

THURSDAY, 12 MARCH 2015

**REPORT OF THE PORTFOLIO HOLDER FOR COMMUNITIES AND PUBLIC HEALTH****ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014 - POLICIES AND PROCEDURES****EXEMPT INFORMATION**

n/a

**PURPOSE**

To inform Cabinet as to the Corporate Impact on Tamworth Borough Council of the Anti-social Behaviour, Crime and Policing Act 2014.

**RECOMMENDATIONS**

It is recommended that;

- The Council takes a corporate approach to the new Act and the current working group (consisting of the Tamworth Borough Council Officers and Staffordshire Police Officers listed in the Report Author Section), or where appropriate sub working groups from within the main working group, be tasked with producing the policies and procedures necessary for such a corporate wide implementation.
- That the authority to implement those policies and procedures be delegated to appropriate officers (at Director Level).
- That once the policies and procedures are in place the authority to implement the Act is delegated to appropriate officers (at Director Level).
- That until the policies and procedures are in place the power to implement the Act rests with appropriate officers (at Director Level) on a case by case basis and where possible in line with current appropriate procedures.

**EXECUTIVE SUMMARY****Background**

In 2010, the Home Office carried out a review of the measures available to practitioners for responding to anti-social behaviour (ASB) which concluded that:

- there are too many tools, and practitioners stick to the ones that provide the best outcomes;
- some of the formal tools, particularly the Anti-Social Behaviour Order (or ASBO), are bureaucratic, slow and expensive, which puts people off using them;
- the growing number of people who breach their ASBO suggests the potential consequences are not deterring a persistent minority from continuing their anti-social or criminal behaviour;
- the tools that were designed to help perpetrators deal with underlying causes of their anti-social behaviour are rarely used; and
- there is now more emphasis on tenancy sustainment (running enforcement

alongside support) and possession should be a last resort

The Home Office subsequently consulted on proposals to reform the policy framework for dealing with ASB in 2011; leading to the publication of a White Paper, Putting Victims First – More Effective Responses to Anti-Social Behaviour, in 2012.

The Home Office indicated that the intention of its proposals was to "*move away from having a tool for every different problem*" to a new approach designed to ensure that local authorities, the police and partners have "*faster, more flexible tools*" to respond to problems with "*victims at the heart of the response*". The message of putting victims first, can clearly be seen as a 'golden thread' running throughout the Act and is clearly a focus for many of the new powers.

The Anti-Social Behaviour, Crime and Policing Bill subsequently progressed through Parliament and the resulting Act received Royal Assent on 13<sup>th</sup> March 2014. The majority of the new measures for tackling ASB were implemented on 20 October 2014 via a Commencement Order with the exception of late decision to delay the introduction of the ASB Civil Injunction until 23 March 2015.

New powers for District and Borough Councils, as well as the Police, are introduced by way of the Act. Many of these powers overlap with Nuisance and Licensing laws, whilst other Parts replace existing Dog Control Orders and Alcohol Orders. The Act has been introduced to speed up the powers for the most serious offenders.

This report is intended to provide an overview of these new measures for tackling anti-social behaviour and to consider the corporate and organisational implications for Tamworth Borough Council.

## **1. Response to Complaints about Anti-Social Behaviour (“Community Trigger”)**

### Overview

The White Paper, Putting Victims First, stated that the aim of the 'community trigger' was to give victims and communities the right to demand that agencies who had ignored repeated complaints about anti-social behaviour take action.

The relevant bodies in an area (police, district council, Clinical Commissioning Group and providers of social housing) must carry out an ASB case review if someone makes an application for a review and the local threshold for a review is met. For Staffordshire the local threshold is the national standard which is three qualifying incidents within a six month period. The incidents are required to amount to "behaviour causing harassment, alarm or distress to members or any member of the public" The report of any community triggers will be reported to Staffordshire police via 101 and any relevant partners in the area concerned will be notified.

Investigations based on the report made will be taken to the Tamworth Vulnerability Partnership (TVP), who meet weekly with all relevant partners. The TVP would then assess the report and decide whether the threshold has been met. 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.

Where the TVP decides that the threshold has not been met the complainant(s) must be informed within five days of the decision being made who should also be told of their right of appeal. The appeal will be heard by the Staffordshire police lead for

ASB. The fact that the threshold has not been met will not preclude the TVP from case managing and to appropriately action agencies to resolve the issues.

