



Home Office

# **Anti-social Behaviour, Crime and Policing Act 2014:**

## **Anti-social behaviour powers Statutory guidance for frontline professionals**

Updated December 2017

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# Introduction

The Home Office published statutory guidance in July 2014 to support the effective use of new powers to tackle anti-social behaviour that were introduced through the Anti-social Behaviour, Crime and Policing Act 2014. This guidance replaces that earlier guidance, updating it in the light of experience since the new powers were introduced. The changes will help to ensure that there is a greater focus on the impact of anti-social behaviour on victims and on their needs, ensuring that the relevant legal tests are met before the powers are used, underlining the importance of ensuring that the use of the powers are focused on specific behaviour that is anti-social or causing nuisance, and ensuring that the issues of local consultation, accountability and transparency are addressed. The guidance is intended to assist those frontline professionals – the police, local councils and social landlords - who are able to make use of the powers to respond to instances of anti-social behaviour in their local areas.

This updated guidance emphasises the importance of ensuring that the powers are used appropriately to provide a proportionate response to the specific behaviour that is causing harm or nuisance without impacting adversely on behaviour that is neither unlawful nor anti-social.

The powers introduced by the 2014 Act are deliberately local in nature. Those who work within and for local communities will be best placed to understand what is driving the behaviour in question, the impact that it is having, and to determine the most appropriate response.

The first part of this guidance focuses specifically on putting victims at the heart of the response to anti-social behaviour. We know that, where left unchecked, anti-social behaviour can have an overwhelming impact on its victims and in some cases, on the wider community. This is why the formal Anti-social Behaviour Case Review, commonly known as the Community Trigger, is an important safety net in ensuring that victims' voices are heard, but it is important that victims can easily access information about how to apply for a formal review and in what circumstances they can do so. The Community Remedy also gives victims a say in out-of-court punishments where the perpetrator of the anti-social behaviour is dealt with through a community resolution disposal.

The second part of the guidance focuses on the use of the powers provided by the 2014 Act. These are designed to be flexible to ensure that local agencies have the tools they need to respond to different forms of anti-social behaviour. The guidance sets out the legal tests that must be met before each of the powers can be used.

# Part 1: Putting the victim first

## The impact on victims and communities

The legal tests that govern the use of the anti-social behaviour powers are focused on the impact that the behaviour is having, or is likely to have, on victims and communities. When considering the response to a complaint of anti-social behaviour, agencies are encouraged to consider the effect that the behaviour in question is having on the lives of those subject to it recognising, for example, the debilitating impact that persistent or repeated anti-social behaviour can have on its victims, and the cumulative impact if that behaviour persists over a period of time.

The legislation requires the relevant local agencies to be satisfied that the specific legal tests and safeguards set out in the legislation are met before the anti-social behaviour powers are used. These tests are intended to help to ensure the appropriate and proportionate use of the powers and that they are being used to target specific problems or specific circumstances. They do allow for preventative action to be taken, for agencies to intervene early to prevent problems from escalating, and in some instances for there to be a focus on tackling the underlying causes of the anti-social behaviour.

The response to anti-social behaviour may require collaborative working between different agencies to determine the most appropriate solution. Where a report or complaint is made to one agency, that lead agency should consider the potential role of others in providing a solution if they are not themselves able to take action. This will help to ensure that reports of anti-social behaviour are not inadvertently lost between the different reporting arrangements of different agencies. It may also help to provide a mechanism for considering the potential for engaging the wider community in finding solutions to specific anti-social behaviour issues.

We recommend that, wherever possible, victims or complainants are kept informed while consideration is being given to deciding the most appropriate response, and that they are informed about the intended course of action. Local agencies also need to consider how victims are best supported.

## Giving victims a say

The Anti-social Behaviour, Crime and Policing Act 2014 included two specific measures designed to give victims and communities a say in the way that complaints of anti-social behaviour are dealt with, and to help ensure that victims' voices are heard. These measures are:

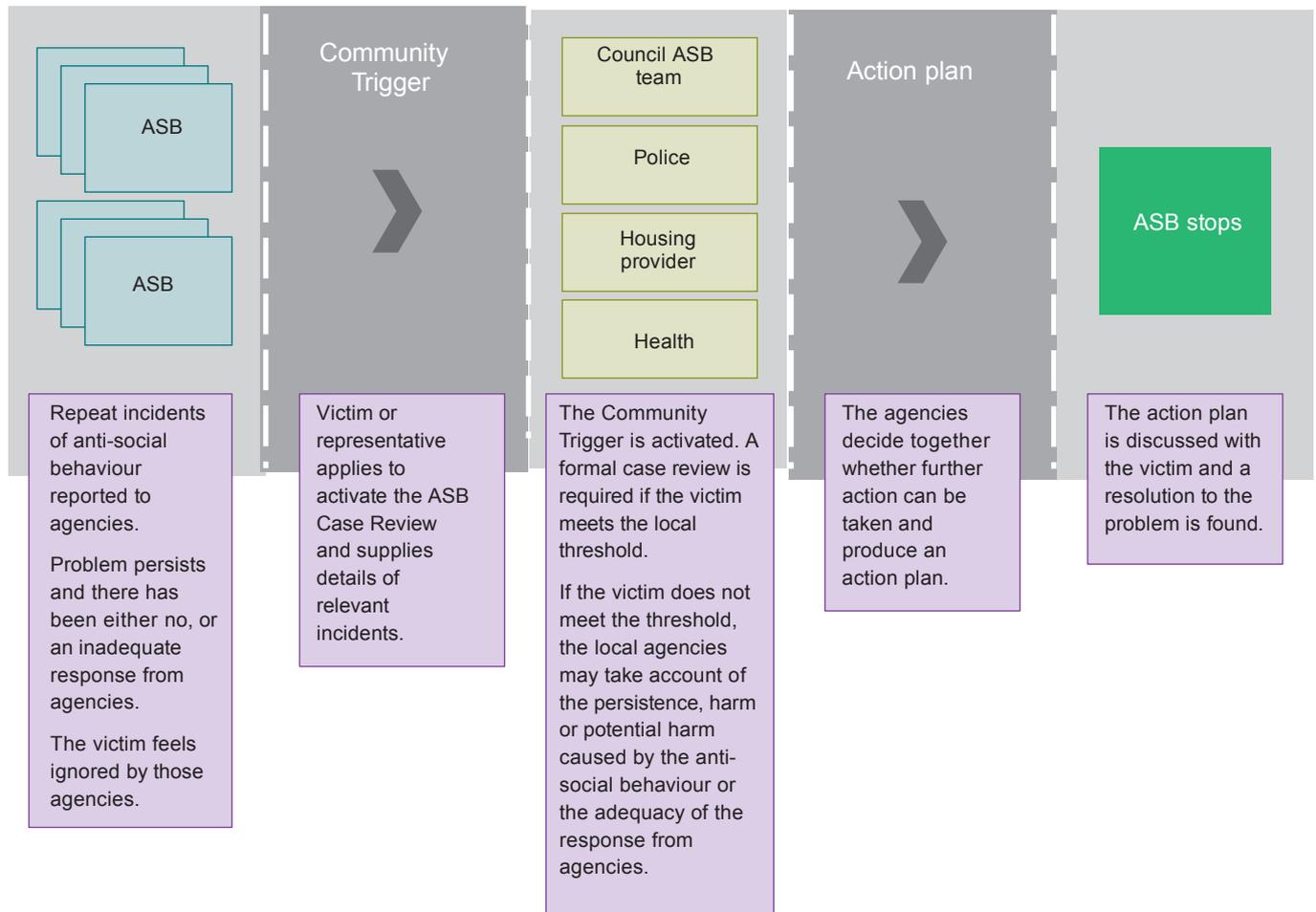
- **the ASB Case Review/Community Trigger:** this gives victims of persistent anti-social behaviour the ability to demand a formal case review where the locally defined threshold is met, in order to determine whether there is further action that can be taken. The relevant bodies in the local area must agree on, and publish their Case Review/Community Trigger procedures; and
- **the Community Remedy:** this gives victims a say in the out-of-court punishment of perpetrators of anti-social behaviour when a community resolution, conditional caution or youth conditional caution is chosen as the most appropriate response.

The above measures are discussed in more detail in this part of this guidance.

## 1.1 The ASB Case Review (also known as the Community Trigger)

|   |   |
|---|---|
| Purpose                                     | To give victims and communities the right to request a review of their case where a local threshold is met, and to bring agencies together to take a joined up, problem-solving approach to find a solution for the victim.   |
| Relevant bodies and responsible authorities | <ul style="list-style-type: none"> <li>• Councils.</li> <li>• Police.</li> <li>• Clinical Commissioning Groups in England and Local Health Boards in Wales.</li> <li>• Registered providers of social housing who are co-opted into this group.</li> </ul>  |
| Threshold                                   | <p>To be defined by the local agencies, but not more than three complaints in the previous six month period.</p> <p>May also take account of:</p> <ul style="list-style-type: none"> <li>• the persistence of the anti-social behaviour;</li> <li>• the harm or potential harm caused by the anti-social behaviour;</li> <li>• the adequacy of response to the anti-social behaviour.</li> </ul> <p>The relevant bodies (listed above) must publish details of the procedure.</p>   |
| Details                                     | <p>When an ASB Case Review is requested, the relevant bodies must decide whether the threshold has been met and communicate this to the victim.</p> <p><b>If the threshold is met:</b></p> <ul style="list-style-type: none"> <li>• a case review will be undertaken by the relevant bodies. They will share information related to the case, review what action has previously been taken and decide whether additional actions are possible. The local ASB Case Review procedure should clearly state the timescales in which the review will be undertaken;</li> <li>• the review will see the relevant bodies adopting a problem-solving approach to ensure that all the drivers and causes of the behaviour are identified and a solution sought, whilst ensuring that the victim receives appropriate support;</li> <li>• the victim is informed of the outcome of the review. Where further actions are necessary an action plan will be discussed with the victim, including timescales.</li> </ul> <p><b>If the threshold is not met:</b></p> <ul style="list-style-type: none"> <li>• although the formal procedures will not be invoked, this does provide an opportunity for the relevant bodies to review the case to determine whether there is more that can be done.</li> </ul> |
| Who can use the ASB Case Review procedure?  | <ul style="list-style-type: none"> <li>• A victim of anti-social behaviour or another person acting on behalf of the victim with his or her consent, such as a carer or family member, Member of Parliament, local councillor or other professional.</li> <li>• The victim may be an individual, a business or a community group.</li> </ul>  |
| The legislation                             | Sections 104 and 105 of the Anti-social Behaviour, Crime and Policing Act 2014.   |
| Protecting the vulnerable                   | The ASB Case Review or Community Trigger provides an important safety net for victims of persistent anti-social behaviour and those who may be most vulnerable.   |

## The ASB Case Review/Community Trigger



### Purpose

The ASB Case Review, often referred to as the 'Community Trigger', is an important statutory safety net for victims of anti-social behaviour who believe they have not had a satisfactory response to their complaints about anti-social behaviour. Where a locally determined threshold is met, victims can require the relevant bodies in the local area to undertake a formal review of the case, and those bodies have a statutory duty to undertake that review. In addition to the victim, the ASB Case Review can be activated by a person on behalf of the victim who is aware of the circumstances and acts with the victim's consent. This might include a family member, friend, carer, councillor, Member of Parliament or other professional.

**Putting victims first:** The 'Community Trigger' is an important safety net for victims of persistent anti-social behaviour. It provides a mechanism to ensure that their case is reviewed in order to secure a satisfactory resolution. The legislation requires the relevant local agencies to determine a local threshold for triggering the Case Review procedures. It is important that these agencies ensure that victims are aware of the procedures, the circumstances in which they can apply for a formal review, and how to do so. Consideration should also be given on how victims can best express the impact that the anti-social behaviour has had on their lives.

## Who are the relevant bodies?

The relevant bodies in any area are those organisations listed below who must have an ASB Case Review/Community Trigger procedure in place and who must undertake a case review when a person asks for one and the local threshold is met. The relevant bodies are:

- the district council, unitary authority or relevant London borough council for the area;
- the police force covering the area;
- the relevant clinical commissioning group in England or local health board in Wales; and
- local providers of social housing who are co-opted into the local arrangements.

### *Providers of social housing as relevant bodies*

The legislation allows for providers of social housing to be co-opted into local arrangements but it does not specify which housing providers should be co-opted. The recommended approach is to co-opt larger housing providers for the purposes of developing and reviewing the local procedures and setting the local threshold, with smaller providers involved where there are specific cases concerning their tenants.

For the purposes of the ASB Case Review or Community Trigger, local social housing providers include:

- in England: a private registered provider of social housing who grants tenancies of dwelling-houses in that area or who manages any house or other property in that area; and
- in Wales: a body registered as a social landlord under section 3 of the Housing Act 1996 who grants tenancies of dwelling-houses in that area or who manages any house or other property in that area.

### *Involving Police and Crime Commissioners*

The local Police and Crime Commissioner must be consulted when the ASB Case Review/Community Trigger procedure is set up and whenever it is reviewed. In addition, the Police and Crime Commissioner can be involved directly in the procedure, for example by:

- auditing case reviews;
- providing a route for victims to query the decision on whether the threshold was met or the way in which the review was carried out; or
- monitoring use of the ASB Case Review/Community Trigger to identify any learning and best practice.

Police and Crime Commissioners also have responsibilities for the commissioning of victims services and may also want to ensure that local agencies consider how the victim is supported as part of the process.

## What must the relevant bodies do?

The relevant bodies listed above must:

- set the local threshold for triggering ASB case reviews;
- establish and publish arrangements for conducting these reviews; and
- undertake a formal Case Review where an application is made and the local threshold is met.

## Setting the local threshold

The relevant bodies should collectively agree an appropriate ASB Case Review/Community Trigger threshold, having regard to the nature of anti-social behaviour experienced by victims in their area and the working practices of the agencies involved.

The threshold must be no higher than three qualifying complaints of anti-social behaviour in a six month period.

Where a person makes an application for a case review and has made at least the set number of qualifying complaints, the threshold for a review is met and the relevant bodies must undertake the review.

## What qualifies as a complaint?

For the purposes of the Case Review/Community Trigger procedures, a qualifying complaint is:

- where the anti-social behaviour was reported within one month of the alleged behaviour taking place; and
- the application to use the ASB Case Review/Community Trigger is made within six months of the report of anti- social behaviour.

It is open to the agencies involved in these reviews to set different levels to those set out above if appropriate for their area, provided that they do not lower the standard as set out here. The requirement for the anti-social behaviour to be recent is to prevent more historical incidents of anti-social behaviour being used to invoke these procedures.

The definition of anti-social behaviour in this context is behaviour causing harassment, alarm or distress to a member or members of the public. When deciding whether the threshold is met, agencies should consider the cumulative effect of the incidents and consider the harm or potential harm caused to the victim, rather than rigidly deciding whether each incident reached the level of harassment, alarm or distress.

Similarly, although housing-related anti-social behaviour has a lower test of nuisance or annoyance for an injunction under Part 1 of the 2014 Act, in such instances because of the victim's inability to separate themselves from the anti-social behaviour, the harm experienced may well result in harassment, alarm or distress for the purposes of the ASB Case Review/Community Trigger.

The ASB Case Review/Community Trigger is specifically designed to deal with anti-social behaviour. However anti- social behaviour can often be motivated by hate and the relevant bodies may wish to include reports of these incidents as part of their procedures.

## Hate Crime

A hate crime is any criminal offence perceived by the victim or any other person to be motivated by hostility on the grounds of race, religion, sexual orientation, disability or transgender identity. Incidents can range from harassment, abusive language, criminal damage/damage to property, to threats and physical violence. Incidents of hate crime may manifest themselves as anti-social behaviour, but on investigation these incidents may be found to be targeted against some intrinsic part of the victim's identity (their race, religion, sexual orientation, disability or transgender identity).

There are a number of laws in place to deal with those who commit hate crimes, including public order offences and racially and religiously aggravated offences. The courts also have powers to enhance a perpetrator's sentence for any offence that is motivated by hatred or hostility towards the victim.

*Action Against Hate: The UK Government's plan for tackling hate crime* was published in July 2016 and brings together the work of a number of departments and agencies to prevent and tackle hate crime. While the Government plays a vital role in setting national direction, the response to hate crime will be led at the local level. An effective multi-agency response to hate crime will involve professionals, the voluntary sector and communities working together to tackle incidents early before they can escalate.

There is extensive guidance on responding to hate crime in the College of Policing Hate Crime Operational Guidance. It, and many other resources, can be viewed on the police hate crime website True Vision ([www.report-it.org.uk](http://www.report-it.org.uk)).

Hate Crime creates fear and can have a devastating impact on individuals and communities. Individual incidents can send reverberations through communities, just as they can reinforce established patterns of prejudice and discrimination. Using Community Impact Statements to engage with communities helps criminal justice partners understand the wider impact of hate crime and can improve decision making and increase public confidence.

### *Setting the threshold: additional considerations*

In considering whether the threshold is met, the relevant bodies should have regard to:

- the persistence of the anti-social behaviour;
- the harm or potential harm caused by the anti-social behaviour; and
- the adequacy of the response from agencies.

The harm, or the potential for harm to be caused to the victim, is an important consideration in determining whether the threshold is met because the more vulnerable will be less resilient to anti-social behaviour. People can be vulnerable for a number of reasons, and vulnerability or resilience can vary over time depending on personal circumstances and the nature of the anti-social behaviour. The relevant bodies should use their risk assessment procedures as part of the decision on whether the threshold is met. Risk assessment matrices cannot provide a definitive assessment of someone's needs, but they will assist agencies in judging an appropriate response. It may be beneficial for the relevant bodies to adopt a common risk assessment matrix, or to have an agreed matrix for the purposes of the ASB Case Review/Community Trigger.

Cases where there are repeated applications by people which, on investigation, relate to non-anti-social behaviour matters may be indicative of an underlying vulnerability or unmet need. Consequently, even where the threshold is not met, local agencies may wish to consider the possibility of hidden needs or risks which may require a response.

Behaviour which falls below the level of harassment, alarm or distress, may not meet the threshold, but when assessed on the grounds of potential harm to the victim, the impact of the behaviour may be such that the threshold is considered to be met.

Where the victim is considered to be particularly vulnerable, the relevant bodies should consider whether additional practical and emotional support can be offered to the victim.

### **Publishing the ASB Case Review/Community Trigger procedure**

The relevant bodies must publish the ASB Case Review/Community Trigger procedure to ensure that victims are aware that they can apply to activate the procedures in appropriate circumstances.

Consideration should be given to where this information is published and how accessible the information is. For example, the title 'Community Trigger' in isolation may not be sufficient of itself to alert victims to the purpose of the procedures. More clearly linking the information to broader information about responding to anti-social behaviour, and making it clear that the procedure is about seeking a case review, is recommended.

The relevant bodies should decide an appropriate method and format for publicising the procedure, taking account of the needs of the local community. The information should be provided on the websites of all the relevant bodies, signposting the public to the lead agency's website, a point of contact and the procedures for activating the process. Consideration should be given to whether it is appropriate to translate the information into different languages.

#### *Publishing a point of contact*

The published information on the ASB Case Review/Community Trigger must include a point of contact for making an application. When publishing the point of contact it is good practice to provide a telephone number, email and postal address and a form which can be completed online.

**Putting victims first:** Using the ASB Case Review/Community Trigger should be made as straightforward as possible for victims of anti-social behaviour.

It is good practice to have a number of methods to contact an agency, recognising that some victims may feel more comfortable contacting one agency than another, or may not have access to the internet or, in the case of issues involving neighbours, may be reluctant to use the telephone for fear of being overheard. The ASB Case Review/Community Trigger can be used by any person and agencies should consider how to make it as accessible as possible to young people, those who are vulnerable, have learning difficulties or do not speak English.

## The ASB Case Review/Community Trigger procedure

The relevant bodies must work together to devise and agree the procedure for the ASB Case Review/Community Trigger. The procedure should ensure that the case review looks at what action has previously been taken in response to the victim's reports of anti-social behaviour. It must also include provision for a person to request a review of the way that their application for a case review has been dealt with, and the way in which the review was carried out.

