

RIBBLE VALLEY BOROUGH COUNCIL REPORT TO HEALTH & HOUSING COMMITTEE

Agenda Item No. 17

meeting date: TUESDAY, 25 MAY 2017
title: PUBLIC SPACES PROTECTION ORDERS AND COMMUNITY PROTECTION NOTICES AS AN ANTI-SOCIAL BEHAVIOUR ENFORCEMENT TOOL
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1 PURPOSE

1.1 To act as an overview on the use of Community Protection Notices (CPNs) as an environmental enforcement tool.

1.2 Relevance to the Council's ambitions and priorities

- Community Objectives }
- Corporate Priorities } To make people's lives safer and healthier.
- Other Considerations }

2 BACKGROUND

2.1 The Anti-Social Behaviour Crime and Policing Act received the Royal Assent on 13 March 2014 and includes sections on:

- A victim focused revision and simplification of the tools and powers used by anti-social behaviour practitioners; a case review process and a community remedy process intended to widen the involvement of victims in restorative justice
- Changes to grounds for possession relating to participation in riots and to involvement in serious crime and anti-social behaviour
- Widening of the application of dangerous dogs legislation and provisions affecting the operation of dog control orders
- Changes to the legislation involving firearms; child sexual exploitation; forced marriage and extradition
- Changes to the governance arrangements for the Police and Police bodies
- Minor changes relating to the administration of the criminal justice system

2.2 The impact for the Council relates to the ASB part of the legislation which replaces nineteen existing powers targeted at types of ASB with more generic powers targeted at holistic problem solving:

- A new Civil Injunction power available to the Police, the Council and housing providers for use with both adults and young people
- A new post-conviction power to impose both prohibitions and requirements
- A new generic power for the Police to require individuals to stay out of an area to prevent them engaging in ASB
- A new community power available to the Police, the Council and designated housing providers to deal with a range of behaviours that might adversely affect the quality of life
- A public spaces power available to the Council only to prevent ASB in an area
- A closure power available to the Police and Council to give residents respite from serious ASB

- An ASB case review process available to members of the public, in certain circumstances, where they feel appropriate action has not been taken by those they have reported the ASB to and their partners
- 2.3 The majority of the new powers including the Community Protection Notice (CPN) and Public Spaces Protection Orders (PSPO) commenced in October 2014 with the Civil Injunction following on in March 2015.
- 2.4 It should be noted that the overwhelming majority of cases dealt with by the Environmental Health and Licensing Enforcement are resolved through early intervention and negotiation rather than recourse to the use of legal powers. Although there are heightened expectations and new opportunities resulting from the new powers they are no substitute for good case management which is recognised in the government's statutory guidance to the new powers.

Public Space Protection Orders

- 2.5 PSPOs are available to the district council only and replace Gating Orders, bringing that power to the district council from the county council, Dog Control Orders and Designated Public Place Orders (alcohol control zones) with a single power that can deal with a broad range of ASB targeted at a geographic area rather than individuals. They are aimed at dealing with persistent and unreasonable nuisance that is detrimental to the quality of life of residents in the designated area for up to three years when they must be reviewed before the period can be extended. The PSPO could be used for a shorter period as a targeted intervention in the way the S.30 (ASB Act 2003) dispersal power was used, however this has not been needed in Ribble Valley.
- 2.6 PSPOs may be used for public spaces, parks, alleys, rural areas and communal areas to deal with issues such as dogs, alcohol and noise. They are also seen as devolving the power to make by-laws from the government to local authorities, however there are detailed provisions with regard to controlling alcohol consumption and restricting rights of access.
- 2.7 Transition arrangements mean the orders currently in place in Ribble Valley will remain, however they will need to be reviewed every three years and will become PSPOs after the first review. It also means current single issue orders could be broadened to include other types of ASB that meet the conduct test. The Council has the option of reviewing its current orders and converting them to PSPOs at any time and in the interests of consistency. This process is currently in hand for dog control orders.
- 2.8 Consultation and publicity requirements are included in the legislation and focus on signage and information on the Council's website. It should be noted that appeal on the terms of a PSPO is to the High Court; a potentially costly process for the Council.
- 2.9 The Police can enforce a PSPO, however the Council will need to consider the enforcement role of the Environmental Crime and ASB Teams for this power. Breach is a criminal offence subject to a fixed penalty notice or a fine on conviction.

