

## YOUR QUESTIONS ANSWERED

# A guide to legal action for witnesses in anti-social behaviour court cases in Newham

### 1. WHO IS A WITNESS?

A witness is somebody who either:

- (a) Has experienced harassment or other anti-social behaviour (in which case they are often referred to as 'the victim'); or
- (b) Has seen something or was present when incidents of anti-social behaviour took place.

### 2. WHY DO WE NEED WITNESSES?

If the police, the council or a housing association wants to take legal action against somebody responsible for harassment or other anti-social behaviour then the court needs to know what happened and when it happened. Anybody who has information about this can assist the court in reaching decisions about such a case by acting as a witness and providing evidence. Without witnesses the police, council or housing associations are unable to take legal action and the court is unable to consider the case.

### 3. WHY HAVE I BEEN ASKED TO BE A WITNESS?

You have been asked to be a witness because you have something to tell (called 'evidence') which may help a person (a 'party') who is making a claim or disputing claims through a civil court.

Depending on the type of claim, the person who started it can be called the 'claimant', 'petitioner', applicant and the person disputing it is the 'defendant' or 'respondent'.

### 4. WHO IS MY CASE OFFICER?

The case officer is the officer who is leading on your case, and who will be the key person keeping in touch with you. Most anti-social behaviour proceedings are brought by the council or by a housing association (also known as a Registered Social Landlord or RSL). Each organisation has a different way of dealing with things. For some, the case officer might be a housing officer, for others it may be an anti-social behaviour officer or enforcement officer. Some housing association staff will take statements themselves, others will use solicitors.





“In the court, before their statements were heard, officers sat with the witnesses, which again was reassuring.”

#### 5. HOW DOES THE INFORMATION OF WITNESSES GET TO COURT?

Before a decision to take legal action is made you will be contacted by your case officer or their solicitor. You will be interviewed and a statement will be taken. For county court proceedings these are known as a ‘statement of truth’. Before this is used for any court proceedings you will be asked to check it to make sure that it is accurate and correct. You will then be asked to sign it. You will be given a copy of your statement to keep. Once the case reaches court you will not be allowed to add any extra information so it is important that the witness statement includes everything which is relevant to the case.

The papers will be sent to the court and a summons issued with the date and time the court will hear the case. This summons is sent to the defendant who is the person against whom the court order is being sought. These papers will usually include the witness statements that the case is relying upon.

In a very small number of cases (such as a breach of an injunction) you may be asked to swear an affidavit. This is similar to a statement but you have to swear an oath that it is accurate.

#### 6. HOW LONG DOES IT TAKE BEFORE THE CASE GETS TO COURT?

It may take a number of weeks and sometimes even months before a case goes to court. The time it takes will depend on a number of issues such as the type of case, how long it is expected to last in court and how busy the court is with other cases that also need to be heard. In serious or urgent cases it is possible to go to court at very short notice for an urgent application. These cases will have to go to court again at a later date when the court is able to set down sufficient time to hear all the evidence from all the witnesses and make a final decision.

“Had it not been for my case officer, I would have felt very alone. She called regularly and this was reassuring. I felt someone was concerned.”



#### 7. WHICH COURT DOES IT GO TO?

Most anti-social behaviour cases (ASB cases) in Newham are heard in Bow County Court. This is a civil court and deals with non-criminal matters such as proceedings to evict someone, injunctions, anti-social behaviour orders, debt and family proceedings. Anti-social behaviour orders can also be heard in a magistrates or crown court which will then become a civil court for the case. All criminal cases will go to a magistrates or crown court, and different rules apply. The local magistrates court is Stratford Magistrates Court. The local crown court is at Snaresbrook.

In the magistrates court, cases are either heard by one magistrate (who is called a stipendiary magistrate) or a bench of lay magistrates.

In the county court, cases are heard by a district or circuit judge.

In the crown court it is the jury who decide whether somebody is guilty or not after considering the evidence and the judge decides on point of law. However, in the county court the judge decides on both the point of law and the point of fact (i.e. the evidence).

#### 8. BEFORE THE COURT

Before the court hearing you can ask to visit a court room. Your case officer or court staff can arrange this for you. If you have any additional needs (e.g. language or mobility needs) it is important to let your case officer know so that arrangements can be made in advance of the hearing.

