



Chartered  
Institute of  
Environmental  
Health

# Professional Practice Note<sup>1</sup>

## Guidance on the use of Community Protection Notices

### under Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014

Part 4 of the Anti-social Behaviour, Crime and Policing Act 2014<sup>2</sup> came into effect in England and Wales on 20 October 2014. This was accompanied by government guidance on the use of measures to control anti-social behaviour (ASB). *Statutory Guidance for Frontline Professionals* was issued by the Home Office in July 2014<sup>3</sup> and government guidance on specific matters associated with ASB has been published on animals<sup>4</sup> and Japanese Knotweed<sup>5</sup>. The Act aims to fill the gaps left in earlier legislation, consolidate enforcement powers and simplify the tools available to counter anti-social behaviour: aims which the CIEH fully supports. But difficult issues are raised as to when long established powers under previous legislation should be used instead of or in addition to the new powers.

The potential for confusion particularly applies with regard to the relationship between the 2014 Act and the statutory nuisance provisions of the Environmental Protection Act 1990. The Statutory Guidance published by the Home Office provides little assistance, leaving the prospect of confusion, duplication and wasted effort by different agencies. At the same time, in the CIEH's view, the Statutory Guidance understates the complexities of applying the new Community Protection measures. It has little to say about which circumstances require expert assessment<sup>6</sup> or when other established controls<sup>7</sup> should be used in preference to the new powers.

This *Professional Practice Note* is intended to help clarify the use of Community Protection notices and to encourage local authorities to develop policies giving effect to the 2014 Act. This requires negotiating with other relevant agencies and agreeing on how to use the new powers consistently, fairly and effectively. It should be borne in mind that the new powers are permissive so there is not a statutory duty to investigate or inspect, as there is for statutory nuisances under Part 3 of the Environmental Protection Act 1990.

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**<sup>1</sup> This Professional Practice Note has been extensively revised in response to expert advice provided by John Pointing, Barrister and David Horrocks, Independent Chartered EHP of Statutory Nuisance Solutions.**

<sup>2</sup> At <http://www.legislation.gov.uk/ukpga/2014/12/contents>

<sup>3</sup> *Anti-social Behaviour, Crime and Policing Act 2014, Reform of anti-social behaviour powers: statutory guidance for frontline professionals*, Home Office, July 2014 at:

[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). Although not obligatory this Statutory Guidance does have weight and agencies should have regard to it.

<sup>4</sup> *Dealing with irresponsible dog ownership*, Practitioner's Manual, Defra, October 2014.

<sup>5</sup> *Reform of anti-social behaviour powers: Japanese Knotweed and other invasive non-native plants*, Home Office, Note, 2014.

<sup>6</sup> For example, acoustic assessment.

<sup>7</sup> For example under the Environmental Protection Act 1990, the Noise Act 2006, the Clean Air Act 1993, the Licensing Act 2003, the Clean Neighbourhoods and Environment Act 2005 or the Town and Country Planning Act 1990.

## At a glance

**Community Protection Notices are intended** to stop a natural person or a body (eg a legal person such as a business) continuing with conduct which unacceptably affects victims and the community.

**They can be issued by** authorised council officers, police officers, police community support officers (PCSOs) if designated by a chief officer of police, and social landlords if designated by the council, in circumstances where there are reasonable grounds to believe the subject's conduct:

- is having a detrimental effect on the quality of life of those in the locality, and
- is unreasonable, and
- the behaviour is of a persistent or continuing nature.

**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 and where that effect continues, **may** then lead to the **issue of a Community Protection Notice requiring** them:

- to stop doing specified things and/or
- to do specified things and/or
- to take reasonable steps to achieve a specified result

**where those requirements are reasonable and have the aim** of either

- preventing the effect of the conduct, or
- reducing it, or
- reducing or preventing the likelihood of it continuing or recurring.

Where the recipient fails to comply with a Community Protection Notice, the **local authority may have work carried out** to ensure that the failure is remedied. The costs of work being undertaken in default by the council can be challenged on the ground that they are excessive.

A **failure to comply** with a Community Protection Notice without reasonable excuse is a summary offence carrying a maximum penalty on conviction of a **fine** of up to level 4 for individuals, or an unlimited **fine** in the case of a business or other body. Alternatively, an Authorised Person **may** issue a **Fixed Penalty Notice** (max £100) conferring immunity from prosecution for that offence if paid within 14 days.

