



Hate Crime / Incident 2018 Policy Document and Procedure Guide

**CCHA adopts a zero tolerance policy to Hate
Crime and Hate Incidents**

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CCHA adopts a zero tolerance policy to Hate Crime and Hate Incidents

1 Objectives

- 1.1 To prevent hate related incidents and to offer assistance and protection to those who have been subjected to harassment.
- 1.2 To demonstrate the Association's clear commitment to equality.
- 1.3 To objectively enforce the Association's Hate Crime policy (see Hate Crime Toolkit) and tenancy condition terms.
- 1.4 To encourage and promote the reporting of incidents of Hate Crime

2 Legal Framework

Housing Act 1985 as amended 1996

Crime and Disorder Act 1998

Anti Social Behaviour Act 2003

Human Rights Act 1998

Environmental Protection Act 1990

Protection From Harassment Act 1997

Regulation of Investigatory Powers Act 2000

Equality Act 2010

Anti Social Behaviour Crime and Policing Act 2014

3 Introduction

Why tackling hate incidents is important for social landlords

Dealing with hate incidents is a vital part of the drive to further the causes of equality and diversity and also of tackling of anti-social behaviour (ASB). An effective approach to incidents is central to efforts to achieve a society in which equal opportunities exist and where differences between people are respected. People who suffer harm at the hands of others because of their race, gender, disability, sexual orientation or other attributes are denied things we should all be able to take for granted, such as being able to go about our business in peace, to have some choice about where we

will live and to be free to adopt a lifestyle that reflects our background and preferences.

Hate incidents stem from prejudice against others based on views about their differences. They therefore are contrary to the central principle of 'diversity' where differences are respected and valued.

Hate incidents, whether or not they are crimes, are a form of ASB. But although the drive to deal effectively with ASB should bring positive outcomes for the victims of hate incidents, the distinct nature and seriousness of these incidents should be recognised.

Much (although not all) ASB is random and untargeted – it affects people who happen to live in, or to be in, a particular area. On the other hand, hate incidents are targeted. Victims are singled out because they are different in some way. This gives rise to a second distinction – the danger of repeat incidents. Once identified as being different, victims stand a good chance of further attacks and, even if they avoid this, many will live in fear of being targeted again.

4 Definitions

4.1 *Hate incident and hate crime*

The definitions adopted by the Office for Criminal Justice Reform have been adopted by CCHA

A **hate incident** is defined as:

'Any incident, which may or may not constitute a criminal offence, which is perceived by the victim or any other person, as being motivated by prejudice or hate.'

All **hate crimes** are hate incidents. However some hate incidents may not constitute a criminal offence.

The definition of a hate incident includes all forms of crimes, harassment or other unwanted behaviour that someone with knowledge of the incident believes is motivated by the perpetrator's prejudice or hate towards the victim resulting from the victim's actual or believed membership of, or another person in that household's actual or believed membership of, a group defined by the following Equality strands;

Disability, including having learning disabilities or mental health problems

Religion or beliefs.

Gender, including gender identity

Race, colour, nationality, ethnic origin or national origin

Sexual orientation

We will also investigate any other prejudice that is perceived to be driven by any of the other protected characteristics.

4.2 Victim and witness

A victim is a person who has suffered one or more hate incident

A witness is a person, not a victim, who has information about a hate incident. This information may include what will become formal evidence in court proceedings.

5.0 Identifying Hate Crime

- 4.1 When investigating an alleged hate incident, the victims' perception of the incident is crucial; a view often expressed by victims is that agencies such as housing associations fail to recognise the personal nature of such incidents
- 4.2 The Association must therefore ensure that at the initial point of report/contact that the incident is considered as a serious matter and is investigated thoroughly. The victims' perceptions must also be accepted unless subsequent investigations prove otherwise.
- 4.3 Officers, when confronted with a report of a hate crime, should seek permission from the victim to report the incident to Hate Crime Team at South Wales Police who can, not only carry out further investigations but Can also offer specialist expertise in both advising the Association and protecting or counselling the victim.

- IBS Information regarding the incident should be stored in detail on CCHA's system including the precise nature of the incident, when and where the incident occurred, and the name of the perpetrator (if known)
- 4.4 Officers, when confronted with a report of hate crime, should not hesitate to engage outside agencies as recommended in the Hate Crime Toolkit
- 4.5 It must be emphasised that the involvement of third party agencies must only take place with the consent of the victim.