### A basic ASB Case Review/Community Trigger procedure

Each area should agree a procedure that suits the needs of victims and communities in their area. However, the basic outline of that procedure is likely to include the following steps:

- a victim of anti-social behaviour (or someone acting on their behalf) makes an application to use the ASB Case Review/Community Trigger;
- the relevant bodies decide whether the threshold is met;
- if the threshold is met, the relevant bodies share information about the case, consider whether any new relevant information needs to be obtained, review previous actions taken and propose a response. The victim is informed of the outcome, or agencies will work with the victim to devise and implement an action plan;
- if necessary, escalation and review.

When setting up the procedure the relevant bodies should consider how the ASB Case Review/Community Trigger can be built into existing processes. Many areas already have regular multi-agency meetings to discuss cases of anti-social behaviour. These may be suitable forums to undertake the case review. Alternatively, the relevant bodies may decide that it is more appropriate to have a separate forum to discuss case reviews. Where the perpetrator is under the age of 18, the youth offending team should be invited to attend the review.

Where most of the agency representatives have been involved in a particular case, consideration should be given to involving somebody independent in the review to provide an external or fresh perspective on the case and the action that has been taken.

**Putting victims first:** It is good practice to have somebody involved in the case review to represent the victim, such as from Victim Support or another organisation providing support for victims in the local area. Consideration should also be given to whether it is appropriate for the victim to be invited to attend the case review to help all members of the panel understand the level of harm and impact or whether, in the circumstances, there are good reasons for them not to do so. In such circumstances, it may more be appropriate to invite a representative of the victim to attend, especially where they have activated the case review on behalf of the victim.

The case review should not include a review of any decisions made by the Crown Prosecution Service (CPS). If a victim is not satisfied with a decision made by the CPS they should refer to the CPS complaints process, and the Victims' Right to Review Scheme. The latter makes it easier for victims to seek a review of a CPS decision not to bring charges against a suspect or to terminate proceedings, in relation to decisions made after 5 June 2013.

## *Sharing information*

The effective operation of the ASB Case Review/Community Trigger requires the relevant bodies to share information for the purpose of carrying out the review. This may include details of previous complaints made by the victim, information about the effect the issue has had on others and details of what action has previously been taken. Relevant bodies should therefore have agreements in place for information sharing, risk assessments and a common understanding of the aims of the ASB Case Review/Community Trigger. Victims also need to give consent for information about them to be collected and shared between agencies.

The relevant bodies may request any person to disclose information for the purpose of the case review. If the request is made to a person who exercises public functions and they possess the information, they must disclose it. The only exception to that is where to share the information would be either:

- in contravention of any of the provisions of the Data Protection Act 1998; or
- prohibited by Part 1 of the Regulation of Investigatory Powers Act 2000.

Other than these two exceptions, disclosing information for the ASB Case Review/Community Trigger does not breach any obligation of confidence or any other restriction on the disclosure of information.

## *Sharing information: housing providers*

Housing providers undertake several functions, including some that are public in nature and some that are not. If a request is made in relation to their functions that are considered to be public in nature, the information sharing duty applies. This is the case for housing providers who are co-opted into the group of relevant bodies as well as those who are not.

### **Sharing information**

The Homes and Communities Agency's Regulatory Framework, Neighbourhood and Community Standard, requires registered housing providers to:

- co-operate with relevant partners to help improve social, environmental and economic wellbeing in areas where they own properties; and
- work in partnership with other agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

## **Making recommendations**

The relevant bodies who undertake a case review may make recommendations to other agencies. The legislation places a duty on a person who carries out public functions to have regard to those recommendations. This means that they are not obliged to carry out the recommendations, but that they should acknowledge them and may be challenged if they choose not to carry them out without good reason.

The recommendations are likely to take the form of an action plan to resolve the anti-social behaviour. Whenever possible, the relevant bodies should involve the victim in devising the action plan to help ensure that it meets their needs. The relevant bodies will not be able to recommend the CPS to take action as it operates independently under the superintendence of the Attorney General, and must make decisions in accordance with the Code for Crown Prosecutors.

## Responding to the victim

The Act places a duty on the relevant bodies to respond to the victim at particular points in the process. These include:

- the decision as to whether or not the threshold is met;
- the outcome of the review; and
- any recommendations made as an outcome of the review.

The relevant bodies should agree as part of the procedure whether one agency will communicate with all victims, or whether an appropriate agency will lead in a specific case. People who make use of the ASB Case Review/Community Trigger procedure may well feel that they have been let down by agencies in the past so it is important that they receive timely and consistent communication regarding their case.

When communicating with victims, local agencies should consider victim support issues and whether they could benefit from being signposted or referred to local victims services.

## Publishing data:

The legislation states that relevant bodies must publish information covering:

- the number of applications for ASB Case Reviews received;
- the number of times the threshold for review was not met;
- the number of anti-social behaviour case reviews carried out; and
- the number of anti-social behaviour case reviews that resulted in recommendations being made.

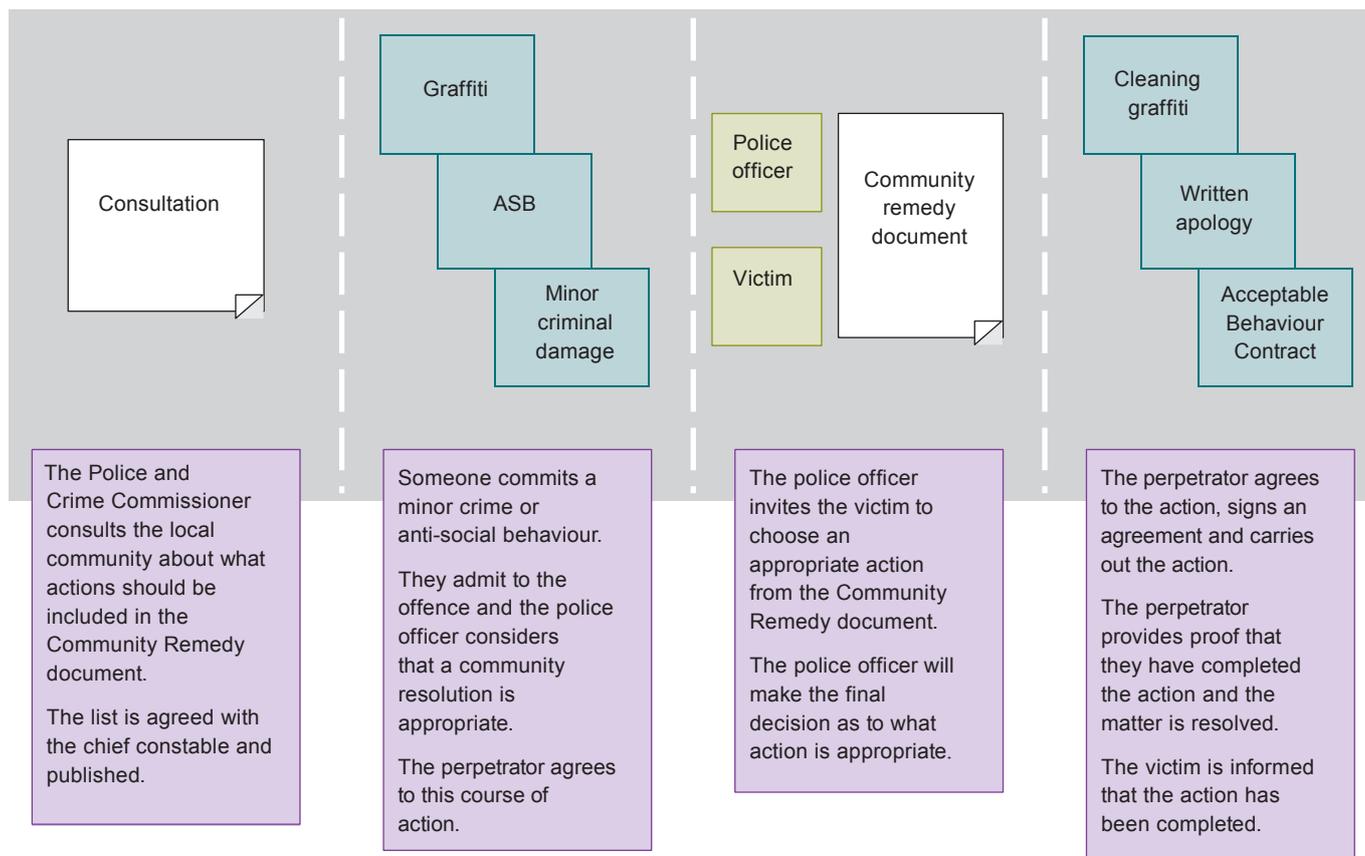
This data can represent the whole area; it does not need to be broken down by relevant body. One relevant body can publish the information on behalf of all the relevant bodies in the area.

The data must be published at least annually, although the relevant bodies may wish to publish data more frequently, or to publish additional details. For example, the relevant bodies may publish information about which area applications came from, or the agencies that they related to, if this information is useful to communities and victims. Published information must not include details which could identify victims.

## 1.2 Community Remedy

|   |   |
|---|---|
| Purpose                                       | To give victims a say in the out-of-court punishment of perpetrators of less serious crime and anti-social behaviour.   |
| The Community Remedy document                 | <p>The Community Remedy document is a list of actions which may be chosen by the victim for the perpetrator to undertake in consequence of their behaviour or offending.</p> <p>The Act places a duty on the Police and Crime Commissioner to consult with members of the public and community representatives on what punitive, reparative or rehabilitative actions they would consider appropriate to be on the Community Remedy document.</p>                             |
| Applicants / who can use the Community Remedy | <ul style="list-style-type: none"> <li>• Police officer;</li> <li>• An investigating officer (which can include Police Community Support Officers for certain offences, if designated the power by their chief constable);</li> <li>• A person authorised by a relevant prosecutor for conditional cautions or youth conditional cautions.</li> </ul>   |
| Community resolutions                         | When dealing with anti-social behaviour or low-level offences through a community resolution the police officer may use the Community Remedy document as a means to engage the victim in having a say in the punishment of the perpetrator.   |
| Test  | <ul style="list-style-type: none"> <li>• The officer must have evidence that the person has engaged in anti-social behaviour or committed an offence;</li> <li>• The person must admit to the behaviour or the offence (and agree to participate);</li> <li>• The officer must think that the evidence is enough for court proceedings including for a civil injunction, or impose a caution, but considers that a community resolution would be more appropriate.</li> </ul> |
| Conditional cautions                          | The Community Remedy document should be considered when it is proposed that a perpetrator be given a conditional caution or youth conditional caution as a means of consulting the victim about the possible conditions to be attached to the caution.  |
| Failure to comply                             | If the perpetrator fails to comply with a conditional caution or youth conditional caution they can face court action for the offence.  |
| The legislation                               | Sections 101 to 103 of the Anti-social Behaviour, Crime and Policing Act 2014.  |

## Community Remedy



### Purpose

All Police and Crime Commissioners, and the Mayor's Office for Policing and Crime in London, must have a Community Remedy document in place to set out how victims of less serious crime and anti-social behaviour can have a say in the punishment of perpetrators who receive an 'out of court' disposal; that is, a community resolution, conditional caution or youth conditional caution. Where a conditional caution or youth conditional caution is given, the Community Remedy provides a means of consulting the victim about possible conditions to be attached to the caution.

### The Community Remedy document

The Community Remedy document is a list of actions that the victim will be invited to choose from when a community resolution is to be used. The list of actions may vary from one police force to another, based on what is available in the area and what the Police and Crime Commissioner and chief constable agree is appropriate. The Community Remedy document must be published.

## Consultation

The Police and Crime Commissioner (and Mayor's Office for Policing and Crime in London) must consult on the actions to be included in the Community Remedy document with:

- members of the public;
- whichever community representatives the Police and Crime Commissioner considers appropriate to consult;
- the relevant local authority; and
- the chief officer of police for the area.

The public consultation may be undertaken in whatever format the Police and Crime Commissioner considers appropriate (for example, online consultation, talking to community groups or local victims groups, via local newspapers and so on) and may be undertaken as part of another consultation such as on the local Police and Crime Plan. The Community Remedy document may be revised at any time, particularly when new options are to be added.

## Actions to be included in the Community Remedy document

The Police and Crime Commissioner and the chief constable will agree the actions that are listed in the Community Remedy document. These actions must be appropriate and proportionate to the types of offences for which community resolutions are used, and seek to have a positive impact on the perpetrator. Each of the actions must have:

- a punitive element, reflecting the effects on the victim and the wider community; or
- a reparative element, to provide appropriate restitution/reparation to the victim; or
- a rehabilitative element, to address the causes of the perpetrator's behaviour; or
- a combination of the above.

### What could be included?

The legislation does not specify what actions should be included in the Community Remedy document. These will vary between areas, reflecting the views of local people and the availability of activities. Examples of actions that might be included are:

- mediation (for example, to resolve a neighbour dispute);
- a written or verbal apology;
- the perpetrator signing an Acceptable Behaviour Contract – where they agree not to behave anti-socially in the future – or face more formal consequences;
- take part in a restorative justice activity such as a neighbourhood justice panel;
- paying an appropriate amount for damage to be repaired or stolen property to be replaced;
- participation in structured activities that are either educational or rehabilitative, funded by the Police and Crime Commissioner as part of their efforts to reduce crime; or
- reparation to the community (for example, by doing local unpaid work for a short period).

## Community Resolutions

Community resolutions are a means of resolving less serious offences or instances of anti-social behaviour. They are used where the perpetrator has been identified and admits to the behaviour or offence in question and the police believe that there is sufficient evidence to obtain a civil injunction or other disposal, but consider that a community resolution would be a more appropriate and proportionate response.

Community resolutions can be used by:

- a police officer;
- an investigating officer (a person employed by a police force or a Police and Crime Commissioner's office or who is under the direction and control of the chief officer and has been designated as an investigating officer); and
- a police community support officer in relation to offences which their chief constable has designated them powers to deal with or more generally on the authority of a police officer of appropriate rank.

### Using the community remedy document with community resolutions

When a community resolution is used, the officer must make a reasonable effort to obtain the views of the victim on whether the perpetrator should carry out any of the actions in the Community Remedy document. If the officer considers that the action chosen by the victim is appropriate, the perpetrator should be asked to carry out that action. The officer will have ultimate responsibility for ensuring that the action offered is appropriate and proportionate to the nature of the anti-social behaviour or the offence committed. Where there are multiple victims, the officer should make reasonable efforts to take the views of all victims into account.

Community resolutions are entirely voluntary. The officer should ensure that the victim understands the purpose of community resolutions and that he or she knows that they can choose not to be involved. This will help to ensure the victim has realistic expectations of what can be achieved. For example, the resolution may not be legally enforceable if the perpetrator fails to complete the agreed action.

**Putting victims first:** The Community Remedy gives victims more say in the out of court punishment of perpetrators. However, the victim's involvement is voluntary and the victim must not be made to feel that they should take part in a process that they are not comfortable with, that they think may put them at risk, or that they do not believe will be of benefit to them.

When using the Community Remedy the officer should consider the most appropriate way to involve the victim. If the victim is under 18 or vulnerable, they may require a family member or carer to assist their understanding of the purpose of community resolutions and choose an action from the Community Remedy document.

If the victim is not contactable, or it cannot be ascertained who the victim is, for example, if the offence is graffiti in a public place, the officer may choose an appropriate action for the perpetrator to undertake.

## Conditional caution and youth conditional caution

When a conditional caution or a youth conditional caution is used, the officer or authorised person must make reasonable efforts to obtain the views of the victim as to whether the perpetrator should carry out any of the actions listed in the Community Remedy document. If the officer issuing the conditional caution considers that the action chosen by the victim is appropriate, the action can form part of the conditions of the caution. The police officer or investigating officer (or prosecutor in some cases) will have ultimate responsibility for ensuring that the sanction offered to the perpetrator is appropriate and proportionate to the offence. If there are multiple victims, the officer must make reasonable efforts to take the views of all the victims into account.

Conditional cautions are available for all offences except domestic violence and hate crimes, which are excluded from the conditional caution scheme. For full details of the considerations to apply when deciding whether to use a conditional caution, see the Ministry of Justice Code of practice for adult conditional cautions:

<https://www.gov.uk/government/publications/code-of-practice-for-adult-conditional-cautions>

A youth conditional caution is available for any offence, except for domestic violence or hate crime. Full details can be found in the Ministry of Justice Code of practice for youth conditional cautions:

<https://www.gov.uk/government/publications/code-of-practice-for-youth-conditional-cautions>

## Part 2: More effective powers

The powers for dealing with anti-social behaviour provided by the Anti-social Behaviour, Crime and Policing Act 2014 are deliberately flexible to allow professionals to use them to protect the public from different forms of anti-social behaviour.

### Working together and sharing information

The powers allow the police, councils, social landlords and others to deal quickly with issues as they arise, with agencies working together where appropriate to ensure the best results for victims. To assist joined-up working, an effective information-sharing protocol is essential. There is already a duty on some bodies (such as the police and councils) to work together and in respect of anti-social behaviour specifically, there is a specific duty on specified bodies to work together when the ASB Case Review/Community Trigger is activated, as set out earlier in this guidance.

### Vulnerability

The powers also strengthen the protection to victims and communities and provide fast and effective responses to deal with anti-social behaviour. Particular consideration should be given to the needs and circumstances of the most vulnerable when applying the powers to ensure that they are not disproportionately and unreasonably impacted upon, and local agencies must be satisfied that the behaviour meets the legal tests. Any use of these powers must be compliant with the Human Rights Act 1998, the Equality Act 2010 (in particular the public sector equality duty pursuant to section 149) along with all other relevant legislation.

### Assessing the risk to victims

It is good practice for agencies to assess the risk of harm to the victim, and their potential vulnerability, when they receive a complaint about anti-social behaviour. This should be the starting point of a case-management approach to dealing with anti-social complaints. The welfare, safety and well-being of victims must be the main consideration at every stage of the process. It is therefore important to identify the effect that the reported anti-social behaviour is having on the victim, particularly if repeated incidents are having a cumulative effect on their well-being. A continuous and organised risk assessment will help to identify cases that are causing, or could result in, serious harm to the victim, either as a one-off incident or as part of a targeted and persistent campaign of anti-social behaviour against the victim.

### Early and informal interventions

Early intervention, especially through informal approaches, may often be all that is necessary to stop incidents of anti-social behaviour. Such interventions can establish clear standards of behaviour and reinforce the message that anti-social behaviour is not tolerated. In many cases, awareness of the impact of the behaviour on victims, and the threat of more formal enforcement, may be sufficient to encourage an individual to change their behaviour. Frontline professionals will be best placed to decide when and how to use these approaches, but it is recommended that the use of informal methods be considered first in most cases, and particularly when dealing with young people as a means of preventing poor behaviour from escalating.

It is, however, the case that informal intervention may not be the appropriate first step in the circumstances of some cases, such as where the victim is at risk of harm, and it is right that frontline professionals make informed decisions about the approach to be taken.

Possible informal interventions include:

- **A verbal or written warning**

In deciding whether or not to use a verbal or written warning, the police, council or housing officer should still be satisfied that there is evidence that anti-social behaviour has occurred, or is likely to occur. The warning should be specific about the behaviour in question and why it is not acceptable, the impact that this is having on the victim or community and the consequences of non-compliance.

Where appropriate, local agencies should alert each other when a warning has been given so that it can be effectively monitored and a record should be kept so that it can be used as evidence in court proceedings later, if matters are taken to that stage.

- **A community resolution**

Community resolutions are a means of resolving less serious offences or instances of anti-social behaviour through informal agreement between the parties involved as opposed to progression through the criminal justice process. A community resolution may be used with both youth and adult perpetrators and allows the police to deal more proportionately with less serious crime and anti-social behaviour, taking account of the needs of the victim, perpetrator and wider community.

