

COMMUNITY PROTECTION NOTICES AS AN ANTI SOCIAL BEHAVIOUR ENFORCEMENT TOOL

Cabinet Member	Cllr Douglas Mills
Cabinet Portfolio	Community, Commerce and Regeneration
Officer Contact	Nigel Dicker, Residents Services Bill Hickson, Residents Services
Papers with report	None

1.0 HEADLINE INFORMATION

Summary	This report recommends that the Cabinet delegates authority to use Community Protection Notices (CPN's) as an environmental enforcement tool to the Deputy Chief Executive and Corporate Director of Residents Services in consultation with the Cabinet Member for Community, Commerce and Regeneration.
Putting our Residents First	This report supports the following Council objectives of: <i>Our Natural Environment; Our Built Environment.</i>
Financial Cost	The cost of adopting the recommendation can be met within current approved budgets. The cost of works in default carried out as a result of the use of this enforcement tool may be recovered from perpetrators through court action if necessary. Income may be achieved if FPNs are issued.
Relevant Policy Overview Committee	Residents and Environmental Services Policy Overview Committee
Ward(s) affected	All

2.0 RECOMMENDATION

That Cabinet delegates authority to the Deputy Chief Executive and Corporate Director of Residents Services, in consultation with the Cabinet Member for Community, Commerce and Regeneration, to use powers available under Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014 in the form of Community Protection Notices to enforce against anti social behaviour that is having a detrimental effect on the quality of life for those in a locality, and is unreasonable, and is of a persistent or continuing nature.

2.1 **Reasons for recommendation**

2.2 If approved, the recommendation will provide an additional tool for officers to enforce against a wider range of anti social behaviours, perhaps where a statutory nuisance does

not exist under the Environmental Protection Act 1990, yet where behaviour is persistent and is having a negative effect on a locality. This may particularly apply to the problem of untidy domestic gardens and other examples of anti social behaviour.

2.3 Alternative options considered / risk management

2.4 To not make use of Community Protection Notices. This option is discounted, as the Community Protection Notice or CPN is a powerful tool. It is available to local authorities to tackle behaviours that cause distress and impacts on a locality that may be more difficult to tackle using other legislation, which requires definitive judgements and may be more appropriate to more clear cut or extreme situations where there is severe nuisance, other damage, or a threat to health. Not adopting the use of CPNs reduces the possibilities open to the Council for dealing with matters that have long term effects on residents and where other powers may not be suitable or as effective.

2.5 Policy Overview Committee comments

2.6 This will support the Council's approach to hoarding, as identified in the review by the Residents & Environmental Services Committee in 2015 on this matter.

3.0 INFORMATION

3.1 Supporting Information

3.2 The Anti-Social Behaviour, Crime and Policing Act, passed in March 2014, has the principal rationale to consolidate and simplify the variety of tools which had grown up to counter anti-social behaviour.

3.3 Amongst other considerations, the Act contains a number of powers for tackling anti social behaviour - i.e. Civil Injunctions, Criminal Behaviour Orders, Dispersal, Community Protection Notices, Public Spaces Protection Orders and Closure Powers.

3.4 This report makes direct reference to, and contains sections from Home Office and Chartered Institute of Environmental Health (CIEH) guidance on The Anti-social Behaviour, Crime and Policing Act 2014 and Community Protection Notices. (Anti-Social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals and Professional Practice Note Guidance on the use of Community Protection Notices under Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014, respectively)

3.5 Untidy Gardens

3.6 The Council has at its disposal a range of other powers for dealing with anti social behaviour, particularly when it concerns neglect of property, accumulations of assorted rubbish and the generation of eyesores. These tools include provisions from legislation in Planning, Statutory Nuisance, Public Health, Highways, Building Control and Pest Control.

3.7 **Community Protection Notices (CPNs)**

3.8 Whilst the Council has successfully made widespread use of Public Space Protection Orders offered by the Anti-social Behaviour, Crime and Policing Act, it is proposed to add the option of the Community Protection Notice to the range of options open to officers seeking to deal with various types of anti social behaviour, including untidy gardens.

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

4.0 A CPN can be issued by the Council if it is satisfied on reasonable grounds that the conduct of the individual, business or organisation:

1. Is having a detrimental effect on the quality of life of those in the locality;
2. Is persistent or continuing in nature; and
3. Is unreasonable.

