

THURSDAY, 18 JUNE 2015

REPORT OF THE PORTFOLIO HOLDER FOR COMMUNITIES AND PUBLIC HEALTH

ASB, CRIME AND POLICING ACT 2014 IMPLEMENTATION

EXEMPT INFORMATION

N/A

PURPOSE

To review and agree the operating processes for the use of Community Protection Notices, Public Space Protection Orders and Community Trigger as defined in the ASB, Crime and Policing Act 2014

RECOMMENDATIONS

That Member's approve:

1. The processes outlined to implement the legislation
2. The level of Fixed Penalty to be set at the maximum permissible within the legislation (currently £100 reduced to £85 for prompt payment)

EXECUTIVE SUMMARY**COMMUNITY PROTECTION NOTICES**

An authorised person can issue a Community Protection Notice (CPN) to an individual aged 16 or over, or a body, including a business, if they are satisfied on REASONABLE grounds that:

- The conduct of the individual or body is having a detrimental effect on the quality of life of those in the locality
- The conduct is of a persistent nature and
- The conduct is unreasonable

The notice imposes the requirement to:

- Stop doing specified things
- Do specified things
- Take reasonable steps to achieve specified results

The only requirements that can be imposed are those that are reasonable to:

- Prevent the detrimental effect from continuing or recurring
- Reduce the detrimental effect or reduce the risk of its continuance or recurrence

There is little guidance to support the Act, however some of the case law from Statutory Nuisance may be relevant along with the Town & Country Planning Act 1990 s.215 Best practice Guide on detriment to amenity.

Detrimental effect – The act does not say the detriment has to be serious or significant, but clearly it should not be trivial. 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.

Persistent or continuing - 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.

Unreasonable - 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.

In relation to conduct on, or affecting premises it can be served on a particular person who; owns, leases, occupies, controls, operates or maintains the premises. 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.**

Where premises are involved a person in a position to manage or control the premises may be held liable. Thus, for example, any person de facto in a position to control a noisy party may be held liable. Also, a landlord or managing agent could be held liable for the behaviour of tenants.

There is not a bar to using CPN's where the issue could fall within statutory nuisance and, to the contrary, parliament may now be said to have considered this position and chosen to enable the use of a CPN in such circumstances.

TYPES OF BEHAVIOUR THAT A CPN MIGHT BE USED TO TACKLE

The CPN is designed to be a broad ranging tool to deal with nuisance behaviour. The act deliberately does not stipulate the types of behaviour that can be considered to give authorities freedom to tackle all behaviour that is detrimental to the local community's quality of life. It puts victims at the heart of the response to anti-social behaviour, and gives the flexibility needed to deal with any given situation. Use of a CPN may well come out of an ongoing investigation of a complaint under another piece of legislation, or may be the primary tool for tackling the problem. Informal attempts to resolve the problem will usually have been undertaken before proceeding down the CPN route and can be considered in conjunction with Public Space Protection Orders.

The following list is intended to be indicative and not exhaustive as a potential use for CPNs:

Escaping/dangerous dogs	Smokers' litter not being cleared	Running a business from home causing nuisance
Unruly gardens	Excessive littering from licensed premises	Car repairs in the street
Rave organisers	Unlicensed scrapyards	Cars for sale on grass verges
Boy racer organisers	Businesses not keeping frontages free of litter	Neighbour nuisance
Noisy parties	Dilapidated buildings	Street gangs
Noise in a public place		Invasive non-native plant species
Flytipping/build up of litter		
Mini motos		

The notice can only be issued when:

- A written warning has been given that the notice will be issued unless the conduct ceases to be detrimental
- The officer is satisfied that despite having had enough time to deal with the matter the conduct is still having an effect

Delegation

Tamworth Borough Council has previously delegated authority to the appropriate Director in order to deal with ASB and environmental protection matters. These Officers may need to consider further delegations to others such as:

- Community safety/ASB officers
- Housing officers
- Neighbourhood Services/Community Wardens
- Environmental Protection officers
- Planning Enforcement officers
- Licensing officers
- Trading Standards (Staffordshire)

Police

Staffordshire Police are delegated to issue of CPN warnings and notices and will work with the Tamworth Community Safety Partnership to implement a memorandum of understanding for the use of the powers.

Registered providers

Registered providers can request the power to issue CPN for estates that are their responsibility – for both their tenants and those who are not their tenants. Delegation will be agreed locally.

The detailed CPN process map and notes are contained as Appendix 1a and Appendix 1b.

PUBLIC SPACE PROTECTION ORDERS

A Public Space Protection Orders (PSPO) is a measure to stop individuals or groups committing ASB in public places. The local authority will identify the area that is to be covered by the order – known as the 'restricted area'.