Where the TVP decides that the threshold has been met they will act as the case review forum. The TVP 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 TVP should involve the victim in devising the action plan to help ensure it meets the needs of the victim.

The complainant(s) have a right of appeal against how the case review was carried out and any of the recommendations. It is recommended that the chair of the community safety partnership undertakes this role.

The community trigger is not a complaints process and is not intended to replace organisations' own complaints procedures. It should be made clear to victims of ASB that they will still have the opportunity to complain to organisations such as the Ombudsman or Independent Police Complaints Commission if they are unhappy about the service they have received from an individual officer or agency.

There is a requirement to produce "review procedures" for carrying out any ASB case reviews and ensure that the current review procedures are published. The number of applications received, the number of times the threshold was met, the number of reviews carried out and the number of reviews that resulted in recommendations being made must also be published.

#### Impact and Considerations for TBC

This part of the law could impact on many Departments across the Council. For example, the response to noise complaints, irresponsible dog owners, planning enforcement, open spaces management and housing matters, could all come under scrutiny. All Departments will need to be aware of the tight statutory deadline (decision whether to allow a 'Trigger' is required within 10 working days).

TBC along with the Police and other Community Safety Partners will need to produce a Community Trigger Policy outlining the process to follow, which will include identifying a 'Single Point of Contact' and 'Responsible Persons' as defined by the Act.

Where possible current Community Safety meetings/processes would be utilised to 'hear' and respond to cases, but measures may need to be implemented to facilitate this.

Staff training will need to be considered for all staff on the possible impact of the 'Trigger' and additional training may be required to those staff who will have more involvement in the process.

## **2. Community Remedy**

### Overview

The Act requires each Police and Crime Commissioner to prepare a community remedy document for its area with a list of actions to be carried out by a person who

has a) engaged in anti-social behaviour or has committed an offence and b) is to be dealt with for that behaviour or offence without court proceedings.

An action is considered appropriate to be carried out by a person only if it has one or more of the following objects:

- assisting in the person's rehabilitation;
- ensuring that the person makes reparation for the behaviour or offence in question;
- punishing the person.

In preparing the document, the local police must consult with the local community and carry out whatever other public consultation that it considers appropriate.

The Act also sets out rules for out-of-court disposals for anti-social behaviour and conditional cautions. This includes a duty to consult victims before deciding what conditions to attach to a conditional caution. For example, if graffiti was the offence, the victim and offender may agree that they clean up the damage etc, rather than being prosecuted.

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.

#### **Staffordshire Community Remedies:**

In all cases, the offender should apologise to the victim(s) and show remorse. Whilst reparation should be the normal minimum, additional sanctions could be included in the Community Remedy in order to reassure the victim that the action will have lasting impact and prevent reoffending.

**Option A** The offender should repair any damage which they have caused to the victim or community. This may include paying for repairs or replacements if they can afford to, undertaking unpaid work to compensate the victim or community, and/or taking action to help relieve any distress caused.

**Option B** The offender should sign an Acceptable Behaviour Contract and agree not to behave anti socially in the future. If they do they will face more formal consequences. These should where possible include positive requirements.

**Option C** The offender should meet with people from the local community so that they understand the consequences of their behaviour. In addition, the offender may talk directly to the victim in a mediated environment, for example to solve a neighbour dispute.

#### Impact and Considerations for TBC

This part of the Act has, up until now, been perceived solely as a Police duty and the Staffordshire Police and Crime Commissioner has published his report to suggest that the remedies are to be used at discretion of the officers, scrutiny will be via local policing panels.

TBC should liaise with the Police to look at any impact the use of the remedies may have on the Community Safety Partnership and on Environmental management / Probation Service who may be asked to accommodate and monitor offenders on

community duties. This will also need to be monitored and consideration given to resources such as staff time and costs.

It is envisaged that this will have minimum impact on Tamworth Borough Council and is more for the Police and Crime Commissioner than the Local Authority and is included more for completeness and to give an overall picture.