6.0 Procedure (for further detail refer to "Tackling Hate Incidents")

A key element of the Association's Hate Crime procedure is to actually prevent harassment taking place so that individuals do not suffer violence or abuse. Officers should not wait until harassment takes place before acting, but should attempt to prevent it by:

- 6.1 Being alert to indicators such as graffiti (which should be removed within 24 hours), excessive repairs to a property, and excessive refusals of a property. 'Target hardening' actions (see later section) should be implemented as soon as possible, although not without the agreement of the victim.
- 6.2 Identifying opportunities for mixed community initiatives
- 6.3 Visit residents if they appear to be vulnerable. This duty applies not just to the Association's office based staff, but to estate based staff such as caretakers, wardens and the Neighbourhood Caretaker. Indeed, on such schemes where staff are present on a daily basis, such staff should be alerted immediately of a racist incident and advised to monitor the position very closely.
- 6.4 Being alert to local developments, which may increase the likelihood of harassment.
- 6.5 By tackling design and environmental factors which may lead them to harassment.
- 6.6 Being alert to co-ordinated complaints, for instance about nuisance, against residents who fall within one of the protected strands

7.0 Investigating an Incident of Harassment

The Association's response to a report of harassment should be immediate. The victim should not be asked to confirm incidents in writing and the victim must be interviewed as soon as possible. In this period, officers should also establish whether or not the victim can communicate easily in English and if not, an interpreter should be arranged e.g. via the Victim Support Officer of Cardiff County Council, the Somali Advice Centre – Tel. 029 20 499916, Language Line etc.

7.1 The interview should be in line with guidance set out in chapter 3 of the "toolkit" document. Introduce yourself to the victim and explain why you have called particularly in cases where a person other than the victim has referred the matter to the Association. As with all interviews conducted by officers of the Association, the interview should be carried out in a calm, objective manner. Use the interview to establish:

- * The date and time of the incident.
- * The nature of the incident.
- * The name and address of the perpetrator.
- * The name and address of any witnesses.
- * If the Police are involved, the name and number of the officer involved and the station at which they are based.

Upon completion of the victim's statement, outline the details of your notes to the victim to ensure they are correct. Having verified the account, the victim should be asked to sign and date it.

If there are witnesses living at the same address, interview them separately to verify the victim's account. Cross check with the victim if there are any discrepancies. If the witnesses are not resident at the same address but are resident in the area, make arrangements to contact them to obtain a statement. Advise the victim/witness to make careful, detailed notes of all future incidents as soon as they occur.

7.2 Advise the victim of the Association's Hate Crime Policy and the courses of action that could be taken. If, in the opinion of the investigating officer, the incident is serious and could involve the Association and the victim in legal action, advise the victim of this possibility. Check that the victim would, at least in principle, be prepared to become involved in such action. Also, check that the victim wishes action to be taken against the perpetrator. To avoid unreasonably raising expectations, officers should advise victims of the pitfalls the legal system can involve and the length of time legal action can take.

7.3 Officers should ensure the victim has been consulted about advice and support. Also, officers should advise the victim to contact the Police. The victim's wishes should be respected. Consequently, if the victim does not wish third parties to become involved, the Association should respect this.

Conversely, if the victim does indicate that they require counselling or assistance, the Association should do all it can to assist.

When dealing with serious incidents, assistance may also extend to contacting Cardiff County Council's Homelessness Section to secure temporary accommodation and to ensure that the applicant is not left unsupported in the property.

- 7.4 Finally, before departing, the officer should advise the victim of the action he/she proposes taking. If the officer is uncertain as to the appropriate action, the victim should be advised that the incident is to be referred to the Housing Manager. The officer should also advise the victim as to when a decision with regard to action is to be made. It is vitally important that the victim is consulted as to the proposed course of action before it is undertaken.

8.0 The Association's Response

Depending upon the seriousness of an incident, the Association can consider taking a number of actions to prevent future incidents of harassment. However, as noted in the previous section, it is essential that the Association's intentions are outlined to the victim. The options available to the Association will vary dependent upon whether or not the perpetrator is a tenant of the Association.

8.1 Identified Perpetrator (tenant of the Association)

Following the reporting of the incident, the Association should contact the perpetrator as soon as possible to arrange an interview. When interviewing the perpetrators of serious incidents, officers should be accompanied by another officer or if necessary, by a Police Officer. Officers should outline the nature of the complaint and make careful notes of the perpetrator's response. The perpetrator should be advised as to the conditions of his/her tenancy and the remedies available to the Association. The severity with which these remedies are applied will be dependent upon the nature of the alleged incident and the extent to which the incident is substantiated.

The Association's options are as follows:

8.1.1 Formal written warning

Such a response would be appropriate in response to a minor incident. However, it must be emphasised that unlike general nuisance cases, which are investigated by the Association, repeated written warnings would not be appropriate. Essentially, the initial warning letter should

advise the perpetrator that any future substantiated incidents will result in the Association taking immediate possession proceedings.

