

## **Environment and Community Safety Portfolio Decision Meeting**

**Date of meeting: 2<sup>nd</sup> October 2015**

### **Appendix 2**

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**Environmental Health Guidance on the procedures for the enforcement powers available under The Anti-Social Behaviour, Crime and Policing Act 2014**

## **1. Introduction:**

- 1.1. This document is to provide guidance for delegated officers within Environmental Health on the procedures for the enforcement powers available under The Anti-Social Behaviour, Crime and Policing Act 2014 (The Act).
- 1.2. The document has been drafted based upon information obtained from the following documents:
  - The Anti-Social Behaviour Crime and Policing Act 2014.
  - Anti-Social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers. Statutory guidance for frontline professionals. (Home Office July 2014).
  - Guidance on the use of Community Protection Notices Professional Practice Note (Chartered Institute of Environmental Health).
- 1.3. The Act contains a number of powers but those specifically relevant to the enforcement role within Environmental Health are:
  - Civil Injunctions (Part 1 of The Act).
  - Criminal Behaviour Order (Part 2 of The Act).
  - Community Protection Notice (Part 4 Chapter 2 of The Act).
  - Closure Notices (Part 4 Chapter 3 of The Act).
- 1.4. It is anticipated that the majority of issues relevant to Environmental health will continue to be dealt with using specific legislation where available, particularly in relation to complaints of noise nuisance, however there may be situations where the above provisions may prove useful, particularly for matters occurring in the street, or communal areas where there is a strong element of anti-social behaviour evident.
- 1.5. It should be understood that any enforcement action relating to activity in the street may be difficult for Environmental Health to enforce unless individuals can be identified and linked to an address, which may require assistance from the police.
- 1.6. It is not envisaged that injunctions and closure notices will be used routinely. Owing to the potential severity of the penalties these are viewed as actions of last resort for extreme circumstances which require an immediate response.

## **2. Civil Injunctions**

- 2.1. Injunctions may be granted against anyone who is over 10 years of age and are used to describe actions the respondent must either do or not do to prevent them from engaging in anti-social behaviour.
- 2.2. To grant an injunction the Court must be satisfied on the "balance of probabilities" that the respondent has engaged or threatens to engage in anti-social behaviour.
- 2.3. There are three definitions for anti-social behaviour:

- Where the anti-social behaviour has occurred in a public place, the definition is, "*conduct that has caused or is likely to cause, harassment, alarm or distress to any person*".
  - For anti-social behaviour affecting residential premises it is defined as "*conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises*".
  - The third definition relates to "*conduct capable of causing housing related nuisance or annoyance to any person*". Housing related meaning directly or indirectly relating to the housing management functions of a local authority or housing provider.
- 2.4. Only the first two definitions will be applicable to Environmental Health and it is envisaged that the use of injunctions will usually be a last resort used in situations where other legislation is unavailable or has failed to provide a permanent remedy.
- 2.5. However it should also be borne in mind that the intention of The Act is that injunctions could be used as a fast and effective protection for victims and communities, so there may be circumstances where injunctions may be appropriate to prevent a serious problem from escalating.
- 2.6. Failure to comply with the injunction can lead to an unlimited fine and up to two years in prison for adults and a supervision order, curfew or activity requirement for respondents under the age of 18.
- 2.7. Despite the fact that any breach of an injunction is not a criminal offence, owing to the potential severity of penalties the court can impose, a criminal standard of proof will be required i.e. beyond reasonable doubt. However in order to protect the identity of persons from intimidation, hearsay evidence is admissible from professional witnesses who have interviewed the witness first hand.

#### Applications

- 2.8. Prior to applying for an injunction against someone under the age of 18 officers must consult with the local Youth Offending Team (YOT) or any other appropriate body or individual e.g. youth charity.
- 2.9. The YOT cannot veto the application but it is important that their views and advice are taken into consideration.
- 2.10. All applications for an injunction are made via the County or Crown Court, or for individuals less than 18 years of age via the Youth Court.
- 2.11. Applications must first be approved by The Environmental Health Manager and officers must ensure they are familiar with the current version of The Act to ensure the draft injunction meets all necessary requirements.
- 2.12. The injunction must include the relevant prohibitions and/or positive requirements to deal with the underlying cause of the anti-social behaviour. Positive requirements can include such matters as attendance of alcohol awareness classes, mediation sessions etc.

- 2.13. The court will require evidence that any prohibitions and requirements are appropriate, enforceable and so far as practicable will not interfere with attendance at any work or educational establishments or conflict with the requirements of any other court orders / injunctions.
- 2.14. Where an injunction includes a requirement it should also specify the person who is to be responsible for supervising compliance. This may be an individual or an organisation and they will be required to give evidence as to the suitability and enforceability of any requirement. See Part 1 Section 3 of The Act.
- 2.15. Standard application forms for injunctions are available from the HM courts website (Form number N16A).