Community resolutions are primarily aimed at first time perpetrators where genuine remorse has been expressed, and where an out-of-court disposal is more appropriate than taking more formal action. The Community Remedy document discussed in Part 1 of this guidance must be used when dealing with anti-social behaviour or less serious offences out of court through community resolutions.

- **Mediation**

In appropriate circumstances, mediation can be an effective way of resolving an issue by bringing all parties together. This can be effective in resolving neighbour disputes, family conflicts, lifestyle differences such as noise nuisance complaints and similar situations. However, mediation is unlikely to work if forced on those involved. All parties should be willing to come to the table and discuss their issues.

It is not for the mediator to establish a solution to the issue as, in most cases, they will have already tried this with each party unsuccessfully. For mediation to deliver long-term solutions, those in dispute should agree a solution. The mediator should facilitate the conversation and draw up any agreement if required for all parties to sign-up to if agreement is reached.

- **Acceptable Behaviour Contracts/Agreements**

An acceptable behaviour contract or agreement is a written agreement between a perpetrator of anti-social behaviour and the agency or agencies acting locally to prevent that behaviour. It can be an effective way of dealing with anti-social individuals, and particularly young people, to nip the problem behaviour in the bud before it escalates. They provide an opportunity to include positive requirements as well as prohibitions to help support the person tackle any underlying issues which are driving their behaviour.

The terms of an acceptable behaviour contract or agreement should be discussed with the perpetrator before they are drafted and signed to help encourage compliance. However, there is no formal sanction associated with refusing to sign, although in such circumstances, this may suggest that a Civil Injunction or a Criminal Behaviour Order might be the more appropriate approach.

Similarly, there are no formal sanctions associated with breaching an acceptable behaviour contract or agreement, and where this occurs, consideration can be given to taking further steps, such as seeking a Civil Injunction, if the circumstances warrant this. Where this is the case, the work undertaken as part of drafting the acceptable behaviour contract or agreement can form part of the evidence pack for the court.

- **Parenting contracts**

Where informal interventions are used with a young person under 18, his or her parents or guardians should be contacted in advance of the decision to take action. In many cases, they may be able to play an important part in ensuring the individual changes their behaviour. While there are formal routes such as parenting orders, at this stage it may be appropriate to include a role for the parent in any acceptable behaviour contract. However, where the behaviour of the parent or guardian is part of the issue (either because they are a bad influence or are failing to provide suitable supervision) agencies could consider a parenting contract. These are similar to an acceptable behaviour contract but are signed by the parent or guardian. They could also be considered where the child in question is under 10 and where other interventions are not appropriate for the perpetrator themselves.

- **Support and counselling**

The anti-social behaviour powers allow professionals to respond to the underlying causes of anti-social behaviour, for example through positive requirements attached to a Civil Injunction or Criminal Behaviour Order. However, providing positive support does not have to wait for formal court action, and can be given as part of any informal intervention, for example by providing support around overcoming substance misuse or alcohol dependency that may be linked to the person's anti-social behaviour.

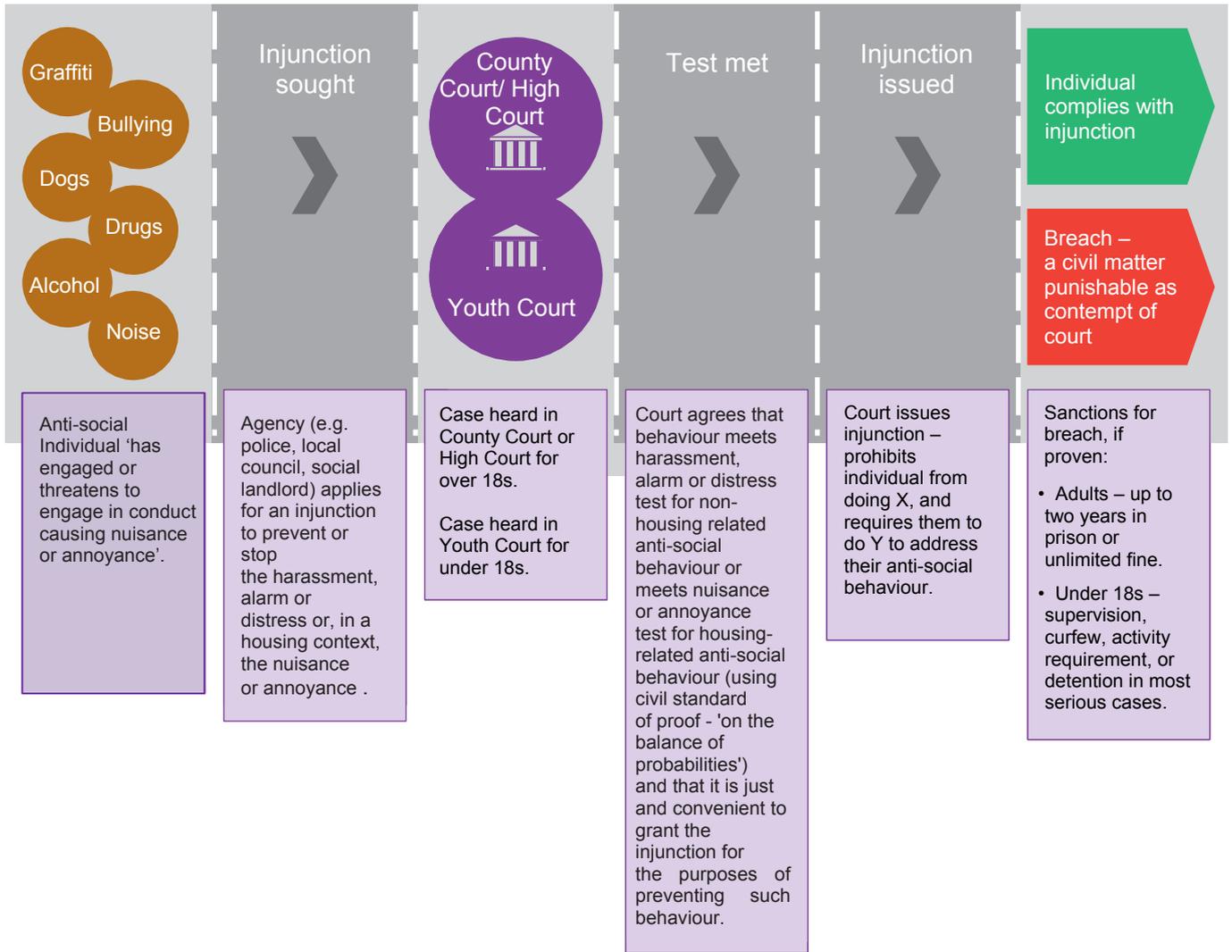
## Conclusion

In many cases, informal and early intervention can be successful in changing behaviour and protecting communities. Such interventions may be included in local plans to deal with anti-social behaviour but should not replace formal interventions where these are the most effective means of dealing with anti-social behaviour.

## 2.1 Civil Injunction

|                   |  |
|-------------------|--|
| Purpose           | To stop or prevent individuals engaging in anti-social behaviour quickly, nipping problems in the bud before they escalate.  |
| Applicants        | <ul style="list-style-type: none"> <li>• Local councils;</li> <li>• Social landlords;</li> <li>• Police (including British Transport Police);</li> <li>• Transport for London;</li> <li>• Environment Agency and Natural Resources Wales; and</li> <li>• NHS Protect</li> </ul>  |
| Test              | <ul style="list-style-type: none"> <li>• On the balance of probabilities;</li> <li>• Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or</li> <li>• Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and</li> <li>• Just and convenient to grant the injunction to prevent anti-social behaviour.</li> </ul>                          |
| Details           | <ul style="list-style-type: none"> <li>• Issued by the county court and High Court for over 18s and the youth court for under 18s.</li> <li>• Injunction will include prohibitions and can also include positive requirements to get the perpetrator to address the underlying causes of their anti-social behaviour.</li> <li>• Agencies must consult youth offending teams in applications against under 18s.</li> </ul>         |
| Penalty on breach | <ul style="list-style-type: none"> <li>• Breach of the injunction is not a criminal offence, but breach must be proved to the criminal standard, that is, beyond reasonable doubt.</li> <li>• Over 18s: civil contempt of court with unlimited fine or up to two years in prison.</li> <li>• Under 18s: supervision order or, as a very last resort, a civil detention order of up to three months for 14-17 year olds.</li> </ul> |
| Appeals           | <ul style="list-style-type: none"> <li>• Over 18s to the High Court; and</li> <li>• Under 18s to the Crown Court.</li> </ul>   |
| The legislation   | Sections 1 to 21 of the Anti-social Behaviour, Crime and Policing Act 2014.  |

# Civil Injunction



## Purpose

The injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 is a civil power to deal with anti-social individuals. The injunction can offer fast and effective protection for victims and communities and set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating.

Although the injunction is a civil power, it is a formal sanction and in appropriate cases professionals will want to consider whether an informal approach might be preferable before resorting to court action, especially in the case of under 18s. However, where informal approaches have not worked or professionals decide that a formal response is needed, they are free to apply to the court for a civil injunction.

## Who can apply for an injunction?

A number of agencies can apply for the injunction, which ensures that the body best placed to lead on a specific case can do so.

The agencies who can apply for an injunction are:

- a local council;
- a housing provider;
- the chief officer of police for the local area;
- the chief constable of the British Transport Police;
- Transport for London;
- the Environment Agency and Natural Resources Wales;
- NHS Protect.

### The legal tests for granting an injunction

These are:

- **non-housing related**

For anti-social behaviour in a non-housing related context the test is that the conduct concerned has caused, or is likely to cause, harassment, alarm or distress to any person. This will apply, for example, where the anti-social behaviour has occurred in a public place, such as a town or city centre, shopping mall, or local park, and where the behaviour does not affect the housing management functions of a social landlord or people in their homes.

- **housing-related**

For anti-social behaviour in a housing context the nuisance or annoyance test will apply, that is, where the conduct is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises or the conduct is capable of causing housing-related nuisance or annoyance to any person. Only social landlords, local councils or the police are able to apply for an injunction under these provisions. In the case of social landlords only, "housing-related" means directly or indirectly relating to their housing management function.

The injunction can be applied for by the police, local councils and social landlords against perpetrators in social housing, the private-rented sector and owner-occupiers. This means that it can be used against perpetrators who are not necessarily tenants of the social landlord applying for the order.

The injunction can also be used in situations where the perpetrator has allowed another person to engage in anti-social behaviour, as opposed to actively engaging in such behaviour themselves. For example, in a case where another person, such as a visitor or lodger, is or has been behaving anti-socially, the injunction could be used against the problem visitor, lodger or owner if applicable. An agency seeking to apply for the injunction must produce evidence to the civil standard of proof, that is, 'on the balance of probabilities', and satisfy the court that it is both 'just and convenient' to grant the order.

**Putting victims first:** In deciding whether the individual's conduct has caused or is likely to cause harassment, alarm or distress or is capable of causing nuisance or annoyance, agencies should contact all potential victims and witnesses to understand the wider harm to individuals and the community. Not only will this ensure that victims and communities feel that their problem is being taken seriously, it will also aid the evidence-gathering process for the application to the court.

## Details

**Who can the injunction be issued against?** A court may grant the injunction against anyone who is 10 years of age or over. Applications against individuals who are 18 years of age or over must be made in the county court or High Court, and applications against individuals who are under 18 must be made in the youth court.

**Intergenerational or 'mixed aged' cases:** Where a hearing involves more than one individual and involves both over 18s and under 18s, the applicant can apply to the youth court to have the cases heard together as joint hearings. The youth court must find that it is in the interests of justice to hear the 'mixed aged' case and, if it does so, the case can only be heard in that court – the joint hearing cannot be heard in the county court. However, subsequent hearings (breach etc.) involving individuals over 18 will take place in the county court.

**Dealing with young people:** Applicants must consult the local youth offending team if the application is against someone under the age of 18 and inform any other body or individual the applicant thinks appropriate, for example, a youth charity that is already working with the young person. Although the consultation requirement does not mean that the youth offending team can veto the application, it is important that applicants fully consider and take into account representations from the youth offending team as part of developing good partnership working in cases involving young people.

The youth offending team will be important in getting the young person to adhere to the conditions in the injunction and that they are understood. The conditions will be overseen by a responsible officer in the youth offending team or children and family services. The youth offending team will also work with applicants as part of a multi-agency approach to ensure that positive requirements in the injunction are tailored to the needs of the young person.

**When can injunctions be used?** The injunction can be used to deal with a wide range of behaviours, many of which can cause serious harm to victims and communities in both housing-related and non-housing related situations. This includes vandalism, public drunkenness, aggressive begging, irresponsible dog ownership, noisy or abusive behaviour towards neighbours, or bullying. Injunctions should not be used to stop reasonable, trivial or benign behaviour that has not caused, or is not likely to cause, anti-social behaviour to victims or communities, and potential applicants are encouraged to make reasonable and proportionate judgements about the appropriateness of the proposed response before making an application for an injunction.

The Civil Injunction can also be used to tackle gang related activity, either directly on gang members or on those being exploited by gangs in order to disrupt their operations. This can be particularly useful in cases of 'county lines' where urban gangs exploit children and vulnerable people to move drugs and money to suburban areas and market and coastal towns. In such cases, the conditions of the injunction can include prohibitions on entering certain areas or affiliating with certain individuals. They could also include positive requirements such as engaging in drug treatment if the reason they became involved with, and remain indebted to, the gang is because of a drug dependency.

Applicants should also consider consulting the relevant local authority as they may hold information which is of relevance and/or which may need to be considered as part of the application. For example, a young person may be a child in need or on a child protection plan and additional safeguarding measures may be required. The local authority may also hold information which supports the application.

**What to include:** The injunction will include relevant prohibitions to get individuals to stop

behaving anti-socially. It can also include positive requirements to get the individual to deal with the underlying cause of their behaviour. Agencies will have the discretion to tailor the positive requirements in each case to address the respondent's individual circumstances, behaviour and needs. There may be opportunities to work with voluntary sector organisations.

Positive requirements might, for example, include the respondent:

- attending alcohol awareness classes for alcohol-related problems;
- attending dog training classes provided by animal welfare charities where the issue is to do with irresponsible dog ownership; or
- attending mediation sessions with neighbours or victims.

The prohibitions or requirements in the injunction must be reasonable and must not, so far as practicable:

- interfere with the times, if any, at which the respondent normally works or attends school or any other educational establishment; or
- conflict with the requirements of any other court order or injunction to which the respondent may be subject.

In addition, applicants should also consider the impact on any caring responsibilities the perpetrator may have and, if they have a disability, whether he or she is capable of complying with the proposed prohibitions or requirements.

A draft of the proposed terms of the injunction should include all proposed prohibitions and requirements, their duration and any powers of arrest attached. Applicants will need to be prepared for the court to examine each prohibition and requirement, and will need to be able to prove how each will help stop or prevent the respondent from engaging in or threatening to engage in anti-social behaviour in the future. It is also important that any requirement is clear about who is responsible for supervising compliance and the court must receive evidence about its suitability and enforceability. Where two or more requirements are included the court must consider their compatibility with each other.

**Putting victims first:** Keeping victims and communities updated on enforcement action at key points can help them to deal with the impact the behaviour is having. Victims may feel that their complaint has been ignored if they do not see changes to the behaviour. Letting victims know what is happening can make a big difference.

**Duration of injunctions:** Prohibitions or requirements in the injunction can be for a fixed or indefinite period for adult perpetrators. In the case of under 18s the prohibitions or requirements must have a specified time limit, with a maximum term of 12 months.

**Exclusion from the home:** The court may exclude a perpetrator over the age of 18 from any premises or an area specified within the terms of the injunction. This can include their home, where the court thinks that the anti-social behaviour includes the use, or threatened use, of violence against other persons, or there is a significant risk of harm. The word harm is defined in section 20 of the legislation as including "serious ill-treatment or abuse, whether physical or not" – which means that it could include emotional or psychological harm, such as harassment or racial abuse.

Social landlords will only be able to apply to the court to exclude their own tenants and visitors to properties managed by them, whilst councils and the police will be the lead agencies in

applying to exclude private tenants or owner-occupiers from their homes. In cases where the police or local council is the lead agency in an application to exclude a social tenant, they should consult the landlord. If the exclusion is applied to someone in privately rented accommodation or in residential leasehold housing, the police or council should, where circumstances permit, inform and consult the landlord (generally referred to in the leasehold as the freeholder) beforehand.

We do not expect the power of exclusion to be used often and the court will pay special attention to issues of proportionality. As such, applications should only be made for exclusion in extreme cases that meet the higher threshold set out above.

**Publicising an injunction issued to a young person:** Making the public aware of the perpetrator and the terms of the order can be an important part of the process in dealing with anti-social behaviour and providing reassurance to victims, as well as providing the information people need to identify and report breaches. The decision to publicise the injunction will be taken by the police or council unless the court has made a section 39 order (Children and Young Persons Act 1933) prohibiting publication. When deciding whether to publicise the injunction, public authorities (including the courts) must consider that it is necessary and proportionate to interfere with the young person's right to privacy, and the likely impact on a young person's behaviour. This will need to be balanced against the need to provide re-assurance to the victims and the wider community as well as providing information so that they can report any breaches. Each case should be decided carefully on its own facts.

**'Without notice' applications:** Injunctions can be applied for 'without notice' being given to the perpetrator in exceptional cases to stop serious harm to victims. They should not be made routinely or in place of inadequate preparation for normal 'with notice' applications. The notification and consultation requirements that apply to 'with notice' applications do not apply to 'without notice' applications.

**Interim injunctions:** The court will grant an interim injunction if a 'without notice' application is successful. The court may also grant an interim injunction where a standard application is adjourned. The interim injunction can only include prohibitions, not positive requirements. When applying for an interim injunction, the applicant should ensure that the application presents the victim's case and also why the interim injunction is necessary.

**Variation and discharge of injunctions:** The court has the power to vary or discharge the injunction upon application by either the perpetrator or the applicant. If the applicant wishes to discharge or vary the injunction, they should notify the people and organisations they consulted as part of the initial application process. Applicants may consider applying to vary the injunction in response to changes in the respondent's behaviour. The powers of the court to vary the injunction include:

- to remove a prohibition or requirement in the injunction;
- to include a prohibition or requirement in the injunction;
- to reduce the period for which a prohibition or requirement has effect;
- to extend the period for which a prohibition or requirement has effect; or
- to attach a power of arrest, or extend the period for which a power of arrest has effect.

If the court dismisses an application to vary the injunction, the relevant party is not allowed to make a further application without the consent of the court or the agreement of the other party.

**Power of arrest:** The court can attach a power of arrest to any prohibition or requirement in the injunction, except a positive requirement, that is, a requirement that the respondent participates in a particular activity. The court can only attach a power of arrest if:

- the anti-social behaviour in which the respondent has engaged, or threatens to engage, consists of or includes the use, or threatened use, of violence against other persons; or
- there is a significant risk of harm to other persons from the respondent.

If the applicant believes a power of arrest is appropriate, they should present this by way of written evidence. Such evidence may indicate that the respondent poses a high level of risk to the victim or the community should any of the conditions in the injunction be breached, for example, where there is a history of violent behaviour.

Where a power of arrest is attached to a condition of the injunction, a police officer can arrest the respondent without warrant if he or she has reasonable cause to believe that a breach has occurred. The police must present the respondent to court within 24 hours of their arrest (except on Sunday, Christmas Day and Good Friday).

If the applicant thinks that the respondent has breached a term of the injunction to which a power of arrest has not been attached, they may apply to the court for an arrest warrant. The application must be made to a judge in the county court in the case of an adult and a justice of the peace in the case of respondents below the age of 18. The court may then issue a warrant for the respondent's arrest and to be brought before the court but only if it has reasonable grounds for believing the respondent has breached a provision in the injunction. The police must inform the applicant when the respondent is arrested.

**Hearsay evidence:** Hearsay and professional witness evidence allow for the identities of those who are unable to give evidence due to fear or intimidation, to be protected. This is especially important as cases can involve anti-social behaviour in residential areas where local people and those targeted by the behaviour may feel unable to come forward for fear of reprisals. Hearsay evidence could be provided by a police officer, healthcare official, or any other professional who has interviewed the witness directly.

