



Home Office

Si-Note: Anti-social Behaviour, Crime and Policing Act 2014
search - replaces the draft guidance issued in October 2013.

Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals

July 2014

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Introduction

Anti-social behaviour is a broad term used to describe the day-to-day incidents of crime, nuisance and disorder that make many people's lives a misery – from litter and vandalism, to public drunkenness or aggressive dogs, to noisy or abusive neighbours. Such a wide range of behaviours means that responsibility for dealing with anti-social behaviour is shared between a number of agencies, particularly the police, councils and social landlords.

Victims can feel helpless, bounced from one agency to another and then back again. In many cases, the behaviour is targeted against the most vulnerable in our society and even what is perceived as 'low level' anti-social behaviour, when targeted and persistent, can have devastating effects on a victim's life.

Our reforms are designed to put victims at the heart of the response to anti-social behaviour, and give professionals the flexibility they need to deal with any given situation.

This is statutory guidance issued under sections 19, 32, 41, 56, 73 and 91 of the Anti-social Behaviour, Crime and Policing Act 2014 and replaces the draft guidance issued in October 2013.

This guidance is written primarily for the police officers, council staff and social landlords who will use the new powers. Part 1 looks at the new measures being introduced to give victims a greater say in the way their reports of anti-social behaviour are dealt with. Part 2 then outlines the new powers. We have worked closely with frontline professionals, victims and others in the development of the legislation, and we will continue to work to ensure that this guidance helps professionals make best use of the new powers to protect the public.

In addition to this guidance, the Government has produced specific advice on how the new antisocial behaviour powers can be used to deal with irresponsible dog ownership. That document has been produced in conjunction with the Welsh Assembly Government and is available at <https://www.gov.uk/government/publications/tackling-irresponsible-dog-ownership-draftpractitioners-manual>

Part 1: Putting victims first

This Government has set out a new approach to crime, policing and community safety, based on a fundamental shift from bureaucratic to democratic accountability through directly elected Police and Crime Commissioners, increased transparency, and increasing professional discretion. This new approach includes overhauling the whole system of dealing with anti-social behaviour to ensure agencies are putting the needs of victims first.

This marks a decisive shift from the target-driven, top-down, directive approach of the past. It makes no sense for officials in Whitehall to decide local anti-social behaviour priorities, say how agencies should respond to specific issues, or set crude targets that can result in perverse working practices and outcomes.

Over the past few years, the police, councils and others have started to adopt a range of effective mechanisms that improve the response they provide to victims. From Multi-Agency Risk Assessment Conferences to taking on board the lessons identified in the anti-social behaviour call handling trials, victims have now become the focus of the response in many areas. This has resulted in an end-to-end risk assessment process, ensuring that vulnerable victims are better supported in cases of anti-social behaviour.

In terms of the behaviour itself, what is seen as ‘anti-social’ will vary from victim to victim, and community to community. This is one reason why we changed the way in which incidents of anti-social behaviour are reported, no longer focusing on the behaviour, but on the impact it has on the victim.

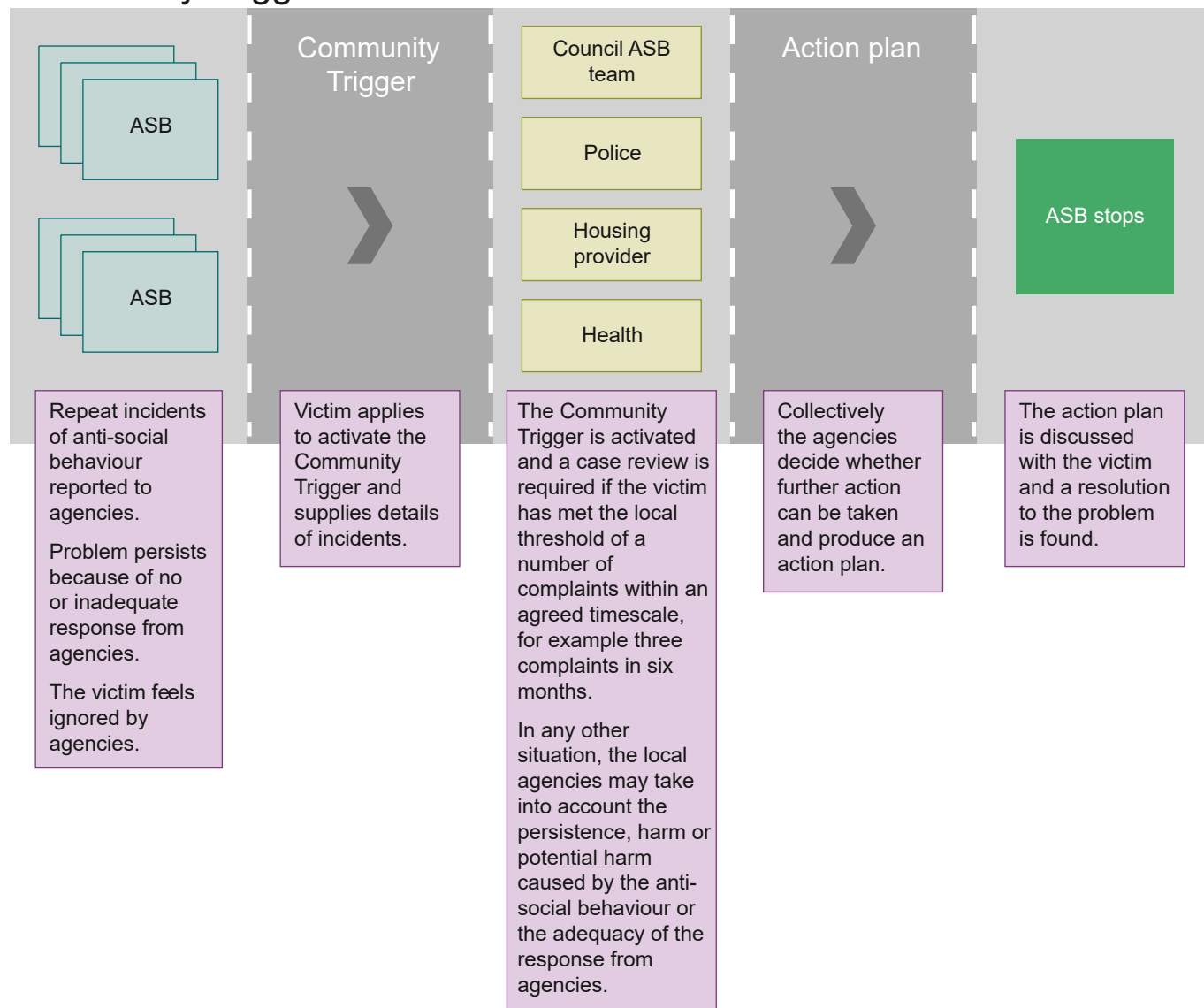
The right response will depend on a range of factors, but most importantly, on the needs of the victim and the impact the behaviour is having on their lives. Solutions need to be jointly developed by local agencies, each bringing their own experience and expertise to work together with communities and victims. Frontline professionals must be free to use their judgment rather than following a prescribed ‘one size fits all’ approach.

Giving victims a say

The Anti-social Behaviour, Crime and Policing Act 2014 includes two new measures which are designed to give victims and communities a say in the way anti-social behaviour is dealt with:

- The **Community Trigger**, gives victims the ability to demand action, starting with a review of their case, where the locally defined threshold is met.

Community Trigger



Purpose

Victims will be able to use the Community Trigger to demand action, starting with a review of their case. Agencies including councils, the police, local health teams and registered providers of social housing will have a duty to undertake a case review when someone requests one and the case meets a locally defined threshold.

The Community Trigger can also be used by any person on behalf of a victim, for example a family member, friend, carer, councillor, Member of Parliament or other professional person. This is intended to ensure that all victims are able to use the Community Trigger. However, the victim's consent should be sought by the person using the Community Trigger on their behalf.

The Community Trigger can be used by a person of any age, and agencies should make it as accessible as possible to all victims.

Putting victims first: The Community Trigger will help to reassure victims that agencies take their reports of anti-social behaviour seriously, but it cannot in itself increase reporting from vulnerable victims. Agencies should consider how to maximise awareness of the

Community Trigger, in particular among vulnerable people and professionals who work with vulnerable people.

Relevant bodies and responsible authorities

'Relevant bodies' are those organisations which have a statutory duty to have a Community Trigger procedure and to undertake case reviews when a person asks for one (and the threshold is met). The relevant bodies are:

- district councils, unitary authorities or London borough councils;
- police forces;
- clinical commissioning groups in England, local health boards in Wales; and
- social housing providers who are co-opted into the group.

There must be arrangements for the inclusion of local providers of social housing among the relevant bodies in an area.

The Act does not determine which housing providers should be co-opted into the procedures. It may be more effective to co-opt the larger housing providers so that they can be involved in developing and reviewing the Community Trigger procedures on behalf of the sector. Smaller housing providers need only be involved in the Community Trigger when a case involves one of their tenants. For the purposes of the Community Trigger, a 'local provider of social housing' includes:

In England:

- A private registered provider of social housing that: – grants tenancies of dwelling-houses in that area; or – manages any house or other property in that area.

In Wales:

- A body registered as a social landlord under section 3 of the Housing Act 1996 that: – grants tenancies of dwelling-houses in that area; or – manages any house or other property in that area.

Box A: How to co-opt a social landlord

Where there are a number of housing providers in an area, they could be represented by one housing provider on behalf of the sector. There may be an established working group or organisation which can provide this role, for example, in Birmingham there is an established partnership organisation.

Birmingham Social Housing Partnership is the representative organisation for housing providers in Birmingham, representing in excess of 35 housing providers. The purpose of the organisation is to ensure that registered housing providers are engaged in community safety in the city. An important part of the work is to lead the development of an action plan for providers to contribute to reducing crime, disorder and anti-social behaviour. The group supports partner agencies in their operational responses to community safety issues, anti-social behaviour, hate crime, domestic abuse and gang violence.

Role of the Police and Crime Commissioner (PCC): The local PCC must be consulted on the Community Trigger procedure when it is set up, and must also be consulted whenever the procedure is reviewed. Depending on how the local council areas are arranged for the purposes of the Community Trigger, there may be a number of different procedures in one police force area. Arrangements may be made for the PCC to be directly involved in the Community Trigger, for example by:

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

Threshold

The relevant bodies should work together to agree an appropriate Community Trigger threshold, taking into consideration the nature of anti-social behaviour experienced by victims in their area and working practices of the agencies involved. **The threshold must be no higher than three complaints of anti-social behaviour in a six months period. Where a person makes an application for a case review and the number of qualifying complaints has been made, the threshold for a review is met.**

In any other situation, in setting the threshold, reference may be had to any of the following matters:

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

The relevant bodies may wish to consult the local community about what they would consider to be an appropriate threshold in their area.

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 those who are vulnerable are likely to 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 procedure as part of the decision on whether the threshold is met. Risk assessment matrices cannot provide a definitive assessment of someone's needs, but 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 one agreed matrix for the Community Trigger.

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 will be met.

One of the aims of the Community Trigger is to encourage those who are most vulnerable, or may not otherwise engage with agencies, to report incidents of anti-social behaviour.

When the victim is considered vulnerable, the relevant bodies should consider what additional practical and emotional support is offered to the victim.

Qualifying complaints: The legislation sets out what will be considered a ‘qualifying complaint’ for using the Community Trigger. The purpose of this is to prevent someone reporting historical incidents of anti-social behaviour in order to use the Community Trigger. The legislation sets out the following standards but agencies can set different levels if appropriate for their area as long as it does not lower the standard as set out:

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

For the purpose of the Community Trigger, anti-social behaviour is defined as behaviour causing harassment, alarm or distress to a member, or members, of the public. However, 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.

