

EAST HERTS COUNCIL

COUNCIL – 18 FEBRUARY 2015

REPORT BY EXECUTIVE MEMBER FOR COMMUNITY SAFETY
AND ENVIRONMENT

ANTI-SOCIAL BEHAVIOUR CRIME AND POLICE ACT 2014

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

- The purpose of this report is to provide a broad overview of a number of the key provisions contained within the Anti-social Behaviour, Crime and Policing Act 2014 and ensure that appropriate officers and organisations are authorised under the Act.
- The report was considered by the Executive on 6 January 2015, and the community trigger procedure was approved. The Executive also supported the proposed scheme of delegations, however, the recommendations were not included in the agenda for the last Council meeting.

RECOMMENDATION FOR COUNCIL: That:

(A)	the scheme of delegations to Officers be amended as follows:
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	1. The Head of Environmental Services and the Head of Community Safety and Health Services in consultation with the Legal Services Manager be granted delegated authority to seek an Injunction to Prevent Nuisance and Annoyance in accordance with Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014.
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	2. The Head of Environmental Services and the Head of Community Safety and Health Services in consultation with the Legal Services Manager be granted delegated authority to apply for Closure Orders and to authorise their officers to issue Closure Notices and in accordance with Part 3 of the Anti-social Behaviour, Crime and
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	<p>Policing Act 2014.</p> <p>3. The Head of Environmental Services and the Head of Community Safety and Health Services in consultation with the Legal Services Manager be granted delegated authority to authorise Officers to serve Community Protection Notices, and Fixed Penalty Notices in the event of a breach, in accordance with Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.</p> <p>4. The Head of Community Safety and Health Services in consultation with the Legal Services Manager be granted delegated authority to may make a public spaces protection order, in accordance with Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014.</p>
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1.0 Background

- 1.1 Anti-social behaviour is a broad term used to describe the day-to-day incidents of crime, nuisance and disorder 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.
- 1.2 The Anti-social Behaviour, Crime and Policing Act 2014 is designed to put the victim at the heart of the response and give professionals the flexibility they need to deal with any given situation.
- 1.3 Home office guidance – “Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers statutory guidance for frontline professionals”, (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2.pdf) provides a detailed summary of how and when each power is appropriate to be used and by whom. It should be noted that the new tools and powers can only be used where there is sufficient evidence to warrant their use. The aim of the powers is to provide a range of tools for professionals, which can be employed on any given case dependant on the circumstances and evidence of each case.

2.0 Report

2.1 The purpose of the new tools and powers are summarised below:

- **Injunction to Prevent Nuisance and Annoyance** – aimed at stopping or preventing individuals from engaging in anti-social behaviour quickly, tackling problems before they escalate.
- **Public Spaces Protection Order** – Designed to stop individuals or groups committing anti-social behaviour in a public space.
- **Community Protection Notice** – Can stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life.
- **Criminal Behaviour Orders** – Are 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 engaged in criminal activity.
- **The Dispersal Power** – Requires a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours.
- **Closure Powers** – Allows the Police or Council to close premises which are being used, or likely to be used, to commit nuisance or disorder.
- **Community Trigger** – To give victims and communities the right to request a review of their case and bring agencies together to take a joined up, problem solving approach to find a solution.
- **Community Remedy** - Gives victims a say in the out-of-court punishment of perpetrators for low level crime and disorder.

2.2 It is proposed that the Head of Environmental Services and the Head of Community Safety and Health Services are granted delegated responsibilities to appoint officers as authorised to determine any action relating to the Anti-Social Behaviour Crime and Policing Act 2014 so far as the provisions relate to the powers and duties of East Herts Council. This will enable the Council to utilise staff resources, currently working in related areas of work,

to implement the new tools and powers as appropriate. For example, officers will use the powers to address complaints in relation to dogs and noise nuisance.

- 2.3 Training will be provided to appropriate officers, to use the new tools and powers.

3.0 Injunction to Prevent Nuisance and Annoyance

- 3.1 The Injunction to Prevent Nuisance and Annoyance (IPNA) is a civil power which can be applied for to deal with anti-social behaviour. It replaces six orders formerly available to local authorities and the Police. An 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.

- 3.2 Any authority seeking to apply for an Injunction must have evidence (to the civil standard of proof – on the balance of probabilities) that the respondent is engaged in or threatened to engage in those activities set out below:

- i) conduct that has caused, or is likely to cause harassment, alarm or distress to any person;
- ii) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises; or
- iii) conduct capable of causing housing related nuisance or annoyance to any person.

- 3.3 Note: (ii) only applies where the injunction is applied for by a housing provider, local authority or Chief Officer of Police (iii) only applies where the injunction is applied for by a housing provider or local authority.

- 3.4 Unlike other proposals in the Act this process is applied through the County Court for persons over 18 and in the Youth Court for under 18's. Evidence and statements from witnesses will be required to support the application but will also vary depending upon the type of conduct which it is sought to restrict such as harassment or causing annoyance to the occupation of premises. It is clear that the latter would be of use to the authorities and to social housing providers. The procedure is indicated to be swift but a good deal of preparation will be required before going before the Court as well as ensuring an urgent date can be obtained.

3.5 Where any action is to be taken against a person under 18 years old in a Youth Court then the Youth Offending Team should be part of the decision making process.

4.0 Public Spaces Protection Orders

4.1 Public Spaces Protection Orders (PSPO's) may be made in relation to activities carried on (or likely to be carried on) in a public place, which are reasonably considered to have a detrimental effect on the quality of life in the locality. This effect must be persistent or continuing in nature and must be such as to make the activity unreasonable. The PSPO may restrict the activity through prohibition or the imposition of requirements, although these restrictions may not go beyond what is reasonable and justified in relation to the detrimental effect sought to be tackled.