**Penalty on breach:** Breach of the injunction is not a criminal offence. However, due to the potential severity of the penalties which the court can impose on respondents, the criminal standard of proof – 'beyond reasonable doubt' – is applied in breach proceedings.

For adults, breach is dealt with by a civil contempt of court, which is punishable by up to two years in prison and/or an unlimited fine. The imprisonment is for contempt of court, not for the conduct. For under 18s, breach proceedings are dealt with in the youth court and could result in a supervision order with a supervision, curfew or activity requirement. In the most serious cases, (that is, 'where the court determines that because of the severity or extent of the breach no other power available to it is appropriate') the court may impose a detention order on a young person for breaching the terms of the injunction, including breach of a positive requirement. For under 18s, only those between 14 and 17 years of age can be detained for breaching the injunction and they cannot be detained for longer than three months.

**Remands:** The court has the power to remand a perpetrator in custody or on bail after they have been arrested for suspected breach of the injunction (with or without warrant). An under 18 can only be remanded in custody on medical grounds, that is, after obtaining evidence from a registered medical practitioner the court is satisfied that the young person is suffering from a mental disorder and it would be impracticable to get a medical report for the young person if they were granted bail. The court has discretion as to whether to remand a person on bail or in custody.

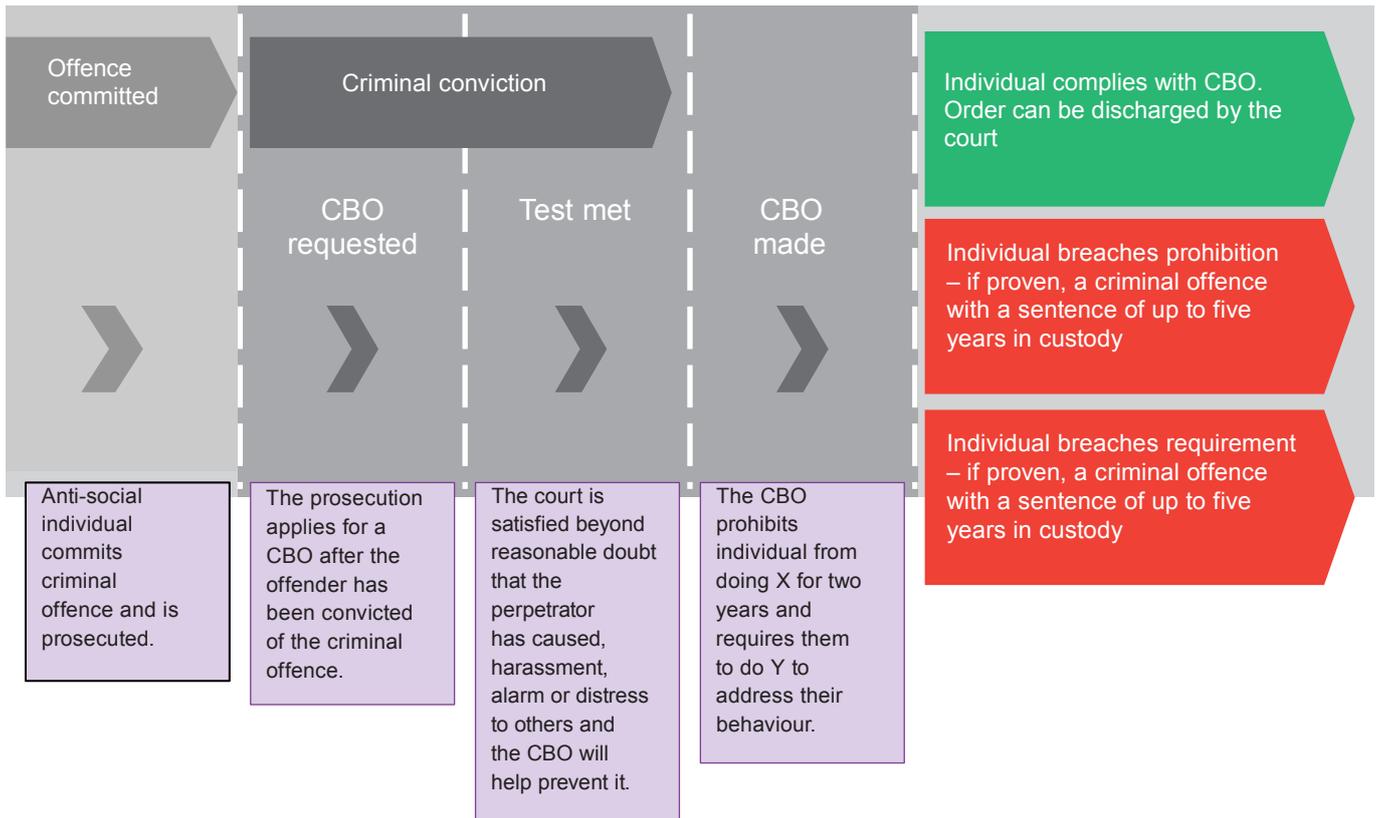
**Appeals:** Appeals may be lodged by both the applicant and perpetrator following the grant, refusal, variation or discharge of the injunction. A decision by the county court (in the case of proceedings in respect of an adult) may be appealed to the High Court. Appeals against decisions of the youth court in under 18 cases are heard in the Crown Court.



## 2.2 Criminal Behaviour Order

|                   |  |
|-------------------|--|
| Purpose           | Issued by any criminal court against a person who has been convicted of an offence to tackle the most persistently anti-social individuals who are also engaged in criminal activity.  |
| Applicants        | The prosecution, in most cases the Crown Prosecution Service, either at its own initiative or following a request from the police or council.  |
| Test              | <ul style="list-style-type: none"> <li>• That the court is satisfied beyond reasonable doubt that the offender has engaged in behaviour that has caused or is likely to cause harassment, alarm or distress to any person; and</li> <li>• The court considers that making the order will help prevent the offender from engaging in such behaviour.</li> </ul>   |
| Details           | <ul style="list-style-type: none"> <li>• Issued by any criminal court on conviction for any criminal offence.</li> <li>• The anti-social behaviour does not need to be part of the criminal offence.</li> <li>• Order will include prohibitions to stop the anti-social behaviour but can also include positive requirements to get the offender to address the underlying causes of their behaviour.</li> <li>• Agencies must find out the view of the youth offending team for applications in respect of anybody under 18.</li> </ul> |
| Penalty on breach | <ul style="list-style-type: none"> <li>• Breach of the order is a criminal offence and must be proved to a criminal standard of proof, that is, beyond reasonable doubt.</li> <li>• For over 18s on summary conviction: up to six months imprisonment or a fine or both.</li> <li>• For over 18s on conviction on indictment: up to five years imprisonment or a fine or both.</li> <li>• For under 18s: the sentencing powers in the youth court apply.</li> </ul>  |
| Appeal            | <ul style="list-style-type: none"> <li>• Appeals against orders made in the magistrates' court (which includes the youth court) lie to the Crown Court.</li> <li>• Appeals against orders made in the Crown Court lie to the Court of Appeal.</li> </ul>   |
| The legislation   | Sections 22 to 33 of the Anti-social Behaviour, Crime and Policing Act 2014.   |

# Criminal Behaviour Order



## Purpose

The Criminal Behaviour Order (CBO) is available on conviction for any criminal offence in any criminal court. The court may make a CBO so long as the court imposes a sentence in respect of the offence or discharges the offender conditionally. The order is intended for tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court.

**Applicants:** The prosecution may apply for a CBO after the offender has been convicted of a criminal offence. The prosecution can make such an application at its own initiative or following a request from a council or the police. The CBO hearing will occur after, or at the same time as, sentencing for the criminal conviction.

Good relationships between local agencies and the CPS will be important to ensure that the CBO application can be properly reviewed and notice of it served as soon as practicable, without waiting for the verdict in the criminal case. Agencies should consider setting up local information exchanges to make sure that the CBO is considered in appropriate cases where anti-social behaviour is brought before a criminal court.

**The test:** For a CBO to be made the court must be satisfied beyond reasonable doubt that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person and that making the order will help in preventing the offender from engaging in such behaviour.

## Details

**When can a Criminal Behaviour Order be used?** The CBO can be used to deal with a wide range of anti-social behaviours following an individual's conviction for a criminal offence; for example, threatening others in the community, persistently being drunk and aggressive in public, or to deal with anti-social behaviour associated with a more serious conviction, such as for burglary or street robbery. The CBO can also be used to address the anti-social behaviour of gang members, for example to prevent them from affiliating with certain individuals or to require them to attend a job readiness course to help them get employment.

However, an application for a CBO does not require a link between the criminal behaviour which led to the conviction and the anti-social behaviour it addresses for it to be issued by the court. Agencies must make proportionate and reasonable judgements before applying for a CBO, and conditions of an order should not be designed to stop reasonable, trivial or benign behaviour that has not caused, or is unlikely to cause, harassment, alarm or distress to victims or communities.

An application for a CBO does not require a link between the criminal behaviour which led to the conviction and the anti-social behaviour for it to be issued by the court.

**Consultation:** The only formal consultation requirement applies where an offender is under 18 years of age. In these cases, the prosecution must find out the views of the local youth offending team before applying for the CBO. The views of the youth offending team must be included in the file of evidence forwarded to the prosecution. In practice, the consultation with the youth offending team must be carried out by the organisation preparing the application for the CBO; that is, the council or the police.

The legislation has deliberately kept formal consultation requirements to a minimum to enable agencies to act quickly where needed to protect victims and communities. However, in most cases it is likely that the police or local council will wish to consult with other agencies. This could include local organisations that have come into contact with the individual, such as schools and colleges of further education, providers of probation services, social services, mental health services, housing providers or others. Their views should be considered before the decision is made to ask the CPS to consider applying for a CBO. This will ensure that an order is the proper course of action in each case and that the terms of the order are appropriate.

Evidence not heard in the criminal case can still be admissible at the CBO hearing, for example, evidence of other anti-social behaviour by the offender and information about why an order is appropriate in the terms asked for. Witnesses who might be reluctant to give evidence in person may have their evidence accepted as a written statement, or given by someone such as a police officer as hearsay evidence, but this will depend on the circumstances of the case.

Special measures are available in CBO proceedings for witnesses under 18 and vulnerable and intimidated adult witnesses (sections 16 and 17, Youth Justice and Criminal Evidence Act 1999). The court has to satisfy itself that the special measure, or combination of special measures, is likely to maximise the quality of the witness's evidence before granting an application for special measures.

**Interim orders:** In cases where an offender is convicted of an offence but the court is adjourned for sentencing, or the CBO hearing is adjourned after sentence, an interim order can be granted if the court thinks that it is just to do so. The prosecution can apply for the interim order.

**Duration of a Criminal Behaviour Order:** The terms of the CBO must include the duration of the order. For adults this is a minimum of two years, up to an indefinite period. For under 18s the order must be between one and three years.

**Prohibitions and requirements:** The CBO must clearly describe the details of what the offender is not allowed to do (prohibitions) as well as what they must do (requirements). Orders can include prohibitions or requirements or both. It is up to the court to decide which are needed to help prevent further anti-social behaviour and which measures are most appropriate and available to tackle the underlying cause of the behaviour. So far as practicable, these must not interfere with an offender's education or work commitments or conflict with any other court order or injunction that the offender is subject to. In addition practitioners should, in proposing prohibitions or requirements to the court, also consider the impact on any caring responsibilities the respondent may have and, in the event that the respondent has any disability, whether he or she is capable of complying with the proposed prohibitions or requirements.

The Crown Prosecution Service has issued a guide to assist the police and local councils in preparing CBO applications setting out the general principles to consider; for example, the prohibitions need to deal with the behaviour in question that has caused or is likely to cause harassment, alarm or distress. The order and requirements need to be proportionate and specific, and clear and easy to understand. Requirements could include:

- attendance at an anger management course where an offender finds it difficult to respond without violence;
- youth mentoring;
- a substance misuse awareness session where an offender's anti-social behaviour occurs when they have been drinking or using drugs; or
- a job readiness course to help an offender get employment and move them away from the circumstances that cause them to commit anti-social behaviour.

Before proposing any requirements evidence must be provided in support of that requirement including information about the person or organisation who will be responsible for supervising compliance and the suitability and enforceability of the requirement. For any requirements where a course is proposed, details of that course and what is involved should be provided, including frequency of appointments and the issues that the appointments will cover or address.

In addition, the responsible person or organisation must inform the police if the offender fails to comply with a requirement; must be a willing participant in the order and be prepared to assist with enforcement.

**Putting victims first:** The potential impact on the victim or victims will be at the heart of the consideration of the terms of the CBO. Stopping the anti-social behaviour is for the benefit of the victim and thinking about how the terms of the order will impact on the victim is critical. What would they think? Would they be satisfied? It is also good practice to take the time to explain the terms of the order to the victims so that they are aware of the outcome of the court case.

**Publicising a CBO issued to a young person:** Making the public aware of the offender and the terms of the order can be an important part of the response to anti-social behaviour. It can provide reassurance for communities that action is being taken and it will provide the information that local people need to identify and report breaches.

The decision to publicise a CBO will be taken by the police or council unless the court has made a section 39 order (Children and Young Persons Act 1933) prohibiting publication. When deciding whether to publicise a CBO, public authorities (including the courts) must consider that it is necessary and proportionate to interfere with the young person's right to privacy, and the likely impact on a young person's behaviour. This will need to be balanced against the need to provide re-assurance to victims and the wider community as well as providing them with information so that they can report any breaches. Each case should be decided carefully on its own facts.

**Applications to vary or discharge a Criminal Behaviour Order:** A CBO may be varied or discharged by the court which made the original order. Either the offender or the prosecution can make an application but if this is dismissed by the court neither party can make a subsequent application without the consent of either the court or the other party. The power to vary includes extending the term of the order or including additional prohibitions or requirements. This flexibility allows for those monitoring the progress of offenders to alter the conditions of the order to suit developing or new circumstances.

**Annual reviews for under 18s:** Where the order is made against someone under 18 there is a requirement to conduct annual reviews. The review must include consideration of:

- the extent to which the offender has complied with the order;
- the adequacy of any support available to help them to comply with the order; and
- anything else relevant to the question of whether an application should be made to vary or discharge the order.

The police have overall responsibility for carrying out such a review, with a requirement to act in co-operation with the council. The police may invite any other person or body to participate in the review. This could include youth offending teams, educational establishments or other organisations who have been working with the young person. As a result of the review an application to vary or discharge the CBO may be made to the court.

**Penalty on breach:** It is a criminal offence if an offender fails to comply, without reasonable excuse, with either the requirements or prohibitions in the CBO. Failure to comply with a prohibition or requirement should be notified to the police. The court has the power to impose serious penalties on conviction, including:

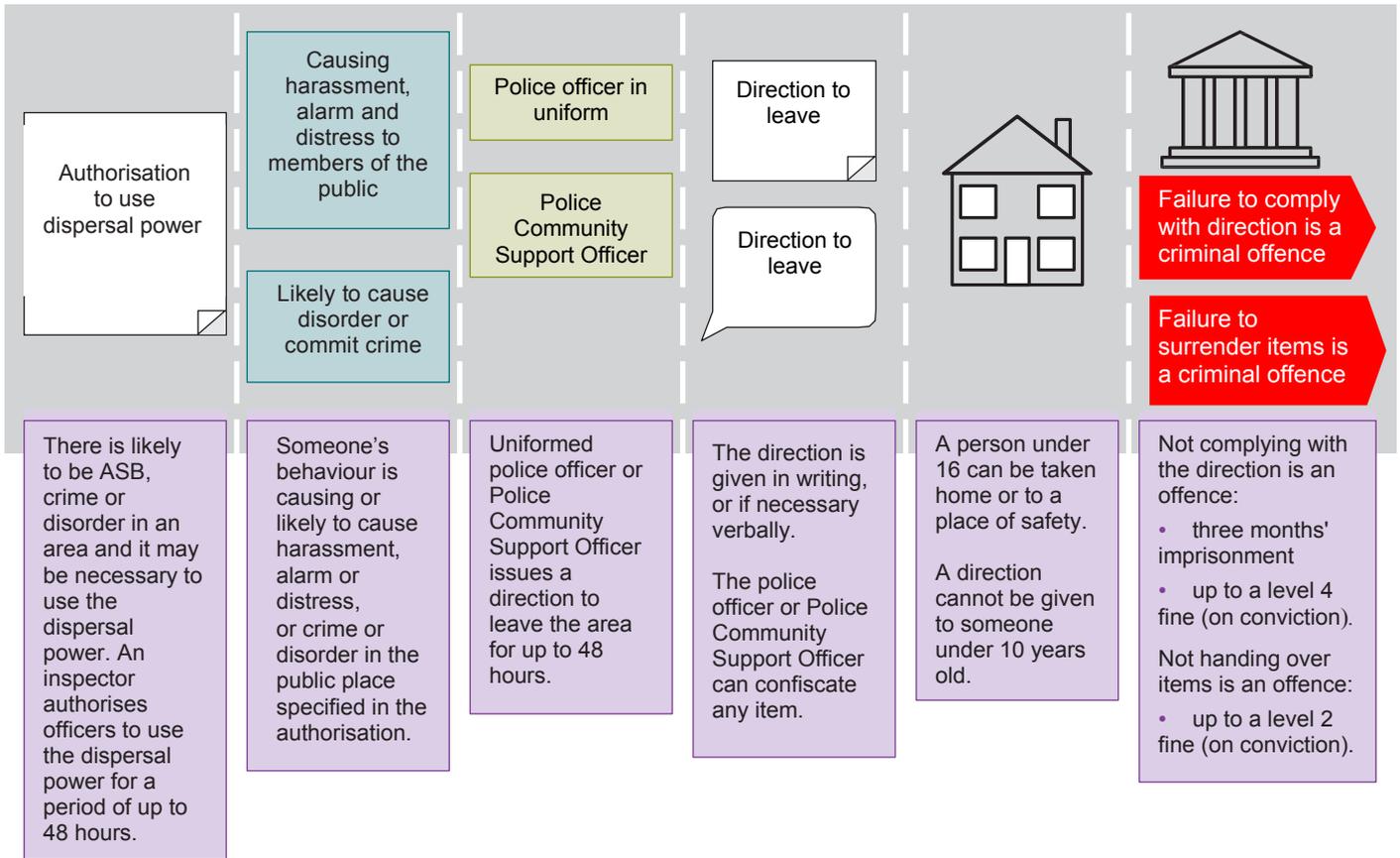
- on summary conviction in the magistrates' court: a maximum of six months in prison or a fine or both;
- on conviction on indictment in the Crown Court: a maximum of five years in prison or a fine or both.

Hearings for those under 18 will take place in the youth court where the maximum sentence is a two year detention and training order.

## 2.3 Dispersal Power

|                           |   |
|---------------------------|---|
| Purpose                   | Requires a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours.  |
| Used by                   | <ul style="list-style-type: none"> <li>• Police officers in uniform; and</li> <li>• Police Community Support Officers (if designated the power by their chief constable).</li> </ul>  |
| Test                      | <ul style="list-style-type: none"> <li>• Contributing or likely to contribute to members of the public in the locality being harassed, alarmed or distressed (or the occurrence of crime and disorder); and</li> <li>• Direction necessary to remove or reduce the likelihood of the anti-social behaviour, crime or disorder.</li> </ul>   |
| Details                   | <ul style="list-style-type: none"> <li>• Must specify the area to which it relates and can determine the time and the route to leave by.</li> <li>• Can confiscate any item that could be used to commit anti-social behaviour, crime or disorder.</li> <li>• Use in a specified locality must be authorised by a police inspector and can last for up to 48 hours.</li> <li>• A direction can be given to anyone who is, or appears to be, over the age of 10.</li> <li>• A person who is under 16 and given a direction can be taken home or to a place of safety.</li> </ul> |
| Penalty on breach         | <ul style="list-style-type: none"> <li>• Breach is a criminal offence.</li> <li>• Failure to comply with a direction to leave: up to a level 4 fine and/or up to three months in prison although under 18s cannot be imprisoned.</li> <li>• Failure to hand over items: up to a level 2 fine.</li> </ul>  |
| Appeals                   | A person who is given a direction and feels they have been incorrectly dealt with should speak to the duty inspector at the local police station. Details should be given to the person on the written notice.  |
| The legislation           | Sections 34 to 42 of the Anti-social Behaviour, Crime and Policing Act 2014.  |
| Protecting the vulnerable | <ul style="list-style-type: none"> <li>• Consideration should be given to how the use of this power might impact on the most vulnerable members of society.</li> <li>• Consideration should also be given to any risks associated with displacement, including to where people may be dispersed to.</li> <li>• There is value in working in partnership to resolve ongoing problems and find long term solutions.</li> </ul>  |

# Dispersal Power



## Purpose

The dispersal power is a flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to the local community. The power is preventative, allowing an officer to deal quickly with someone's behaviour and nip the problem in the bud before it escalates.