Even though housing-related anti-social behaviour has a lower test of nuisance or annoyance for an injunction under Part 1 of the Act, because of the victim’s inability to separate themselves from the anti-social behaviour the harm experienced is highly likely, depending upon the circumstances, to result in harassment, alarm or distress for the purposes of the Community Trigger.

The Community Trigger is specifically designed to deal with anti-social behaviour. However antisocial behaviour can often be motivated by hate and the relevant bodies may wish to include reports of these incidents in their Community Trigger.

Box B: Hate crime

A hate crime is any criminal offence which is perceived by the victim or any other person to be motivated by hostility or prejudice based on a personal characteristic. Incidents can range from harassment, abusive language, criminal damage/damage to property, to threats and physical violence. Incidents of hate crime may manifest themselves in low level forms of anti-social behaviour, which on the surface may appear minor but the impact on the victim and their families may be devastating and life changing. Hate crime can also have a negative impact on cohesion and integration in communities if incidents are not dealt with quickly and effectively.

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 and the courts also have powers to enhance a perpetrator's sentence for any offence that is motivated by hatred or hostility towards the victim.

In March 2012, the Government published ‘Challenge it, Report it, Stop it: The Government's Plan to Tackle Hate Crime’ (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/97849/action-plan.pdf). The plan brings together the work of a number of departments and agencies under three important objectives: to prevent hate crime happening in the first place; to increase reporting and access to support, and to improve the operational response to hate crime. Whilst the Government plays a vital role in setting a national direction, the response to hate crime should 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 develop effective responses to tackle incidents early before they can escalate.

Details

The Community Trigger was piloted in Manchester, Brighton and Hove, West Lindsey and Boston, and Richmond upon Thames. The Home Office report 'Empowering Communities, Protecting Victims: summary report on the community trigger trials', published in May 2013 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207468/community-trigger-trials-report-v4.pdf), highlights the lessons identified by the pilot areas and will help assist the relevant bodies which are setting up their Community Trigger procedures.

Information sharing: The effective operation of the legislation requires the relevant bodies to share relevant information for the purpose of carrying out the case review. This may include details of previous complaints made by the victim, information about the effect the problem has had on others in the area, 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 Community Trigger.

The relevant bodies may request any person to disclose information for the purpose of a Community Trigger 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 Community Trigger does not breach any obligation of confidence or any other restriction on the disclosure of information.

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.

Box C: 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
- to work in partnership with other agencies to prevent and tackle anti-social behaviour in the neighbourhoods where they own homes.

Publishing the Community Trigger procedure and contact details: The relevant bodies must publish the Community Trigger procedure, including the point of contact for making an application to use the Community Trigger. The relevant bodies can decide an appropriate method and format for publishing this depending on the needs of the community, for example, it may be necessary to translate the information into different languages.

The relevant bodies must publish a 'point of contact' for victims (or anyone acting on their behalf) who have decided to use the Community Trigger. This may include a phone number, email address, postal address, and a form which can be completed online.

Putting victims first: Using the Community Trigger must be straightforward for the victim. It is good practice to have a number of methods to contact an agency, and consideration should be given to the fact that some victims may feel more comfortable contacting one agency than another. The 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 Community Trigger procedure: The relevant bodies must work together to devise and agree the procedure for the Community Trigger. The procedure must include provision for a person to request a review of the way an application for a Community Trigger was dealt with, and also the way their Community Trigger review was carried out.

Box D: Basic procedure for a Community Trigger

Each area should agree a procedure that suits the needs of victims and communities locally. 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 Community Trigger.
- The relevant bodies decide whether the threshold is met.
- If it has been, then 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.

The case review: The relevant bodies should have an agreed procedure for carrying out the Community Trigger review. The review will look at what action has previously been taken in response to the victim's reports of anti-social behaviour.

When setting up the procedure the relevant bodies should consider how the Community Trigger can be built into existing processes. Many areas have a regular multi-agency meeting to discuss cases of anti-social behaviour, such as an Anti-social Behaviour Risk Assessment Conference or a Multi-Agency Risk Assessment Conference. These may be the best-placed forums to undertake the case review. Alternatively, the relevant bodies may decide that it is more appropriate to have a separate forum to discuss cases. It will be up to local relevant bodies to decide what works best in their area. If the perpetrator is under the age of 18 the youth offending team should be invited to attend the review.

The Community Trigger will not prompt a review of decisions previously 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 Victims' Right to Review Scheme 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.

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 it meets the needs of the victim. The relevant bodies will not be able to recommend the CPS to take action. The CPS 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 use the Community Trigger may feel that they have been let down by agencies in the past so it is important that victims receive timely and consistent communication regarding their case.

Publishing data: The legislation states that relevant bodies must publish information covering:

- the number of applications for Community Triggers 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. 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 the triggers came from, or which the relevant bodies they related to, if this information is useful to communities and victims. Published information must not include details which could identify the victim.

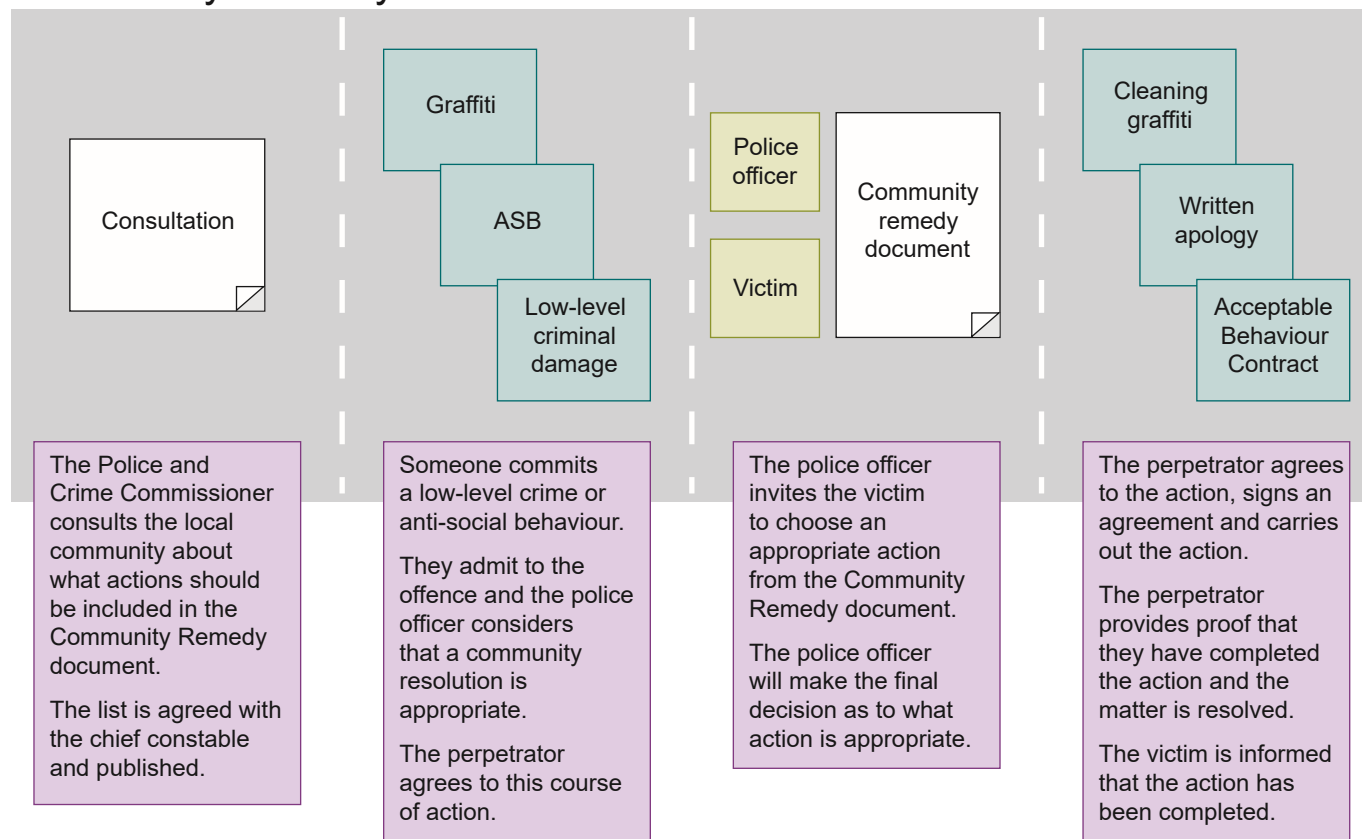
Who can use the Community Trigger?

Individuals, businesses and community groups can all use the Community Trigger. Relevant bodies may decide to have a different threshold for the community to use it collectively to encourage them to work together to share and find solutions to problems. Forums such as Neighbourhood Watch, Home Watch, residents' associations, community groups, Safer Neighbourhood meetings and Neighbourhood Policing community meetings are among the ways in which communities can share experiences and problems.

1.2 Community Remedy

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| Purpose | The Community Remedy gives victims a say in the out-of-court punishment of perpetrators for low-level crime and anti-social behaviour. |
| The Community Remedy document | 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. |
| Applicants / who can use the Community Remedy | <ul style="list-style-type: none"> • Police officer; • An investigating officer (which can include Police Community Support Officers for certain offences, if designated the power by their chief constable); • A person authorised by a relevant prosecutor for conditional cautions or youth conditional cautions. |
| 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"> • The officer must have evidence that the person has engaged in anti-social behaviour or committed an offence; • The person must admit to the behaviour or the offence (and agree to participate); • 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. |
| 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. |
| Important changes/ differences | 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. |

Community Remedy



Purpose

This section explains how the Community Remedy document should be developed and how it should be used when a community resolution, conditional caution or youth conditional caution is the chosen disposal.

The Community Remedy document will be used as part of the existing process for delivering community resolutions. It will give victims of low-level crime and anti-social behaviour a say in the punishment of perpetrators out of court. The Community Remedy may also be used when a conditional caution or youth conditional caution is given, as a means of consulting the victim about the possible conditions to be attached to the caution.

The community remedy is for anti-social behaviour and low-level criminal offences.

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 area to another, based on what is available in the area and what the Police and Crime Commissioner (PCC) and chief constable agree are appropriate. The Community Remedy document must be published.

Consultation

There is a duty on the PCC to consult with members of the public and community representatives on what actions they would consider appropriate to be included in the Community Remedy document. The PCC has a statutory duty to consult the local authority and

chief officer of police for the area on what actions they consider should be included. The local authority youth offending and community safety teams will know what resources and facilities are available locally.

The public consultation could be undertaken as part of another consultation, for example, when consulting on the Police and Crime Plan. The Community Remedy document may be revised at any time and it may be desirable to do this if new options are to be added. Consultation may be undertaken in whatever format the PCC considers appropriate (for example, online consultation, talking to community groups and local victims groups, via local newspapers or a combination of formats).

Actions in the Community Remedy document

The PCC and the chief constable will agree the actions listed on 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
- reparative element: achieving appropriate restitution/reparation to the victim; or
- rehabilitative element: helping to address the causes of the perpetrator's behaviour; or
- combination of these.

The actions available must help improve public confidence in the use of out-of-court disposals and must be compatible with the perpetrator's human rights.

Box E: What could be included?

The legislation does not specify what actions should be included in the Community Remedy document. This will vary from one police force to another depending on the views of local people and the availability of actions or activities. Actions in the Community Remedy document may include:

- 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 PCC 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

Typically, community resolutions are used when dealing with low-level criminal damage, low value theft, minor assaults (without injury) and anti-social behaviour.