8.1.2 An Injunction

Is an order of the court requiring a party either to do a specific act or acts or to refrain from a specific act or acts. The advantage of taking out an injunction is that they can be granted virtually immediately. An injunction could be used as an alternative to possession action or as a supplement to possession action. A judge has the discretion whether or not to award an injunction.

Officers should note the following:

- a The court will only grant an injunction where the Association can show that it has a cause of action in law entitling it to relief e.g. where there is damage to the Association's property, trespass, the continuing breach of a tenancy agreement, breach of another covenant or a public nuisance.
- b The court may grant an injunction before the full hearing of the matter in circumstances where it is satisfied that there is a serious question to be tried.
- c The Association will have to show that damages would be an inadequate remedy if the case is proved.
- d If the Association seeks an interlocutory (interim) injunction, it is likely that the court would require it to undertake to pay any damages subsequently found to be due to the defendant as compensation if the injunction cannot be justified at the final hearing.
- e As with any other case, where the Association is seeking an injunction, it will have to call upon evidence from those people who have witnessed the various acts which are complained of and that evidence will be subject to cross examination.
- f At a hearing for an interlocutory (interim) injunction, the court will receive evidence by way of affidavit and hear submissions from counsel or a solicitor, but the people giving the affidavit (sworn statement) will almost certainly have to give oral evidence at any full hearing.

Interim injunctions can be obtained on the same day and emergency legal aid can be granted to a perpetrator if their solicitor telephones the Law Society. In extreme cases, an injunction can be obtained without notice to

the other party (ex-parte) within hours. It is usually obtained on not less than 48 hours' notice. The great advantage is that the evidence is by affidavit (sworn statement) rather than oral so that nervous witnesses do not have to go into the witness box and the victim need not attend.

To obtain a Perpetual Injunction, the procedure through court would be similar to possession proceedings, but no notice of intention to seek possession is required so proceedings can be begun immediately. This type of injunction would be most useful in cases where possession is unlikely to be granted so that the Association could have a condition imposed upon a tenant, which would remain in existence so that their behaviour would be modified.

The Association could consider seeking an injunction either as an alternative to, or more likely to supplement future possession proceedings. If officers decide that an injunction is necessary, the Association's solicitors should be contacted immediately. The solicitors should then be sent a written brief of the incident, the name of the victim, witnesses and perpetrator. The brief should indicate the names and addresses of those witnesses who are prepared to provide sworn affidavits or appear as witnesses. As with possession proceedings (see following section), the Association should only consider commencing injunction proceedings if, in the opinion of the Association's solicitors, such an action has reasonable prospects of being successful.

8.1.3 Possession Action

The Association's Assured Tenancy Agreement expressly prohibits all forms of harassment by tenants, invited visitors etc. The Association's Tenancy Agreement expressly prohibits all forms of serious nuisance, which includes incidents of harassment. In responding to serious substantiated incidents or a further incident following the issue of a warning letter, the Association may initiate possession proceedings against the tenant.

The issue of the notice/instruction to commence legal action should be in accordance with the Association's standard procedures. However, unlike possession actions instigated as a result of rent arrears, the Association's intention will be to secure an immediate possession order and not a suspended possession order. Essentially, the issue of the notice and the instigation of possession proceedings should be one act and not two separate decisions as in the case of rent arrears.

As soon as the Association decides that possession proceedings are an appropriate response, the Association's solicitors should be contacted. The Association's file should be made available to the solicitors and arrangements should be made for the victim/witnesses to be interviewed by the solicitors. The Association should also request the opinion of the solicitors with regard to the success of the case should it proceed to court.

As with the Association's general serious nuisance procedures, the Association's case will depend to a great extent on the evidence of the victim/witnesses. The Association should therefore consider carefully the advice of the solicitor prior to the commencement of the legal action. Essentially, the Association must be reasonably certain that its case can be successful. It would not be appropriate to subject the victim to the rigours a court appearance involves, only for the Association to lose its case. If such an outcome were to result, the victim (particularly if the victim has chosen not to move) could find himself/herself in the position of continuing to live next door to or in the vicinity of the perpetrator. Such an outcome would be little short of disastrous.

If, in the opinion of the Association's solicitors possession would not be the likely outcome of the court action, the Association should advise the victim that it will not be commencing legal action.

It should be noted that the assumptions made in sections are that the victim and perpetrator are tenants of the Association. In a case where the perpetrator is a tenant of the Association, but the victim is not, the Association's options remain the same in terms of dealing with the perpetrator. The Association may not, however, be able to directly assist the victim. However, the Association should offer the victim all appropriate advice, assistance and support.

