding on Appropriate Action

4.2.17 Representations / Submissions

In deciding the appropriate course of action Clare County Council will consider any representations, submissions, documentation and observations made by or on behalf of the respondent, and any other relevant material.

4.2.18 Options

Once a relevant complaint has been received in the Estate Management Unit the matter will be investigated and one or more of the following actions will be implemented as appropriate.

(a) No Further Action

If the Estate Management Unit has reasonable grounds for believing that the complaint is unfounded or malicious then no further action will be taken against the respondent.

(b) Advice Given

Usually where both parties are contributing to the circumstances of the complaint and the complaint is trivial. Also used if complaints involve very young children under the age of criminal responsibility and where it is considered more appropriate to offer advice and refer the appropriate agencies for support.

(c) Referral to Housing Welfare/Tenancy Sustainment Service

Some cases involve households with complex welfare needs, mental health issues, addiction problems, domestic violence with clear need for support services. These cases may be referred to the Council's Housing Welfare Service or the Council's Tenancy Sustainment Service for appropriate support and advice.

(d) Referral to other Agencies such as An Garda Siochana/Tusla/HSE

Some complaints warrant immediate referral to An Garda Siochána and/or Tusla (Child and Family Agency). The Council's Child Protection Policy provides guidance to staff to address child protection issues that may arise.

(e) Dispute Resolution

The Estate Management Unit has access to trained mediators to assist and find ways to prevent manage and transform conflicts peacefully and effectively.

(f) Verbal Warning

A verbal warning is usually issued for first instances of anti social behaviour.

(g) Tenancy Notification

A Tenancy Notification is issued for more serious offences. It advises the tenant(s) or a member of his/her household that they have breached their Tenancy Agreement and the measures they are required to take to remedy the breach of the Tenancy Agreement. In addition tenants are advised that they are at risk of receiving a Tenancy Warning.

(h) Tenancy Warning

If the behaviour persists a Tenancy Warning may be issued (Sec 7, Housing Miscellaneous Provisions) Act 2014. The Tenancy Warning informs the tenant(s) that the Council is of the opinion that he/she or a member of the household has breached the Tenancy Agreement. The document specifies the terms that have been breached and advises the tenant(s) what actions should be taken in order to avoid the risk of the Council initiating legal action to take possession of the property. The tenant (s) has a right to seek a review of the decision to issue a Tenancy Warning if he/she does not accept that there was a breach of the tenancy agreement. The review request **must** (a) outline the grounds upon which the tenant disputes the basis for the Tenancy Warning and (b) state whether the tenant or a member of his or her household wishes to make oral representations as part of the review. The review request **must** be received by the Housing Department within 10 working days. The Chief Executive Officer may extend this time by a **maximum** of 10 more working days due to extenuating circumstances as prescribed in legislation.

The Review Officer, who will be appointed by the Chief Executive will not have been involved in the decision to issue the Tenancy Warning and will be senior in rank to the person who issued the Tenancy Warning.

(i) Referral to In-House Case Conference

In-house Case Conferences will be held in serious cases to decide possible legal action where a Tenancy Warning has been issued and the tenancy breach continues or is repeated within 12 months. In urgent cases, i.e. where the substantiated complaint is having a significant or persistent

detrimental effect on the quality of life of those in the locality of the dwelling, the In-house case conference may also be called to decide on possible legal action without at first issuing a Tenancy Notification or Tenancy Warning. The case conference will decide the possible options in each case i.e.

- 1)** Referred back – the matter may be back to the Estate Management Unit for further enquiries.

- 2)** Make an application for an Excluding Order where a targeted approach is more appropriate – If a decision is made that an Excluding Order should be sought, the tenant/relevant purchaser will be advised accordingly. However, if the tenant/relevant purchaser, through violence, threat or fear will not apply for an Excluding Order, Clare County Council may apply for such an order after consultation with the tenant/relevant purchaser (See 4.2.21).

- 3)** Initiate Possession Application to District Court – under Housing (Miscellaneous Provisions Act) 2014 or move to terminate tenancy by alternative legislation where appropriate.