Restricting an individual's freedom of movement is a serious issue, and accordingly the power should not be invoked lightly. This is why the legislation requires the authorising officer to be satisfied on reasonable grounds that use of the power is necessary to remove or reduce the likelihood of people being harassed, alarmed or distressed or the occurrence of crime or disorder.

In areas where there are regular problems, it is recommended that the police work with the local council to find a sustainable long-term solution. The impact on the local community should be considered when using the dispersal power.

## Who can use the power?

The dispersal power can be used by police officers in uniform. Police Community Support Officers can also use this power if designated by their chief constable.

Use of the dispersal power must be authorised by an officer of at least the rank of inspector. This helps to ensure that the power is not used to stop activities which are not causing anti-social behaviour. It may be appropriate for an officer of a more senior rank to authorise the use of the power where, for example, there is no inspector on duty who knows the specific circumstances of the area. The authorising officer can sanction use of the power in a specified locality for a period of up to 48 hours.

The inspector (or above) must record the authorisation in writing, specifying the grounds on which it is given and sign the authorisation. The decision should be based on objective grounds: this may include local knowledge of the area and information to suggest that individuals are likely to cause harassment, alarm or distress to others or engage in crime and disorder at a specific time. The authorising officer should ensure that the evidence is sufficient to justify using the power, and should take account of wider impacts, such as on community relations. The written authorisation may be admitted in evidence if the authorisation is in dispute.

**Ensuring proportionality:** Restricting people's freedom of movement is a serious matter and it is important that the dispersal power is used proportionately and reasonably, respecting individuals' rights of lawful freedom of expression and freedom of assembly.

The dispersal power can only be used in the specific location authorised by the inspector (or above) who should define a specific geographic location, for example by listing the streets to which it applies or the streets which form the boundary of the area, rather than stating 'in and around the area of'. The authorisation should not cover an area larger than is necessary. If the anti-social behaviour occurs outside the authorised area, the authorising officer will have to increase the area or officers will not be able to use the power.

**Consultation:** Wherever practicable, the authorising officer should consult the local council or community representatives before making the authorisation. This will help to understand the implications of using the power within a particular community or area and whether the community will benefit from use of the dispersal power. Working with the relevant council can also assist the police in gaining community consensus and support when it is necessary to use the dispersal power, or assist community relations where there are concerns about the use of the power in a particular area. When it has not been practical to consult the local council, the authorising officer may wish to notify the local authority of the authorisation or the use of the power.

**Transparency and scrutiny:** Police forces may wish to put in place appropriate arrangements for maintaining records of authorisations and use of the dispersal power and the circumstances in which it is used, and to publish data on its use. Police and Crime Commissioners have an important role in holding forces to account to ensure that officers are using the power proportionately. Publication of data will help to highlight any 'hotspot' areas that may need a longer-term solution, such as diversionary activities for young people or security measures in pubs and clubs to prevent alcohol-related anti-social behaviour in town centres.

## Details

**The legal tests:** Two conditions need to be met for a direction to be given:

- the officer must have reasonable grounds to suspect that the behaviour of the person has contributed, or is likely to contribute, to:
  - members of the public in the locality being harassed, alarmed or distressed; or
  - crime and disorder occurring in the locality.
- the officer considers that giving a direction to the person is necessary for the purpose of removing or reducing the likelihood of anti-social behaviour, crime or disorder.

Including behaviour that is likely to cause harassment, alarm or distress in the legal tests allows the power to be used as a preventative measure. The power is for use in public places; this includes places to which the public has access by virtue of express or implied permission such as a shopping centre.

**Written notice:** The direction must be given in writing, unless that is not reasonably practicable. The written notice will specify the locality to which the direction relates and for how long the person must leave the area. The officer can also impose requirements as to the time by which the person must leave the locality and the route they must take. The officer must also tell the person that failure to comply, without reasonable excuse, is an offence unless it is not reasonably practicable to do this.

The information should be provided as clearly as possible and the officer should ensure the person has understood it. If the direction is given verbally a written record of it must also be kept in order to enforce it in the event that it is breached, and for the police force to be able to monitor use of the power. The written notice may also be admitted in evidence in breach proceedings.

Many forces have already established good practice in relation to the use of dispersal powers. For instance, in some forces, officers carry a pre-printed notepad to provide details of the direction, the consequences of a failure to comply, where to collect any confiscated items, and a map to clarify the area a person is excluded from.

**Dispersing young people:** A police officer (or Police Community Support Officer where designated) can give a direction to anyone who is, or appears to be, over the age of 10. If the officer reasonably believes the person given the direction to be under the age of 16, the officer can take them home or to another place of safety. Under the provisions of the Children Act 2004 the police have a duty to 'safeguard and promote the welfare of children'. Police forces have safeguarding arrangements in place to ensure that children are not returned to unsafe homes or placed in potentially harmful situations.

Case law in relation to Part 4 of the Anti-social Behaviour Act 2003 states that to 'remove' a person under 16 to their place of residence carries with it a power to use reasonable force if necessary to do so: see *R (on the application of W by his parent and litigation friend PW) (Claimant) v (1) Commissioner of Police for the Metropolis, (2) Richmond-upon-Thames London Borough Council (Defendants) and the Secretary of State for the Home Department (Interested Party)* [2006].

**Restrictions:** A direction cannot be given to someone engaged in peaceful picketing that is lawful under section 220 of the Trade Union and Labour Relations (Consolidation) Act 1992 or if they are taking part in a public procession as defined in section 11 of the Public Order Act 1986.

In addition, the direction cannot restrict someone from having access to the place where they live or from attending a place where they:

- work, or are contracted to work for that period of time;
- are required to attend by a court or tribunal;
- are expected for education or training;
- are required to attend a service provision appointment or to receive medical treatment during the period of time that the direction applies.

**Providing information to the public:** Where use of the dispersal power has been authorised in advance, the police should consider providing information to those who may be affected.

**Putting victims first:** If the dispersal power is used in response to a complaint from a member of the public, the officer should update them about what has been done in response to their complaint. Keeping victims updated on enforcement action can provide reassurance to the community and result in fewer follow up calls on the issue

**Surrender of property:** The police officer or Police Community Support Officer can require the person given the direction to hand over items causing or likely to cause anti-social behaviour. This could be any item but typical examples are alcohol, fireworks or spray paint. The officer does not have the power to seize the item; therefore the person's consent is required to take the item. However, it is an offence for the person not to hand over the item if asked to do so.

Surrendered items will be held at the police station and can be collected after the period of the direction has expired. If the item is not collected within 28 days it can be destroyed or disposed of. If the individual is under the age of 16 they can be required to be accompanied by a parent or other responsible adult to collect the item; this will mean that the adult can be made aware of the young person's behaviour and will help encourage parental responsibility.

**Recording information and publishing data:** The officer giving the direction must record:

- the individual to whom the direction is given;
- the time at which the direction is given; and
- the terms of the direction (including the area to which it relates and the exclusion period).

If a direction is varied or withdrawn the officer must record the time this was done and the terms of the variation.

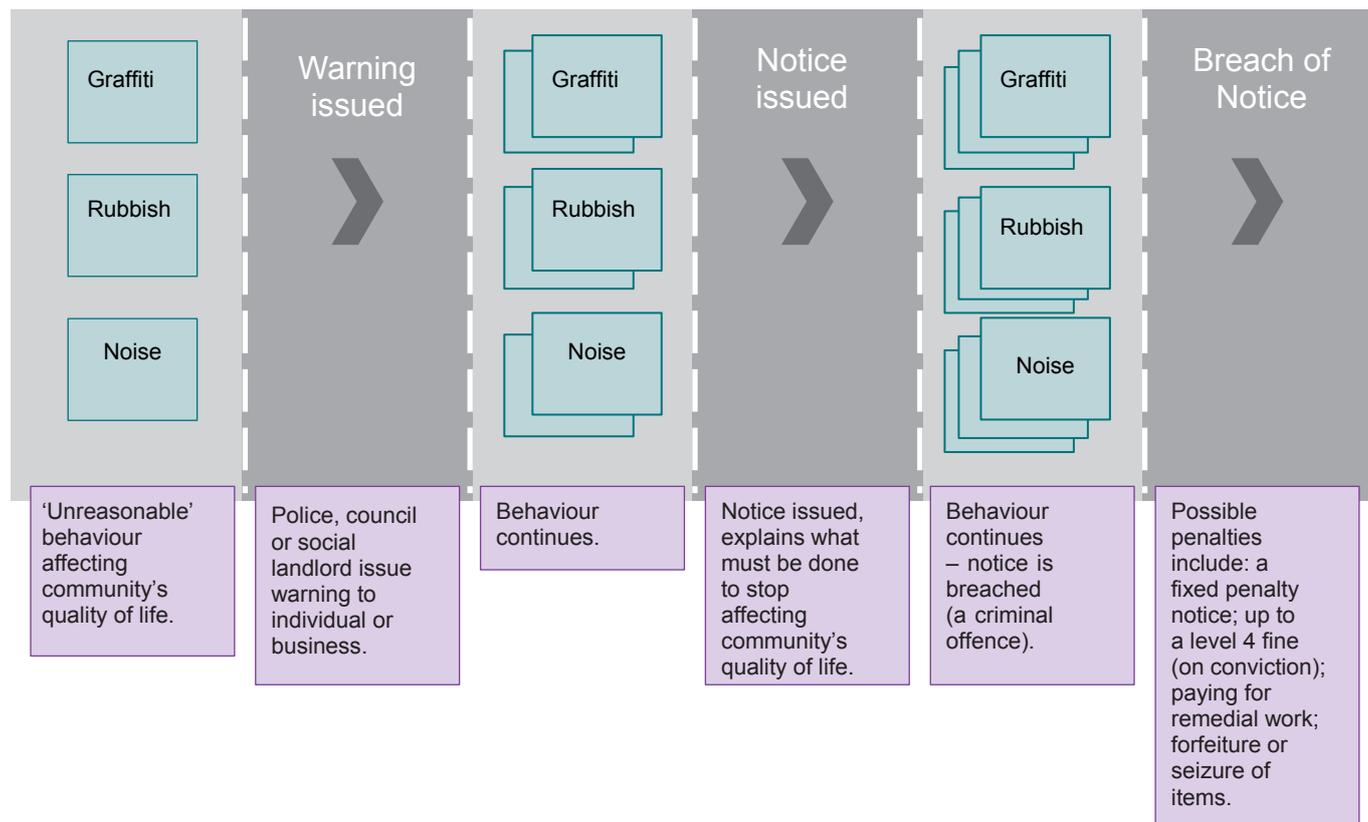
**Penalty on breach:** Failure to comply with the direction is a summary only criminal offence which will be dealt with in the magistrates' court or youth court for people under the age of 18. On conviction it carries a maximum penalty of a level 4 fine and/or three months imprisonment, although those people under the age of 18 cannot be imprisoned. Failure to surrender items is also a criminal offence with a maximum penalty of a level 2 fine.

**Appeals:** A person who is given a direction and feels they have been incorrectly dealt with should speak to the duty inspector at the local police station. Details should be given to the person on the written notice.

## 2.4 Community Protection Notice

|                           |  |
|---------------------------|--|
| Purpose                   | To stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life.  |
| Who can issue a CPN       | <ul style="list-style-type: none"> <li>• Council officers;</li> <li>• Police officers;</li> <li>• Police community support officers (PCSOs) if designated; and</li> <li>• Social landlords (if designated by the council).</li> </ul>  |
| Test                      | Behaviour has to: <ul style="list-style-type: none"> <li>• have a detrimental effect on the quality of life of those in the locality;</li> <li>• be of a persistent or continuing nature; and</li> <li>• be unreasonable.</li> </ul>   |
| Details                   | <ul style="list-style-type: none"> <li>• The Community Protection Notice (CPN) can deal with a range of behaviours; for instance, it can deal with noise nuisance and litter on private land.</li> <li>• The CPN can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again.</li> <li>• A written warning must first be issued informing the perpetrator of problem behaviour, requesting them to stop, and the consequences of continuing.</li> <li>• A CPN can then be issued including requirement to stop things, do things or take reasonable steps to avoid further anti-social behaviour.</li> <li>• Can allow council to carry out works in default on behalf of a perpetrator.</li> </ul> |
| Penalty on breach         | <ul style="list-style-type: none"> <li>• Breach is a criminal offence.</li> <li>• A fixed penalty notice can be issued of up to £100 if appropriate.</li> <li>• A fine of up to level 4 (for individuals), or £20,000 for businesses.</li> </ul>   |
| Appeals                   | <ul style="list-style-type: none"> <li>• Terms of a CPN can be appealed by the perpetrator within 21 days of issue.</li> <li>• The cost of works undertaken on behalf of the perpetrator by the council can be challenged by the perpetrator if they think they are disproportionate.</li> </ul>   |
| The legislation           | Sections 43 to 58 of the Anti-social Behaviour, Crime and Policing Act 2014.   |
| Protecting the vulnerable | <ul style="list-style-type: none"> <li>• Particular care should be taken to consider how use of the power might impact on more vulnerable members of society.</li> </ul>   |

## Community Protection Notice



### Purpose

The Community Protection Notice can be used to deal with particular, ongoing problems or nuisances which are having a detrimental effect on the community's quality of life by targeting those responsible.

### Who can issue a Community Protection Notice

Local councils have traditionally taken the lead in dealing with the sort of issues that can be addressed through the use of Community Protection Notices, but the police are also able to issue these Notices, as are social landlords where they have been designated to do so by the relevant local authority, recognising their role in responding to anti-social behaviour in the dwellings they manage.

**Putting victims first:** To understand the impact that the behaviour is having on the quality of life of those in a locality, the agency considering the use of a Community Protection Notice should first speak to members of the community to gain a proper understanding of the harm that is being caused to individuals and the community. This will help to ensure that victims feel that the issue is being taken seriously and will also help to ensure that the decision to issue a Community Protection Notice is based on evidence of the impact that the perpetrator's behaviour is having. It will also help to ensure that officers do not use the notice to stop activities which are not causing anti-social behaviour.

## Details

**The legal tests:** These focus on the impact that the behaviour is having on victims and communities. A Community Protection Notice can be issued by one of the bodies mentioned above if they are satisfied, on reasonable grounds, that the conduct of an individual, business or organisation:

- is having a detrimental effect on the quality of life of those in the locality;
- is persistent or continuing in nature; and
- is unreasonable.

Agencies should have sufficient evidence to satisfy themselves that the behaviour in question is genuinely having a detrimental effect on others' quality of life, in terms of the nuisance or harm that is being caused to others, rather than being a behaviour that others may just find annoying.

Similarly, decisions on whether behaviour is persistent or continuing in nature should be taken on a case by case basis. For example, where an individual is storing rubbish in their garden for many months, proving persistence will be relatively straightforward. However, there will be cases where behaviour is continuing over a much shorter time period and the individual has been asked to cease the behaviour but has refused to do so and persists with the behaviour.

The issuing officer must also make a judgement as to whether the behaviour in question is unreasonable. For instance, a baby crying in the middle of the night may well have a detrimental effect on immediate neighbours and is likely to be persistent in nature. However, it is unlikely to be reasonable to issue the parents with a Community Protection Notice if there is not a great deal that they can do to control or affect the behaviour.

There is significant merit in involving the local council, who will have many years of experience in tackling environmental issues, when deciding whether or not to serve a Community Protection Notice. In addition, the issuing body should be satisfied that it has sufficient evidence that the activity in question is having a detrimental effect on others' quality of life, is persistent or continuing and is unreasonable.

**Who can a Community Protection Notice be issued to?** A Community Protection Notice can be issued against any person aged 16 or over or to a body, including a business. Where a body is issued with a Community Protection Notice, it should be issued to the most appropriate person. In the case of a small business, it could be the shop owner whereas in the case of a major supermarket it may well be the store manager. The issuing officer will need to be satisfied that the person issued with the Community Protection Notice can be reasonably expected to control or affect the behaviour in question, taking into consideration all the available circumstances. There is also a need to have due regard to the Equality Act 2010.

The Community Protection Notice can be handed directly to the person in question or it can be posted. In circumstances where the owner or occupier cannot be determined, the issuing officer can post the Community Protection Notice on the premises and it is considered as having been served at that point. In such a scenario, the issuing officer would need to demonstrate that reasonable enquiries had been undertaken to ascertain the identity of the owner or occupier, for instance, checking with the Land Registry.

**Community Protection Notices and statutory nuisance:** Issuing a Community Protection Notice does not discharge the council from its duty to issue an Abatement Notice where the behaviour constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990. A statutory nuisance is one of the matters listed in section 79(1) of that Act which, given all the circumstances, is judged to be 'prejudicial to health or a nuisance'. For England and Wales, statutory nuisances are listed as:

- any premises in such a state to be prejudicial to health or a nuisance;
- smoke emitted from premises so as to be prejudicial to health or a nuisance;
- fumes or gases emitted from (domestic) premises so as to be prejudicial to health or a nuisance;
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance;
- any accumulation or deposit and being prejudicial to health or a nuisance;
- any animal kept in such a place or manner as to be prejudicial to health or a nuisance;
- any insects emanating from relevant industrial, trade or business premises and being prejudicial to health or a nuisance;
- artificial light emitted from premises so as to be prejudicial to health or a nuisance;
- noise emitted from premises so as to be prejudicial to health or a nuisance;
- noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street;
- any other matter declared by any enactment to be a statutory nuisance.

Many of these terms have special meanings, either under the 1990 Act or following decisions of the courts. In particular, 'nuisance' means something different to 'bothersome' or an 'annoyance'. The assessment of nuisance is an objective test, taking into account a range of factors and is based on what is reasonable for the 'average' person. 'Prejudicial to health' means 'injurious or likely to cause injury to health' under section 79(7) of the 1990 Act. While a Community Protection Notice can be issued for behaviour that may constitute a statutory nuisance, the interaction between the two powers should be considered. It remains a principle of law that a specific power should be used in preference to a general one.

As a Community Protection Notice can only be issued for behaviour that is persistent or continuing and unreasonable, in most cases, social landlords or the police will have sufficient time to contact the relevant council team in advance of issuing the Notice if they believe the behaviour could be a statutory nuisance. If it could be a statutory nuisance, the issuing authority should consider whether issuing a Community Protection Notice is necessary given the powers afforded to council under the 1990 Act. If they do decide to issue a Community Protection Notice in parallel, they should work with the relevant council team to ensure any restrictions or requirements complement those that may be included in any future Abatement Notice.

**The written warning:** In many cases, the behaviour in question will have been ongoing for some time. Informal interventions may well have been exhausted by the time the applicant decides to proceed with a Community Protection Notice. However, before a Notice can be issued, a written warning must be issued to the person committing anti-social behaviour.

The written warning must make clear to the individual that if they do not stop the anti-social behaviour, they could be issued with a Community Protection Notice. However, local agencies may wish to include other information in the written warning, for instance:

- outlining the specific behaviour that is considered anti-social and which is having a detrimental effect on others' quality of life, as this will ensure there is little doubt over what needs to be done to avoid the formal Notice being issued;
- outlining the time by which the behaviour is expected to have changed in order to give the alleged perpetrator a clear understanding of when the Community Protection Notice might be served;
- setting out the potential consequences of being issued with a Community Protection Notice and in particular the potential sanctions on breach, which could act as an incentive for the individual to change their behaviour before a formal Notice is issued.