8.1.4 Transferring the Victim

"Severe" harassment is an identified transfer priority. If a victim of a substantiated "hate" attack requests a transfer, the Association should make the necessary arrangements to re-house the family as soon as possible. The main problem for the Association in arranging a transfer, is that it may not be possible for the Association to move the victim any considerable distance from the scene of the attack given the limited geographical spread of the Association's stock. If the options available to the Association will not realistically assist the victim or are not acceptable to the victim, the Association should request the assistance of Cardiff County Council and offer to reciprocate their help by way of a nomination right to the vacant property which the transferee will vacate if the council re-house the victim.

It is important to emphasise that transfers should only be arranged at the request of the victim, although clearly the Association should make the victim aware of this option. The Association should attempt to ensure that if a transfer is to be arranged, that it takes place as soon as possible.

8.1.5 Immediate Completion of Repairs/Installation of Security Measures

Irrespective of any eventual action taken, the Association should ensure that all damage to a victim's property is repaired immediately and graffiti

must be removed within 24 hours. Where necessary the Association should ensure that the victim's property is equipped to withstand any future attacks/incidents. For instances:

- a Toughened laminated glass should be installed if windows have been smashed.
- b Lockable letter boxes should be installed.
- c Strengthened doors.
- d Lockable windows etc.

Where the Association has CCTV on site, the feasibility of re locating the cameras to cover the victim's home should be investigated immediately and moved accordingly if it is possible.

8.2 **Identified Perpetrator (not a tenant of the Association)**

If the perpetrator of an incident is not the tenant of the Association the range of options previously outlined are not available as remedies. Nevertheless, the investigative/ professional principals outlined do apply and the Association can clearly consider the use of injunctions and can indeed transfer the victim.

When investigating cases involving third party perpetrators, the Association should contact the Police and Hate Crime Officer immediately and interviews with the perpetrators should either be conducted by these organisations or collaboratively by representatives of these organisations and members of the Association's staff. It is felt that such an approach (particularly if the Police are involved) would have far greater impact than an interview simply with members of the Association's staff.

8.3 **Unidentified Perpetrators**

If an unidentified perpetrator carries out an attack, the options open to the Association are rather limited, although clearly the transfer of the victim is one course of action, which could be pursued. In such cases, officers should investigate the matter fully and advise the Police that an incident has occurred. The Association should then write to residents in an area advising them of:

- * The nature of the incident.
- * The Association's attempts to prevent such incidents.
- * Ask witnesses to provide information.
- * The involvement of the Police.

9.1 Encouraging Reporting

Often victims hate incidents / crime will not contact organisations for help, as they perceive that their report may not be taken seriously. Therefore, it is clearly essential that CCHA send a clear message to victims, perpetrators and other tenants that the problem is taken very seriously. A number of methods will be used to convey this message; for example:

- * Posters displayed prominently in reception.
- * Regular newsletter articles.
- * Invitations to groups such as the Police Minorities Unit and Race Equality First to events such as the Tenants Fair.

Whilst initiatives of this type can certainly help, it is essential that the Association's staff remain alert at all times to the problem and respond quickly to any incident. Moreover, it is essential that officers are totally clear as to the actions expected of them and the roles other organisations can play in tackling harassment. Although effective training can increase staff awareness and accountability, officers are required to ensure that they keep themselves abreast of the detail in the "Tackling Hate Incidents Toolkit" and query any areas where they may have a doubt as to what is expected of them.

10.0 Information Sharing

The Data Protection Act 1998 allows for the exchange of information where it is for the prevention or detection of crime or for the apprehension or the prosecution of offenders.

CCHA will only share information with other agencies, with consent unless CCHA are required to do so by law or the information is necessary for the safeguarding children and vulnerable adults in the line with CCHA's Safeguarding Policies.

CCHA recognise that confidentiality is important to build up a relationship of trust with the person experiencing harassment or hate crime to reassure them that any information they provide is kept in the strictest confidence.

CCHA will only share information, where necessary, in line with All Wales Accord and Information sharing protocols.

11.0 Administration/Delegated Authority

Case investigation: ASB Officer/Senior ASB Officer.

Authorisation of an injunction: Head of Customer and Community Services.

Authorisation of possession proceedings: Director of Customer and Community Services.

Annual Board Review: Head of Customer and Community Services.

Useful contacts

Victim Support Cardiff: 08 08 16 89 111

Race Equality First: 029 2048 6207

Non - emergency Police: 101

Police (emergency) 999

The Safer Wales Dyn project provides support to Heterosexual, Gay, Bisexual and Trans men who are experiencing Domestic abuse from a partner

Dyn Project : 0808 80 10 321

Safer Wales provides a premium service to women who experience domestic abuse and sexual violence in the Cardiff area. They offer support, advice and information to **women** to increase safety and health in relation to domestic abuse and sexual violence.

Safer Wales: 029 2022 0033