Termination of tenancies to which the Residential Tenancies Act 2004 applies will be by way of Notice of Termination by the Landlord in accordance with Section 34 of the Act.

4.2.19 Considerations

In deciding the appropriate course of action to take the following will be considered:

- The seriousness of the complaint
- The reliability of the information concerning the complaint
- The response of the respondent to the complaint
- The history of past behaviour (if any)
- The adequacy of alternative measures
- The interest of good estate management
- All information / submissions / representations received

4.2.20 Informing all Tenants

In cases where Anti-Social Behaviour is widespread and / or the perpetrators cannot be identified, correspondence will be sent to all tenants in the relevant area reminding them of their obligations under their tenancy agreements. This letter will inform them that it is the Council's policy not to tolerate Anti-Social Behaviour, and that engaging in this behaviour could result in exclusion of the offenders from the dwelling or eviction of the entire household. The Council may consult with local tenants / residents association prior to the issue of such a letter. While Clare County Council will not solicit complaints against individuals, it may invite persons affected by Anti-Social Behaviour to lodge complaints and may put in place procedures to facilitate persons to do so.

4.2.21 Excluding Order

If it is decided that an excluding order is the appropriate course of action the respondent is interviewed and informed that they should make application to the District Court for an excluding order against the person engaging in Anti-Social Behaviour. This is usually a member of the respondent's household, but can also be a joint tenant, or a person directly related to the dwelling.

The procedure for the application to the District Court is fully explained to them. They will be asked to provide proof of the application within a reasonable period of time and to furnish Clare County Council with a copy of the order if / when granted.

If the application is refused then the case will be reconsidered as to the appropriate course of action to be taken.

If they choose not to apply for the excluding order through fear or intimidation, or for any other reason, it is explained to them that Clare County Council has the authority to, and will apply for, the

excluding order. An excluding order may relate to a specified dwelling, area or estate.

The excluding order provisions apply to standard tenancy dwellings; relevant purchaser dwellings (including house tenant purchase, and incremental purchase); chapter 4 tenancy dwellings.

□ **Phase Four - Protocols governing Possession Applications to District Court/Termination of tenancies.**

- a) The decision to seek to terminate the tenancy will be in the interests of good estate management.
- b) Except in urgent serious cases and in accordance with 12(3)(b) Housing (Miscellaneous Provisions) Act 2014, the tenant(s) will already have been issued with a Tenancy Warning and will have been given an opportunity to make submissions and to appeal the decision being considered.
- c) Chief Executive Order will authorise the making of a Possession Application to the District Court or the termination of tenancy by other lawful means.
- d) A Possession Order if granted will specify the commencement date for the period during which the Council has the right to recover possession of the property.
- e) An Garda Siochana will be consulted.
- f) The tenancy is terminated on the date that the Council recovers possession under the Order in accordance with the Housing (Miscellaneous Provisions) Act 2014
- g) All notices will be served on the tenant(s) firstly by hand, if this fails by registered post, if this fails by leaving at the address.
- h) Termination of tenancies to which the Residential Tenancies Act 2004 applies will be by way of notice of Termination by the Landlord in accordance with Section 34 of the Act.

□ **Phase Five - Protocols governing referral to the Sheriff and Eviction**

- a) Once the Council obtains a Possession Order a pre-eviction In-house case conference will be arranged.
- b) A decision will be made at this In-house case conference to consider if the eviction will be carried out.
- c) Consideration will be given to ongoing complaints, the seriousness of the history, the effect on the community, and other relevant factors.
- d) If the decision to evict then the matter will be referred to the County Sheriff.
- e) The decision will be authorised by Order of the Chief Executive.
- f) Where appropriate, the HSE, Tusla and/or An Garda Síochána will be consulted.
- g) The Council's Welfare Team and the HAT (Homeless Action Team) will be consulted.
- h) The Estate Management Unit will organise the eviction and liaise with the Sheriff and An Garda Síochána.
- i) Members of the Estate Management Unit will attend the eviction.
- j) A risk assessment will be conducted in all cases.
- k) Once the eviction is carried out the dwelling will immediately be secured.