4.2 Consultation with the police and community representatives must be undertaken before a PSPO is made. A PSPO will have effect for periods of up to three years, but may be renewed indefinitely for so long as it is considered necessary.

4.3 Breaching a PSPO is a criminal offence punishable on conviction by a level 3 fine (currently £1000). Alternatively a fixed penalty notice of up to £100 may be issued by a Constable or by an authorised officer of the authority which made the Order. While the Order is in force any local byelaws which apply to the same activity cease to have effect.

5.0 Closure Power

5.1 The Closure Power allows the Police or the Council to quickly close premises which are being used, or likely to be used to commit nuisance or disorder. A Closure Notice is issued out of Court in the first instance. Flowing from this the Closure Order can be applied for through the Magistrates Court.

5.2 Both the Council and Police can issue a Closure Notice (CN) and guidance requires that it must be approved at an Inspector or above level for the Police or a suitably qualified and experienced Officer within local authority for those issuing CN's of 24 hours. Following the issue of a CN the legislation requires that a series of notifications must be undertaken once a CN has been served particularly if the intention is to seek a Closure Order (CO). The

Magistrates Court is required to hear the application within 48 hours and this will require close working with the Court Service

- 5.3 In addition before serving a CN or seeking a CO the Council and/or Police must ensure that they consult widely including with the victim, community representatives other organisations and users of the premises under investigation. Record keeping and evidential matters will be a key consideration and an agreed procedure will need to be established with partner bodies.
- 5.4 A notice can close premises for up to 48 hours but cannot stop the owner or those who live there accessing the premises. An order can close premises up to 6 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 and licensed premises.
- 5.5 Breaching a Closure Order will be a criminal offence. Breaching a Notice can carry a custodial sentence of up to 3 months and breaching an Order can result in 6 months in prison. Both carry an unlimited fine for residential and non-residential premises.
- 5.6 Prior to seeking a Closure Order, it will be important that appropriate services in the Council are consulted.

6.0 Community Protection Notice

- 6.1 A Community Protection Notice (CPN) is intended to deal with particular, on-going problems or nuisances which negatively affect the community's quality of life by targeting those responsible. These include graffiti, rubbish and noise. A 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, but both can run in tandem.
- 6.2 The test to be applied in issuing a Community Protection Notice is broad and focuses on the impact anti-social behaviour is having on victims and communities. A CPN can be issued by the Police, Council authorised officers or housing associations if they are satisfied on reasonable grounds that the conduct of the individual, business or organisation:
- (a) is having a detrimental effect on the quality of life of those in the community;

- (b) is persistent or continuing in nature; and
- (c) is unreasonable.

6.3 Under the procedure outlined in the Guidance which accompanies the Act, a written warning has to be served followed by the CPN then at a later stage a Fixed Penalty Notice (FPN) may be issued for non-compliance. In addition, the CPN can be appealed within 21 days of service. All these processes need to be recorded and evidenced. The Council and its partners will need to ensure that there is an effective monitoring arrangement in place because of the appeal process and potential for prosecution. Some form of 'gate keeping' arrangement may be required in order to avoid duplicate actions by partner organisations. Coordination may fall to the responsibility of the Community Safety staff.

6.4 Failure to comply with a CPN can result in one of the following sanctions:

- Fixed Penalty Notice
- Remedial Action
- Remedial Orders
- Forfeiture Orders
- Seizure.

7.0 Criminal Behaviour Orders

7.1 Criminal Behaviour Orders may be issued following a conviction by the Criminal Courts. They are intended to rehabilitate offenders by tackling the underlying cause of the anti-social behaviour, such as misuse of drugs, and alcohol etc. For example, offenders may be obliged to attend alcohol/anger management courses etc. These are normally sought by Crown Prosecution Service but a local authority can also apply for these in cases of serious and persistent anti-social behaviour and may occasionally be a useful adjunct to prosecution for criminal offences (e.g. persistent noise nuisance).

8.0 The Dispersal Power

8.1 Police Dispersal Powers require a person committing, or likely to commit antisocial behaviour or crime or disorder, to leave an area for up to 48 hours.

9.0 Community Trigger

- 9.1 East Herts has been a leader in developing the Community Trigger which is already in place since April this year. The procedure together with a flow chart, which has been approved by the Executive, is outlined in **Essential Reference Paper B**.
- 9.2 For the Community Trigger to apply, anti-social behaviour must be persistent, be harmful or potentially harmful to an individual or a community. A victim, not satisfied with authorities' responses to complaints, may request a review of any action taken. If three complaints about anti-social behaviour are received within a 6 month period, upon request, the Council is obliged to formally review the actions taken/planned with relevant partners (Police, housing associations etc.) and inform the victim of the outcome.
- 9.3 This part of the law could impact on many services across the Council and any partners. For example, the response to noise complaints, irresponsible dog owners, planning enforcement, open spaces management and housing matters, could all come under scrutiny.
- 9.4 If a 'Trigger' request is made, a formal review would have to be held and the case scrutinised. A multi-agency panel would ultimately review the case and make recommendations for action. Community Safety staff will act as the single point of contact for the Community Trigger where they will coordinate any processes with other services.

10.0 Community Remedy

- 10.1 This new power allows the Police to choose an alternative punitive/rehabilitation action against offenders, other than proceeding through the courts. The victim and perpetrator of the crime would be involved in deciding the reparation action required.

11.0 Implications/Consultations

- 11.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Home office guidance – “Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers statutory guidance for frontline professionals”,

(https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf)

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