### **3. ASB Civil Injunction (comes into force 23 March 2015)**

#### Overview

The ASB Civil injunction is an enhancement of a current civil power already in place which can be applied for by a range of agencies to deal with anti-social individuals. Housing departments have been using injunctions successfully for years and have found them to be a very effective way of dealing with anti social behaviour, especially when combined with exclusion and arrest and that is why these powers have been extended in the Act. Agencies that can apply for these injunctions include district councils, housing providers and police. Applications must be made to a youth court for those aged under 18 and to the county court or High Court in all other cases. The injunction can prohibit the offender from doing proscribed things (prohibitions) and/or require them to do certain things (requirements). The requirements should aim to tackle the underlying causes of the anti-social behaviour and could include such things as attending an anger management course, participating in substance misuse awareness sessions, or attending a job readiness course. There is also the option to request committal upon breach.

For non housing applications the test is conduct that has caused, or is likely to cause, harassment, alarm or distress to any person. For housing related applications 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.

Breach of an injunction is not a criminal offence. For adults, a breach is dealt with by a civil contempt of court and breach proceedings for under 18s are dealt with in the youth court.

This power would most likely be used instead of ASBOS, which have been repealed, it is not expected that this will mean an increase in the use of this new power. Issues such as bullying, drug and alcohol misuse, irresponsible dog owners and noise issues etc, could also be addressed by using these injunctions.

#### Impact and Considerations for TBC

Much of the case work leading up to corrective action will remain within the originating team. It may, however, prove to be a more streamlined process to get cases to court.

TBC will need to identify advocates (potentially Revenues Team who currently take environmental offences, Housing and Community Safety Teams) and ensure they are permitted to appear on behalf of the Community Safety Partnership instead of or as well as the Council's Legal Department, on a case to case basis. Resources will have to be monitored.

That the collation of all injunction evidence and the issuing of such cases, be undertaken by the originating team for each action on behalf of the Council, but with assistance and collaboration with the Community Safety Hub.

A sharing of information protocol is already in place, and the best method of keeping all agencies updated and informed of persons subject to an injunction, will need to be decided.

Consideration will need to be given to the types of positive requirements we will use and where the funding will come from, especially when they benefit a number of departments within Tamworth Borough Council or other agencies.

It is not currently envisaged that this new power will lead to a high increase in usage over the previous powers, however the effect on resources such as staff time and costs should be considered and monitored and consideration should be given to identifying or putting into place a shared legal budget for such actions.

#### **4. Criminal Behaviour Orders (CBO) and Police Dispersal Powers**

##### Overview

The CBO is available on conviction for any criminal offence in any criminal court. It is similar to the civil injunction and can include prohibitions and requirements. 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.

However, unlike the injunction, it is a criminal offence to fail to comply with an order without reasonable excuse. Breaches of CBO by those aged under 18 will be dealt with in the youth court. In all other cases, the offence will be considered by the Magistrates' court or Crown Court.

The dispersal power can be used by the police to disperse anti-social individuals and provide immediate short-term respite to the local community. Police officers can also confiscate any item that they believe has been used, or is likely to be used, in anti-social behaviour. Failure to comply with the direction is an offence, which can result in imprisonment or a fine. If used in a specific locality authorised by police inspector, the authorisation can last for 48 hours. There is no requirement for the police to consult the council.

##### Impact and Considerations for TBC

Both of these new powers are not expected to be an added burden on the Council and are provided simply for information purposes.

#### **5. Community Protection Notice**

##### Overview

A Community Protection Notice can be issued, following written warning when we have reasonable grounds that an individual's or business's 'behaviour' is having a detrimental effect on the area, having been satisfied that :-

1. It has a detrimental effect on quality of life of those in locality
2. It is persistent
3. It is unreasonable

These notices can be used to oblige action to be taken to prevent the problem such as graffiti, rubbish, noise etc. Breach of Notice can be dealt with by a variety of sanctions, fixed penalties or prosecution, but not both. On conviction, a court order

can be obtained for remedial action, remedial orders or forfeiture orders. Failure to comply with any of the requirements of the court order constitutes contempt of court and could lead to a custodial sentence. Conviction of an offence of breach of CPN can lead to a level 4 fine (up to £20,000 fine in a case of business or organisation). As well as individuals' behaviours, such notices could be issued to late night refreshment premises, pubs, and other businesses and the Police are also able to issue notices.