□ **Phase Six - Protocols Governing Applications for Excluding Orders**

- a) The decision will emanate from an In-House Case Conference.
- b) It will be in the interest of good estate management.
- c) Due Process will always be followed.
- d) All procedures will be fair and impartial and the respondent will be given the opportunity to make submissions in writing appealing a decision being considered.
- e) A Chief Executive Order will authorise proceedings.
- f) An Garda Síochána will be consulted.
- g) The procedure will be in accordance with Section 3 of the Housing (Miscellaneous Provisions) Act 1997 as amended.
- h) The tenant(s) /relevant purchaser will be consulted in writing.
- i) The respondent will be consulted in writing.
- j) An Garda Síochána, Council Officials and, in some cases, relevant witnesses will give evidence.
- k) The Order will be for three years except in cases of less significance.
- l) The Order will be for the dwelling and the estate and any other relevant dwelling and estate, as the Council deems necessary.
- m) The Council can apply to vary the order at any time.
- n) Any breaches of the Order will be referred to An Garda Síochána for enforcement.
- o) The Council will endeavour to explore the application of an Excluding Order in all cases if practicable.

- p) These procedures will also apply to Chapter 4 tenancies and the landlord will be notified in writing of any application with a minimum 14 days notice in accordance with Section 25 of the Housing Miscellaneous Provisions Act 2009.

5.0 COORDINATION OF SERVICES – CLARE COUNTY COUNCIL

The services within Clare County Council that have a role in dealing with issues of Anti-Social Behaviour are as follows:

5.1 Estate Management Unit

Based within the Social Development Directorate (Housing Department) the Estate Management Unit operates in the area of combating Anti-Social Behaviour. The responsibilities of the unit are:

- to interview respondents / complainants, where merited
- to conduct investigations in a fair and impartial manner
- to decide in consultation with the Housing Welfare Team on appropriate action, if any
- to issue Tenancy Warning letters as appropriate.
- to compile case reports and recommendations
- authorise the making of a Possession Application to the District Court.
- to give evidence in court in regard to terminated tenancies
- to process excluding order cases, from the consultation with the respondent to the close of the case
- to give evidence in court regarding excluding order cases
- to collate and manage statistics
- to meet with external agencies, such as the HSE, An Garda Siochana, Approved Housing Bodies, and other local authorities as and when required
- to monitor changes in legislation and to keep policies and procedures up to date

5.2 Housing Department

It is here that most complaints of Anti-Social Behaviour are received.

5.3 County Solicitors Office

The County Solicitors Agent arranges legal proceedings, provides solicitor and counsel representation in court, deals with appeal cases / High Court applications, assists in the negotiation of costs, and generally provides important technical and legal advice and support in the area of combating Anti-Social Behaviour.

5.4 Housing Allocations Section

Allocations of social housing tenancies are made in accordance with Clare County Council's 2020 Social Housing Allocation Scheme (and subsequent amendments). This Scheme is used in the allocation of standard Council housing units, casual vacancies and long and short term lease properties.

6.0 PROMOTING CO-OPERATION WITH OTHER PERSONS / BODIES

Clare County Council is committed to adopting and promoting a multi-agency approach when taking steps to prevent, reduce and combat Anti-Social Behaviour within its areas of responsibility.

Under section 15 of the 1997 Act, as amended, the Council has the statutory right to request / exchange information with certain relevant bodies for the purpose of any of their functions under the Housing Acts 1966 to 2014, and these include:

- An Garda Síochana
- Dept. of Social Protection
- TUSLA
- HSE
- Other Housing Authorities
- Approved Housing Bodies

Clare County Council will continue to engage with these bodies and any other relevant agency, in the carrying out of their functions in relation to preventing and abating Anti-Social Behaviour, in order to help avoid duplication of effort in the performance of these functions.

7.0 PROMOTION OF GOOD ESTATE MANAGEMENT

Section 1 of the Housing (Miscellaneous provisions) 1997 Act, as amended, defines Estate Management as follows:

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

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

Part (b) of the above definition has already been addressed in this strategy under Objective One. However, further initiatives for preventing and reducing Anti-Social Behaviour, as well as ways in which it is hoped to promote the interests of tenants, lessees, owners or occupiers in the reasonable enjoyment of any dwelling provided by Clare County Council are detailed below.