#### Duration of Injunction

- 2.16. Prohibitions and requirements can be for a fixed or indefinite period for adult perpetrators. However for persons under the age of 18 there must be a specified time limit which must not exceed 12 months.

#### Exclusion

- 2.17. The court may exclude a perpetrator over the age of 18 from any premises or area specified within the injunction. Where the court believes there have been threats of violence or there is a risk of harm to other persons this can include exclusion from their own home.
- 2.18. In the case of a tenanted or leasehold property, prior to obtaining the injunction officers should consult and inform the landlord or freeholder where circumstances permit.

#### Power of Arrest

- 2.19. If there have been any threats of violence or there is a risk of harm to others, then written evidence should be produced as part of the application to enable the court to consider attaching a power of arrest to a prohibition or requirement of the injunction. This will enable a police officer to arrest the respondent without a warrant in the event of a breach of any prohibition or requirement.
- 2.20. In all other circumstances should the respondent breach any requirement or prohibition of the injunction an arrest warrant will need to be obtained by officers from whichever court granted the injunction.

#### Notice

- 2.21. The General Rules for Applications for Court Orders require that a copy of the application is served upon all respondents giving at least 3 days' notice of the hearing.
- 2.22. In exceptional circumstances applications can be made without giving notice to the respondents in order to prevent serious harm to victims.
- 2.23. If a "without notice" application is successful the court will adjourn the proceedings and impose an interim injunction.
- 2.24. A decision has to be made whether to publicise when an injunction is granted. This can be important as it provides assurance to the community

that action is being taken and also enables local people to identify and report any breaches of the order.

- 2.25. For persons under the age of 18 section 39 of The Children and Young Persons Act 1933 applies so the court can make an order prohibiting publication of the injunction. Consequently at the application stage consideration should be given to whether publication is necessary and proportionate to interfere with a young person's right to privacy and the likely impact upon their behaviour balanced against the need to reassure and protect the community.

### **3. Criminal Behaviour Order**

- 3.1. Criminal behaviour orders (CBO) are available when a perpetrator is convicted of a criminal offence and there is evidence beyond reasonable doubt that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress and the court considers that making the order will help in preventing such behaviour.
- 3.2. Failure to comply with the terms of a CBO without reasonable excuse can on summary conviction in a magistrates court lead to a maximum of six months in prison and or a fine or on conviction on indictment in a Crown Court a maximum of Five years in prison and or a fine.
- 3.3. Hearings for persons under 18 years of age will take place in a youth court where the maximum detention is a two year detention and training order.
- 3.4. The Prosecution (CPS or Local Authority) can apply for an order either on their own behalf or at the request of the Police or Local Authority.
- 3.5. Application for an order does not require any link between the criminal behaviour which led to the conviction and the anti-social behaviour associated with the CBO application, so evidence not heard in the criminal case can still be admissible at the CBO hearing.
- 3.6. If relying on evidence from witnesses who are fearful of intimidation it may be possible for hearsay evidence to be given by officers who have interviewed the witnesses, however regard must be given to the provisions in Chapter 1 Part 2 of The Youth Justice and Criminal Evidence Act 1999.
- 3.7. As contravention of an abatement notice is a criminal offence it is possible for the Anti-Social Behaviour Unit or the Police to seek a CBO on a conviction obtained by Environmental Health.
- 3.8. The only formal consultation required is where the order is sought against a person under the age of 18 years. In which case the views of the local Youth Offending Team should be sought and included in the file of evidence forwarded to the prosecution.
- 3.9. However it is likely that consultation will be required with other organisations notably educational establishments, mental health services, social services etc. prior to drafting any requirements / prohibitions to be included within the order.

- 3.10. The CBO must include the duration of the order, which for adults is a minimum of two years or an indefinite period and between one year and three years for persons under the age of 18.
- 3.11. It must also clearly describe the proposed prohibitions and / or requirements to prevent further anti-social behaviour by the offender and tackle the underlying cause of the behaviour; however the court will ultimately decide which are the most appropriate.
- 3.12. So far as practicable these must not interfere with an offenders work / education commitments or conflict with other court orders / injunctions so communication with other agencies and bodies will be required.
- 3.13. A decision has to be made whether to publicise when a CBO is granted. This can be important as it provides assurance to the community that action is being taken and also enables local people to identify and report any breaches of the order.
- 3.14. For persons under the age of 18 Section 39 of The Children and Young Persons Act 1933 applies so the court can make an order prohibiting publication of the CBO. Consequently at the application stage consideration should be given to whether publication is necessary and proportionate to interfere with a young person's right to privacy and the likely impact upon their behaviour balanced against the need to reassure and protect the community.
- 3.15. For persons under the age of 18 there is an annual review process which is the responsibility of the Police but will be conducted in co-operation with The Council.