Community resolutions can be used by a police officer or an investigating officer. Police community support officers (PCSOs) can carry out community resolutions for offences which their chief constable has designated them powers to deal with. Community resolutions may also be delivered by PCSOs on the authority of a police officer of the appropriate rank.

Section 38 of the Police Reform Act 2002 defines an investigating officer as a person employed by a police force or Office of the Police and Crime Commissioner, or who is under the direction and control of the chief officer, and has been designated as an investigating officer.

Before deciding on a community resolution the police officer must:

- have evidence that the person has engaged in anti-social behaviour;
- have an admission of guilt from the person engaged in the behaviour (and they agree to participate and are capable of understanding the situation and process);
- believe that the evidence is sufficient for taking proceedings for a civil injunction, or other court proceedings, caution, or fixed penalty notice, but considers that a community resolution would be more appropriate.

Further information can be found in the ACPO Guidelines on the use of Community Resolutions (CR) Incorporating Restorative Justice (RJ) 2012 (http://www.acpo.police.uk/documents/criminaljustice/2012/2_01208CJBAComResandRJ.pdf).

Using the community remedy document with community resolutions

When a community resolution is to be used, the officer 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 considers that the action chosen by the victim is appropriate, the perpetrator should be asked to carry out that action. The police officer or investigating officer in question will have ultimate responsibility for ensuring that the action offered to the perpetrator is appropriate and proportionate to the offence.

If there are multiple victims of the offence, the officer must make reasonable efforts to take the views of all the victims into account. If the victims have different views then the officer should consider these but will make the final decision as to which action it is appropriate for the perpetrator to undertake.

Community resolutions are entirely voluntary. The officer should ensure the victim understands the purpose of community resolutions and that the victim 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.

It is not necessary for the victim to meet the perpetrator in order to choose the action in the Community Remedy document. The officer may consider undertaking a risk assessment, particularly if the victim is known to the perpetrator, or if the resolution involves the victim meeting the perpetrator.

Putting victims first: The Community Remedy is intended to give victims more say in the punishment of perpetrators out of court. However, the victim's involvement is voluntary and the victim must not be made to feel they should take part in a process 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 them understand 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 will 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 to be 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 in question (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 of the offence, the officer must make reasonable efforts to take the views of all the victims into account. If the victims have different views then the officer should consider these but will make the final decision as to which action it is appropriate for the perpetrator to undertake.

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's Statutory 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, which scores four on the ACPO Gravity Matrix. Full details can be found in the Ministry of Justice's Statutory Code of Practice for Youth Conditional Cautions.

<https://www.gov.uk/government/publications/code-of-practice-for-youth-conditional-cautions--2>

Part 2: More effective powers

Dealing with anti-social behaviour is rarely simple. The new powers are designed to be flexible, allowing professionals to adapt them to protect victims in a wide range of situations. However, the new powers will work best when complemented by more effective ways of working – in particular, working in partnership, sharing information and using early and informal interventions.

Working together and sharing information

The new powers will allow the police, councils, social landlords and others to deal with problems quickly. However, local agencies should still work together where appropriate to ensure the best results for victims. Each agency brings with it a range of expertise and experience that when brought together can assist in resolving issues more effectively.

As part of this joined-up approach, 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 areas where this works well, with information flowing between partners quickly, victims can see a real difference in the response to their reports of anti-social behaviour. The Community Trigger outlined in Part 1 of this guidance includes a specific duty on some bodies to share information when the trigger is activated, however, partners should not wait until a victim feels they are being ignored before coming together to prepare a response.

Case management

Effective case management should underpin all activity to deal with anti-social behaviour, starting from when a complaint is received until the matter is resolved. The welfare, safety and well-being of victims whose complaints form the basis of any action must be the main consideration at every stage of the process. This will ensure that agencies provide a fair and consistent service to the public, taking timely appropriate action to tackle anti-social behaviour.

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 mark the start of the case-management process. It is important to identify the effect the anti-social behaviour is having on the victim, particularly if repeated incidents of anti-social behaviour are having a cumulative effect on their well-being. A continuous and organised risk assessment will help 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.

2.1 Early and informal interventions

Early intervention, especially through informal approaches, can be successful in stopping the anti-social behaviour committed by the majority of perpetrators. For example, a 2013 HouseMark survey showed that over 80% of anti-social behaviour cases dealt with by social landlords were successfully resolved through some form of early or informal intervention.

Early and informal interventions can establish clear standards of behaviour and reinforce the message that anti-social behaviour will not be tolerated. In many cases, awareness of the impact of their behaviour on victims, and the threat of more formal enforcement tools, can be a sufficient incentive for an individual to change their behaviour. It should be for frontline professionals to decide when and how to use these approaches, but the Government encourages use of informal methods where it is deemed to be appropriate.

Informal interventions should be considered first in most cases, particularly when dealing with young people, as they can stop bad behaviour before it escalates. This should be determined by professionals on a case by case basis. However, some of the most common forms of informal intervention are included below for reference. Alternatively, in cases where informal

intervention is not the appropriate first step, perhaps because the victim is at risk of harm, professionals should consider progressing directly to formal sanctions.

Warnings

Verbal warnings: In deciding to use a verbal warning, the officer should still consider the evidence. For instance, the officer should have reason to believe that the anti-social behaviour has occurred, or is likely to occur, and that the individual's behaviour could be considered to be unreasonable. In issuing a verbal warning, the police, council or housing officer should make clear to the individual what behaviour is causing the issue and what effect this is having on the victim or community and the consequences of non-compliance are explained clearly.

Written warnings: As with a verbal warning, a written warning should contain specifics about what behaviour has occurred and why this is not acceptable, including the impact on any victims or local community. Local agencies should alert each other that the warning has been given so that it can be effectively monitored.

Each agency needs to ensure that it keeps a record of any verbal or written warning given so that it may be used as evidence in court proceedings if required.

Local agencies may wish to consider what level of detail they go into at this stage regarding the consequences of further anti-social behaviour and more serious sanctions – for instance, an Acceptable Behaviour Contract, court proceedings for a civil injunction or even criminal proceedings if the behaviour escalates.

Community resolution

'Community resolution' is the nationally recognised term for the resolution of a less serious offence or 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. It enables the police to deal more proportionately with lower level crime and anti-social behaviour in a timely and transparent manner that takes into account the needs of the victim, perpetrator and wider community, outside the formal criminal justice system.

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. Community resolutions can help to reduce reoffending by encouraging perpetrators to face up to the impact of their behaviour and to take responsibility for making good the harm caused.

Further information can be found in the ACPO Guidelines on the use of Community Resolutions (CR) Incorporating Restorative Justice (RJ) 2012.

The new Community Remedy document outlined in Part 1.2 must be used when dealing with antisocial behaviour or lower-level offences out of court through community resolutions.

Mediation

In many cases of anti-social behaviour, mediation can be an effective tool, solving the issue by bringing all parties to the table. This can be very effective in neighbour disputes, family conflicts,

lifestyle differences such as noise nuisance complaints and similar situations where it can sometimes be difficult to identify the victim and the perpetrator.

Mediation does not work if it is forced on those involved. All parties must be willing to come to the table and discuss their issues and agencies should consider whether mediation is appropriate, who should attend and set clear ground rules for participation.

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 this conversation and ensure all parties adhere to the ground rules. They can also draw up an agreement if required for all parties to sign to formalise what has been agreed.

Acceptable Behaviour Contracts

Acceptable behaviour contracts (ABCs), sometimes called acceptable behaviour agreements, can be an effective way of dealing with anti-social individuals, especially where there are a number of problem behaviours. They can also be very effective at dealing with young people early, to nip problem behaviours in the bud before they escalate.

ABCs are a written agreement between a perpetrator of anti-social behaviour and the agency or agencies acting locally to prevent that behaviour. The terms of an ABC can be discussed with the perpetrator before they are drafted and signed to encourage compliance. However, there is no formal sanction associated with refusing to sign an ABC, so if an individual does not wish to sign, they cannot be forced to do so. However, refusal to sign an ABC may persuade a court that only a civil injunction or a criminal behaviour order will prevent the anti-social behaviour.

While there are no formal sanctions associated with breaching the conditions of an ABC, agencies should consider further steps if the individual does not change their behaviour. Potential further action should be made clear in the ABC so that the perpetrator is aware of the consequences of failing to comply. In the case of graffiti, for example, this could be the issue of a community protection notice or an application for a civil injunction.

In cases where court proceedings are subsequently deemed necessary, the work undertaken as part of drafting an ABC can form part of the evidence pack. For instance, any discussion with victims and communities to assess the impact of the behaviour could form the basis of a community impact statement for the court.

Parenting contracts

Where informal interventions are used against under 18s, the parents or guardians of the young person should be contacted in advance of the decision to take action. In many cases, the parents or guardians can play an important role 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 an ABC. In addition, if the behaviour of the parent is part of the issue (either because they are a bad influence on the child or fail to provide suitable supervision) agencies could consider a parenting contract. These are similar to an ABC but are signed by the parent or guardian. They could also be considered where the child in question is under 10 and so other interventions are not appropriate for the perpetrator themselves.

With a potentially troubled family, agencies should consider discussing the matter with other bodies with an interest – for instance the local youth offending team, social services and school to assess the scale of the problem. Family intervention programmes and the local Troubled Families Unit should also be contacted where appropriate to discuss potential interventions.

Support and counselling

In many cases, there are underlying causes of the anti-social behaviour. The new powers allow professionals to actively deal with these through the use of positive requirements. However, there is no need to wait until formal court action before offering help.

Substance misuse or alcohol dependency can drive anti-social behaviour and low-level crime, and support can have a positive impact. Catching someone before they fall into a criminal way of life by supporting them to escape addiction can save thousands of pounds in enforcement action over a person's lifetime.

The Troubled Families Programme has already identified many of the issues faced by young people (<https://www.gov.uk/government/policies/helping-troubled-families-turn-their-lives-around>). The young person being dealt with may already be known by the Troubled Families Unit, but if not, it may be useful to discuss the issues with local experts to see whether there is a wider support programme that can be put in place.