Community Protection Notices

- 2.10 CPNs replace little used and complex Litter Clearing Notices, Street Litter Control Notices and Defacement Removal Notices. The purpose of a CPN is to stop a person, business or organisation committing ASB which is persistent, unreasonable and detrimental to the quality of life of those in the locality.
- 2.11 CPNs can be issued by the Council, Police and a person designated by the Council such as officers of housing providers. Lancashire Constabulary has declined to take

up use of the power although it is committed to supporting local authorities. Housing providers in Pendle have adopted a similar approach.

- 2.12 A CPN must be preceded by a written warning informing the perpetrator of the behaviour of what they are doing, asking them to stop, advising them of the effect of not stopping and allowing a reasonable time to remedy the situation. The CPN can require the perpetrator to stop doing something, to do something to prevent the ASB or to take reasonable steps to prevent the ASB.
- 2.13 Like PSPOs CPNs can address a wide range of behaviours and types of ASB in a single notice and include positive requirements as well as prohibitions. As a result it is open to the Council to include public order type behaviour in a notice that might primarily be aimed at general nuisance, noise nuisance and property condition. The need for agencies to work in partnership and share information will increase as a result and Ribble Valley benefits from the existing co-location and partnership arrangements such as ASBRAC and PCSO tasking.
- 2.14 The Council may carry out remedial work in default at a reasonable cost either where the work is on land open to the air or, subject to a notice being served and with the consent of both the owner and the occupier, work within premises. Breach is a criminal offence subject to a fixed penalty notice or a fine on conviction. On conviction the court may also order remedial action is taken to put right the breach or forfeiture of equipment or goods involved in the breach.

Alternative options considered / risk management

- 2.15 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.

3 ISSUES

- 3.1 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.
- 3.2 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.
- 3.3 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)
- 3.4 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.

Community Protection Notices (CPNs)

- 3.5 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.
- 3.6 A CPN can be issued by the Council if it is 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.
- 3.7 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.

Issuing the CPN

- 3.8 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.
- 3.9 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.
- 3.10 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; and
 - 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.

Penalties

- 3.11 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.

Fixed Penalty Notices

- 3.12 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.

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

Remedial Action

- 3.14 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.
- 3.15 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.
- 3.16 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.
- 3.17 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.

Remedial Orders

- 3.18 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:
- The matter may be deemed so serious that a court order is warranted;
 - The works may be required to an area that requires the owner's or occupier's consent and this is not forthcoming;
 - 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).
- 3.19 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.

Forfeiture Orders

- 3.20 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).

Seizure

- 3.21 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.

4 RISK ASSESSMENT

- 4.1 The approval of this report may have the following implications

- Resources - Provisions of the Act will be administered within existing budgets.

- Technical, Environmental and Legal - The powers, if adopted, will contribute towards the Council's corporate aims of enhancing local communities and protecting and enhancing the natural environment. In cases intended to be dealt with by this legislation the impact of antisocial behaviours can have both a significant impact on the cohesion of the local community they occur in and impact on the environment.
- Political – No implications identified.
- Reputation – The powers will build on the Council's reputation to deal with anti-social behaviour.
- Equality & Diversity – After considering each equality group no negative equality impacts have been identified should the recommendations of this report be agreed by Council. It should be noted however Children under 18 or vulnerable persons could be subject to a CPN or CBO. There is clear Crown Prosecution Service guidance on how to apply this legislation to youths which the Service will follow. In addition the draft enforcement policy considers equality matters.

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BACKGROUND PAPERS

None

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