7.1 Communicating to Tenants / Residents

Clare County Council will make this Strategy available to all its tenants / residents.

7.2 Tenant Training

Clare County Council organises pre-tenancy training courses for all new tenants. Attendance at these courses is compulsory for all new tenants.

The obligations of tenants are outlined and the tenancy agreement is fully explained with particular emphasis on tenant involvement and the expectations of CCC as landlord.

7.3 Education and Research

Clare County Council considers education and research into preventing and reducing Anti-Social Behaviour to be of high importance.

Education will be provided to dedicated staff involved in dealing with issues of Anti-Social Behaviour i.e. training courses run in-house and training seminars / conferences run by appropriate outside agencies.

Clare County Council will engage with appropriate bodies and other housing authorities in relation to research into preventing and abating Anti-Social Behaviour, with a view to keeping its overall Strategy, including policies and procedures, up to date and effective.

7.4 Engaging with Communities

The Council's Estate Management Unit will assist in the setting up of tenant / resident committees and maintain communication with them.

The unit will assist tenant / resident participation in various activities such as tree and shrub planting, area cleanups, etc., in order to foster a community spirit, particularly with emphasis on involving young people.

7.5 Good Practice

Some examples of good practice in estate management and sustainable communities are outlined below regarding allocation of dwellings:

- (a) Clare County Council will avoid allocating too many members of the same family in the same estate.
- (b) Clare County Council will not house previously evicted applicants in the same estate from which they were evicted.
- (c) Clare County Council will be mindful of social integration of dwellings with a view to encouraging sustainable communities.

8.0 TENANCY AGREEMENT

8.1 Standard Tenancy (Letting) Agreement

Each Local Authority tenant signs a tenancy agreement when allocated a dwelling. The tenancy agreement, sample below, contains a set of rules regarding anti-social behaviour and breaches of some of these rules are considered to be serious and will be investigated by the Estate Management Unit. Each tenant is supplied with a tenant's handbook which outlines the tenant's obligations with respect to the tenancy agreement. These obligations are also explained to tenants at Pre-tenancy/Information meetings for new Tenants.

Sample of Terms and Conditions concerning anti-social behaviour contained in the Council's tenancy agreement: - (note: following sample from June 2020)

Nuisance and Anti-Social Behaviour

Anti-Social Behaviour will not be tolerated in the interest of Good Estate Management and will be dealt with under Clare County Council's Anti-Social Behaviour Strategy and appropriate housing legislation.

For the purposes of this Agreement the phrase anti-social behaviour, shall have the meaning attributed to it in Section 1 of the Housing (Miscellaneous Provisions) Act 1997 as amended and expanded by the Housing Act 1988, Housing (Miscellaneous Provisions) Act 2004 and Housing (Miscellaneous Provisions) Act 2009 as set out hereunder:-

- (a) the manufacture, production, preparation, importation, exportation, sale, supply, possession for the purposes of sale or supply, or distribution of a controlled drug (within the meaning of the Misuse of Drugs Acts 1977 to 2007)
- (b) any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, alarm, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the Housing Acts 1966 – 2014 or Part V of the Planning and Development Act 2000, or a housing estate in which the

house is situated on a site and, without prejudice to the foregoing, includes:-

- (1) violence, threats, intimidation, coercion, harassment, or serious obstruction of any person.
- (2) behaviour which causes any significant or persistent impairment of a person's use or enjoyment of his or her home, or
- (3) damage to or defacement by writing or other marks on any property, including a person's home.

Neither the tenants nor any member of their household shall cause unreasonably loud noise by shouting, screaming, playing any musical instruments or sound reproduction equipment (including TV, radio etc) or by using other machinery.

Neither the tenants nor any member of their household or visitor shall cause any nuisance or be guilty of or permit any conduct likely to cause annoyance or disturbance to any neighbours, their children or visitors.

The term "neighbours" in this Agreement means persons living or working in the vicinity of the Tenant's dwelling.