#### **4. Community Protection Notice**

- 4.1. Community protection notices (CPN) are intended to deal with repeated or on-going conduct which negatively affects the quality of life of the community.
- 4.2. They can be issued to individuals or corporate bodies but cannot be issued to persons under the age of 16.
- 4.3. The test for anti-social behaviour under this part of the Act is that officers have to be satisfied on reasonable grounds that the conduct of the individual or business is
  - having a detrimental effect on the quality of life of those in the locality
  - unreasonable and
  - its effect is persistent or continuing in nature.
- 4.4. For conduct consisting of acts of omission, officers should consider to what extent the subject is under any obligation to act and whether a more appropriate remedy is available than the use of a CPN.
- 4.5. There should also be some malign intent and the effect should be substantial.
- 4.6. It should be borne in mind there is a principle of law that a specific power e.g. statutory nuisance under The Environmental Protection Act 1990 should be used in preference to a general one.

- 4.7. Therefore consideration should first be given to the use of statutory nuisance under The Environmental Protection Act 1990 and other legislation such as The Noise Act 1996, Control of Pollution Act 1974 and Clean Air Act 1993.

Detrimental Effect

- 4.8. Officers must have regard to any material evidence to form an objective opinion and be able to describe the detrimental effect the conduct is having upon the community, as this needs to be clearly stated in the notice.
- 4.9. Officers should interview victims to obtain first-hand accounts and establish the detrimental effect of the conduct upon them and characteristics such as frequency and duration.
- 4.10. It is not absolutely necessary for officers to witness the conduct first hand but if relying solely on evidence obtained from interviewing victims they must ensure to exclude any exaggeration, prejudice or unusual sensitivities.
- 4.11. As this is potentially the start of a criminal process, complainants should be advised that they may be asked to provide formal statements or give evidence in court as hearsay evidence is not admissible under this part of The Act.

Quality of Life

- 4.12. The test for quality of life should be based upon the character of the locality and must impact at community level not just upon a single neighbour. In terms of Environmental Health it is similar to what we would define as a public nuisance.

Persistent or Continuing

- 4.13. The detrimental effect must be present at the time of issue. CPN's cannot be issued on the basis of likely to occur or in respect of conduct which has ceased to have any impact unless there are grounds to believe it may soon recur such that its effect could be regarded as persistent.

Unreasonable

- 4.14. Officers must make a judgement as to whether independent of its effect the conduct is unreasonable and not influenced by factors beyond the control of the person.
- 4.15. Careful consideration will need to be given to cases which involve subjects who may suffer from mental health or disability.

Written Warning

- 4.16. Prior to the service of a CPN a written warning must be issued to the person responsible outlining the behaviour that is causing the problem. The written warning should only be sent once the officer is satisfied on reasonable grounds that the behaviour is unreasonable and having a detrimental effect of a persistent or continuing nature on the quality of life of those in the locality. It should not be sent as part of a routine procedure.
- 4.17. The letter should specify a reasonable time for compliance to prevent service of a CPN. However unless works or steps are required it is envisaged in most circumstances the behaviour in question can be required to cease immediately.

- 4.18. The written warning is a legal condition precedent to the service of the CPN therefore its service should be treated and documented as a statutory notice in its own right.

#### Issuing a CPN

- 4.19. Where a warning notice has not been heeded and there is sufficient evidence of further anti-social behaviour a Community Protection Notice may be issued.
- 4.20. Prior to service consideration must be given to consultation with any other bodies or persons considered appropriate, this could include Social Services, mental health teams, PCC Housing / ASBU and the police.
- 4.21. The service of a Community Protection Notice is similar in all aspects to the procedures followed for service of an abatement notice for statutory nuisance, but detailed guidance can be found within Sections 44, 45 and 55 of The Act.
- 4.22. When deciding on what requirements to include within the notice officers should remember that CPN's have been designed to deal with short or medium term issues therefore they should avoid conditions requiring for example attendance at drug rehabilitation courses etc. which are more appropriate to an order issued by the courts.
- 4.23. Any requirements in the notice must be reasonable and designed to ensure the following:
- Prevent the detrimental effect from continuing or recurring.
  - Reduce the effect or reduce the risk of its continuance or recurrence.
  - Must be clearly as to what is required and can be shown beyond a reasonable doubt whether they have been undertaken within the required timescale.

