

CABINET – 13 JANUARY 2016

ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014

Report of Assistant Chief Executive, Executive Director of Commercial Development and Head of Law and Governance

1. Purpose of the Report

To advise Cabinet of the new powers available to the Council and other bodies under the Anti-Social Behaviour, Crime and Policing Act 2014 (the Act), to recommend the authorisation of officers to exercise powers under the Act, including the issue of fixed penalty notices and to set the level of the fixed penalty notices.

2. Description of Decision (Recommendations)

It is recommended that Cabinet:

- (1) Authorise the use of the full range of powers available under the Anti-Social Behaviour, Crime and Policing Act 2014, as set out in this Report;
- (2) Agree the level of the fixed penalty notices issued under Section 52 and 68 of the Act be set at £75 (discounted to £50 if paid within 10 days); and
- (3) Recommend Council to authorise the Head of Law and Governance, in consultation with the Leader, to amend the Constitution to reflect the delegation of functions set out in paragraph 8 of this Report and to make such other consequential amendments as are appropriate.

3. Introduction/Background

- 3.1 Anti-social behaviour is a broad term used to describe day to day incidents of crime, nuisance and disorder that can have a substantial impact on people's lives. It can include litter and vandalism, public drunkenness, aggressive dogs and noisy or abusive neighbours. Responsibility for dealing with such behaviours has been shared between a number of agencies, including the Council, the Police and social landlords.
- 3.2 In 2014/2015 there were 14,290 incidents of anti-social behaviour reported to the Police and the Council has dealt with 1,399 cases of anti-social behaviour.
- 3.3 Prior to the introduction of the Act, which came into force in October 2014, the Council made use of a number of powers available to it under various pieces of legislation to tackle issues of anti-social behaviour, such as issuing litter clearing notices, drink banning orders and dog control orders. All of these powers have now been replaced with new provisions..
- 3.4 The intention behind the Act is to put victims at the heart of the response to anti-social behaviour and to ensure agencies have effective powers that are quick, practical and easy to use. Some of the measures are aimed at giving greater say to victims in the way their reports of anti-social behaviour are dealt with.

4. Current Position

- 4.1 The Act replaces 19 pre-existing measures with 6 new measures for tackling anti-social behaviour. The new powers are set out in the table below and summarised in the subsequent paragraphs. In implementing the new powers, the Council will, wherever possible, attempt to explore alternative informal solutions to the issues but in some cases direct enforcement action may be deemed necessary.

Old Powers	New Powers
Anti-Social Behaviour Order Drink Banning Order Anti-Social Behaviour Injunction Individual Support Order Intervention Order	Civil Injunction
Anti-Social Behaviour Order on Conviction Drink Banning Order on Conviction	Criminal Behaviour Order
Litter Clearing Notice Street Litter Clearing Notice Graffiti/Defacement Removal Notice	Community Protection Notice
Designated Public Place Order Gating Order Dog Control Order	Public Spaces Protection Order
Premises Closure Order Crack House Closure Order Noisy Premises Closure Order S161 Closure Order	Closure Notice / Order
<u>Police Powers:-</u> Dispersal Order Direction to Leave	<u>Police Power:-</u> Dispersal Power

5. Enforcement Provisions Available under the Act

5.1 Civil Injunction

- 5.1.1 The purpose of an injunction is to stop or prevent individuals engaging in anti-social behaviour quickly and before the behaviour escalates. Previously, anti-social behaviour injunctions were available only to social landlords and to local authorities in relation to housing management functions. The new power under the Act is available to local councils, housing providers, the Police and other agencies and is not restricted to housing matters.

- 5.1.2 An application for an injunction under the Act will be made to the county court or, in the case of under 18s, to the youth court. An injunction will be issued if it is shown, on the balance of probabilities, that a person has engaged, or is threatening to engage, in conduct capable of causing nuisance or annoyance to any person and the court considers it is just and convenient to grant the injunction to stop the anti-social behaviour. There is also scope for the injunction to include positive requirements to focus on long-term solutions. For example, this might include attendance at alcohol awareness classes for alcohol-related problems, attendance at dog training classes by irresponsible dog owners or attendance at mediation sessions with neighbours or victims.
- 5.1.3 The penalty for a breach of an injunction is an unlimited fine or up to two years in prison. In the case of under 18s, a breach could be dealt with through a curfew, supervision or detention.