Convictions in relation to criminal behaviour including public order offences of tenants, members of the tenant's family or any other person permitted to stay in the property by the Local Authority may result in the service of a tenancy warning letter and/or proceedings to recover possession of the property in accordance with the relevant Housing Act(s), or the commencement of proceedings seeking an exclusion order as provided for under the Housing (Miscellaneous Provisions) Act 1997, the Housing (Traveller Accommodation) Act 1998 and the Housing (Miscellaneous Provisions) Act 2014.

The tenants or any member of their household, guest or visitor shall not suffer or permit to be done by any act, matter or thing or engage in any conduct which in the opinion of the Council is likely to bring the property or the estate into disrepute or give scandal or cause noise or nuisance to adjoining owners or occupiers, or the public generally.

9.0 HEALTH AND SAFETY

Clare County Council is committed to providing a safe and healthy workplace for all our employees, customers and those affected by our activities. Regular Risk Assessments are carried out which are communicated to staff working in the Estate Management area.

10.0 CUSTOMER CARE

Clare County Council is committed to providing a quality service to its tenants and residents within its areas of responsibility.

The standards of service which you can expect are set out in our Customer Charter and Customer Action Plan. The Customer Action Plan sets out the basic principles of customer service adopted by the Council.

If you would like to discuss any customer care matters please contact the Customer Care Co-Ordinator, Corporate Services at (065) 6821616

11.0 LEGISLATION UNDERPINNING THE STRATEGY

The legislation available to Clare County Council in dealing with anti-social behaviour includes the following:

Housing (Miscellaneous Provisions) Act 1997
Housing (Miscellaneous Provisions) Act 2009 and
Housing (Miscellaneous Provisions) Act 2014

Relevant legislation in relation to Traveller Accommodation includes:

Housing (Miscellaneous Provisions) Act 1992
Housing (Miscellaneous Provisions) Act 1997 and
Housing (Traveller Accommodation) Act 1998
Housing (Miscellaneous Provisions) Act 2014

11.1 Definition of Anti-Social Behaviour

Housing (Miscellaneous Provisions) Act 2014 (Part 2 and amendment of Act of 1997).

Anti-social behaviour includes either or both of the following, namely –

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

(b) any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, alarm, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the Housing Acts 1966 to 2014, or Part V of the Planning and Development Act 2000, or a housing estate in which the house is situated or a site and, without prejudice to the foregoing, includes

(i) violence, threats, intimidation, coercion, harassment, or serious obstruction of any person;

(ii) behaviour which causes any significant or persistent impairment of a person's use or enjoyment of his or her home, or

(iii) damage to or defacement by writing or other marks of any property, including a person's home.

It is the above legal definition only that Clare County Council looks to when deciding on whether or not behaviour complained of is Anti-Social Behaviour. The exception to this is where a private landlord is initiating eviction proceedings in a Chapter 4 Tenancy, in which case the definition contained in the Residential Tenancies Act 2004 is used.

Possession of illegal drugs solely for personal use does not come within this definition of Anti-Social Behaviour. Activities that do not fall within the definition can represent breaches of the Tenancy Agreement. If this is the case, and if legal action is deemed appropriate, then proceedings may be initiated for breach of Tenancy.

Cases of domestic violence do not come within the scope of the definition. The Domestic Violence Act 2018 is the appropriate legislation for such cases.

11.2 Definition of Estate Management

Housing (Miscellaneous Provisions) Act 1997, Act as amended defines Estate Management as follows:

(a) the securing, or promotion of the interests of any tenants, lessees, owners or occupiers, whether individually or generally, in the enjoyment of any house, building or land provided by a housing authority under the Housing Acts, 1966 to 1997,

(b) the avoidance, prevention or abatement of anti-social behaviour in any housing estate in which is situated a house provided by a housing authority under the Housing Acts 1966 to 1997, or a site.