#### Appeals

- 4.24. There are rights of appeal against the notice in section 46 of The Act, and appeals must be made to the Magistrates Court within 21 days of service. The grounds of appeal are as follows:
- *The behaviour did not take place:* In most cases officers will have collected evidence to place beyond any reasonable doubt that the behaviour occurred. However in cases where the officer has relied on witness statements alone, they should consider the potential for this route of appeal.
  - *The behaviour has not had a detrimental effect on the quality of life of those in the locality:* Witness statements and any other evidence that the behaviour is having a negative impact should be collected to ensure this defence is covered.
  - *The behaviour was not persistent or continuing:* In cases where a decision to issue a CPN is taken more quickly, officers should use their professional judgement to decide whether this is met and may need to justify this on appeal.



- *The behaviour is not unreasonable:* In deciding whether behaviour is unreasonable officers should consider the impact the behaviour is having on the victim, whether steps could be taken to alleviate this impact and whether the behaviour is necessary at all.
  - *The individual cannot reasonably be expected to control or affect the behaviour:* In issuing the CPN the officer must make a judgement as to whether the individual or business can reasonably be expected to do something to change the behaviour and be prepared to justify this decision.
  - *Any of the requirements are unreasonable:* Officers should ensure all requirements relate to the behaviour in question.
  - *There is a material defect or error with the CPN:* Arise when there has been a failure to comply with a requirement of The Act such as failure to provide a written warning prior to issuing a CPN.
  - *The CPN was issued to the wrong person:* CPN posted to the wrong address or the wrong person was identified.
- 4.25. On appeal any requirement imposed by the notice to stop doing specified things remains in effect unless the court orders otherwise but any other requirement imposed by the notice is of no effect pending the outcome of the hearing.

#### Non-Compliance

- 4.26. Failure to comply with the requirements of a CPN is an offence under section 48 of The Act punishable on conviction by a fine not exceeding level 4 on the standard scale for individuals (currently £2500) and £20 000 in the case of a body.
- 4.27. There are two defences:
- The person took all reasonable steps to comply with the notice.
  - There is some other reasonable excuse for the failure to comply with the notice.
- 4.28. The burden of proving the failure to comply and that any excuse for the failure was not reasonable lies with the prosecutor to the criminal standard i.e. beyond reasonable doubt. However the burden of proving the defendant took all reasonable steps to comply lies with him on the balance of probabilities.
- 4.29. There are three alternatives to prosecution for non-compliance
- Remedial action by local authority
  - Seizure
  - Fixed penalty notice.

#### Remedial action for non-compliance

- 4.30. Where works are required to comply with the CPN the local authority can carry out the works in default but only on land that is open to air ( this includes gardens), for which a power of entry is available under section 47(5).

- 4.31. To reclaim costs a further notice would need to be issued giving details of the work carried out and specifying an amount that is no more than the cost to the authority of having the work carried out; however there is a right of appeal under Section 47(7) on the grounds that the amount was excessive.
- 4.32. If considering remedial works to or within a building a further notice must be issued specifying works intended to be carried out, estimated costs and inviting the defaulter to consent to the works.
- 4.33. Works can only be carried out if consent is given and upon completion notice must be issued as per paragraph 4.31 above. If consent is not given or withdrawn this can be used as part of the prosecution evidence.
- 4.34. On conviction the court can make a Remedial Order requiring the defendant to carry out specified works or to allow the works to be undertaken by the Local Authority.
- 4.35. This does not authorise entry to the defendants home without consent, however the defendant will be in breach of a court order.

#### Seizure

- 4.36. Section 51 of The Act provides similar powers to those currently use by Environmental Health under The Noise Act 1996 to seize any item used in commission of an offence.
- 4.37. A warrant of entry can be obtained from a Justice of the Peace to seize items, which can be retained for 28 days unless criminal proceedings are commenced within that period then it can be held pending the outcome of the hearing.
- 4.38. Environmental Health already has procedures in place for obtaining warrants and seizure of equipment.

#### Fixed Penalty Notices

- 4.39. Under section 52 of The Act fixed penalty notices of up to £100 can be issued in lieu of prosecution.
- 4.40. Where a fixed penalty notice is issued no prosecution may be taken for a period of 14 days. If after 14 days no payment is received a prosecution should be taken.
- 4.41. Notices may be issued by handing it to the person, leaving it at the person's proper address or sending it by post to the person at that address.
- 4.42. Environmental Health have procedures in place for issuing fixed penalty notices for the night noise offence under The Noise Act 1996 but these will require updating due to changes in the councils payment and financial systems.