Conclusion

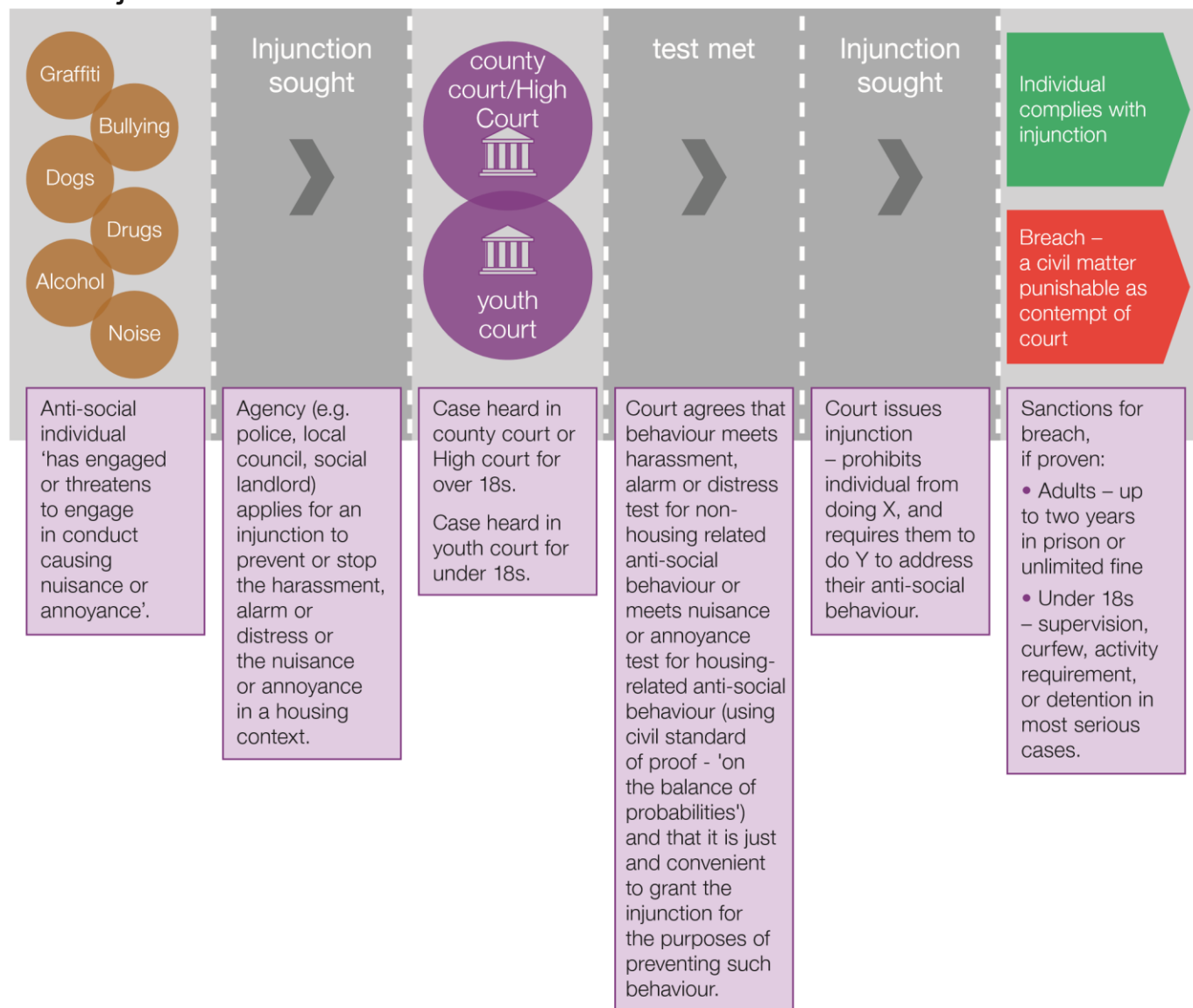
These are only a selection of the informal approaches that have been successful across England and Wales in recent years. In many cases, informal early intervention is successful in changing behaviours and protecting communities. Local enforcement agencies should develop a framework of early and informal interventions that reflects the needs of victims and communities. Early and informal interventions may be included in a plan to deal with anti-social behaviour locally, but should not replace formal interventions where they are the most effective means of dealing with anti-social behaviour.

2.2 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"> • Local councils; • Social landlords; • Police (including British Transport Police); • Transport for London; • Environment Agency and Natural Resources Wales; and • NHS Protect and NHS Protect (Wales) |
| Test | <ul style="list-style-type: none"> • On the balance of probabilities; • Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or • Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and • Just and convenient to grant the injunction to prevent anti-social behaviour. |

| | |
|---------------------------------------|--|
| Details | <ul style="list-style-type: none"> • Issued by the county court and High Court for over 18s and the youth court for under 18s. • Injunction will include prohibitions and can also include positive requirements to get the perpetrator to address the underlying causes of their anti-social behaviour. • Agencies must consult youth offending teams in applications against under 18s. |
| Penalty on breach | <ul style="list-style-type: none"> • Breach of the injunction is not a criminal offence, but breach must be proved to the criminal standard, that is, beyond reasonable doubt. • Over 18s: civil contempt of court with unlimited fine or up to two years in prison. • Under 18s: supervision order or, as a very last resort, a civil detention order of up to three months for 14-17 year olds. |
| Appeals | <ul style="list-style-type: none"> • Over 18s to the High Court; and • Under 18s to the Crown Court. |
| Important changes/ differences | <ul style="list-style-type: none"> • Available to a wider range of agencies than Anti-Social Behaviour Injunctions. • Obtainable on a civil standard of proof unlike Anti-Social Behaviour Orders (ASBOs). • No need to prove “necessity” unlike ASBOs. • Breach is not a criminal offence. • Scope for positive requirements to focus on long-term solutions. |

Civil injunction



Purpose

The injunction under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 is a civil power which can be applied for 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 still a formal sanction and many professionals will want to consider informal approaches 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 more quickly, they should be free to do so.

Applicants

A number of agencies can apply for the injunction to ensure that the body best placed to lead on a specific case can do so. These 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 and NHS Protect (Wales).

Putting victims first: Anti-social behaviour should be tackled with agencies working together, rather than in isolation. Agencies may consider establishing local consultation protocols and arrangements for applying for injunctions.

Test

There are two tests for an injunction under Part 1 of the 2014 Act.

Non-housing related

For anti-social behaviour in a non-housing related context the test is conduct that 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 will be able to apply for an injunction under these provisions in the legislation. 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 even tenants of the social landlord who is 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 antisocially, 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 communicate with 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, but it will also aid the evidence-gathering process for 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, whilst applications against individuals who are under 18 years of age must be made in the youth court.

Intergenerational or ‘mixed aged’ cases: Mostly, hearings for injunction applications will be heard in the youth court for under 18s and the county court for over 18s. However, there are some cases of anti-social behaviour where the individuals involved include both over 18s and under 18s. In such cases, the applicant can apply to the youth court to have such 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 (YOT) 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 YOT can veto the application, it is important that applicants fully consider and take into account representations from the YOT as part of developing good partnership working in cases involving young people. YOTs play a central role in preventing and reducing anti-social behaviour by young people, working with them to try and help them stay away from crime. For more information on YOTs and how to find your local team you should visit <https://www.gov.uk/youth-offending-team>.

YOTs 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 YOT or children’s and family services. YOTs 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 can include vandalism, public drunkenness, aggressive begging, irresponsible dog ownership, noisy or abusive behaviour towards neighbours, or bullying. Agencies must make proportionate and reasonable judgements before applying for the injunction. Injunctions should not be used to stop reasonable, trivial or benign behaviours that have not caused, or are not likely to cause, anti-social behaviour to victims or communities. Failure to make such reasonable and proportionate judgements will increase the likelihood that an application will not be successful.

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. Positive requirements could include the following:

- The respondent attending alcohol awareness classes for alcohol-related problems;
- Irresponsible dog owners attending dog training classes provided by animal welfare charities;
or
- The respondent 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 to these factors, applicants should consider the impact on any caring responsibilities the perpetrator may have and, in the event that 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.

Putting victims first: Keeping victims and communities updated on enforcement action at key points can help them deal with the impact the behaviour is having. Victims may feel that their complaint has been ignored if they don't see immediate changes to the behaviour. However, simply informing them of what is happening can make a huge 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, and the maximum term is 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 the local council is the lead agency in an application to exclude a social tenant, they should consult the landlord. If the exclusion is applied against someone in privately rented accommodation or in residential leasehold housing, the police force 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 proportionality in light of the Article 8 (Right to respect for private and family life, European Convention on Human Rights) implications. As such, applications should only be made for exclusion in extreme cases that meet the higher threshold set out above.

Publicising the 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. It can provide reassurance to communities that action is being taken when they report anti-social behaviour. It will also provide the information local 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 them with 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, 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 who are 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

The 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.

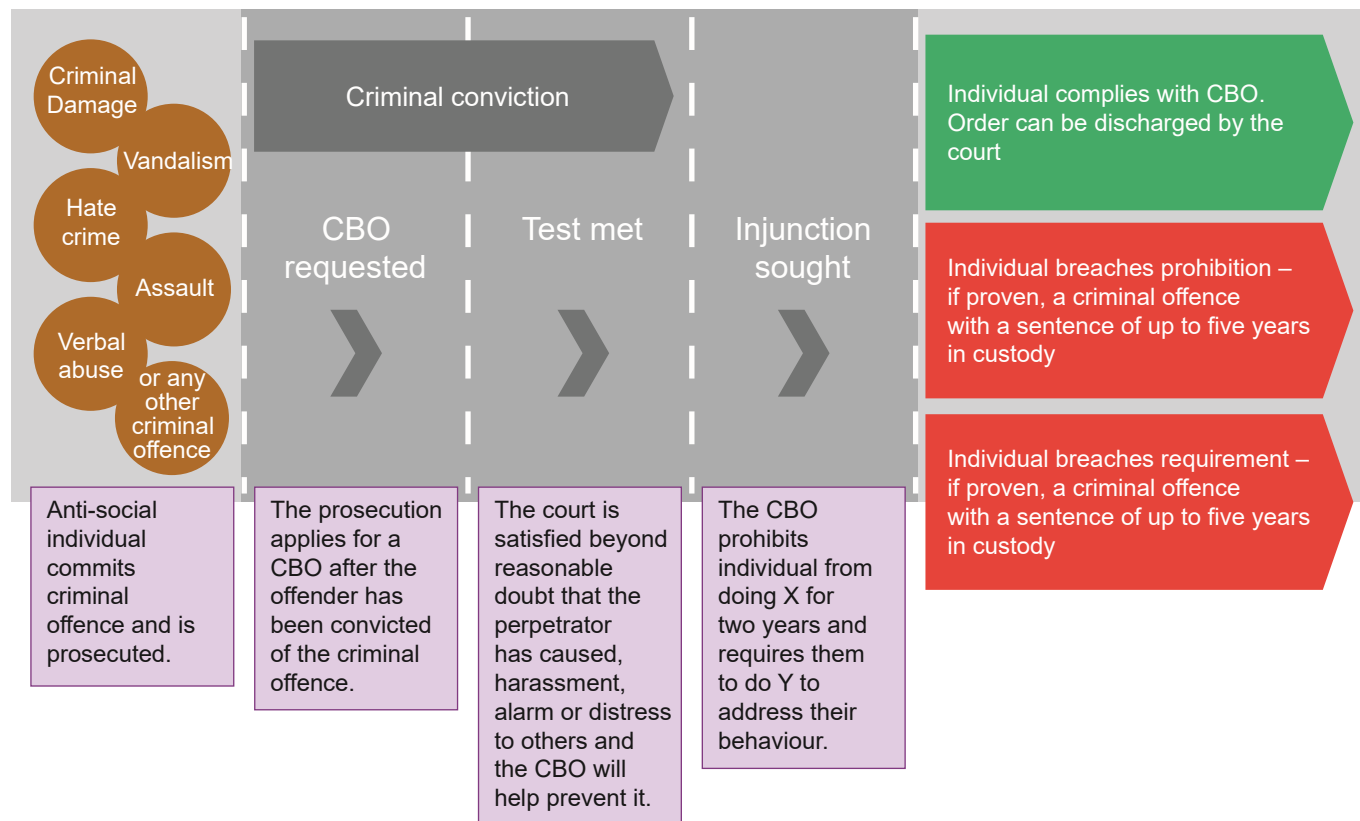
Appeals

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.