Possession of illegal drugs solely for personal use does not come within this definition. However, it may be considered to be a breach of the tenancy agreement. The Housing (Miscellaneous Provisions) Act 2009 widens the powers to include acts of vandalism such as graffiti and criminal damage to property. Serious violence and intimidation is frequently associated with drug dealing and must for the purpose of this Act involve significant or persistent danger, damage, etc. to persons. The definition does not include noise (see 4.2.10) and nuisance or other activities, which would not normally be associated with the serious problems towards which the Act is targeted. However these lesser activities could represent breaches of the tenancy agreement and if this is the case legal proceedings under current legislation can be considered.

11.3 Anti Social Behaviour Strategy

The Housing (Miscellaneous Provisions) Act, 2009 Section 35, allows for the adoption of an anti-social behaviour strategy with the principal objectives being:-

- a) the prevention and reduction of anti-social behaviour,
- b) the coordination of services within the housing authority directed at dealing with, or preventing or reducing, anti social behaviour,
- c) the promotion of co-operation with other persons, including the Garda Siochana, in the performance of their respective functions insofar as they relate to dealing with, or the prevention or reduction of anti-social behaviour, having regard to the need to avoid duplication of activities by the housing authority and such other persons in the performance of those functions, and
- d) the promotion of good estate management.

The drawing up and adoption of, and the amendment of, an anti-social behaviour strategy is a reserved function.

11.4 Possession Application

Part 2 of the Housing (Miscellaneous Provisions) Act, 2014 repeals Section 62 Housing Act, 1966 and allows for the issuing of Tenancy Warnings, the carrying out of Review of Tenancy Warnings and proceedings for possession of local authority dwellings.

11.5 Excluding Order

The Housing (Miscellaneous Provisions) Act 1997, as amended, allows applications for Excluding Orders by a tenant/relevant purchaser or by a Local Authority. The legislation is designed to have a more targeted response to anti-social behaviour whereby the specific offenders are dealt with while avoiding the eviction of the entire household. If granted, an Excluding Order can prohibit the respondent from entering the relevant dwelling or the entire estate for a period up to three years. An Excluding Order can also prohibit a respondent from causing or attempting to cause any intimidation, coercion, harassment or obstruction of, threat to, or interference with the tenant or other occupant of the dwelling concerned. Sections 34, 35 and 36 of the Housing (Traveller Accommodation) Act

1998 amends the 1997 Act and allows for Excluding Order legislation to be extended to sites provided for members of the travelling community.

Under Section 19 of the Housing (Miscellaneous Provisions) Act, 2014 an application for an Excluding Order may not be made against a person who is under twelve years of age.

Under the same Act, where the grounds for a possession application are anti social behaviour by a household member other than, where there is no joint tenant, the tenant, then the District Court may decide to determine the possession application as if it were an application for an Excluding Order.

11.6 Domestic Violence

Cases of domestic violence do not come within the scope of this legislation. An Garda Síochána and Tusla (Child and Family Agency) are the statutory agencies responsible for dealing with incidents of such nature and offer advice and support and assist with enforcement. However, the Council's Housing Welfare Service is available for further advice and support regarding housing issues surrounding domestic violence.

11.7 Intimidation of staff

Section 18 of the Housing (Miscellaneous Provisions) Act 1997 is amended by Section 19 (11) of the 2014 Act which creates a specific offence of intimidation against housing authority officials or employees, or any members of their families or households or any person who provide or is to provide evidence in any proceedings under the Act or Part 2 of the 2014 Act, the penalty being Class A Fine or 12 months imprisonment or both.

11.8 Freedom of Information/Data Protection

The Council will fully comply with the provisions of the Freedom of Information Act 2014 (see 5.2.6) and the Data Protection Acts 1988 and 2018.

Explanatory Document

This document is an overview of powers available to Local Authorities to deal with Anti-social behaviour and breaches of the tenancy agreement in accordance with the Housing (Miscellaneous Provisions) Act 2014. It is not a legal document.

What powers are available?

Local Authorities can now apply to the District Court for a Possession Order where a tenant or member of the household breaches the tenancy agreement. The procedure of issuing a notice to quit under the Housing Act 1966-2014 is now repealed. The Local Authority can issue a tenancy warning as outlined below before making a possession application, however in serious cases of anti-social behaviour where the quality of life of other tenants are affected a possession application can be made directly to the District Court in accordance with Section 12 of the Housing (Miscellaneous Provisions) Act 2014. A notice of intention must be given to the tenant prior to the application.