### Impact and Considerations for TBC

Community Protection Notices will be an extremely useful tool for the Council and amongst other things warnings could be used by Housing and Neighbourhood Services for low level persistent ASB such as garden nuisance, vehicle nuisance, animal nuisance and the cost benefits could be substantial, estimated to be at least 50% of the cost of a current injunction. It would also have the added bonus of allowing officers to deal with ongoing nuisance issues out of hours, which is difficult under current powers.

TBC needs to put in place a clear and robust process for notification of warnings issued by all departments to Environmental Management Business Support. The collation of all evidence for Community Protection Notices can be undertaken by Neighbourhood Services for the Council and Police (should they issue warnings). Neighbourhood Services should inform all partners of intention to issue a CPN and a central budget should be established for the receipt of them.

Neighbourhood Services should inform all partners of intention to issue a CPN after failure to comply with the requirements of a warning and a central budget should be established for the receipt of any fixed penalty income and expenditure on any associated legal fees.

Accessing current communication channels and the sharing information protocols between agencies that are already in place, will need to be used wherever possible, with co-ordination through the Community Safety Hub.

The increased level of work will need to be monitored and any resource implications be reported back to senior managers and a process established to report back to victims.

Community Protection Notices could also be used to manage some planning enforcement matters inclusive of untidy buildings and land (formally dealt with under S.215) and businesses from home which have dramatically increased in recent years. Providing officers with the ability to deal with these types of complaints in a more effective and efficient manner than is currently available through the planning system.

Consultation will need to be undertaken with Staffordshire Police to determine how these powers will be utilised by them in conjunction with the Council (especially with due regard to noise issues).

This is an area where it is envisaged that a separate sub working group would be of benefit.

## **6. Public Spaces Protection Order (PSPOs)**

### Overview

The Council will be able to make an Order on any public space to control activity that may have a 'detrimental effect on the quality of life of those in the locality'. Tamworth Borough Council own a lot of public spaces, these Orders apply to any area of land where there is an implied public access. This can include privately owned areas.

Obvious examples include Dog Control Orders, alcohol bans etc and such existing Orders will be replaced by PSPOs within 3 years. However, other uses for such Orders appear to be endless.

The use of these Orders may become a favourite to replace Byelaws or to introduce new controls. Cycling and ball games are examples of possible activities that could be controlled in parks etc using these orders.

One Order could therefore cover a multitude of controlled activities.

The law requires such Orders to be reviewed every three years and includes a consultation procedure. Over a period of time therefore, as requests for such Orders increase, the required administration could impact considerably on resources.

### Impact and Considerations for TBC

It will have an impact on certain Orders already in place, such as Dog Control Orders and it may be an opportunity to replace Byelaws (often considered ineffective) and also to consider new applications going forward. Any proposals will need to be made with consultation with chief officers, Councillors, Police and communities.

TBC should set up a working party be set up to look into areas which may benefit from the use of PSPOs in conjunction with the Police/Councillors/Housing and establish robust assessment criteria based on levels of ASB and ability to enforce the order.

The collation of all evidence and consultation processes etc required for Public Space Protection Orders be undertaken by Environmental Management / Neighbourhood Services in conjunction with Corporate PR and the Police.

Workloads and budgets will also need to be considered including a budget for any relevant signage.

Existing dog control, Gating Orders and alcohol zones should be renewed as PSPOs before 20<sup>th</sup> October 2017 in accordance with the statutory regulations in place.

A democratic process will need to be identified to approve new PSPOs and receive consultation for debate in response to any increased ASB and a review process of existing PSPOs every three years or as required.

## **7. Closure Powers**

### Overview

The Council and Police will have the power to close premises (which includes licensed premises, those enclosed or open, residential and businesses) where the legal test is met. Approval to close premises for up to 48 hours can be given by a designate of the Chief Executive. The new powers allow closure to take place up to 48 hours without Court involvement. This could be used to stop music nuisance from residential premises, for example, as well as for disorder problems in pubs and clubs



etc.

### Impact and Considerations for TBC

A lot will depend on subsequent case law defining what is meant by 'nuisance'. If it takes on a lower threshold to that of a 'statutory nuisance', then it is possible that Closure Powers may be used more often than may have been first thought.