2.3 Criminal behaviour order

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|---------------------------------------|---|
| 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 (CPS), either at its own initiative or following a request from the police or council. |
| Test | <ul style="list-style-type: none"> • If 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 • The court considers that making the order will help prevent the offender from engaging in such behaviour. |
| Details | <ul style="list-style-type: none"> • Issued by any criminal court for any criminal offence. • The anti-social behaviour does not need to be part of the criminal offence. • Order will include prohibitions to stop the anti-social behaviour but it can also include positive requirements to get the offender to address the underlying causes of the offender's behaviour. • Agencies must find out the view of the youth offending team (YOT) for applications for under 18s. |
| Penalty on breach | <ul style="list-style-type: none"> • Breach of the order is a criminal offence and must be proved to a criminal standard of proof, that is, beyond reasonable doubt. • For over 18s on summary conviction: up to six months imprisonment or a fine or both. • For over 18s on conviction on indictment: up to five years imprisonment or a fine or both. • For under 18s: the sentencing powers in the youth court apply. |
| Appeals | <ul style="list-style-type: none"> • Appeals against orders made in the magistrates' court (which includes the youth court) lie to the Crown Court. • Appeals against orders made in the Crown Court lie to the Court of Appeal. |
| Important changes/ differences | <ul style="list-style-type: none"> • Consultation requirement with YOTs for under 18s. • No need to prove "necessity" unlike Anti-Social Behaviour Orders. • Scope for positive requirements to focus on long-term solutions. |

Criminal behaviour order



Purpose

The Criminal Behaviour Order (CBO) is available on conviction for any criminal offence in any criminal court. The order is aimed at tackling the most serious and persistent offenders where their behaviour has brought them before a criminal court.

Applicants

The prosecution, usually the Crown Prosecution Service (CPS), but in some cases it could be a local council, may apply for the CBO after the offender has been convicted of a criminal offence. The prosecution can apply for a CBO 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, the sentencing for the criminal conviction.

Good relationships will be important between local agencies and the CPS to ensure 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. The court cannot consider an application for a CBO at a hearing after the offender has been sentenced, unless the court has adjourned proceedings from the sentence date for the application to be considered. Agencies should consider setting up local information exchanges to make sure that the CBO is considered every time an anti-social behaviour offender is brought to 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 the court considers making the order will help in preventing the offender from engaging in such behaviour.

Details

When can a CBO be used? The CBO can deal with a wide range of anti-social behaviours following the individual's conviction for a criminal offence, for example, threatening violence against others in the community, persistently being drunk and aggressive in public or criminal damage. 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 behaviours that have not caused, or are not likely to cause, anti-social behaviour 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 those cases, the prosecution must find out the views of the local youth offending team (YOT) before applying for the CBO. The views of the YOT must be included in the file of evidence forwarded to the prosecution. In practice, the consultation with the YOT must be carried out by the organisation preparing the application for the CBO, namely the council or police force.

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 there would be a number of agencies the police or local council would wish to consult with. 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.

These 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 individual case.

Special measures are available in proceedings for CBOs in the case of witnesses who are 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 CBO: 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 the offender is subject to. In addition to these factors, 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.

Local agencies will be familiar with the prohibitions element of the order. However, as with the civil injunction, requirements could also be included if the court believes that it will help stop further antisocial behaviour by the offender. Requirements should aim to tackle the underlying cause of the anti-social behaviour and be tailored to the specific needs of each offender. They 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.

The court must receive evidence about the suitability and enforceability of any requirement from the person or organisation who will be responsible for supervising compliance with the requirement.

Putting victims first: The potential impact on the victim(s) will be at the heart of the considerations of the terms of the order. Stopping the anti-social behaviour is for the benefit of the victim and the CBO is not a punitive measure. Always stop to think how the terms of the order will impact on the victim(s): 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 victim(s) 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 process in dealing with anti-social behaviour. It can provide reassurance to communities that action is being taken when they report anti-social behaviour. It will also provide the information 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 the 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 the 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 the order includes extending the term of the order or including additional prohibitions or requirements in the order. This flexibility allows for those monitoring the progress of offenders to alter the conditions of the order to suit any developing new circumstances.

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

- the extent to which the offender has complied with their 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.

Under the legislation, 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:

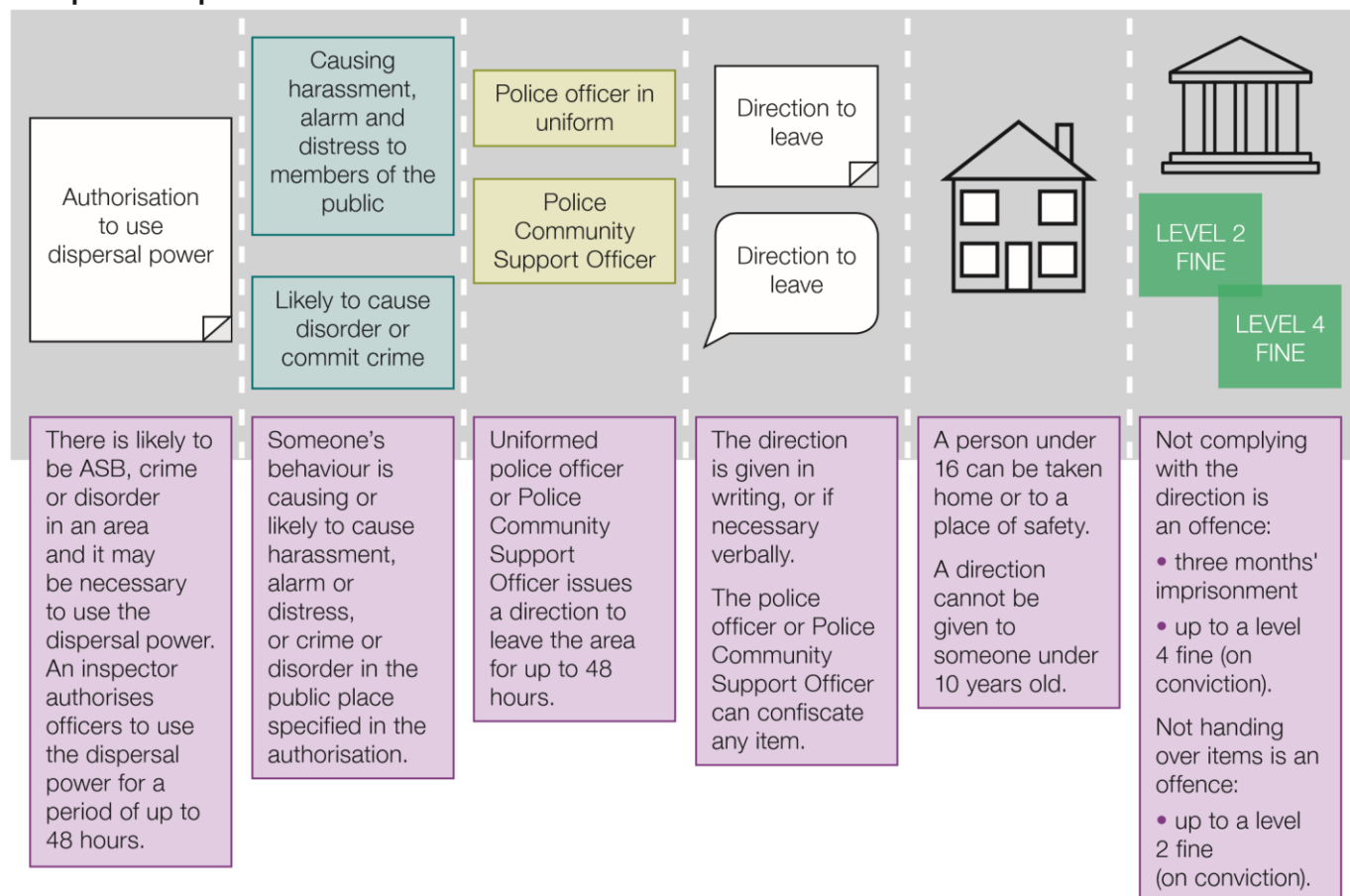
- on summary conviction in the magistrates' court: a maximum of six months in prison or a fine or both.
- on conviction on indictment in the Crown Court: a maximum of five years in prison or a fine or both.

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

2.4 Dispersal power

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|---------------------------------------|--|
| 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"> • Police officers in uniform; and • Police Community Support Officers (if designated the power by their chief constable). |
| Test | <ul style="list-style-type: none"> • 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 • Direction necessary to remove or reduce the likelihood of the anti-social behaviour, crime or disorder. |
| Details | <ul style="list-style-type: none"> • Must specify the area to which it relates and can determine the time and the route to leave by. • Can confiscate any item that could be used to commit anti-social behaviour, crime or disorder. • Use in a specified locality must be authorised by a police inspector and can last for up to 48 hours. • A direction can be given to anyone who is, or appears to be, over the age of 10. • A person who is under 16 and given a direction can be taken home or to a place of safety. |
| Penalty on breach | <ul style="list-style-type: none"> • Breach is a criminal offence. • 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. • Failure to hand over items: up to 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. |
| Important changes/ differences | <ul style="list-style-type: none"> • It is a more flexible power; it can be used to provide immediate respite to a community from anti-social behaviour, crime or disorder. • An area does not need to be designated as a dispersal zone in advance. • Although there is no requirement to consult the local council, the authorising officer may consider doing so in some circumstances before authorising use of the dispersal. • Police Community Support Officers may use all elements of the dispersal power (if designated the power by their chief constable). |

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 a local community. The power is preventative as it allows an officer to deal instantly with someone's behaviour and nip the problem in the bud before it escalates. In areas where there are regular problems, the police force should work with the local council to find sustainable long-term solutions. In all instances, the impact on the local community should be considered before using the dispersal power.

Who can use it?

The dispersal power can be used by police officers in uniform. Police Community Support Officers (PCSOs) 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 before use. This will ensure that the dispersal power is not used to stop reasonable activities such as busking or other types of street entertainment which are not causing anti-social behaviour. It may be appropriate for an officer of a more senior rank than inspector to authorise the use of the dispersal power where, for example, there is not an 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 or make a decision on a case by case basis.

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 intelligence that there are likely to be problems at a specific time. The authorising police officer should ensure that the wider impacts on, for

example, community relations, are considered properly before use. The written authorisation may be admitted in evidence if the making of the authorisation is in dispute.

It is important that this power is used proportionately and reasonably in a manner compatible with the Human Rights Act 1998. As such, when pre-authorising or authorising an area, the locality should be defined as 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 necessary.

The dispersal power can only be used in the specific location authorised by the inspector. If the anti-social behaviour is occurring outside the authorised area, the inspector (or above) will have to increase the area or the officer cannot issue the dispersal.

The authorising police officer may wish, where practical, to consult with the local council or community representatives before making the authorisation. This may help to understand the implications of using the power within a particular community or whether the community will benefit from the authorisation or use of the dispersal power. Working with the local authority 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 dispersal power in a particular area. When it has not been practical to consult the local authority, the authorising officer may wish to notify the local authority if authorisation of the dispersal power has been given or the dispersal power has been used.

In authorising the dispersal power the inspector (or above) must have regard to Articles 10 and 11 of the European Convention on Human Rights that provide for the right for lawful freedom of expression and freedom of assembly. **The test**

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.

The test includes behaviour that is **likely** to cause harassment, alarm or distress, allowing the dispersal to be used as a preventative measure. The dispersal power is for use in public places; this includes places to which the public has access by virtue of express or implied permission, for example a shopping centre. **Details**

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 so.

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 PCSO 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].

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.

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, 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 force may wish to consider providing information to those who may be affected.

Surrender of property: The police officer or PCSO 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.

Police forces may wish to publish data on the use of the dispersal power to be transparent about their use of it. Police and Crime Commissioners will have an important role in holding forces to account to ensure that officers are using the power proportionately. Publication of data locally will help 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.

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.

A more effective power

The new dispersal power is a more flexible tool available to uniformed police officers and designated PCSOs to deal with individuals engaging in anti-social behaviour, crime and disorder not only when they have occurred or are occurring, but when they are likely to occur and in any locality. This extends the capability of the police to prevent incidents of anti-social behaviour, crime and disorder before they take place. The new dispersal power replaces those available under section 27 of the Violent Crime Reduction Act 2006 and section 30 of the Anti-social Behaviour Act 2003.