The PSPO can:

- Prohibit specified things being done in the area

- Require specified things to be done in the area

The prohibitions or requirements can be framed so that they:

- Apply to all persons, or only persons in specified categories, or to all persons except those in specified categories
- Apply at all times, or only at specified times, or at all times except those specified
- Apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified

The following conditions must be met before making the order:

- Activities carried out in a public place within the local authority’s area have a detrimental effect on the quality of life of those living in the locality **OR**
- It is likely that activities will be carried out in a public place within the area that will have such an effect

The effect, or likely effect of the activities:

- Is, or is likely to be, of a persistent or continuing nature **OR**
- Is, or is likely to be, such as to make the activities unreasonable *and* justifies the restrictions imposed by the order

Identification of Potential PSPO

This will come from a variety of routes – including, but not exclusively:

- Partnership problem solving – daily meetings, hotspots, intelligence
- Recorded complaints from the public
- Public consultation
- Elected members
- Residents Groups
- Neighbourhood meetings
- Recorded crime (Staffordshire Police)
- Review of existing bye-laws
- Issues resulting from the management of public open space

The process to be followed is below. Responsibility for overseeing this process will vary depending upon the focus of the PSPO.

Types of Behaviour That a PSPO May Be Used to Tackle

The following list is intended to be indicative and not exhaustive:

Vagrancy	Legal highs – sale	Verge parking
Rough sleeping	of/taking of	Parking outside schools
Street drinking	Boy racers	Swimming in dangerous areas
Urinating and defecating	Skateboards	Ball games
Prostitution	Mini motos	Grazing of horses
Kerb crawling	Congregating in car parks	Litter
Dogging	Cars for sale	Disposable BBQs
Begging	Vehicle nuisance	Flytipping
Placing yourself to beg	Buskers	Cycling in pedestrian areas
Fishing	Dog fouling	Illegal encampments
Fly posting	Unruly dogs	
Distribution of literature		

Metal detecting	Dog prohibited	Aggressive Charity Collectors (Chuggers)
-----------------	----------------	---

It is important that the PSPO is used proportionately and that it is not seen to be targeting behaviour of the children/young people where there is a lack of tolerance and understanding by local people. Consideration must also be given to the Equality Act when setting out restrictions or requirements.

When making a PSPO, the impact on other areas and the level to which displacement is likely to occur should be included.

The detailed PSPO process map and notes are contained as Appendix 2a and Appendix 2b.

FIXED PENALTY NOTICES

Within the CPN process and for breach of PSPO, the legislation permits local authorities to set a maximum fixed penalty of £100 with a lower amount for payment within 14 days.

The (current) maximum level of penalty of £100 is proposed for use by Tamworth Borough Council with an early payment of £85 if paid within 14 days.

Tamworth Borough Council Environmental Management will issue ALL FPNs for breach of CPN or PSPO utilising current processes and this will be monitored in the M3 back office system. Income from the issue of Fixed Penalty Notices will be retained by Tamworth Borough Council with all partners will be subject to internal robust agreements.

The legislation is silent on the manner in which such income should be utilised. In the interim a separate budget line will be created for monitoring and transparency purposes, with a view to ensuring the financial costs of enforcement are as cost neutral as possible.

COMMUNITY TRIGGER

The purpose of the community trigger is 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.

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.

The Council must publish our Community Trigger procedure, this will be on our website. This will include the above information, the single point of contact (county wide agreement will be Staffordshire police) and information as to how to notify agencies about a Community Trigger.

There is a requirement to publish certain data namely;

- The number of applications for Community Triggers received
- The number of times the threshold was not met
- The number of anti socials behaviour case reviews carried out, and
- The number of anti socials behaviour case reviews that resulted in case reviews

This data is published by Staffordshire police broken down by each local authority district.

OPTIONS CONSIDERED

The process has been consulted on and fully endorsed by all relevant departments and Tamworth Police

RESOURCE IMPLICATIONS

The process and level of resource will be reviewed in April 2016 dependent on service demand and other internal reviews.

LEGAL/RISK IMPLICATIONS BACKGROUND

The process has been reviewed by the Legal Support officer as part of the ASB group and is compliant with Tamworth Borough Council governance arrangements. Risk factors are mitigated by the use of partnership meetings and case conferences to ensure that any prosecutions arising from use of the powers will be fully discussed and budgets identified.

In all cases a evidence determination sheet will be completed as outlined in the process – see **Appendix 3a and Appendix 3b**

Finance – fixed penalty receipts to be accounted for separately, and can only be utilised to support the legislative process

SUSTAINABILITY IMPLICATIONS

BACKGROUND INFORMATION

The ASB, Crime and Policing Act 2014 became law on 20th October 2014.

Tamworth Borough Council have approved a corporate approach to the implementation of the Act and use of powers contained within in by all departments, Police and wider Community Safety partners.

Approval for the process of implementation was endorsed by Cabinet on Thursday 12 March 2015.

This reports outlines the specific processes for the use of Community Protection Notices, Public Space Protection Orders and Community Trigger.

REPORT AUTHOR

Jo Sands, Neighbourhood Services Manager

LIST OF BACKGROUND PAPERS

ASB, Crime and Policing Act 2014: Reform of anti-social behaviour powers – Statutory Guidance for frontline professionals
ASB Crime and Policing Act 2014

APPENDICES

Appendix 1a – CPN Process
Appendix 1b – CPN Process Flowchart
Appendix 2a – PSPO Process
Appendix 2b – PSPO Process Flowchart
Appendix 3a – CPN determination sheet
Appendix 3b – PSPO determination sheet

This page is intentionally left blank