How the written warning is discharged is up to each agency. In cases where a problem has been continuing for a period of time, the written warning may be included in other correspondence. However, in cases where the issue of a written warning is required more quickly, it could be a standard form of words, adaptable to any situation – for instance, a pre-agreed form of words that can be used by the officer on the spot.

Enough time should be left between the issue of a written warning and the issue of a Community Protection Notice to allow the individual or body to deal with the matter. It will be for the issuing officer to decide how long is allowed on a case by case basis. For instance, in an example where a garden is to be cleared of waste, several days or weeks may be required to enable the individual to make the necessary arrangements. However, where an individual is playing loud music in a park, as outlined above, the officer could require the behaviour to stop immediately.

**Putting victims first:** Keeping victims and communities updated on enforcement action at important points can help them to deal with the impact of the behaviour. Victims may feel that their complaint has been ignored if they do not see immediate changes to the behaviour. However, informing them of what is happening can make a difference and result in fewer follow up calls on the issue. If a Community Protection Notice has been issued, the officer may wish to speak to those affected by the anti-social behaviour to inform them of what steps have been taken, potential timescales and possible implications for the perpetrator.

**Partnership working:** In many cases, the issuing agency will have already had contact with other partners in dealing with a persistent issue. For instance, in a case dealing with a build-up of litter, the council may have spoken to the local neighbourhood policing team or social landlord. However, in situations that develop more quickly, the relevant officer will have to decide whether there are other individuals or bodies that should be informed. In particular, for matters that could amount to a statutory nuisance it will often be advisable to seek the expert view of council environmental health officers before issuing a Community Protection Notice.

**What to include in a Community Protection Notice** A CPN can be drafted from scratch if necessary so that it is appropriate to the situation and can include any or all of the following:

- a requirement to stop doing specified things;
- a requirement to do specified things;
- a requirement to take reasonable steps to achieve specified results.

This means that not only can the relevant officer stop someone being anti-social, they can also put steps in place to ensure the behaviour does not recur.

In deciding what should be included as a requirement in a Community Protection Notice, issuing officers should consider what is reasonable to include in a notice of this type and any timescales they wish to add. The Community Protection Notice is intended to deal with short or medium-term issues. While restrictions and requirements may be similar to those in a Civil Injunction, more onerous conditions, such as attendance at a drug rehabilitation course, would clearly be more appropriate to a court issued order. The CPN could be used, for example, to require a dog owner to attend training classes or fix fencing to deal with straying incidents where this is having a detrimental effect on the community's quality of life.

**Putting victims first:** When the issuing officer has decided what to include as a requirement in the Community Protection Notice they should consider the desired outcome for the community. Victims will not only want the behaviour to stop, they will also want it not to occur again. Consideration should be given to whether there are requirements that could ensure the anti- social behaviour does not recur.

**Penalty on breach:** Failure to comply with a Community Protection Notice is an offence. Where an individual, business or organisation fails to comply with the terms of a Community Protection Notice, a number of options are available for the issuing authority and these are outlined in more detail below.

- **Fixed penalty notices**

Depending on the behaviour in question, the issuing officer could decide that a fixed penalty notice would be the most appropriate sanction. This can be issued by a police officer, Police Community Support Officer, council officer or, if designated, a social landlord. In making the decision to issue a fixed penalty notice, the officer should be mindful that if issued, payment would discharge any liability to conviction for the offence.

**Putting victims first:** When deciding which sanction to choose on non-compliance with a Community Protection Notice, the issuing authority should where appropriate consider the potential wishes of the victim. While issuing a fixed penalty notice may be considered appropriate, if it does nothing to alleviate the impact on the community or leaves victims feeling ignored, this may not be the best course of action and may lead to further complaints and the requirement for more action.

A fixed penalty notice should not be more than £100 and can specify two amounts, for instance, a lower payment if settled early, say within 14 days. In order to allow the individual time to pay, no other associated proceedings can be taken until at least 14 days after the issue. The exact wording or design of a fixed penalty notice can be determined locally to fit with local standards and protocols but must:

- give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- state the period during which proceedings will not be taken for the offence;
- specify the amount or amounts payable;
- state the name and address of the person to whom the FPN should be paid; and
- specify permissible methods of payment (for example, cash, cheque, bank transfer).

- **Remedial action**

If an individual or body fails to comply with a Community Protection Notice issued by the council, it may decide to take remedial action to address the issue. Where the Community Protection Notice has been issued by the police or a social landlord, but they believe remedial action is an appropriate sanction, they should approach the council to discuss the best way to move forward. For instance, the social landlord could undertake the work on behalf of the council.

If it is decided that remedial action is the best way forward, the council (or the other agency in discussion with the council) should establish what works are required to put the situation right. For instance, in a situation where the complaint relates to a significant build up of rubbish in someone's front garden, remedial action could take the form of clearing the garden on the perpetrator's behalf.

**Putting victims first:** Punishment of the perpetrator may not be top of the victim's priority list; they may just want to see the situation fixed. If remedial action is chosen as the most appropriate action, it may help those affected by the behaviour to know when they can expect remedial works to be undertaken

Where this work is to be undertaken on land 'open to the air', the council or their agent (for instance, a rubbish disposal contractor) can undertake these works without the consent of the owner or occupier. Where works are required indoors the permission of the owner or occupier is required. When it has been decided what works are required, the council has to specify to the perpetrator what work it intends to carry out and the estimated cost. Once the work has been completed, the council should give the perpetrator details of the work completed and the final amount payable. In determining a 'reasonable' charge, local authorities should ensure the costs are no more than is necessary to restore the land to the standard specified in the notice. Such costs may include officer time, use of cleaning equipment (unless of a specialised nature), and administration costs relating to the clearance itself.

- **Remedial orders**

On conviction for an offence of failing to comply with a Community Protection Notice, the prosecuting authority may ask the court to impose a remedial order and/or a forfeiture order. This could be for a number of reasons, for instance:

- the matter may be deemed so serious that a court order is warranted;
- works may be required to an area that requires the owner's or occupier's consent and this is not forthcoming; or
- the issuing authority may believe that forfeiture or seizure of one or more items is required as a result of the behaviour (for instance, sound making equipment).

A remedial order may require the defendant:

- to carry out specified work (this could set out the original Community Protection Notice requirements); or
- to allow work to be carried out by, or on behalf of, a specified local authority.

Where works are required indoors, the defendant's permission is still required. But this does not prevent a defendant who fails to give that consent from being in breach of the court's order.

- **Forfeiture orders**

Following conviction for an offence under section 48, the court may also order the forfeiture of any item that was used in the commission of the offence. This could be spray paints, sound making equipment or a poorly socialised dog where the court feels the individual is not able to manage the animal appropriately (re-homed in the case of a dog). Where items are forfeited, they can be destroyed or disposed of appropriately.

- **Seizure**

In some circumstances, the court may issue a warrant authorising the seizure of items that have been used in the commission of the offence of failing to comply with a Community Protection Notice. In these circumstances, an enforcement officer may use reasonable force, if necessary, to seize the item or items.

Failure to comply with any of the requirements in the court order constitutes contempt of court and could lead to a custodial sentence. If an individual is convicted of an offence under section 48, they may receive up to a level 4 fine (up to £20,000 in the case of a business or organisation).

**Appeals:** Anyone issued with a Community Protection Notice has the opportunity to appeal it. Appeals are heard in a magistrates' court and the Notice should provide details of the process, how an individual can appeal and the timeframe to appeal (within 21 days of the person being issued with the notice). As the legislation makes clear, an appeal can be made on the following grounds:

The test was not met if:

- **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 appeal route and build their case accordingly;
- **the behaviour has not had a detrimental effect on the quality of life of those in the locality:** again, the importance of witness statements and any other evidence that the behaviour in question is having a negative impact on those nearby should be collected to ensure this defence is covered;
- **the behaviour was not persistent or continuing:** in some cases, judging persistence will be straightforward. However, in cases where a decision to issue a Community Protection Notice is taken more quickly, officers should use their professional judgement to decide whether this test is met and may need to justify this on appeal;

- **the behaviour is not unreasonable:** In many cases, individuals, businesses or organisations that are presented with evidence of the detrimental impact of their behaviour will take steps to address it. Where they do not, they may argue that what they are doing is reasonable. In deciding whether behaviour is unreasonable, officers should consider the impact the behaviour is having on the victim or victims, 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 based on reasonable grounds as to whether the individual, business or organisation can reasonably be expected to do something to change the behaviour. The officer should be prepared to justify this decision in court if required.

Other reasons:

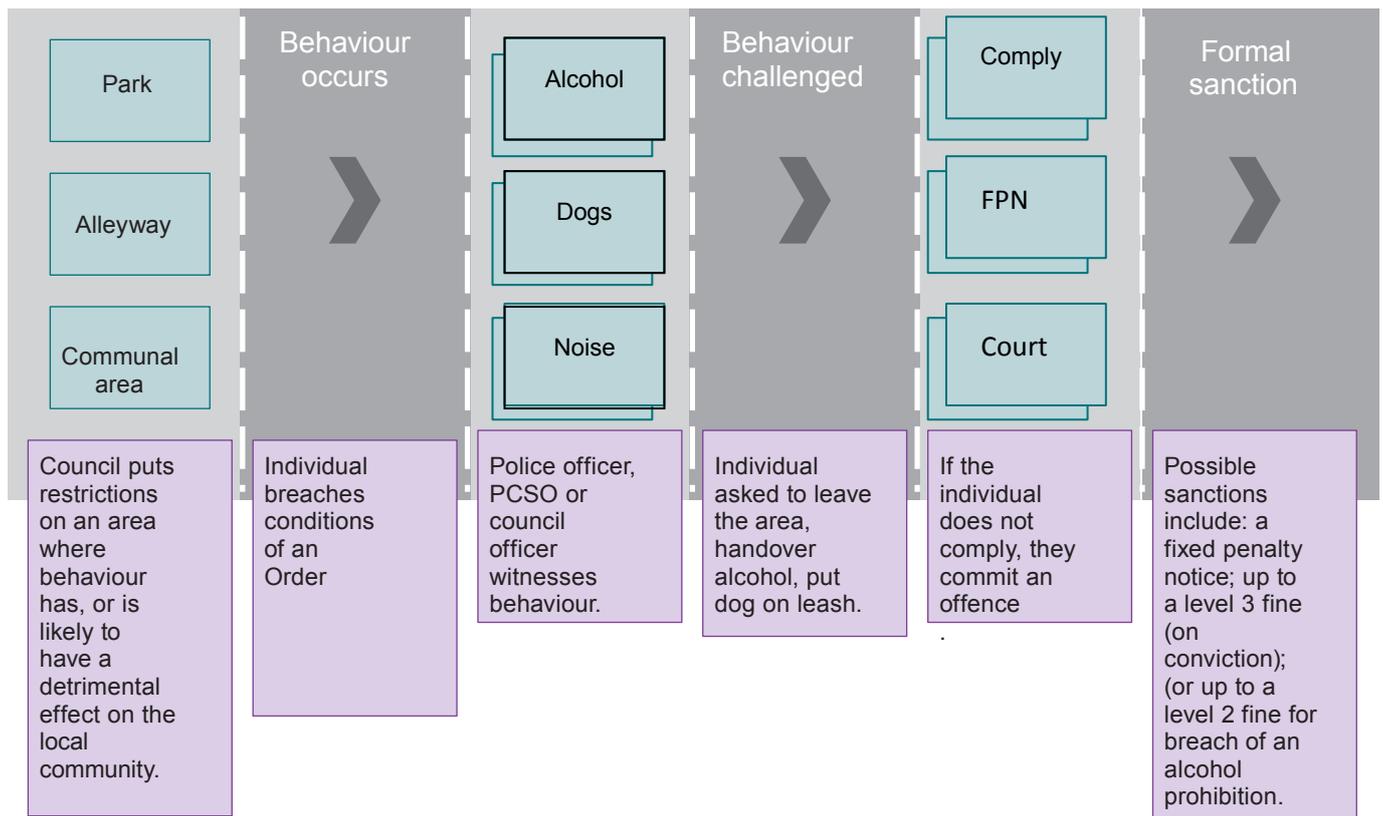
- **any of the requirements are unreasonable:** requirements in a Community Protection Notice should either prevent the anti-social behaviour from continuing or recurring, or reduce the detrimental effect or reduce the risk of its continuance or recurrence. As such, it should be related to the behaviour in question;
- **there is a material defect or error with the Community Protection Notice:** this ground for appeal could be used if there was a failure to comply with a requirement in the Act, such as a failure to provide a written warning before issuing the Notice;
- **the Notice was issued to the wrong person:** this could be grounds for appeal if the Notice was posted to the wrong address or the wrong person was identified in a business or organisation.

The person issued with the Community Protection Notice must appeal within 21 days of issue. Where an appeal is made, any requirement included under section 43(3)(b) or (c), namely a requirement to do specified things or take reasonable steps to achieve specified results, is suspended until the outcome of the appeal. However, requirements stopping the individual or body from doing specified things under section 43(3)(a) continue to have effect. In addition, where remedial action is taken by a council under section 47 or 49 the individual has the opportunity to appeal on the grounds that the cost of the work being undertaken on their behalf is disproportionate.

## 2.5 Public Spaces Protection Order

|                           |   |
|---------------------------|---|
| Purpose                   | Designed to stop individuals or groups committing anti-social behaviour in a public space.  |
| Who can make a PSPO       | <ul style="list-style-type: none"> <li>Councils issue a Public Spaces Protection Order (PSPO) after consultation with the police, Police and Crime Commissioner and other relevant bodies.</li> </ul>   |
| Test                      | <p>Behaviour being restricted has to:</p> <ul style="list-style-type: none"> <li>be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;</li> <li>be persistent or continuing nature; and</li> <li>be unreasonable.</li> </ul>   |
| Details                   | <ul style="list-style-type: none"> <li>Restrictions and requirements set by the council.</li> <li>These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times.</li> <li>Can restrict access to public spaces (including certain types of highway) where that route is being used to commit anti-social behaviour.</li> <li>Can be enforced by a police officer, police community support officers and council officers.</li> </ul> |
| Penalty on breach         | <ul style="list-style-type: none"> <li>Breach is a criminal offence.</li> <li>Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate.</li> <li>A fine of up to level 3 on prosecution.</li> </ul>   |
| Appeals                   | <ul style="list-style-type: none"> <li>Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue.</li> <li>Further appeal is available each time the PSPO is varied by the council.</li> </ul>  |
| The legislation           | Sections 59 to 75 of the Anti-social Behaviour, Crime and Policing Act 2014.  |
| Protecting the vulnerable | <ul style="list-style-type: none"> <li>Consideration should be given to how the use of this power might impact on the most vulnerable members of society.</li> <li>Consideration should also be given to any risks associated with displacement, including to where people may be dispersed to</li> <li>There is value in working in partnership to resolve ongoing problems and find long term solutions.</li> </ul>   |

## Public Spaces Protection Order



### Purpose

Public Spaces Protection Orders are intended to deal with a particular nuisance or problem in a specific area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. They are intended to help ensure that the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

Given that these orders can restrict what people can do and how they behave in public spaces, it is important that the restrictions imposed are focused on specific behaviours and are proportionate to the detrimental effect that the behaviour is causing or can cause, and are necessary to prevent it from continuing, occurring or recurring.

### Who can make a PSPO?

Local councils are responsible for making Public Spaces Protection Orders: district councils should take the lead in England with county councils or unitary authorities undertaking the role where there is no district council. In London, borough councils are able to make Public Spaces Protection Orders, as is the Common Council of the City of London and the Council of the Isles of Scilly. In Wales, responsibility falls to county councils or county borough councils. Parish councils and town councils in England, and community councils in Wales are not able to make these Orders. In addition, section 71 of the Anti-social Behaviour, Crime and Policing Act 2014 allows bodies other than local authorities to make Public Spaces Protection Orders in certain circumstances by order of the Secretary of State. This power has been exercised by the Secretary of State to allow the City of London Corporation to manage a number of public spaces with the permission of, and on behalf of, local authorities.

## Details

**The legal tests:** The legal tests focus on the impact that anti-social behaviour is having on victims and communities. A Public Spaces Protection Order can be made by the council if they are satisfied on reasonable grounds that the activity or behaviour concerned, carried out, or likely to be carried out, in a public space:

- has had, or is likely to have, a detrimental effect on the quality of life of those in the locality;
- is, or is likely to be, persistent or continuing in nature;
- is, or is likely to be, unreasonable; and
- justifies the restrictions imposed.

**Putting victims first:** In deciding to place restrictions on a particular public space, councils should consider the knock on effects of that decision and ensure that this is a reasonable and proportionate response to incidents of anti-social behaviour in the area. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.

**Where can it apply?** The council can make a Public Spaces Protection Order on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre.

**Consultation and working with partners:** Before making a Public Spaces Protection Order, the council must consult with the police. This should be done formally through the chief officer of police and the Police and Crime Commissioner, but details could be agreed by working level leads. This is an opportunity for the police and council to share information about the area and the problems being caused as well as discussing the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted. This should include the county council (if the application for the Order is not being led by them) where they are the Highway Authority.

The council must also consult whatever community representatives they think appropriate. It is strongly recommended that the council engages in an open and public consultation to give the users of the public space the opportunity to comment on whether the proposed restriction or restrictions are appropriate, proportionate or needed at all. The council should also ensure that specific groups likely to have a particular interest are consulted, such as a local residents association, or regular users of a park or those involved in specific activities in the area, such as buskers and other street entertainers.

**Openness and accountability:** Before the Public Spaces Protection Order is made, the council must publish the draft order in accordance with regulations published by the Secretary of State and ensure that the draft order is available on its website.

Given that the effect of Public Spaces Protection Orders is to restrict the behaviour of everybody using the public place, the close or direct involvement of elected members will help to ensure openness and accountability. This will be achieved, for example, where the decision is put to the Cabinet or full Council.

## Land requiring special consideration

Before a council makes a Public Spaces Protection Order it should consider whether the land falls into any of the following categories:

- **Registered common land:** There are around 550,000 hectares of registered common land in England and Wales. Common land is mapped as open access land under the Countryside and Rights of Way (CROW) Act 2000 with a right of public access on foot. Some commons, particularly those in urban districts, also have additional access rights and these may include rights for equestrian use.
- **Registered town or village green:** Town and village greens developed under customary law as areas of land where local people indulged in lawful sports and pastimes. These might include organised or ad-hoc games, picnics, fetes and similar activities, such as dog walking.
- **Open access land:** Open access land covers mountain, moor, heath and down and registered common land, and also some voluntarily dedicated land, for example the Forestry Commission's or Natural Resources Wales' freehold estate. Open access land provides a right of open-air recreation on foot although the landowner can voluntarily extend the right to other forms of access, such as for cycling or horse-riding.

This can be done by contacting the Commons registration authority (county council in two-tier areas; unitary authority elsewhere). If the land in question is a registered common, the council will be able to find out what common land rights exist and the access rights of any users. The Department for Environment, Food & Rural Affairs considers the model set out in 'A Common Purpose' to be good practice in consulting directly affected persons (including commoners) and the public about any type of potential change in the management of a common.

If land is a registered green, it receives considerable statutory protection under the 'Victorian Statutes'. In terms of open access land, there are various national limitations on what activities are included within the access rights. It is possible for local restrictions on CROW rights to be put in place to meet wider land use needs, and this system is normally administered by Natural England.

Where an authority is considering an order on one of these types of land, the council should consider discussing this with relevant forums and user groups (e.g. Local Access Forums, Ramblers or the British Horse Society) depending on the type of provision that is contemplated in the order. It could also be appropriate to hold a local public meeting when considering whether to make an order for an area of such land to ensure all affected persons are given the opportunity to raise concerns.