The 2014 Act strengthens existing powers Local Authorities have in relation to Excluding Orders. A Local Authority can apply for an Excluding Order against any occupant of a local authority dwelling including a joint tenant who is or has been engaging in anti-social behaviour and it is in the interest of good estate management. Certain conditions and age limits apply e.g. a person over 12 and under 18 cannot be excluded from their home. Relevant Purchasers, persons under 12, and sole tenants are also exempt.

What is Anti – Social behaviour?

Section 1 of Housing (Miscellaneous Provisions) Act 1997 Act as amended defines Anti-Social behaviour as either or both of the following:

(a) *the manufacture, production, preparation, importation, exportation, sale, supply, possession for the purposes of sale or supply, or*

distribution of a controlled drug (within the meaning of the Misuse of Drugs Acts 1977 to 2007.

(b) any behaviour which causes or is likely to cause any significant or persistent danger, injury, damage, alarm, loss or fear to any person living, working or otherwise lawfully in or in the vicinity of a house provided by a housing authority under the Housing Acts 1966 to 2014, or Part V of the Planning and Development Act 2000, or a housing estate in which the house is situated or a site and, without prejudice to the foregoing, includes

(i) violence, threats, intimidation, coercion, harassment, or serious obstruction of any person

(ii) behaviour which causes any significant or persistent impairment of a person's use or enjoyment of his or her home, or

(iii) damage to or defacement by writing or other marks of any property, including a person's home.

What is a tenancy warning regarding anti-social behaviour?

A tenancy warning is a statutory warning in writing issued to a tenant(s) where the Housing Authority has formed the opinion that the tenant(s) or household member has breached a specified term of the tenancy agreement that prohibits anti-social behaviour, nuisance, or conduct likely to cause annoyance or disturbances, or the tenant(s) knowingly permitting a person to enter a dwelling whom an excluding order or interim excluding order is in force with regard to that dwelling. To be issued with a tenancy warning is a serious matter with serious tenancy and legal implications which could lead to repossession proceedings.

A tenancy warning is designed to prevent and prohibit anti-social behaviour however in serious cases housing authorities can bypass this process and proceed directly to the Courts to recover possession of a dwelling involved in anti-social behaviour.

Why this procedure?

This procedure is in accordance with the Housing (Miscellaneous Provisions) Act 2014 to allow the tenant (s) fair procedures and the right

to appeal findings by the Housing Authority and challenge any matter of fact with a Review Officer. It also affords the tenant(s) the right to present a defence in Court proceedings and complies with the European Convention on Human Rights.

Who issues a tenancy warning regarding anti-social behaviour?

A Housing Authority has the powers to issue a tenancy warning in accordance with Part 2 Section 7 of the Housing (Miscellaneous Provisions) Act 2014. In this case, the Housing Authority is Clare County Council, the landlord, and the tenancy warning is authorised by a Senior Official from the Housing Department.

What must a tenancy warning contain regarding anti-social behaviour?

There are strict guidelines on tenancy warnings, how they are issued and their content in accordance with Part 2 Section 7 of the Housing (Miscellaneous Provisions) Act 2014.

A tenancy warning shall be in writing and set out the specified term of the tenancy agreement that has been breached and if relevant shall include:-

The nature of the breach including the name of the person responsible, and the occasion of the breach i.e. the date and time as far as practicable, and, if relevant the effect of the breach on the quality of life of other residents. The warning must also include if applicable a requirement for the tenant to remedy the behaviour by ensuring the household member involved ceases the behaviour, or does not repeat it or similar behaviour.

The consequences of a tenancy warning must be highlighted such as:

If the behaviour continues within 12 months of the tenancy warning being issued, then the housing authority may apply to the District Court to recover possession or where applicable apply for an Excluding Order.

Also the tenant(s) shall be informed that the issue of a tenancy warning will be taken into account for a period of 3 years when considering whether to refuse a tenant(s) right to purchase a council dwelling under the various tenant purchase and right to buy schemes, and

When considering whether to refuse or defer an allocation of a dwelling to the tenant(s) or household members involved in the anti-social behaviour.