Important features of the new power are that:

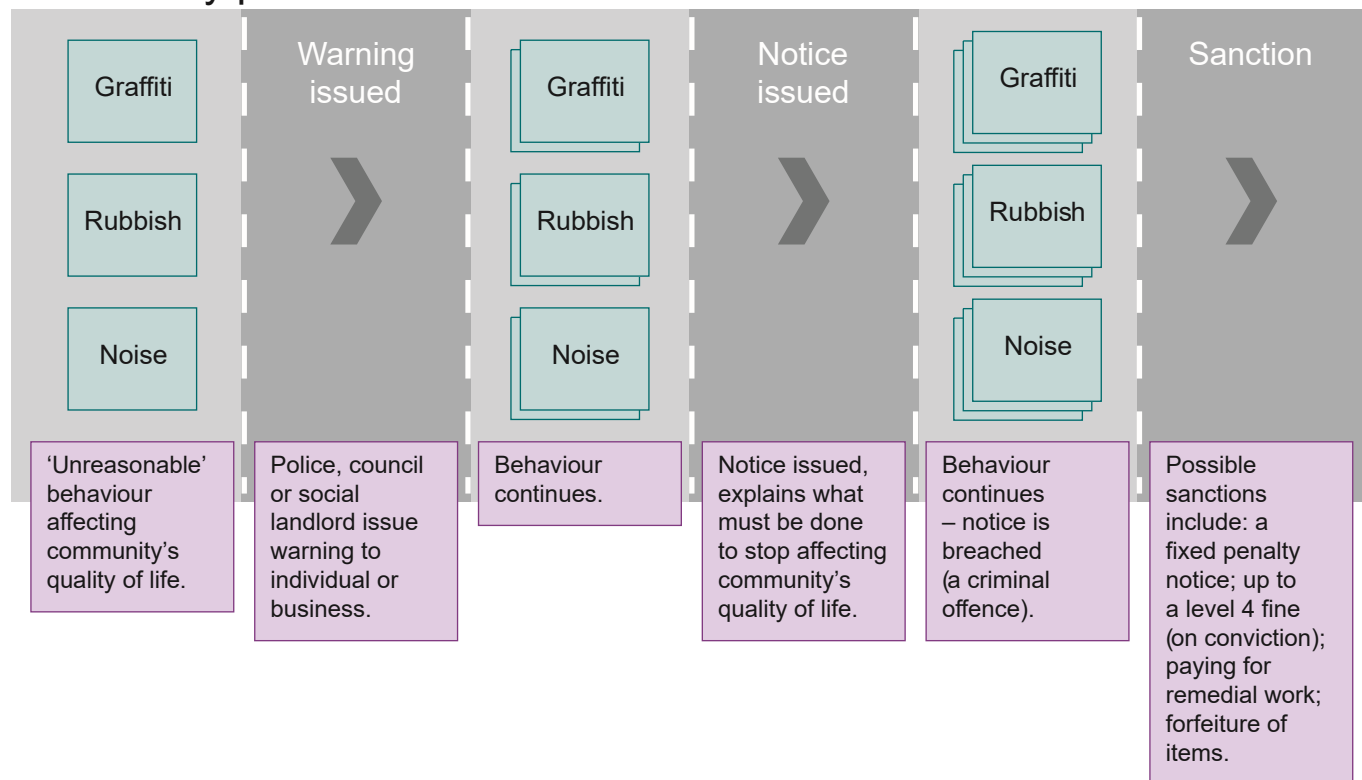
- PCSOs will be able to use the power to enable them to take swift action to prevent anti-social behaviour or to stop its escalation;
- There is no longer a requirement for the pre-designation of a "dispersal zone" in which the power can be used therefore it can be used in any locality immediately;

- The power is also available to disperse individuals without a requirement that two or more people be engaged in the offending behaviour;
- The new power can be used across the spectrum of anti-social behaviour, crime and disorder; not just in dealing with anti-social behaviour and disorder associated with the night-time economy and problem licensed premises;
- There is an additional power to confiscate items associated with the behaviour of the person being directed to disperse, for example alcohol, offensive material, noisy equipment or eggs and other missiles used for Halloween “tricks”;
- The period of a person’s exclusion from a specified area has been extended to a maximum of 48 hours;
- There is no longer a requirement for the police officer or PCSO to definitively establish the person’s age as the new power is available if the person appears to be aged 10 or over;
- Authorisation from a senior officer is a safeguard to ensure that the power is used fairly and proportionately and only in circumstances in which it is necessary. In many cases, the preauthorisation will fit into current operational processes. For example, many current section 27 directions are given during Friday and Saturday nights while policing the night time economy. In this situation, pre-authorisation could be given during the pre-brief before officers begin;
- The requirement to keep a written record of when the power is used enables effective enforcement of any breach and will be evidentially important for prosecution of breaches.

2.5 Community protection notice

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|--------------------------------------|---|
| 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"> • Council officers; • Police officers; • Police community support officers (PCSOs) if designated; and • Social landlords (if designated by the council). |
| Test | <p>Behaviour has to:</p> <ul style="list-style-type: none"> • have a detrimental effect on the quality of life of those in the locality; • be of a persistent or continuing nature; and • be unreasonable. |
| Details | <ul style="list-style-type: none"> • Written warning issued informing the perpetrator of problem behaviour, requesting them to stop, and the consequences of continuing. • Community protection notice (CPN) issued including requirement to stop things, do things or take reasonable steps to avoid further anti-social behaviour. • Can allow council to carry out works in default on behalf of a perpetrator. |
| Penalty on breach | <ul style="list-style-type: none"> • Breach is a criminal offence. • A fixed penalty notice can be issued of up to £100 if appropriate. • A fine of up to level 4 (for individuals), or £20,000 for businesses. |
| Appeals | <ul style="list-style-type: none"> • Terms of a CPN can be appealed by the perpetrator within 21 days of issue. • 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. |
| Important changes/differences | <ul style="list-style-type: none"> • The CPN can deal with a wider range of behaviours for instance, it can deal with noise nuisance and litter on private land open to the air. • The CPN can be used against a wider range of perpetrators. • The CPN can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again. |

Community protection notice



Purpose

The community protection notice (CPN) is intended to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible.

Who can issue a CPN

In many areas, councils already take the lead in dealing with these kinds of issues and they will continue to be able to issue the new notice. However, the move towards neighbourhood policing and community safety teams in recent years has seen the police take a more active role in dealing with these issues, working with councils, and so police officers and police community support officers will also be able to issue CPNs.

In addition, there is a formal role for social landlords. Social landlords in England and Wales manage over four million dwellings and deal with hundreds of thousands of complaints of antisocial behaviour every year. Where it is appropriate, local councils can designate social landlords in their area to issue CPNs.

Test

The test is designed to be broad and focus on the impact anti-social behaviour is having on victims and communities. A CPN can be issued by one of the bodies above if they are satisfied on reasonable grounds that the conduct of the 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.

Putting victims first: In deciding whether the behaviour is having a detrimental effect on the quality of life of those in the locality, issuing officers should consider speaking to potential victims to understand the wider harm to individuals and the community. Not only will this ensure that victims feel that their problem is being taken seriously, but also add to the case against the alleged perpetrator. It will also ensure that officers do not use the notice to stop reasonable activities such as busking or other types of street entertainment which are not causing anti-social behaviour.

Decisions on whether behaviour is persistent should be taken on a case by case basis by issuing officers. Where an individual is storing rubbish in their garden for many months, proving persistence may be simple, but there may be cases where behaviour is continuing over a very short time period. An example could be where an individual is playing loud music in a park. If the officer had asked the individual to stop the music and they had refused, this could be considered continuing in nature and a CPN could be used.

The issuing officer must also make a judgement on whether the behaviour is unreasonable. For instance, a baby crying in the middle of the night may well be having a detrimental effect on those living next door and is likely to be persistent in nature. However, it would not be reasonable to issue the parents with a CPN as there is not a great deal they can do to control or affect the behaviour.

There is significant merit in involving the local council, which will have many years of experience in tackling environmental issues, when deciding whether or not to serve a CPN.

Details

Who can a CPN be issued to? A CPN can be issued against any person aged 16 or over or a body, including a business. Where a body is issued with a CPN, 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 could be the store manager. The issuing officer will have to be able to prove that the person issued with the CPN can be reasonably expected to control or affect the behaviour. The CPN can be handed directly to the person in question or it could be posted to them. In circumstances where the owner or occupier cannot be determined, the issuing officer can post the CPN on the premises and it is considered as having been served at that point. In that 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.

Box F: Considering statutory nuisance

Issuing a community protection notice (CPN) 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 that, given all the surrounding circumstances, is judged to be 'prejudicial to health or a nuisance'. For England and Wales, statutory nuisances are listed as:

- the state of the premises;
- smoke emitted from premises;
- fumes or gases emitted from (domestic) premises;
- any dust, steam, smell or other effluvia arising on industrial, trade or business premises;
- any accumulation or deposit;
- any animal kept in such a place or manner;
- any insects emanating from relevant industrial, trade or business premises;
- artificial light emitted from premises;
- noise emitted from premises;
- noise 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 CPN 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 CPNs can only be issued for behaviours that are 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 a CPN if they believe the behaviour could be a statutory nuisance. If it could be a statutory nuisance, the issuing authority may wish to consider whether issuing a CPN is necessary given the powers afforded to council under the 1990 Act. If they do decide to issue a CPN 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 go down the formal route of issuing a CPN. However, before a CPN 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 CPN. However, local agencies may wish to include other information in the written warning, for instance:

- outlining the behaviour that is considered anti-social as this will ensure there is little doubt over what needs to be done to avoid the CPN 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 CPN might be served;
- setting out the potential consequences of being issued with a CPN – namely the potential sanctions on breach which could act as an incentive for the individual to change their behaviour before a formal CPN is issued.

How this 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 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 CPN 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 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 don't see immediate changes to the behaviour. However, simply informing them of what is happening can make a huge difference and result in fewer follow up calls on the issue. If a CPN has been issued, the officer may wish to speak to those affected by the anti-social behaviour again 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 (see Box F) it will often be advisable to seek the expert view of council environmental health officers before issuing a CPN.

What to include in a CPN? 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, but 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 CPN, issuing officers should consider what is reasonable to include in a notice of this type and any timescales they wish to add. CPNs are designed to deal with short or medium-term issues. While restrictions and requirements may be similar to those in a civil injunction (see part 2.2), more serious conditions, such as

attendance at a drug rehabilitation course, would clearly be more appropriate to a court issued order.

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 don't just want the behaviour to stop; they also want it not to occur again. Consideration should be given to whether there are requirements that could ensure the antisocial behaviour does not recur.

Penalty on breach

Failure to comply with a CPN is an offence. Where an individual, business or organisation fails to comply with the terms of a CPN, a number of options are available for the issuing authority and these are outlined in more detail below.

Putting victims first: When deciding which sanction to choose on non-compliance with a CPN, the issuing authority should 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.

Fixed penalty notices: Depending on the behaviour in question, the issuing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, PCSO, council officer or, if designated, a social landlord. In making the decision to issue a FPN, the officer should be mindful that if issued, payment of the FPN would discharge any liability to conviction for the offence.