**What to include in a Public Spaces Protection Order.** The Order can be drafted from scratch based on the individual and specific issues being faced in a particular public space. A single Order can also include multiple restrictions and requirements. It can prohibit certain activities, such as the drinking of alcohol, as well as placing requirements on individuals carrying out certain activities, for instance making sure that people walking their dogs keep them on a lead in designated areas.

When deciding what to include, the council should consider scope. The broad aim is to keep public spaces welcoming to law abiding people and communities and not simply to restrict access. So restrictions or requirements can be targeted at specific people, designed to apply only at certain times or apply only in certain circumstances.

**Putting victims first:** Although it may not be viable in each case, discussing potential restrictions and requirements prior to issuing an Order with those living or working nearby may help to ensure that the final Order better meets the needs of the local community and is less likely to be challenged.

In establishing which restrictions or requirements should be included, the council should be satisfied on reasonable grounds that the measures are necessary to prevent the detrimental effect on those in the locality or reduce the likelihood of the detrimental effect continuing, occurring or recurring.

As with all the anti-social behaviour powers, the council should give due regard to issues of proportionality: is the restriction proposed proportionate to the specific harm or nuisance that is being caused? Councils should ensure that the restrictions being introduced are reasonable and will prevent or reduce the detrimental effect continuing, occurring or recurring. In addition, councils should ensure that the Order is appropriately worded so that it targets the specific behaviour or activity that is causing nuisance or harm and thereby having a detrimental impact on others' quality of life. Councils should also consider whether restrictions are required all year round or whether seasonal or time limited restrictions would meet the purpose.

When the final set of measures is agreed the Order should be published in accordance with regulations made by the Secretary of State and must:

- identify the activities having the detrimental effect;
- explain the potential sanctions available on breach; and
- specify the period for which the Order has effect.

### **Homeless people and rough sleepers**

Public Spaces Protection Orders should not be used to target people based solely on the fact that someone is homeless or rough sleeping, as this in itself is unlikely to mean that such behaviour is having an unreasonably detrimental effect on the community's quality of life which justifies the restrictions imposed. Councils may receive complaints about homeless people, but they should consider whether the use of a Public Spaces Protection Order is the appropriate response. These Orders should be used only to address any specific behaviour that is causing a detrimental effect on the community's quality of life which is within the control of the person concerned.

Councils should therefore consider carefully the nature of any potential Public Spaces Protection Order that may impact on homeless people and rough sleepers. It is recommended that any Order defines precisely the specific activity or behaviour that is having the detrimental impact on the community. Councils should also consider measures that tackle the root causes of the behaviour, such as the provision of public toilets.

The council should also consider consulting with national or local homeless charities when considering restrictions or requirements which may impact on homeless people and rough sleepers.

## Controlling the presence of dogs

Under the Animal Welfare Act 2006, owners of dogs are required to provide for the welfare needs of their animals. This includes providing the necessary amount of exercise each day, which in many cases will require dogs to be let off the lead whilst still under control. Councils will be aware of the publicly accessible parks and other public places in their area which dog walkers can use to exercise their dogs without restrictions.

When deciding whether to make requirements or restrictions on dogs and their owners, local councils will need to consider whether there are suitable alternative public areas where dogs can be exercised without restrictions. Councils should consider if the proposed restrictions will displace dog walkers onto other sensitive land, such as farmland or nature conservation areas.

Councils should also consider the accessibility of these alternative sites for those with reduced mobility, including but not limited to, assistance dog users. For example, is there step free access, are there well maintained paths and what transport options are available, including in the early morning and evening.

Councils are also encouraged to publish a list of alternative sites which dog walkers can use to exercise their dogs without restrictions. Both dog walkers and non-dog walkers would then have a clear opportunity to submit their views on whether these alternatives were suitable. This should help minimise the risks of unwanted and unintended displacement effects.

Guidance published by the Department for Environment, Food and Rural Affairs on dog control states that councils must consult dog law and welfare experts e.g vets or animal welfare officers and organisations affected by restrictions before seeking to impose restrictions. Councils may also wish to consider consulting the Kennel Club. Where a Public Spaces Protection Order proposes to restrict dog walking in parks and other commonly used dog walking sites, consideration should be given to how to alert interested people to the proposed restrictions, such as posting notices of the proposed restrictions and consultation details within these spaces.

Consideration must also be given on how any dog walking restrictions being proposed would affect those who rely on assistance dogs, ensuring any prohibition or requirement is compliant with the provisions of Equality Act 2010 or considering what exemptions should apply for assistance dogs.

In relation to dogs and their owners, a Public Spaces Protection Order could, for example:

- exclude dogs from designated areas (e.g. a children's play area in a park);
- require the person in charge of the dog to pick up after it;
- require dogs to be kept on leads in a designated area;
- be framed to apply during specific times or periods (e.g. dogs excluded from a beach from 9am to 6pm, 1 May to 30 September);
- restrict the number of dogs that can be walked by one person at any one time; and
- put in place other restrictions or requirements to tackle or prevent any other activity that is considered to have a detrimental effect on the quality of life of those in the locality, or is likely to have such an effect.

Councils should also consider whether alternative options are available to deal with problems around irresponsible dog ownership or dogs being out of control. It may be that if there are local problems with specific individuals allowing their dogs to stray or run out of control for which one of the other available powers, such as the Community Protection Notice, may be more appropriate. The Department for Environment, Food and Rural Affairs has produced detailed guidance in the form of a practitioner's guide on the range of tools available to deal with irresponsible dog ownership. Targeted measures and educational days for irresponsible dog owners can bring about real improvements in the behaviour of irresponsible dog owners.

#### **Parish and Town Councils:**

Public Spaces Protection Orders are not available to Parish and Town Councils. Parish and Town Councils wishing to deal with dog control issues should discuss the issue with their principal authority, including whether a Public Spaces Protection Order would provide the means to address the issues being experienced by the local community. If the principal authority is satisfied that the legal tests for the use of the power are met and that it is a proportionate response to the level of harm and nuisance being caused it should consider consulting on putting in place a Public Spaces Protection Order. This ensures a single approach on dog control matters within the local community and avoids the risk of any duplication or conflicting requirements and restrictions being put in place.

**Restricting alcohol:** A Public Spaces Protection Order can be used to restrict the consumption of alcohol in a public space where the relevant legal tests are met. However, such an Order cannot be used to restrict the consumption of alcohol where the premises or its curtilage (a beer garden or pavement seating area) is licensed for the supply of alcohol (other than council operated licenced premises). There are also limitations where a temporary event notice has been given under Part 5 of the Licensing Act 2003, or where the sale or consumption of alcohol is permitted by virtue of permission granted under section 115E of the Highways Act 1980. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour. It would create confusion and duplication if Public Spaces Protection Orders were introduced here.

#### **Groups hanging around/standing in groups/playing games**

It is important that councils do not inadvertently restrict everyday sociability in public spaces. The Public Spaces Protection Order should target specifically the problem behaviour that is having a detrimental effect on the community's quality of life, rather than everyday sociability, such as standing in groups which is not in itself a problem behaviour.

Where young people are concerned, councils should think carefully about restricting activities that they are most likely to engage in. Restrictions that are too broad or general in nature may force the young people into out-of-the-way spaces and put them at risk. In such circumstances, councils should consider whether there are alternative spaces that they can use.

People living in temporary accommodation may not be able to stay in their accommodation during the day and so may find themselves spending extended times in public spaces or seeking shelter in bad weather. It is important that public spaces are available for the use and enjoyment of a broad spectrum of the public, and that people of all ages are free to gather, talk and play games.

**Restricting access:** In the past, Gating Orders have been used to close access to certain public rights of way where the behaviour of some has been anti-social.

A Public Spaces Protection Order can be used to restrict access to a public right of way. However, when deciding on the appropriateness of this approach, the council must consider a number of things, as set out below:

- **Can they restrict access?** A number of rights of way may not be restricted due to their strategic value.
- **What impact will the restriction have?** For instance, is it a primary means of access between two places and is there a reasonably convenient alternative route?
- **Are there any alternatives?** Previously gating was the only option, but it may be possible under a Public Spaces Protection Order to restrict the activities causing the anti-social behaviour rather than access in its totality.

There are also further consultation requirements where access is to be restricted to a public right of way. These include notifying potentially affected persons of the possible restrictions. This could include people who regularly use the right of way in their day to day travel as well as those who live nearby. Interested persons should be informed about how they can view a copy of the proposed order, and be given details of how they can make representations and by when. The council should then consider these representations.

It will be up to the council to decide how best to identify and consult with interested persons. In the past newspapers have been used, but other channels such as websites and social media may now be more effective. Where issues are more localised, councils may prefer to deal with individual households. Or, where appropriate, councils may decide to hold public meetings and discuss issues with regional or national bodies (such as the Local Access Forum) to gather views.

**Duration of a Public Spaces Protection Order:** The maximum duration of a Public Spaces Protection Order is three years but they can last for shorter periods of time where more appropriate. Short-term Orders could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, and in such circumstances the council might decide to make an initial Order for 12 months and then review that decision at that point.

At any point before expiry, the council can extend a Public Spaces Protection Order by up to three years if they consider it is necessary to prevent the original behaviour from occurring or recurring. They should also consult with the local police and any other community representatives they think appropriate before doing so.

**Changing the terms of a Public Spaces Protection Order:** A Public Spaces Protection Order can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a single public space. However, if a new issue arises in an area where an Order is already in force, the council can vary the terms of the order at any time. This can change the size of the restricted area or the specific requirements or restrictions. For instance, a Public Spaces Protection Order may exist to ensure dogs are kept on their leads in a park but, after 12 months, groups start to congregate in the park drinking alcohol which is having a detrimental effect on those living nearby. As a result, the council could vary the Order to deal with both issues. Any proposed variation to an existing Public Spaces Protection Order would require the council to undertake the necessary consultation on the proposed changes.

As well as varying the Order, a council can also seek to discharge it at any time, for instance when the issue that justified the Order has ceased or where the behaviour has stopped or the land ceases to be classified as a public space.

**Penalty on breach:** It is an offence for a person, without reasonable excuse, to:

- do anything that the person is prohibited from doing by a Public Spaces Protection Order (other than consume alcohol – see below); or
- fail to comply with a requirement to which the person is subject under a Public Spaces Protection Order.

A person does not commit an offence by failing to comply with a prohibition or requirement that the council did not have power to include in a Public Spaces Protection Order. A person guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

It is not an offence to drink alcohol in a controlled drinking zone. However, it is an offence to fail to comply with a request to cease drinking or surrender alcohol in a controlled drinking zone. This is liable on summary conviction to a fine not exceeding level 2 on the standard scale. If alcohol is confiscated, it can be disposed of by the person who confiscates it.

Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice would be the most appropriate sanction. This can be issued by a police officer, a Police Community Support Officer, council officer or other person designated by the council. In making the decision to issue a fixed penalty notice, the officer should consider that if issued, payment would discharge any liability to conviction for the offence. However, payment is not made within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the Public Spaces Protection Order).

**Appeals:** Any challenge to the Public Spaces Protection Order must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council. Additionally, as with all orders and powers, the making of a PSPO can be challenged by judicial review on public law grounds within three months of the decision or action subject to challenge.

Interested persons can challenge the validity of an Order on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with.

When the application is made, the High Court can decide to suspend the operation of the Public Spaces Protection Order pending the verdict in part or in totality. The High Court has the ability to uphold the Public Spaces Protection Order, quash it, or vary it.

**Enforcement:** Although Public Spaces Protection Orders are made by the council in an area, enforcement is the responsibility of a wider group. Council officers are able to enforce the restrictions and requirements, as are other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, police officers and Police Community Support Officers are able to enforce Public Spaces Protection Orders.

## Transition of existing orders to Public Spaces Protection Orders

Section 75 of the Anti-social Behaviour, Crime and Policing Act 2014 sets out that where a Gating Order, Dog Control Order or Designated Public Place Order is still in force three years from commencement of the Act (i.e. on 20 October 2017) the provisions of such an order will automatically be treated as if they were provisions of a Public Spaces Protection Order. The transitioned Order will then remain in force up to a maximum of three years from the point of transition i.e. 2020.

Section 75(3) of the Anti-social Behaviour, Crime and Policing Act 2014 treats transitioned orders as Public Spaces Protection Orders that have already been made. The consultation, notification and publicity requirements in section 72(3) of the Act apply before a Public Spaces Protection Order has been made; the obligation under section 59(8) of the Act to publish arises once a Public Spaces Protection Order has been made.

Councils are not required to undertake a new consultation (or associated publications, and notifications, set out in section 72(3) of the Act) where a Gating Order, Dog Control Order or Designated Public Place Order automatically transitions to a Public Spaces Protection Order after October 2017.

However, local councils should publish the Public Spaces Protection Order online when the Gating Order, Dog Control Order or Designated Public Place Order transitions in order to make the public aware of the specific provisions of the Public Spaces Protection Order.

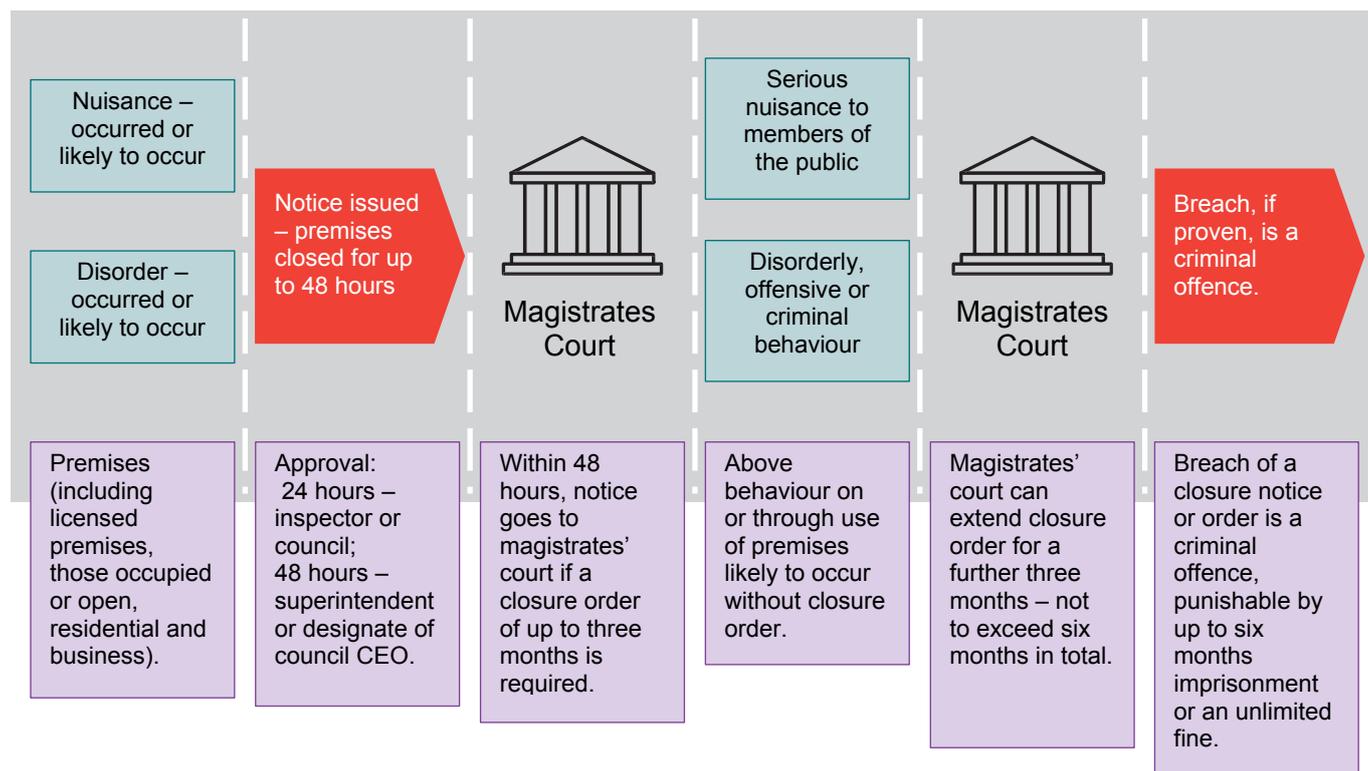
It will be for local councils to consider what changes to signage are necessary to sufficiently draw the matters set out in Regulation 2 of the Anti-social Behaviour, Crime and Policing Act 2014 (Publication of Public Spaces Protection Orders) Regulation 2014 to members of the public's attention.

Any extension, variation or discharge of a transitioned Public Spaces Protection Order would mean that the local council would need to carry out the necessary consultation and publication as required under section 72 (3) of the Anti-social Behaviour, Crime and Policing Act 2014.

## 2.6 Closure Power

|                   |  |
|-------------------|--|
| Purpose           | To allow the police or council to close premises quickly which are being used, or likely to be used, to commit nuisance or disorder.   |
| Applicants        | <ul style="list-style-type: none"> <li>Local council.</li> <li>Police.</li> </ul>  |
| Test              | <p>The following has occurred, or will occur, if the closure power is not used:</p> <p><b>(a) Closure Notice (up to 48 hours):</b></p> <ul style="list-style-type: none"> <li>Nuisance to the public; or</li> <li>Disorder near those premises.</li> </ul> <p><b>(b) Closure Order (up to six months):</b></p> <ul style="list-style-type: none"> <li>Disorderly, offensive or criminal behaviour;</li> <li>Serious nuisance to the public; or</li> <li>Disorder near the premises.</li> </ul>   |
| Details           | <ul style="list-style-type: none"> <li>A Closure Notice is issued out of court in the first instance. Flowing from this the Closure Order can be applied for through the courts.</li> <li><b>Notice:</b> can close premises for up to 48 hours out of court but cannot stop owner or those who habitually live there accessing the premises.</li> <li><b>Order:</b> can close premises for up to six months and can restrict all access.</li> <li>Both the Notice and the Order can cover any land or any other place, whether enclosed or not including residential, business, non-business and licensed premises.</li> </ul> |
| Penalty on breach | <p>Breach is a criminal offence.</p> <ul style="list-style-type: none"> <li><b>Notice:</b> Up to three months in prison.</li> <li><b>Order:</b> Up to six months in prison.</li> <li>Both: Up to an unlimited fine for residential and non-residential premises.</li> </ul>  |
| Who can appeal    | <ul style="list-style-type: none"> <li>Any person who the Closure Notice was served on;</li> <li>Any person who had not been served the Closure Notice but has an interest in the premises;</li> <li>The council (where Closure Order was not made and they issued the notice);</li> <li>The police (where Closure Order was not made and they issued the notice).</li> </ul>  |
| The legislation   | Sections 76 to 93 of the Anti-social Behaviour, Crime and Policing Act 2014  |

## Closure Power



## Purpose

The closure power is a fast, flexible power that can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder.

## Applicants

The power comes in two stages: the Closure Notice and the Closure Order which are intrinsically linked. The Closure Notice can be used by the council or the police out of court. Following the issuing of a Closure Notice, an application must be made to the magistrates' court for a Closure Order, unless the closure notice has been cancelled.

## Details

**The legal tests:** A Closure Notice can be issued for 24 hours if the council or police officer (of at least the rank of inspector) is satisfied on reasonable grounds:

- that the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public; or
- that there has been, or (if the notice is not issued) 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 or disorder from continuing, recurring or occurring.

The Closure Notice can be issued in the first instance for 48 hours or extended from 24 hours up to a maximum of 48 hours by the council's chief executive officer (head of paid service) or designate thereof, or by a police superintendent.

A Closure Order can subsequently be issued if the court is satisfied:

- that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises; or
- that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public; or
- that there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

A Closure Notice cannot prohibit access in respect of anyone who habitually lives on the premises. This means that the notice cannot prohibit those who routinely or regularly live at those premises. It is therefore unlikely to disallow access to, for example, students who live away from the family home for part of the year but routinely return to the family home or those who spend the majority of the week living at the pub in which they work. However, a Closure Order, granted by the court, can prohibit access to those who routinely live at the premises.