Decide what you are going to wear. You will have to spend some time waiting so choose something comfortable but smart. To help pass the time it may help to take a book or magazine with you.

#### 9. WHAT HAPPENS WHEN THE CASE GETS TO COURT?

When you reach the court, court staff will be able to tell you where to go if you give them your name and the name of the case (this is the name of the person the action is being taken against e.g. LB Newham v Smith). Outside the courtroom you will meet the representative/s from the police, the council or housing association who will be dealing with your case in court. You will then wait for the case to be called.

The claimant will usually employ a barrister (known as counsel) who will present the case in court. Although in some cases you will be able to sit in the court and wait your turn to be called, more often you will be asked to wait outside the courtroom until you are needed. When you enter the court the claimants will usually sit on the judge’s right, and the defendant will usually sit on the judge’s left.



“The most important thing was the fact that the officer was there for us both before and after, to give information and to be a support.”



### 10. WHAT HAPPENS WHEN THE CASE IS CALLED?

When you get into court, remember that as a rule you can not take notes into the witness box with you as you will not be allowed to refer to them. If you wish or need to refer to direct records or notes this requires the prior consent of all the parties' legal representatives and/or the court. A copy of your witness statement will be available in the witness box when you give evidence.

On entering the witness box you will be asked to affirm or swear the oath and you will be asked your full name and address.

The legal representative who is presenting the case will then ask you questions about what happened. You should address your answers to the court and the correct forms of address are as follows:

- a) A circuit judge is called your honour
- b) A district judge is called sir or madam
- c) If addressing a single magistrate or the chair of a bench of magistrates, use sir or madam
- d) If addressing more than one magistrate in the magistrates court, use your worships
- e) A crown court judge is called your honour
- f) A high court judge is called my lord or my lady

### 11. WHAT HAPPENS WHEN YOU GIVE YOUR EVIDENCE TO THE COURT?

You will usually be asked questions on the contents of your witness statement. When giving evidence, take your time and do not rush. If you do not understand a question do not hesitate to ask for further clarification and/or a repeat of the question. Although you should be addressing your answers to the court, do not expect eye contact from a judge or magistrate. They may be taking notes and eye contact is not expected or demanded.

Keep your answer brief and answer only the question that is put to you. Do not race ahead or anticipate a line of questioning. By attempting to answer what you think the next question may be, you can tie yourself up in knots.

Think about the question and answer honestly. “Yes” and “no” are perfectly acceptable replies. If the solicitor/barrister requires more detail they will ask.

Do not attempt to answer questions to which you do not know the answer. “I don't know” or “I don't remember” is both honest as well as perfectly acceptable in this kind of situation.

### 12. WHAT HAPPENS WHEN YOU HAVE FINISHED GIVING YOUR EVIDENCE?

When you have answered all the questions you will be asked to leave the witness box. Most of the time you are then ‘released’. This means you are free to go home.

However, very occasionally the court may ask you to stay in case they need to ask you further questions later.

If you wish to stay after you have finished your evidence you can usually do so unless the matter is heard in private and not in open court.

### 13. HOW DOES THE COURT REACH ITS DECISION?

When all the evidence has been heard the judge or magistrate (and in the crown court the jury) will have to decide whether the case has been proved. If the court decides that it has not been proved this does not mean that they disbelieved you. Such an outcome can be based on a number of factors including legal arguments based on points of law only, insufficient evidence overall and/or the view of the court that the case was not proved to the high degree of proof which is required by law.

A county court judge will make a decision on the balance of probabilities (that something is more likely to have happened than not). A criminal court requires a case to be proved beyond reasonable doubt which is a higher standard of proof.



“There was a lot of support given around information gathering and writing statements.”

“The housing officer came around every day, before and after the court case... she was there if we needed her.”

### COURT PROCEEDINGS COMMONLY INITIATED FOR ANTI-SOCIAL BEHAVIOUR

- a. **Injunction** – an injunction is an order from a court that tells someone either to stop doing a certain thing (e.g. not to allow a certain person into their home) or to do a certain thing (e.g. to keep to the tenancy terms and conditions). Breaking an injunction is a serious offence.
 