5.2 Criminal Behaviour Order (CBO)

- 5.2.1 A Criminal Behaviour Order is an order issued by a criminal court against a person who has been convicted of an offence. The Order will include prohibitions to stop the anti-social behaviour concerned, for example banning the individual from certain activities or places, but can also include positive requirements to encourage the offender to address the underlying causes of their behaviour, such as attending drug treatment programmes.
- 5.2.2 The penalty for a breach of a Criminal Behaviour Order is a fine and/or imprisonment. For under 18s the sentencing powers of the youth court apply.

5.3 Community Protection Notice (CPN)

- 5.3.1 A Community Protection Notice is intended to deal with on-going problems or nuisances which negatively affect the community's quality of life, by targeting those responsible. To engage the Community Protection Notice procedure, the behaviour involved must have a detrimental effect on the quality of life of those in the locality, be of a persistent or continuing nature and be unreasonable.
- 5.3.2 Where unreasonable behaviour for example, that relates to graffiti, rubbish or noise, is affecting a community's quality of life, the Police or Council (or a social landlord designated by the Council) can issue a written warning to an individual or business. The warning informs the perpetrator of the problem behaviour, requests them to stop and advises of the consequences of continuing. If, despite such warning, the behaviour continues, the Police/Council/social landlord can then issue a Community Protection Notice, which will include a requirement to stop things, do things or take reasonable steps to avoid further anti-social behaviour.
- 5.3.3 If an individual or body fails to comply with a Community Protection Notice issued by the Council, the Council may be able to take remedial action to address the issue and then charge the perpetrator the reasonable costs incurred in doing so. For example, if there has been a significant build-up of rubbish in someone's garden, remedial action could take the form of cleaning the garden on the perpetrator's behalf.

5.3.4 Breach of a Community Protection Notice is a criminal offence which carries a fine of up to £2,500 for individuals, or up to £20,000 for businesses. Following conviction, a court can make a Remedial Order requiring work to be carried out by the perpetrator, or a Forfeiture Order ordering the disposal of any item used in the commission of the offence (such as spray paints in a graffiti matter). As an alternative to prosecution, a fixed penalty notice can be issued if appropriate.

5.4 Public Spaces Protection Order (PSPO)

5.4.1 The Council may issue a Public Spaces Protection Order after consultation with the Police, Police and Crime Commissioner and other relevant bodies, if they are satisfied on reasonable grounds that unreasonable behaviour is occurring in a public space which is having, or is likely to have, a detrimental effect on the quality of life of those in the locality and which is of a persistent or continuing nature. For example, this could involve rowdiness and consumption of alcohol, the playing of loud music or allowing dogs to run around out of control in a park, alleyway or communal area.

5.4.2 The Public Spaces Protection Order can include blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times. It can also restrict access to public rights of way where that route is being used to commit anti-social behaviour.

5.4.3 Where a Public Spaces Protection Order is in force, a police officer, police community support officer or Council officer witnessing behaviour that breaches its conditions may challenge the individual(s) concerned and ask them to comply. If the individual does not comply with the request, an offence is committed.

5.4.4 An offence involving breach of a Public Spaces Protection Order is punishable by a fine of up to £1,000 or a fixed penalty notice may be issued if appropriate.

5.5 Closure Notice and Closure Order

5.5.1 The purpose of the closure powers is to allow the Police or Council to quickly close residential or business premises which are being used, or are likely to be used, to commit nuisance or disorder.

5.5.2 If the Council or the Police are satisfied on reasonable grounds that the use of particular premises has resulted in, or is likely soon to result in, nuisance to members of the public or that there has been, or is likely soon to be, disorder near those premises associated with the use of those premises, they may (if they consider it necessary) issue a Closure Notice to prevent the nuisance or disorder from continuing, recurring or occurring. A police inspector or authorised Council officer can issue a Closure Notice for 24 hours and a 48 hour notice (or an extension of a 24 hour notice to 48 hours) can be issued by the Council's Head of Paid Service (or his/her designate) or by a police superintendent. While it is in force, the Closure Notice closes the premises to which it relates and prevents access by any person other than the owner and those who live there.

5.5.3 If it is necessary to extend the period of closure, application must then be made to the court for a Closure Order. The court may make the Order sought if satisfied that there has been disorderly, offensive or criminal behaviour, a serious nuisance to the public or disorder near the premises. A Closure Order can close premises for up to six months and can restrict all access (including access by the owner and occupiers if necessary).

5.5.4 Breach of a Closure Notice or Order is a criminal offence which carries a maximum penalty of an unlimited fine and/or imprisonment.

5.6 **Police Dispersal Power**

5.6.1 This is a police power to direct any individual causing or likely to cause anti-social behaviour, crime or disorder to leave an area for up to 48 hours and to direct that individual to surrender any item that the police constable believes has been or is likely to be used in causing anti-social behaviour. A failure to comply with a direction to leave and/or a direction to surrender is a criminal offence.