A FPN 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 the FPN, no other associated proceedings can be taken until at least 14 days after the issue. The exact wording or design of a FPN 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 CPN issued by the council, the council may decide to take remedial action to address the issue. Where the CPN 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 CPN, 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 CPN 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 45, 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 CPN. 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 CPN has the opportunity to appeal it. Appeals are heard in a magistrates' court and the CPN should provide details of the process and how an individual can appeal. 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 CPN 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, whether steps could be taken to alleviate this impact and whether the behaviour is necessary at all.
- **the individual cannot reasonably be expected to control or affect the behaviour.** In issuing the CPN, the officer must make a judgement as to whether the individual or business 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 CPN 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 CPN.** 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 a CPN.
- **The CPN was issued to the wrong person.** This could be grounds for appeal if the CPN was posted to the wrong address or the wrong person was identified in a business or organisation.

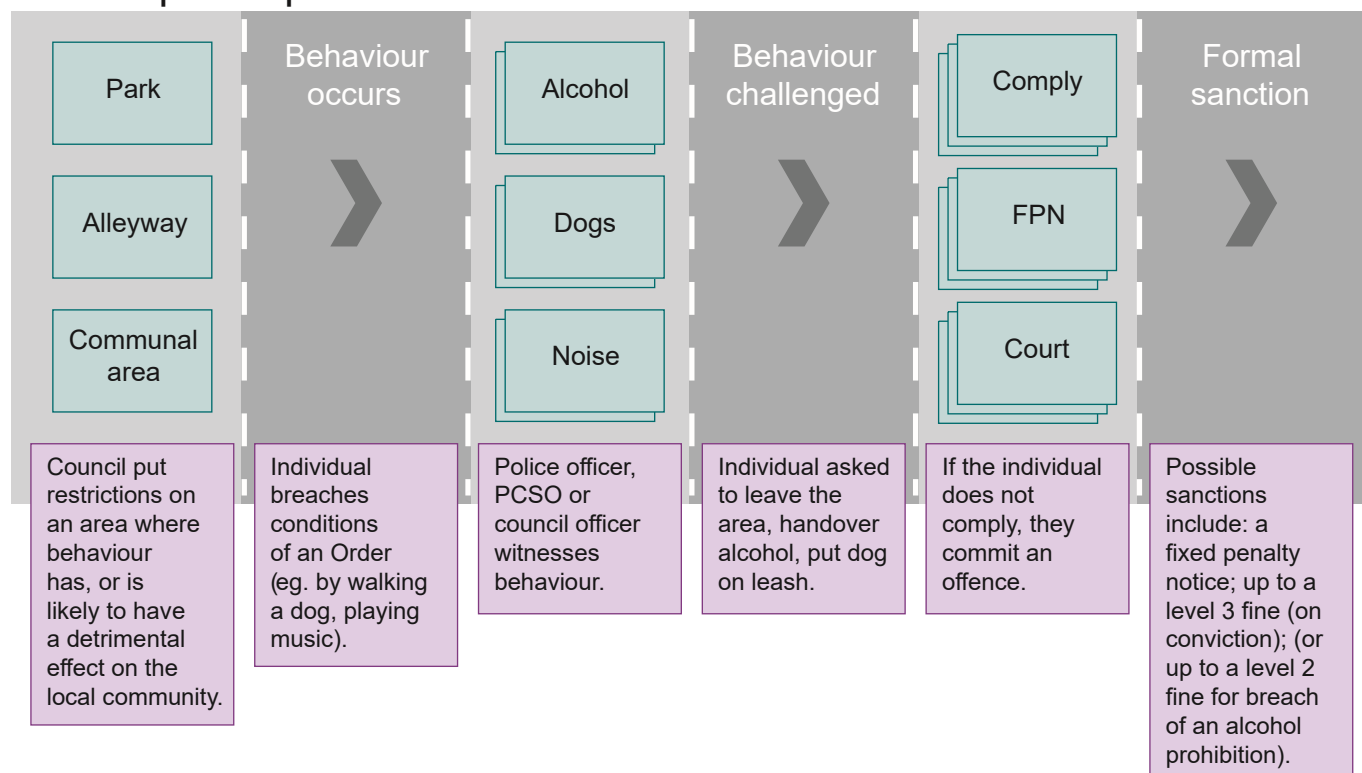
The person issued with the CPN must appeal within 21 days of issue. Where an appeal is made, any requirement included under section 43(3)(b) or (c), namely a requirement to do

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.

2.6 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"> • Councils issue a public spaces protection order (PSPO) after consultation with the police, Police and Crime Commissioner and other relevant bodies. |
| Test | <p>Behaviour being restricted has to:</p> <ul style="list-style-type: none"> • be having, or be likely to have, a detrimental effect on the quality of life of those in the locality; • be persistent or continuing nature; and • be unreasonable. |
| Details | <ul style="list-style-type: none"> • Restrictions and requirements set by the council. • These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times. • Can restrict access to public spaces (including certain types of highway) where that route is being used to commit anti-social behaviour. • Can be enforced by a police officer, police community support officers and council officers. |
| Penalty on breach | <ul style="list-style-type: none"> • Breach is a criminal offence. • Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate. • A fine of up to level 3 on prosecution. |
| Appeals | <ul style="list-style-type: none"> • 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. • Further appeal is available each time the PSPO is varied by the council. |
| Important changes/differences | <ul style="list-style-type: none"> • More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a wider range of behaviours than the orders it replaces. |

Public spaces protection order



Purpose

Public spaces protection orders (PSPOs) are intended to deal with a particular nuisance or problem in a particular 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 designed to ensure the law-abiding majority can use and enjoy public spaces, safe from anti-social behaviour.

Who can make a PSPO?

Councils will be responsible for making the new PSPO although enforcement powers will be much broader. District councils will take the lead in England with county councils undertaking the role only where there is no district council. In London, borough councils will be able to make PSPOs, as will the Common Council of the City of London and the Council of the Isles of Scilly. In Wales, responsibility will fall to county councils or county borough councils. The new power is not available to parish councils and town councils in England, or community councils in Wales. Section 71 ensures that bodies other than local authorities can make PSPOs in certain circumstances by order of the Secretary of State. This will allow the City of London Corporation to continue managing a number of public spaces with the permission of, and on behalf of, local authorities.

Test

The test is designed to be broad and focus on the impact anti-social behaviour is having on victims and communities. A PSPO can be made by the council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:

- have had, or are 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. Introducing a blanket ban on a particular activity may simply displace the behaviour and create victims elsewhere.

Details

Where can it apply? The council can make a PSPO 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.

Working with partners: Before making a PSPO, the council must consult with the local 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 discuss the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted. This should include the County Council (if the PSPO application is not being led by them) where they are the Highway Authority.

The council must also consult whatever community representatives they think appropriate. This could relate to a specific group, for instance the residents association, or an individual or group of individuals, for instance, regular users of a park or specific activities such as busking or other types of street entertainment. Before the PSPO is made, the council also has to publish the draft order in accordance with regulations published by the Secretary of State.

Box G: Land requiring special consideration

Before a council makes a PSPO, 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. Defra 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 PSPO? The PSPO can be drafted from scratch based on the individual issues being faced in a particular public space. A single PSPO can also include multiple restrictions and requirements in one order. 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. However, activities are not limited to those covered by the orders being replaced and so the new PSPO can be used more flexibly to deal with local issues.

When deciding what to include, the council should consider scope. The PSPO is designed to make public spaces more welcoming to the majority of law abiding people and communities and not simply restrict access. 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 PSPO 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 ensure 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.

When the final set of measures is agreed on, the PSPO 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 PSPO has effect.

Box H: Controlling the presence of dogs

When deciding whether to make requirements or restrictions on dogs and their owners, local councils will need to consider whether there are suitable alternatives for dogs to be exercised without restrictions.

Under the Animal Welfare Act 2006, owners of dogs are required to provide for the welfare needs of their animals and this includes providing the necessary amount of exercise each day. Councils should 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. Consideration should also be made on how any restrictions affect those who rely on assistance dogs.

In relation to dogs and their owners, a PSPO could, for example:

- exclude dogs from designated areas (e.g. a children's play area in a park);
- require dog faeces to be picked up by owners;
- require dogs to be kept on leads;
- 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.

Restricting alcohol: A PSPO can be used to restrict the consumption of alcohol in a public space where the test has been met. However, as with the Designated Public Place Order which it replaces, there are a number of limitations on using the power for this end.

A PSPO 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. There are also limitations where either Part 5 of the Licensing Act 2003 or section 115E of the Highways Act 1980 applies. This is because the licensing system already includes safeguards against premises becoming centres for anti-social behaviour. It would create confusion and duplication if PSPOs were introduced here.

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. The PSPO can also be used to restrict access to a public right of way. However, when deciding on this approach, the council must consider a number of things.

- **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 PSPO 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. This includes 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. However in the digital age, other channels such as websites and social media may be more effective. Where issues are more localised, councils

may prefer to deal with individual households. Alternatively, 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 PSPO: The maximum duration of a PSPO is three years but they can last for shorter periods of time where appropriate. Short-term PSPOs could be used where it is not certain that restrictions will have the desired effect, for instance, when closing a public right of way, councils may wish to make an initial PSPO for 12 months and then review the decision at that point.

At any point before expiry, the council can extend a PSPO by up to three years if they consider that 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.

Changing the terms: The new PSPO can cover a number of different restrictions and requirements so there should be little need to have overlapping orders in a particular public space. However, if a new issue arises in an area where a PSPO is 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 PSPO 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 PSPO to deal with both issues.

As well as varying the PSPO, a council can also seek to discharge it at any time. For instance when the problem has ceased to exist 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 PSPO (other than consume alcohol – see below); or
- fail to comply with a requirement to which the person is subject under a PSPO.

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 the PSPO. 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 also 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 (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, PCSO, council officer or other person designated by the council. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the PSPO).

Appeals

Any challenge to the PSPO 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.

Interested persons can challenge the validity of a PSPO 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 PSPO pending the verdict in part or in totality. The High Court has the ability to uphold the PSPO, quash it, or vary it.

Enforcement

Although PSPOs are made by the council in an area, enforcement should be the responsibility of a wider group. Council officers will be able to enforce the restrictions and requirements, as will other groups that they designate, including officers accredited under the community safety accreditation scheme. In addition, police officers and PCSOs will have the ability to enforce the order.