The relevant purchaser(s) shall be informed that the issuing of a tenancy warning will be taken into account for a period of 3 years when considering consent to sale under the various schemes.

A tenancy warning shall include a tenant(s) right to review in accordance with Section 10 of the Act as set out below.

Summary of the consequences of a tenancy warning

If issued with a tenancy warning the tenant(s) will be deemed anti-social by the Housing Authority which will affect their right to transfer, or purchase the dwelling for a period of 3 years, notwithstanding a further breach within 12 months could lead to eviction or excluding order proceedings. It will also affect any person subject to the tenancy warning who is on the Council's Housing List and can include a person seeking permission to reside in any Council dwelling or Socially Supported Housing.

Can a tenancy warning be appealed?

Yes, if a tenant does not accept that a breach of the tenancy agreement has occurred as outlined in the tenancy warning then the matter can be reviewed or appealed.

How can a tenancy warning be appealed/reviewed?

A tenant must request a review in writing to be received by the Housing Authority within 10 working days of the issue of the tenancy warning.

The review request must contain the grounds for disputing the tenancy warning including any supporting documentation and whether oral representations are to be made by the tenant or any member of the household.

Can the limit be extended?

Only in extenuating circumstances and at the discretion of the Chief Executive or Delegated Officer and will not exceed 20 working days from the issuing of the tenancy warning.

What happens next?

If the review request satisfies the aforementioned criteria a senior housing authority official with no involvement in the decision to issue the tenancy warning will review the case.

How is the review conducted?

The Reviewer may make enquiries with any person including other statutory agencies including An Garda Síochána and will generally conclude the review and make a decision within 20 working days of his/her appointment. It is important to note that the Reviewing Officer can accept the opinion of a Garda or Housing Official that a person is involved in anti-social behaviour if there are reasonable grounds for such belief and that any other person would be deterred or prevented by violence threat or fear from providing evidence.

If oral representations are made or the Reviewer wishes to meet the tenant or household member then a decision will be made within 30 working days of the Reviewers appointment.

The 30 day rule will also apply if the tenant or Reviewer proposes a variation to the tenancy warning for consultation and consideration purposes.

There is a provision where these timelines can be overruled by mutual agreement in writing between the Reviewer and tenant.

What are the likely outcomes of a review?

The reviewer can make the following decisions:

- (a) confirm the tenancy warning in its original terms.
- (b) Vary the tenancy warning in specified terms.
- (c) Annul the tenancy warning.

Is the tenant entitled to a copy of the review?

Yes, the Housing Authority shall send a copy of the reviewer's decision, and the reasons for the decision in writing to the tenant.

Can the tenant withdraw the review?

Yes, a review can be withdrawn if submitted in writing. However if appropriate the Reviewer can still proceed regardless and conduct the review and the tenant(s) will be notified in writing.

Explain the process and how repossession proceedings are instigated?

The Housing Authority will generally follow the procedures outlined below regarding tenant(s) or households involved in anti-social behaviour.

For minor and first time offences advice or a verbal warning will be given.

For other offences a tenancy notification will be issued putting the tenant of notice that if the behaviour continues a statutory tenancy warning will be issued.

For persistent or significant offences a statutory Tenancy Warning will be issued.

An appeal or Review provision is available to challenge any disputed facts or the issue of a Tenancy Warning.

If the behaviour continues within 12 months of the issue of a Tenancy Warning a Possession Application will be made to the District Court seeking a Possession Order.

The Housing Authority can also if it deems necessary apply at any time for a Possession Application if there is a breach of the tenancy agreement which is having a significant or persistent detrimental effect on the quality of life of those in the locality of the dwelling and it is proportionate to do so.

The District Court will decide if a Possession Order is to be granted or in some cases may grant an Excluding Order instead.

Are there other types of Tenancy Warnings?

Yes, Tenancy Warnings also exist for rent arrears and other breaches of the tenancy agreement with similar consequences.

For advice and clarification on any issue raised in this document please contact the Council's Estate Management Unit or contact your local Citizens Information Centre.