TBC should define an officer(s) at Director level who is authorised to close premises both up to 24 hours, and 48 hours, as the designate of the Chief Executive, as required to be stipulated under the Act.

## **8. Enforcement Issues**

### Overview

Enforcement is a major issue that needs clarification of roles. Some of the Orders will cover issues that Local Government has not previously had powers to issue Fixed Penalty Notices for.

The Act is one of primarily taking action to prevent anti-social behaviour. The Council and Community Safety Partners should be aware from the outset that agreeing to making Orders and issuing Notices and Injunctions is a requirement to enforce the laws.

The Act empowers both the police and Councils to enforce the laws and it is already clear that Staffordshire Police will use the new powers as standard procedure.

Whilst it appears fair to assume that the vast majority of enforcement of this new Act will therefore rest with the Council, there nevertheless is a need to clarify the differing enforcement roles between Councils and Police.

### Impact and Considerations for TBC

TBC should consider setting out in a memorandum of understanding how the matter of enforcement of the new Act will be dealt with either locally or across Staffordshire, to formally clarify the parameters of each agencies' enforcement roles.

The impact on the need to enforce the various new powers should be monitored and any resource implications be reported back to CMT.

## **9. Recovery of Possession of Dwelling-Houses: Anti-Social Behaviour Grounds**

### Overview

The Act introduced additional discretionary grounds for possession in May 2014 and absolute grounds for possession in October 2014. The discretionary grounds are related to rioting and causing nuisance or annoyance to the landlord or their employees while they are carrying out their housing function.

The absolute grounds of possession are;

That the tenant, a member of the tenant's household, or a person living in the property met one of the following conditions:

- Convicted of a serious offence (as specified by 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.

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. If the above conditions have been met, the Court must grant possession (subject to any available Human Rights defence raised by the tenant, including proportionality) where the correct procedure has been followed. This is aimed at reducing the time taken to deal with such proceedings and free up Court resources and time.

#### Impact and Considerations for TBC

Tamworth Borough Council, will need to look at the impact this will have on the level of possession proceedings and any effects should be monitored and any resource implications be reported back to CMT.

A review process will need to be implemented to deal with appeals.

All cases being considered under this mandatory ground should be considered under the Eviction Consultation Protocol with the Tamworth Vulnerability Partnership.

### **OPTIONS CONSIDERED**

#### Do Nothing

Practically this is not applicable, while the Act does not specify any specific required actions, it replaces many of the powers the Council already has and the powers are in areas where the Council does have duties.

#### Implement the Act Department by Department

This would lead to inconsistent treatment if one department dealt with similar issues in a different way to another department. It would lead to criticism, potential bad publicity and could open up avenues to appeal or review decisions.

#### Corporate Wide Approach

This is the favoured approach, it allows for a consistent approach across the Council and a level of certainty regarding how issues will be dealt with.

### **LEGAL/RISK/RESOURCE AND SUSTAINABILITY IMPLICATIONS**

Individual implications for each part of the Act has been discussed above in the relevant section, broadly these can be summarised as;

Corporate Plan & Council Objectives;

- The Act will have implications primarily on Healthier Safer Tamworth.

Legal;

- The Act impacts on statutory obligations of the Council.
- The risk of not meeting statutory obligations could be challenged by way of Judicial Review.

Environmental;

- Most parts of the new Act have environmental implications e.g. noise, litter, graffiti

#### Finance;

- The risk of not meeting statutory obligations could be challenged by way of Judicial Review.
- Proposal to, where possible, consider clarifying and sharing budgets, this will not have an immediate financial risk, but would need to be re-considered when any future procedures are implemented.
- As plans develop the financial and budget implications will be reported back to cabinet.

#### Reputation;

- The management of expectations of both the public and members needs to be addressed when developing processes to ensure enforcement can be done within resource and in the public interest in line with current enforcement policy

#### Equalities;

- All complaints will be processed without discrimination.

#### Resources;

- All new polices and procedures will need to take into account resources, including work loads/officer time, training and pure financial resources.

#### Partnerships;

- The majority of the Act contains either requirements or opportunities for partnership working, which we will look to encourage, but will need to be monitored.

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#### **LIST OF BACKGROUND PAPERS**

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/352562/ASB\\_Guidance\\_v8\\_July2014\\_final\\_\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf)

**APPENDICES**  
n/a