### **5. Closure Notices**

- 5.1. Section 76 of The Act gives powers to enable closure of premises associated with nuisance or disorder for up to 48 hours by issuing of a Closure Notice and for up to 3 months by obtaining a Closure Order from the Courts.
- 5.2. To issue a closure notice officers must be satisfied on reasonable grounds:

- That the use of particular premises has resulted or is likely soon to result in nuisance to members of the public or
  - There has been or is likely soon to be disorder near those premises associated with the use of those premises and that the notice is necessary to prevent the nuisance from occurring, recurring or occurring.
- 5.3. Authorised officers of the Council can issue Closure Notices for a period of 24 hours, whilst the Chief Executive Officer or a designated officer for the Chief Executive Officer can issue Closure notices for a period of up to 48 hours.
- 5.4. The Closure Notice prohibits access to the premises by all persons except those specified, for example access cannot be prohibited to anyone who routinely lives on the premises or the owner of the premises. Consideration should also be given to anyone who may need access to secure the premises which may not always be the owner.
- 5.5. Therefore prior to service of the notice all reasonable efforts must be made to inform the above persons that the notice is going to be issued and that all appropriate persons have been consulted.
- 5.6. This can include the victims, members of the public that might be affected, community representatives, other organisations and bodies, the police or others that regularly use the premises and who may be impacted by the closure.
- 5.7. Whenever a Closure Notice is issued an application must be made to the Magistrates Court for a closure order within 48 hours, unless the officer is satisfied there is no longer any risk of nuisance or disorder in which case a Cancellation Notice must be issued.
- 5.8. To avoid pressure on the courts thought should be given to as to exactly when to serve the notice, where possible it is advisable to liaise with the courts listing office before serving the notice especially as the date and time of the hearing should be specified in the notice.
- 5.9. The court should also be advised if the intention is to serve a cancellation notice prior to the end of the 48 hour notification period.
- 5.10. A variation notice can also be issued if the Closure Notice is no longer applicable to a particular part of the premises.
- 5.11. Closure Notices should:
- Identify the premises
  - Explain the effect of the notice
  - State that failure to comply with the notice is an offence
  - State that an application will be made for a closure order
  - Specify when and where the application will be heard.
  - Explain the effect of the closure order; and
  - Give information about the names of and means of contacting, persons and organisations in the area that provide advice about housing and legal matters.

- 5.12. A 24 hour notice can be extended to 48 hours by the Chief Executive Officer should it be considered necessary, by the service of an Extension Notice.
- 5.13. All Notices (Closure, Extension, Variation, Cancellation) must be served if possible by:
- Fixing a copy to at least one prominent place on the premises
  - Fixing a copy to each normal means of access.
  - Fixing a copy to any outbuildings that appear to be used with or as part of the premises.
  - Giving a copy to at least one person who appears to have control of or responsibility for the premises, and
  - Giving a copy to the people who live on the premises and to any person who does not live there but habitually but were informed that the notice was to be issued.
- 5.14. There is no right of appeal against a closure notice but there is a 21 day right of appeal to the Crown Court regarding a Closure Order for both parties i.e. the local authority can appeal against a decision not grant a closure order.
- 5.15. However it should be borne in mind that the courts may order the payment of compensation if it is satisfied
- that the applicant is not associated with the use of the premises, or the behaviour on the premises, on the basis of which the closure notice was issued or the closure order made.
  - if the applicant is the owner or occupier of the premises, that the applicant took reasonable steps to prevent that use or behaviour,
  - that the applicant has incurred financial loss in consequence of the notice or order, and
  - that having regard to all the circumstances it is appropriate to order payment of compensations in respect of all loss.
- 5.16. A Person who without reasonable excuse remains on or enters premises in contravention of a closure notice is liable on summary conviction to imprisonment for a period not exceeding 3 months and / or an unlimited fine.
- 5.17. A person who without reasonable excuse remains on or enters premises in contravention of a closure order is liable on summary conviction to imprisonment for a period not exceeding 51 weeks and / or an unlimited fine.
- 5.18. A person who without reasonable excuse obstructs an authorised officer is liable on summary conviction to imprisonment for a period not exceeding 3 months and / or an unlimited fine.

**6. Absolute ground for possession**

- 6.1. Although not a power likely to be used by Environmental Health, officers should be aware that landlords now have powers to seek possession within a 4 week notice period one of the conditions for which is that a tenant or a member of their household or a person visiting the property has been convicted for breaching noise abatement notice or a criminal behaviour order.
- 6.2. Therefore it is important to communicate all local authority, social and private landlords the outcome of any enforcement action.