6. **Recovery of Possession of Dwelling-houses**

6.1 The Act introduces a new absolute ground for possession of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court. It is a ground that can be used by private rented sector landlords as well as social landlords and the aim is to expedite the eviction of landlords' most anti-social tenants and bring faster relief to victims.

6.2 The Act also introduces a new discretionary ground for possession in relation to secure tenancies which applies in cases where there has been conduct likely to cause annoyance to the landlord or his staff/contractors or where the tenant or any other person residing in the property has been convicted of an indictable offence connected with participation in a riot.

7. **New Measures for Community Involvement**

To enable local involvement and accountability, the Act has also introduced the following two measures:-

7.1 **Community Trigger** - The 'Community Trigger' is essentially an anti-social behaviour case review. It is designed to offer a "safety net" for vulnerable victims and help avoid individuals being passed between agencies without resolution. The Community Trigger presents an opportunity for victims to demand a review of the response to their concerns, if certain criteria are met and is intended to encourage collaborative working between agencies.

7.2 **Community Remedy** - This will give victims a say in the out-of-court punishment of offenders for low-level crime and anti-social behaviour. The Police and Crime Commissioner is required to publish a Community Remedy Document as to what options will be offered in these circumstances.

8. Amendments to Delegation Scheme

- 8.1 At its meeting on 23rd September 2015, Council authorised the Head of Law and Governance to make applications to the Court for the various orders under the Act. In order to ensure that the full range of powers is available, it is recommended that the following additional delegated authority is granted. Where application to the Court is required, the relevant Chief Officer referred to below may authorise the Head of Law and Governance to make the appropriate application. Where the exercise of the power does not require a court application, for example, the issue of a Community Protection Notice or fixed penalty notice, such notices may be issued by the Chief Officer concerned or on their behalf by an officer authorised by them. In the case of Public Space Protection Orders, such orders will only be made with the approval of Cabinet, which will authorise the relevant officer to issue the Order.

Power to be used	Delegated Officer
Public Spaces Protection Orders	Appropriate Chief Officer to be authorised by Cabinet on a case by case basis
Civil Injunctions Criminal Behaviour Orders Closure Notices and Orders Fixed penalty notices issued for breaches of Public Spaces Protection Orders	Assistant Chief Executive
Community Protection Notices and fixed penalty notices issued for breaches Fixed penalty notices issued for breaches of Public Spaces Protection Orders Criminal Behaviour Orders Closure Notices and Orders	Executive Director of Commercial Development

- 8.2 Where the same power is recommended to be delegated to the Assistant Chief Executive and the Executive Directive of Commercial Development, the Chief Officer exercising the power will only do so following consultation with the other named Chief Officer to ensure no duplication occurs. As required by the Council's Constitution, appropriate consultation will also take place with the relevant portfolio holder in respect of the exercise of powers under the Act.

9. Fixed Penalty Notices

- 9.1 The Act makes provision for fixed penalty notices to be issued, for a breach of a Community Protection Notice or Public Spaces Protection Order, up to a maximum of £100.
- 9.2 It is recommended that the fixed penalty notices are set at £75, discounted to £50 if payment is made within 10 days. This level mirrors existing fixed penalty notices offered for other environmental crime matters.

10. Reasons for the Decision

- 10.1 The various powers the Council had to tackle anti-social behaviour have been replaced with provisions in the Act. The decision recommended to Cabinet will ensure the Council is able to make use of the full range of powers available and continue to deal with anti-social behaviour and environmental crime effectively.

11. Alternative Options

- 11.1 The only other option would be to do nothing, however the Council would then be unable to use all of the powers available to it and would therefore weaken its ability to tackle anti-social behaviour and protect the community.

12. Impact Analysis

- (a) **Equalities, Privacy Impact Assessment (PIA) and Sustainability** –there are no equality and diversity, risk management or privacy and sustainability implications directly arising from this proposal. Careful consideration would be given on a case by case basis to utilising any of the new powers.
- (b) **Reduction of Crime and Disorder – Community Cohesion / Social Inclusion** – this legislation is specifically designed to address crime, nuisance and / or disorder.

13. Other Relevant Considerations / Consultations

- (i) **Financial Implications** – it is expected that the use of the enforcement powers contained within the Act will have limited financial implications both in terms of expected income and associated costs. Revenue generated by the use of fixed penalty notices will be paid directly to the Council and be administered in the same way as existing fixed penalty notices.

Background Papers

[Home Office - Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers](#)
[Statutory guidance for frontline professionals](#)
[July 2014](#)