4.1 Decisions on whether the anti social behaviour is persistent should be taken on a case by case basis by issuing officers. With untidy gardens for example, where an individual is storing rubbish in their garden for many months, proving persistence may be simple, but there may be cases where a type of 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.

4.2 **Issuing the CPN**

4.3 CPN's can be issued against any person aged 16 or over or a body, including a business. 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.

4.4 Before a Community Protection Notice can be issued, the subject must be given a written warning stating that a Community Protection Notice will be issued unless their conduct ceases to have the detrimental effect. Failure to heed a warning after sufficient time, that effect continuing, may then lead to the issue of a Community Protection Notice.

4.5 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:

1. A requirement to stop doing specified things;
2. A requirement to do specified things;
3. 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.

4.6 **Penalties**

4.7 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.

4.8 **Fixed Penalty Notices**

4.9 Depending on the behaviour in question, a fixed penalty notice (FPN) could be the most appropriate sanction. Payment of the FPN would discharge any liability to conviction for the offence. The Council's Environmental Enforcement Wardens may be employed to issue Fixed Penalty Notices, or they may be issued by post,.

5.0 FPN levels can be set by the Council but should not be more than £100 and can specify a lower amount for prompt payment.

5.1 **Remedial Action**

5.2 If an individual or body fails to comply with a CPN, the Council may decide to take remedial action. The Council should then establish what works are required to put the situation right. For instance, in a situation where the complaint is about an untidy front garden the Council could clear the garden on the perpetrator's behalf.

5.3 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.

5.4 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 specifies the works required and the estimated cost. Once the work is done, the Council should give the perpetrator details, and the final amount payable.

5.5 In determining a 'reasonable' charge, local authorities should ensure the costs are no more than needed bring the land to the standard laid out 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.

5.6 **Remedial Orders**

5.7 On conviction for not complying with a CPN, the Council may ask the court to impose a remedial order and / or a forfeiture order. This could be because:

1. The matter may be deemed so serious that a court order is warranted;
2. The works may be required to an area that requires the owner's or occupier's consent and this is not forthcoming;
3. 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).

5.8 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.

5.9 **Forfeiture orders**

6.0 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, e.g. spray paints, sound making equipment or a badly behaved dog where the court feels the individual is not able to manage the animal appropriately (re-homed in the case of a dog).

6.1 **Seizure**

6.2 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. An enforcement officer may use reasonable force, if necessary, to seize the items.

6.3 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).

7.0 **Financial Implications**

7.1 Officers from the Council's Anti Social Behaviour team will be responsible for issuing any agreed Community Protection Notices, in consultation with the Cabinet Member. As these notices would replace other enforcement activity at the same premises it is not envisaged that there will be any significant resource implications in using this enforcement tool, other than any marginal costs in issuing the notices.

7.2 Income from FPNs and/or prosecutions in the case of non compliance will help offset service costs and (in the case of FPNs) count towards existing fees & charges budgets within the service.

8.0 **EFFECT ON RESIDENTS, SERVICE USERS & COMMUNITIES**

8.1 The use of CPNs will potentially allow officers to effectively deal with issues where persistent ASB, particularly in the case of untidy front gardens is having a negative effect on quality of life for residents, where that behaviour may fall below some enforcement thresholds for other types of enforcement.

8.2 CPNs would be a useful additional power bringing additional flexibility for officers to resolve anti social behaviour problems affecting residents.

8.3 **Consultation Carried Out or Required**

8.4 None

9.0 CORPORATE IMPLICATIONS

9.1 Corporate Finance

9.2 Corporate Finance has reviewed this report and concurs with the financial implications set out above. The recommendation will allow the Council to take enforcement action against a wider range of anti-social behaviours through the issuance of Community Protection Notices. It is noted that any income from Fixed Penalty Notices will contribute towards existing General Fund revenue budgets.

9.3 Legal

9.4 Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014 provides the Council with effective powers to tackle anti-social behaviour that provides better protection for communities. If satisfied on reasonable grounds that the conduct of an individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and the conduct is unreasonable; the Council may take such steps as are appropriate to remedy such conduct, including where necessary the issuing of a notice on all parties with a proprietary right and/or interest in the subject land requiring specific actions to be undertaken to remedy the detrimental effect/unreasonable conduct.

9.5 The legal implications and statutory powers are set out within the body of the report. Legal Services have considered the content of the report and conclude that the recommendation is consistent with legislative requirements and Cabinet's powers.

10.0 BACKGROUND PAPERS

10.1 NIL