In prohibiting access through a Closure Notice it will be important to consider who is responsible for the premises and who may need access to secure the premises. This might not always be the owner, for example an individual managing premises on behalf of an owner who lives abroad may need to secure the premises on their behalf.

**Approvals:** The level or role of employee within the council who can issue a notice for up to 24 hours has not been specified due to the different structures in place in different areas. In considering who should be authorised as designates of the chief executive officer for the issuing of the 48 hour notice, councils will also want to consider who is delegated to issue the Closure Notice for 24 hours and consider whether the extension to 48 hours should be authorised by an officer of greater seniority, as is the case for the police. This may take into consideration the need for the power to be used quickly, its flexible nature, and equivalent requirement for a police inspector to issue a Closure Notice for 24 hours.

**Notifications:** With every issue of a Closure Notice, an application must be made to the magistrates' court for a Closure Order. Where the intention is to cancel the notice prior to the end of the 48 hour period because a Closure Order or a temporary order is not deemed necessary, this should be communicated to the court on application for a hearing for the Closure Order.

The police and council will want to consider when the courts will be able to hear the application for the Closure Order. The courts are required to hear the application within 48 hours of the service of the Closure Notice. This 48 hour period for the courts excludes Christmas day. To avoid undue pressure on the courts to hear applications for Closure Orders within 48 hours of serving the Closure Notice, careful thought should be given as to exactly when to serve the Closure Notice. Where possible, it is advisable to liaise with the court's listing office before serving the Closure Notice so that victims can be effectively protected at the earliest opportunity.

**Putting victims first:** The issuing body should undertake to inform the victim of the anti-social behaviour of the Closure Notice and to inform them of the details of the Closure Order hearing where possible and appropriate.

**Temporary orders:** Courts can consider giving an extension of the Closure Notice if required. This can be considered as an option by the magistrates' court at the hearing for the Closure Order. The court can order a Closure Notice to stay in force for a further 48 hours if it is satisfied that this meets the test required for a Closure Notice.

A court may also order that a Closure Notice continue in force for a period of not more than 14 days in circumstances where the hearing is adjourned. A hearing can be adjourned for no more than 14 days to enable the occupier or anyone with an interest in the premises to show why a Closure Order should not be made.

**Partnership working:** Consultation is required as part of the Closure Notice. Before issuing a notice the police or council must ensure that they consult with anyone they think appropriate. This should include the victim, but could also include other members of the public that may be affected positively or negatively by the closure, community representatives, other organisations and bodies, the police or local council (where not the issuing organisation) or others that regularly use the premises. There may also be people who use the premises as access to other premises that are not subject to the closure notice but may be impacted on by the closure.

The method of consultation will depend on the situation and urgency. The police or council will want to consider how to keep a record of those consulted in case challenged at a later date (for instance, as part of a court case).

What to include in a Closure Notice? The Closure Notice 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.

Information should be displayed clearly in simple language, avoiding the use of jargon.

**Putting victims first:** It is not necessary to include information about those consulted within an order so as to protect those who may have made a complaint from any retribution. However, the officer issuing the Closure Notice should keep a record of those consulted.

**Access:** There may be times where the closure of premises through a Closure Order has a wider impact. An item may have been left in the premises or access has become restricted to other premises. Where an item has been left on premises it is expected that the police and local council will use their discretion in either allowing access temporarily to enable the individual to retrieve their item or retrieving the item on their behalf. Where an individual accesses the premises themselves without communication to the police or council they commit an offence unless they have a reasonable excuse. It is therefore sensible for the police and council to have clear communication with individuals affected.

Where a Closure Order restricts access to other premises or part of other premises that are not subject to a Closure Order the individuals affected will be able to apply to the appropriate court to have the order considered. The court may make any order that it thinks appropriate. This may be a variation order to vary the terms of the order or it could cancel the order if considered inappropriate for it to remain in place.

**Penalty on breach:** An offence is committed when a person, without reasonable excuse, remains on or enters premises in contravention of a Closure Notice or a Closure Order.

**Closure Notice and temporary order:** Breaching a Closure Notice or temporary order is a criminal offence carrying a penalty of either imprisonment for a period of up to three months or an unlimited fine or both.

**Closure Order:** Breaching a Closure Order is a criminal offence carrying a penalty of either imprisonment for a period of up to six months or an unlimited fine, or both.

**Obstruction:** It is a criminal offence to obstruct a police officer or local council employee who is:

- serving a Closure Notice, cancellation notice or variation notice;
- entering the premises; or
- securing the premises.

This offence carries a penalty of either imprisonment for a period of up to three months or an unlimited fine, or both.

**Who can appeal:** A Closure Notice cannot be appealed. A Closure Order can be appealed. Appeals are to the Crown Court and must be made within 21 days beginning with the date of the decision to which the appeal relates.

An appeal against the decision to issue the order may be made by:

- a person who was served the Closure Notice; or
- anyone who has an interest in the premises upon whom the notice was not served.

Where the court decides not to issue a closure order the following may appeal:

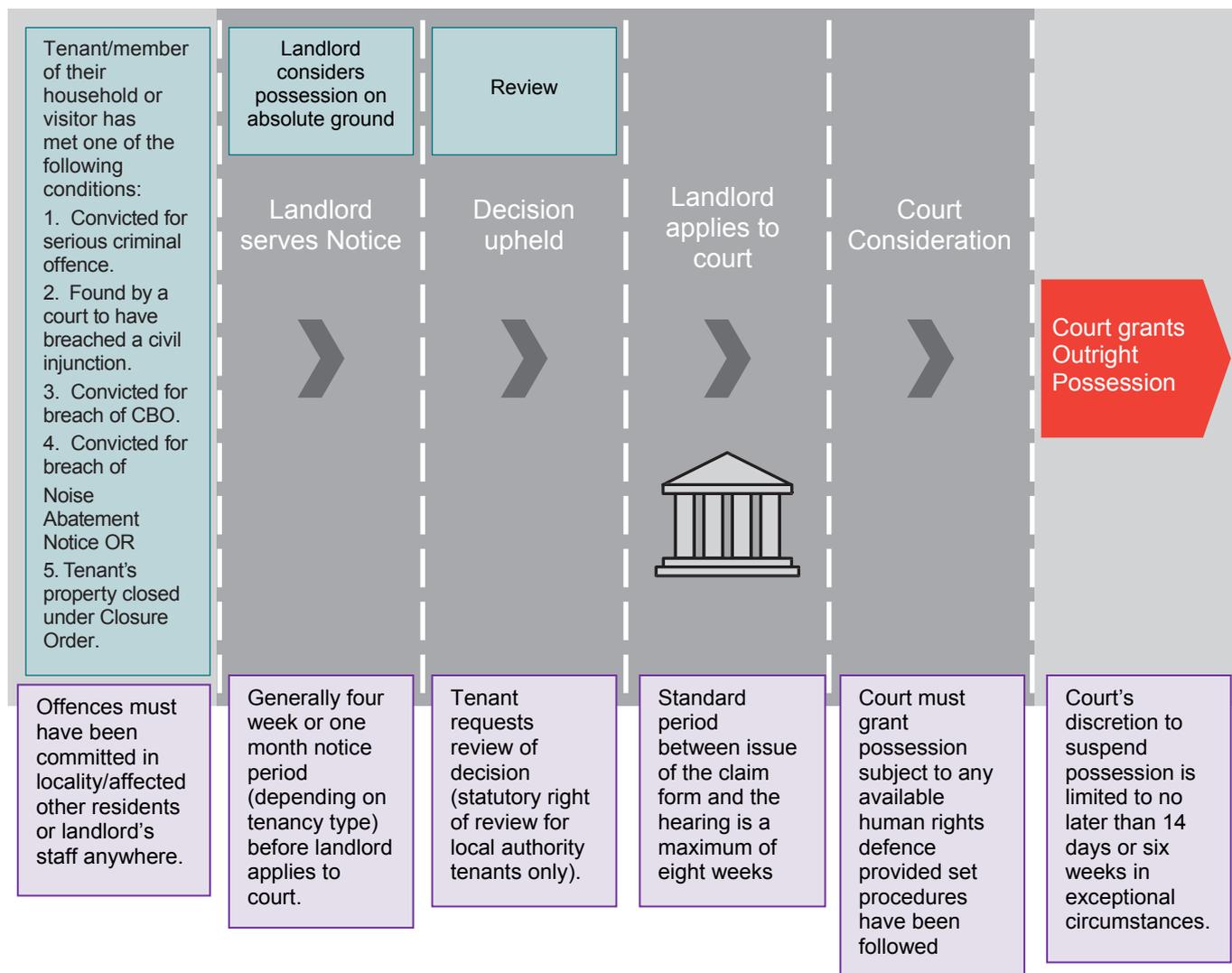
- the police may only appeal where they issued the Closure Notice;
- the local council may only appeal where they issued the Closure Notice.

On appeal, the Crown Court may make whatever order it thinks appropriate. If the premises is licensed the court must inform the licensing authority. It should also be considered whether it is appropriate and possible to update the victim on the progress of the case.

## 2.7 Absolute ground for possession

|   |  |
|---|--|
| Overview                                | The Act introduced a new absolute ground for possession of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court.   |
| Purpose                                 | To expedite the eviction of landlords' most anti-social tenants to bring faster relief to victims.   |
| Applicants / Who can use the new ground | <ul style="list-style-type: none"> <li>• Social landlords (local authorities and housing associations).</li> <li>• Private rented sector landlords.</li> </ul>   |
| Test                                    | <p>The tenant, a member of the tenant's household, or a person visiting the property has met one of the following conditions:</p> <ul style="list-style-type: none"> <li>• convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985);</li> <li>• found by a court to have breached a civil injunction;</li> <li>• convicted for breaching a criminal behaviour order (CBO);</li> <li>• convicted for breaching a noise abatement notice; or</li> <li>• the tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour.</li> </ul>  |
| Details                                 | <ul style="list-style-type: none"> <li>• Offence/breach needs to have occurred in the locality of the property or affected a person with a right to live in the locality or affected the landlord or his or her staff/contractors;</li> <li>• Secure tenants of local housing authorities will have a statutory right to request a review of the landlord's decision to seek possession. Private registered providers are encouraged to adopt a similar practice.</li> </ul>   |
| Result of action                        | <ul style="list-style-type: none"> <li>• If the above test is met, the court must grant a possession order (subject to any available human rights defence raised by the tenant, including proportionality) where the correct procedure has been followed.</li> </ul>   |
| Important changes/differences           | <ul style="list-style-type: none"> <li>• Unlike the discretionary grounds for possession, the landlord is not required to prove to the court that it is reasonable to grant possession. This means the court is more likely to determine cases in a single, short hearing;</li> <li>• This offers better protection and faster relief for victims and witnesses of anti-social behaviour, saves landlords costs, and frees up court resources and time;</li> <li>• It provides flexibility for landlords to obtain possession through this route for persistently anti-social tenants;</li> <li>• The court cannot postpone possession to a date later than 14 days after the making of the order except in exceptional circumstances, and cannot postpone for later than six weeks in any event.</li> </ul> |
| The legislation                         | Sections 94 to 100 of the Anti-social Behaviour, Crime and Policing Act 2014   |

## Absolute ground for possession



## Overview

Prevention and early intervention should be at the heart of all landlords' approaches to dealing with anti-social behaviour. Available evidence shows this is the case with over 82% of anti-social behaviour complaints resolved by social landlords through early intervention and informal routes without resorting to formal tools in 2015/16.

It has, however, been a source of frustration for landlords and victims that in exceptional cases where anti-social behaviour (or criminality) persists and it becomes necessary to seek possession, the processes for evicting anti-social tenants can be lengthy and expensive, prolonging the suffering of victims, witnesses and the community.

## Purpose

The absolute ground for possession was introduced to speed up the possession process in cases where anti-social behaviour or criminality has been already been proven by another court. This strikes a better balance between the rights of victims and perpetrators and provides swifter relief for those victims. The absolute ground for possession is intended to be used in the most serious cases and landlords are encouraged to ensure that the ground is used selectively.

## Details

**Informing the tenant:** Landlords should ensure that tenants are aware from the commencement of their tenancy that anti-social behaviour or criminality either by the tenant, people living with them, or their visitors could lead to a loss of their home under the absolute ground.

**Applicants:** The absolute ground is available for secure and assured tenancies, and can be used by both social landlords and private rented sector landlords. In practice, many private rented sector landlords continue to use the 'no fault' ground for possession, in section 21 of the Housing Act 1988, where this is available. This does not require the tenant to be in breach of any of the terms of their tenancy and, therefore, does not require the landlord to show that it is reasonable to grant possession as long as the relevant notice has been served. However, the 'no fault' ground can only be used at the end of the fixed term of the tenancy, which must be at least six months from the initial inception of the tenancy. This often limits private landlords' ability to seek possession where a tenant commits serious anti-social behaviour or criminality in the early stages of the tenancy. The absolute ground should assist private rented sector landlords to end tenancies quickly in cases of serious anti-social behaviour or criminality that occur during the fixed term of an assured short-hold tenancy.

**The legal tests:** The court must grant possession (subject to any available human rights defence raised by the tenant, including proportionality) provided the landlord has followed the correct procedure and at least one of the following five conditions is met:

- the tenant, a member of the tenant's household, or a person visiting the property has been convicted of a serious offence;
- the tenant, a member of the tenant's household, or a person visiting the property has been found by a court to have breached a Civil Injunction;
- the tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a Criminal Behaviour Order;
- the tenant's property has been closed for more than 48 hours under a closure order for anti- social behaviour; or
- the tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a noise abatement notice or order.

The offence or anti-social behaviour must have been committed in, or in the locality of, the property, affected a person with a right to live in the locality of the property or affected the landlord or the landlord's staff or contractors.

Serious offences for this purpose include, for example: violent and sexual offences and those relating to offensive weapons, drugs and damage to property. A list of the relevant offences is found in Schedule 2A to the Housing Act 1985.

The ground is available to landlords in addition to the discretionary grounds for possession set out in Schedule 2 to the Housing Act 1985 for secure tenants and Schedule 2 to the Housing Act 1988 for assured tenants. Landlords are able to choose to use the absolute ground, in addition to, or instead of the discretionary grounds for anti-social behaviour where one or more of the five conditions are met.

**Partnership working:** Close working relationships with the police, local councils and other local agencies are important to ensure that the landlord is always aware when one or more of the triggers for the absolute ground has occurred.

### Secured and Assured Tenancies

**Secure tenants** are generally tenants of local councils with a very high level of security of tenure. Apart from the absolute ground, secure tenants can only be evicted from their property on the discretionary grounds for possession in Schedule 2 to the Housing Act 1985.

Tenants of housing associations generally have **non-shorthold assured tenancies** giving them a high level of security of tenure (although not fully equivalent to that of secure tenants). They can be evicted under mandatory grounds for possession provided for in Schedule 2 to the Housing Act 1988 (for example, for rent arrears) as well as discretionary grounds for possession.

Private rented sector tenants generally have **assured shorthold tenancies** giving them limited security of tenure. They can be evicted under the grounds for possession in Schedule 2 to the Housing Act 1988 as well as the 'no fault' ground in section 21 of the Housing Act 1988. This simply requires the landlord to give the tenant the proper notice before seeking a court order (usually without a hearing).

**Notice requirements:** In order to seek possession under the absolute ground, landlords must serve a notice of the proceedings on the tenant, either:

- within 12 months of the relevant conviction or finding of the court being relied on (or if there is an appeal against the finding or conviction within 12 months of the appeal being finally determined, abandoned or withdrawn); or
- within three months where the tenant's property has been closed under a closure order (or if there is an appeal against the making of the closure order, within three months of the appeal being finally determined, abandoned or withdrawn).

The minimum notice period for periodic tenancies is four weeks, or the tenancy period (i.e. the rent period) if longer. In the case of a fixed term tenancy the minimum notice period is one month. The notice is valid for 12 months.

The notice must include the following information:

- the landlord's intention to seek possession under the absolute ground;
- the reasons why they are seeking possession;
- which of the five conditions for the absolute ground the landlord proposes to rely on;
- the relevant conviction, finding of the court, or closure order the landlord proposes to rely on;
- details of any right that the tenant may have to request a review of the landlord's decision to seek possession, and the time within which the request must be made;
- where and how a tenant may seek advice on the notice; and
- the date after which possession proceedings may be begun.

If the landlord wishes to seek possession on one or more of the discretionary grounds as well, he or she must also specify and give details of the relevant discretionary ground/s in the notice.

There are no prescribed forms of notice for the absolute ground for either secure or assured tenancies. In the case of secure tenancies, section 83ZA of the Housing Act 1985 (inserted by section 95 of the Anti-social Behaviour, Crime and Policing Act 2014) simply specifies that certain information must be contained in the notice.

The provisions of section 83ZA (4) also makes clear that where possession of a secure tenancy is being sought under the absolute ground as well as one of the grounds in Schedule 2 of the 1985 Act, the notice need not be served in a form prescribed by regulations as required by section 83 of the 1985 Act but should follow the requirements of section 83ZA in such circumstances.

In the case of assured tenancies, section 97 of the Anti-social Behaviour, Crime and Policing Act 2014 has amended section 8 of the 1988 Act to modify the notice requirements for possession under assured tenancies to take account of the absolute ground.

The court has no power to dispense with service of a notice for possession under the absolute ground. Therefore where a landlord decides to seek possession for anti-social behaviour on the absolute ground alongside one or more of the discretionary grounds, the court will not be able to dispense with the notice as they would have been able to do if the possession was sought solely on the discretionary ground.

#### **The review procedure:**

- Local council tenants have a statutory right to request a review of the landlord's decision to seek possession under the new absolute ground.
- The request for a review must be made in writing within seven days of the notice to seek possession being served on the tenant.
- The review must be carried out before the end of the notice.
- The landlord must communicate the outcome of the review to the tenant in writing.
- If the decision is to confirm the original decision to seek possession, the landlord must also notify the tenant of the reasons for the decision.
- If the review upholds the original decision, the landlord will proceed by applying to the court for the possession order.
- The statutory review procedure does not apply to housing associations tenants. However, we expect housing associations to offer a similar non-statutory review procedure (in the same way that they have done so for starter tenancies for example).

**Putting victims first:** In preparation for the court process, landlords should consider:

- reassuring victims and witnesses by letting them know what they can expect to happen in court;
- using professional witnesses where possible; and
- taking necessary practical steps with court staff to reassure and protect vulnerable victims and witnesses in court (e.g. the provision of separate waiting areas and accompanying them to and from court).

Landlords should also consider providing support/protection for victims and witnesses out of court, at home, and beyond the end of the possession proceedings when necessary.

**Court hearing and defences:** Tenants are entitled to a court hearing. As with other grounds of possession, tenants of public authorities or landlords carrying out a public function are able to raise any available human rights defence, including proportionality, against the possession proceedings.

The court will consider whether such a defence meets the high threshold of being 'seriously arguable' established by the Supreme Court. Subject to any available human rights defence raised by the tenant, the court must grant an order for possession where the landlord has followed the correct procedure.

**Suspension of possession order:** The court may not postpone the giving up of possession to a date later than 14 days after the making of the order; unless exceptional hardship would result in which case it may be postponed for up to six weeks.

### Important differences

Unlike with the discretionary grounds for possession, landlords do not need to prove to the court that it is reasonable to grant possession. This means that the court will be more likely to determine cases in a single hearing, thereby expediting the process.

The absolute ground is an additional tool which provides more flexibility for landlords but is applicable only in limited circumstances – where a court has already found a tenant or member of their household guilty of anti-social behaviour or criminality in the locality of the property.

The court has no power to dispense with service of a notice for possession under the absolute ground as they can do under the discretionary ground for anti-social behaviour.

Local council tenants have a statutory right to request a review of the landlord's decision to seek possession under the absolute ground. We expect housing associations to make a similar non-statutory review procedure available to their tenants.

The court only has the discretion to suspend a possession order made under the absolute ground to a date no later than 14 days after the making of the order (unless it appears to the court that exceptional hardship would be caused, in which case it may be postponed to a date no later than six weeks after the making of the order).