Transition

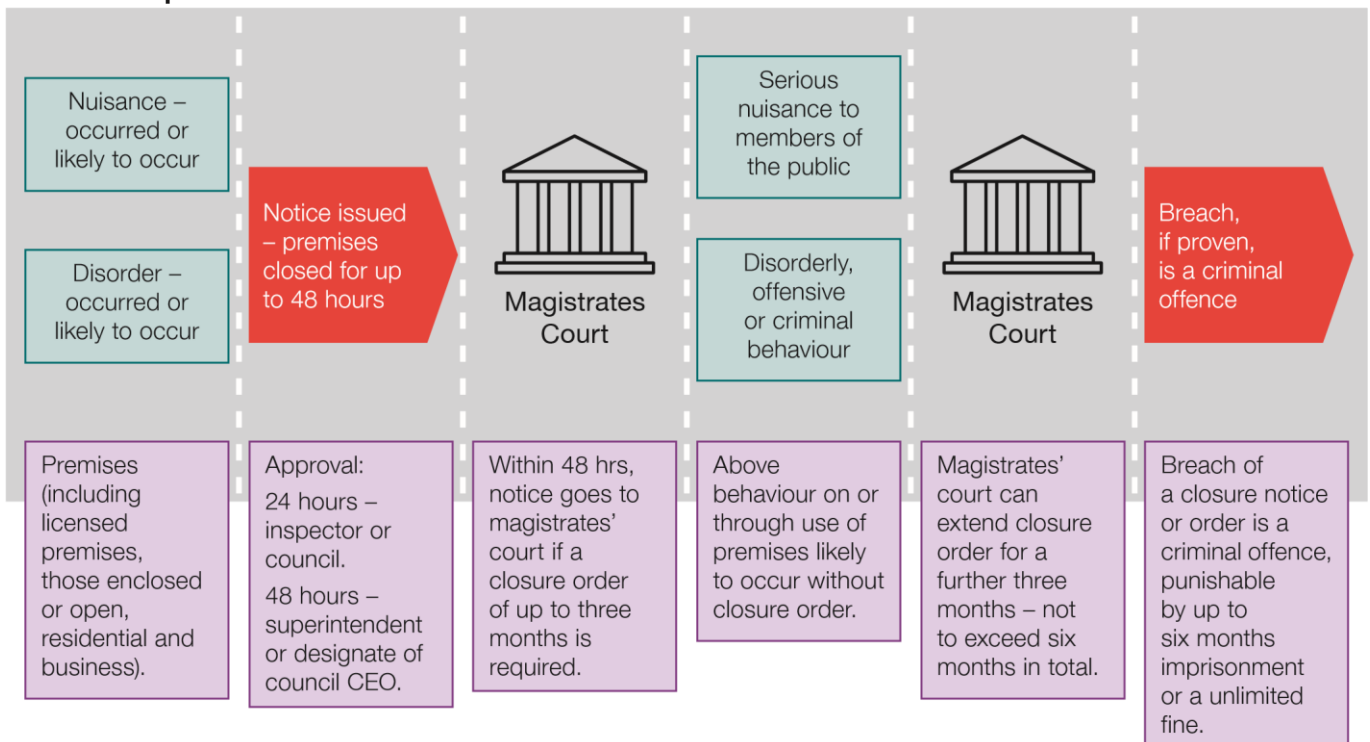
Where a designated public place order, gating order or dog control order is currently in force, this will continue to be valid for a period of three years following commencement of the new power. At this point it will be treated as a PSPO. However, councils need not wait for this to happen and could decide to review the need for their current orders ahead of that transition to simplify the enforcement landscape.

2.7 Closure power

| | |
|-------------------|---|
| Purpose | To allow the police or council to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder. |
| Applicants | <ul style="list-style-type: none">• Local council.• Police. |
| Test | <p>The following has occurred, or will occur, if the closure power is not used:</p> <p>Closure notice (up to 48 hours):</p> <ul style="list-style-type: none">• Nuisance to the public; or• Disorder near those premises. <p>Closure order (up to six months):</p> <ul style="list-style-type: none">• Disorderly, offensive or criminal behaviour;• Serious nuisance to the public; or• Disorder near the premises. |

| | |
|---------------------------------------|--|
| Details | <ul style="list-style-type: none"> • 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. • Notice: can close a premises for up to 48 hrs out of court but cannot stop owner or those who habitually live there accessing the premises. • Order: can close premises for up to six months and can restrict all access. • 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. |
| Penalty on breach | <p>Breach is a criminal offence.</p> <ul style="list-style-type: none"> • Notice: Up to three months in prison; • Order: Up to six months in prison; • Both: Up to an unlimited fine for residential and non-residential premises. |
| Who can appeal | <ul style="list-style-type: none"> • Any person who the closure notice was served on; • Any person who had not been served the closure notice but has an interest in the premises; • The council (where closure order was not made and they issued the notice); • The police (where closure order was not made and they issued the notice). |
| Important changes/ differences | <ul style="list-style-type: none"> • A single closure power covering a wider range of behaviour. Quick, flexible and can be used for up to 48 hours out of court. |

Closure powers



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.

The test

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 a 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 a 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 a premises. This might not always be the owner, for example an individual managing a premises on behalf of an owner who lives abroad may need to secure the premises on their behalf.

Putting victims first: In deciding the effect of the behaviour and courses of action the police and local council should speak to the victim to obtain their view on how the behaviour is affecting them and what outcome they would like to see.

Details

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 locally. 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 satisfied 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 another premises that is 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 another 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. Therefore it is sensible for the police and council to have clear communication with individuals affected.

Where a closure order restricts access to another premises or part of a premises that is 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 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 a 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.

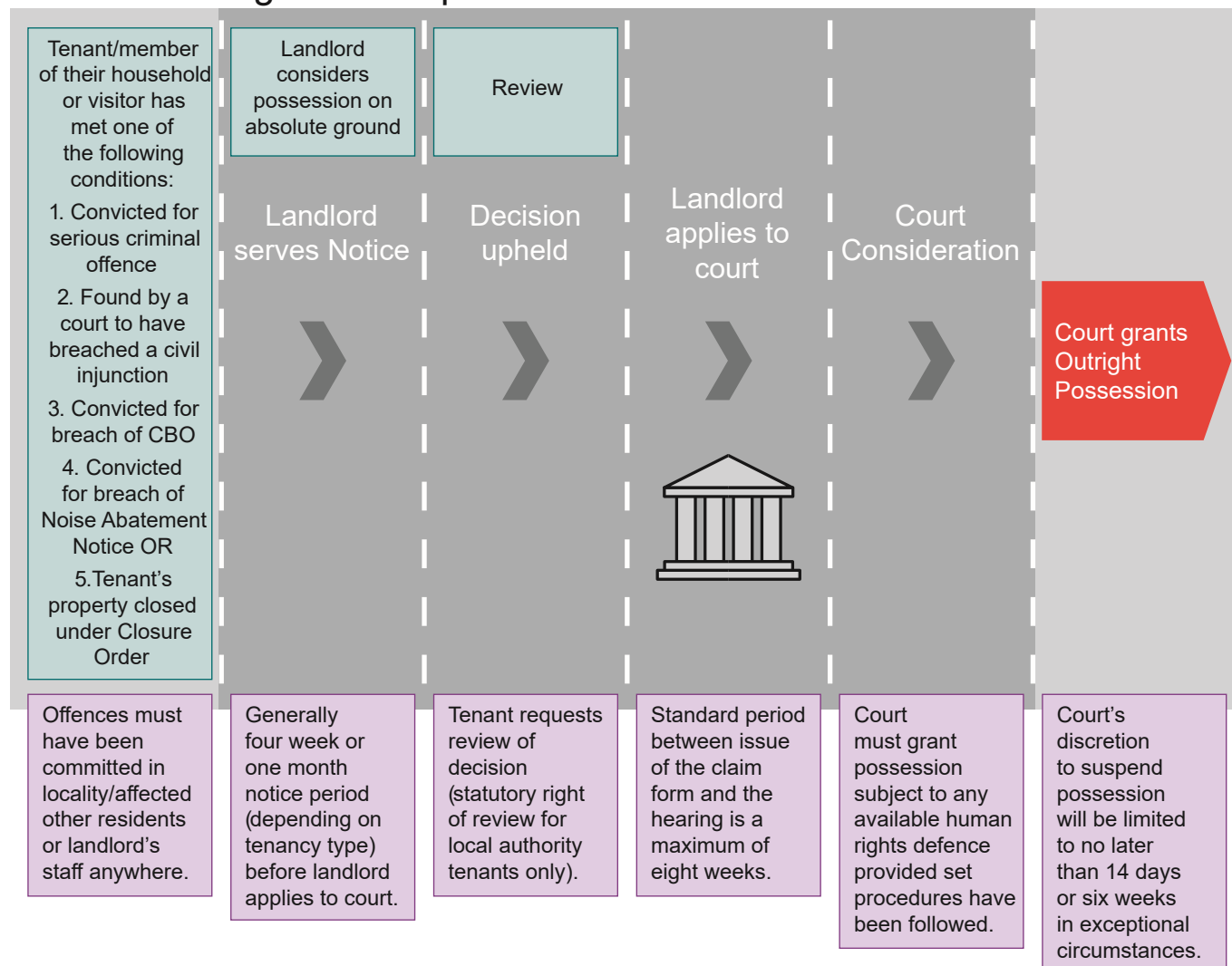
2.8 New absolute ground for possession

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| Overview | 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. |
| 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"> • Social landlords (local authorities and housing associations). • Private rented sector landlords. |
| 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"> • convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985); • found by a court to have breached a civil injunction; • convicted for breaching a criminal behaviour order (CBO); • convicted for breaching a noise abatement notice; or • the tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour. |
| Details | <ul style="list-style-type: none"> • 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; • 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. |
| Result of action | <ul style="list-style-type: none"> • 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. |

Important changes/ differences

- Unlike the existing discretionary grounds for possession, the landlord will not be required to prove to the court that it is reasonable to grant possession. This means the court will be more likely to determine cases in a single, short hearing;
- This will offer better protection and faster relief for victims and witnesses of antisocial behaviour, save landlords costs, and free up court resources and time;
- It will provide new flexibility for landlords to obtain possession through this faster route for persistently anti-social tenants;
- The court will not be able to postpone possession to a date later than 14 days after the making of the order except in exceptional circumstances, and will not be able to postpone for later than six weeks in any event.

New absolute ground for possession



Overview

Prevention and early intervention should be at the heart of all landlords' approaches to dealing with anti-social behaviour. The evidence shows this is the case with over 80% of anti-social behaviour complaints resolved by social landlords through early intervention and informal routes without resorting to formal tools.

It is, however, a source of frustration for landlords and victims that in exceptional cases where antisocial behaviour (or criminality) persists and it becomes necessary to seek possession, the existing process for evicting anti-social tenants is often very lengthy and expensive for landlords

and the courts and, most importantly, prolongs the suffering of victims, witnesses and the community.

Purpose

The purpose of the new absolute ground for possession is to speed up the possession process in cases where anti-social behaviour or criminality has been already been proven by another court.

As the landlord will no longer need to prove that it is reasonable to grant possession, the court will be more likely to determine cases in a single, short hearing. This will strike a better balance between the rights of victims and perpetrators, and provide swifter relief for victims, witnesses and the community. **The new absolute ground is intended for the most serious cases of antisocial behaviour and landlords should ensure that the ground is used selectively.**

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 new absolute ground.

Applicants

The new absolute ground will be available for secure and assured tenancies, and, therefore, will be able to be used by both social landlords and private rented sector landlords.

In practice, it is likely that private rented sector landlords will generally 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 new 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.

Test

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 (CBO);
- the tenant's property has been closed for more than 48 hours under a closure order for antisocial 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 conduct 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. **Details**

The new absolute ground is based on the existing process for ending introductory tenancies for local authority tenants set out in sections 127 to 129 of the Housing Act 1996, and existing mandatory grounds for possession for rent arrears for housing association tenants, which generally work well for landlords.

The new ground will be available to landlords in addition to the existing 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 will be able to choose to use the new ground, in addition to, or instead of the existing 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 will be important to ensure that the landlord is always aware when one or more of the triggers for the new absolute ground has occurred.

Box I: Secured and Assured Tenancies

Secure tenants are generally tenants of local councils with a very high level of security of tenure. Apart from the new 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 already 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 existing 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 new absolute ground, landlords will need to 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 new 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 existing discretionary grounds as well, he or she must also specify and give details of the relevant discretionary ground/s in the notice.

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

Review procedure:

- Local council tenants will 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 will not apply to housing associations tenants. However, we would 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 will be entitled to a court hearing.
- As with other grounds of possession, tenants of public authorities or landlords carrying out a public function will be 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 changes/differences

- Unlike with the existing discretionary grounds for possession, landlords will 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 new ground is an additional tool which will provide more flexibility for landlords but will be 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 new absolute ground as they can do under the discretionary ground for anti-social behaviour.
- Local council tenants will have a statutory right to request a review of the landlord’s decision to seek possession under the absolute ground. We would expect housing associations to make a similar non-statutory review procedure available to their tenants.
- The court will only have the discretion to suspend a possession order made under the new 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.)