Injunctions are usually granted for a 3, 6 or 12 month period. If there has been a threat of violence they will usually have the power of arrest attached to some of the clauses. This means that if an injunction is breached and the police are called, they can arrest the perpetrator and bring him/her back before a judge, who can impose a fine or prison sentence. Where an injunction has been sought to protect you, a copy of the injunction will usually be given to you.

Ex parte injunctions are used when immediate action is needed in cases of violence or threatened violence. The perpetrator won't know it is happening and so won't be in court. This type of order usually lasts for a week or two only, until there is a second hearing. If an injunction is given at a court hearing where the perpetrator is in court, the injunction takes effect from the time it is granted. In the case of ex parte injunctions, where the perpetrator is not in court, the injunction takes effect from the time they receive the terms of the order. With an ex parte injunction this will be the first time they are aware of the court hearing and the injunction.
- b. **Possession action** – If the perpetrator is a council or housing association tenant and has caused you serious incidents of harassment or minor incidents over a long period of time the landlord can apply to the court for an order to evict the perpetrator from his/her home. It is very serious action to take when removing someone from their home so the court will not grant such an order without you giving evidence in court.
 

A judge can give an outright order, a suspended order or a deferred order. An outright order means the court has agreed the person can be evicted. Deferred and suspended orders will include terms that the defendant must abide by. If these are broken (or 'breached') then the landlord can take steps to have them evicted.
- c. **Demotion** – It is now possible for the council or housing association (RSL) to apply for a tenancy to be demoted. A demoted tenant has fewer rights and, if they breach the terms of a demotion, they will be evicted without the need for witnesses to attend court again.
- d. **Anti-social behaviour orders (ASBOs)** – These are similar to an injunction but are available from magistrates or (in some circumstances) county courts. The council, the police, RSLs or the British Transport Police can make applications. If they are breached this is a criminal offence. An application for an ASBO can be made against anyone who has caused 'harassment, alarm or distress against one or more persons not of the same household' and an order is considered necessary to stop their behaviour. Breach of an ASBO is prosecuted in the criminal courts and should result in a fine or imprisonment.
- e. **Police prosecution** – If you are a victim of criminal offences such as physical assault or damage to your personal property, the police should prosecute the perpetrator on your behalf since it is their public duty to do so.



### GLOSSARY

- Affidavit:** a written description of events that a witness must swear or affirm is true in court
- Affirm:** confirm the truth of something in court (a non-religious alternative to swearing an oath)
- Barrister:** a legal representative who can put someone's case to court and question witnesses
- Breach:** (of an injunction) when someone ignores an injunction or breaks the conditions of it
- Committal case:** a court case held when someone breaks an injunction. The judge could send or 'commit' them to prison or fine them
- Complainant:** the person who has suffered from (and complained of) anti-social behaviour
- Contempt of court:** disobeying the court, e.g. breaking an injunction
- Defendant:** the person we're bringing the complaint about
- Ex parte injunction:** a type of injunction used in cases that need immediate action because of violence or threats and where the defendant is not told of the application until after the order is made
- Interim injunction:** a type of temporary injunction used in cases that don't need immediate action or as a follow up to an ex parte injunction
- Injunction:** an order from the court that tells someone to either do or not do a certain thing
- Perpetrator:** the person causing anti-social behaviour
- Plaintiff:** the person or organisation bringing the case
- Possession case:** a hearing to decide if a council tenant should be evicted from their home
- Solicitor:** a legal representative who can put someone's case to court and question witnesses
- Statement:** a written record of events that a witness signs as a true record
- Suspended possession:** the judge sets a time period (usually of one or two years) when the tenant must not repeat their behaviour. If they do, we will go back to court and ask for immediate possession
- Suspended sentence:** a prison sentence that is only enforced if the perpetrator breaks a court order within a time set by the judge
- Swear on oath:** confirm the truth of something in court – sworn on a bible or other religious book
- Tenancy agreement:** the legal contract of rules between the landlord and a tenant
- Undertaking:** a promise made to the court by the perpetrator to either do or not do a certain thing



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