Items used in the commission of an offence on any premises may be **seized** under a Warrant and may, following conviction, be ordered to be **handed-over** for destruction or disposal in another way.

A right of **appeal** against a Community Protection Notice or its terms lies to a Magistrates' Court within 21 days of issue.

## 1 Introduction

1.1 The Anti-social Behaviour, Crime and Policing Act 2014 received royal assent on 13 March 2014. The Act introduces a number of powers intended to enable the police, local authorities and social landlords to deal more effectively with anti-social behaviour. Chapter 1 of Part 4 contains the provisions relating to Community Protection Notices and was brought into effect by SI 2014/2590, on 20 October 2014. It extends only to England and Wales.

1.2 Community Protection Notices (CPNs) were introduced to deal with a wide range of anti-social behaviours impacting on victims and communities. Indeed, their scope is deliberately not limited in the legislation to specific situations or types of behaviour. Lord Taylor stated during the Bill stage that the government's intention was to fill the gaps left by previous measures, adding: "(To say) it can be used for this behaviour but not that behaviour would simply return us to mistakes from the past. We must move on from focusing on the behaviour, and instead understand the impact it is having on the victims and communities that are being damaged"<sup>8</sup>.

1.3 Community Protection Notices issued under s.43 of the Act<sup>9</sup> are intended to deal with repeated or on-going conduct - not occasional or 'one-off' conduct. It also needs to be shown that such conduct - of individuals aged over 16 or bodies - negatively and unacceptably affects the quality of life of those in the locality<sup>10</sup>.

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<sup>8</sup> Lords Hansard, 20 Nov 2013, Col 1048.

<sup>9</sup> References to primary legislation are to the Anti-social Behaviour, Crime and Policing Act 2014 unless otherwise stated.

<sup>10</sup> Notwithstanding they are independent prosecuting authorities, local authorities must have regard when developing policies and operational procedures that guide their regulatory activities to the: *Regulators' Code*, 2014, BRDO at <https://www.gov.uk/government/uploads/system/u>

Under s.57, 'conduct' includes a failure to take appropriate action as well as acts themselves.

## 2 Who can issue a CPN?

### Local authorities

2.1 Local authorities<sup>11</sup> have had a leading role in the control of anti-social behaviour for many years. They can continue to have this through delegating their powers under s.53 to issue Community Protection and related Fixed Penalty Notices (FPNs) to their officers, either individually or by appointment. Delegation must be by formal resolution and be recorded. Officers must be able to demonstrate this when necessary, in particular in any legal proceedings, eg by the production of some suitably authenticated document.

### Police

2.2 Neighbourhood policing and inter-agency community safety teams have been established in some areas in recent years. These developments make it essential that a coordinated and consistent approach to anti-social behaviour issues occurs at a local level. Police Officers and police Community Support Officers (where designated by Chief Officers of Police pursuant to s.38 of the Police Reform Act 2002) are also able to issue CPNs and FPNs.

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<sup>11</sup> Local authority means – (a) in relation to England, a district council, a county council for an area for which there is no district council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly; (b) in relation to Wales, a county council or a county borough council (Section 57).

## Designated persons

2.3 Pursuant to s.53, the Secretary of State has ordered<sup>12</sup> that 'housing providers' (broadly, Registered Social Landlords) be designated as 'other persons' by the relevant local authority to serve CPNs and related FPNs. Where local authorities choose to designate such persons they should bear in mind the description by the Minister of this as: 'a highly responsible activity' and CPNs as 'a powerful tool' which 'need experienced practitioners in their use'<sup>13</sup>. This is to ensure that those entrusted with powers of criminal investigation and enforcement are properly trained and supervised, are capable of acting properly in the public interest and are publicly accountable.

2.4 To that end, local authorities are recommended to consider placing conditions or limits on the exercise of those powers by other persons. This might be achieved by way of a Memorandum of Understanding. Suitable conditions might include that such persons should undergo a minimum formal training<sup>14</sup>, meet a suitable benchmark of competence<sup>15</sup>, adhere to minimum service standards and report on their activities regularly to the local authority. It may also be appropriate to restrict their activities to particular forms of behaviour or to specific neighbourhoods. The local authority could not, of course, exclude itself or the Police

<sup>12</sup> Anti-social Behaviour (Authorised Persons) Order 2015, SI 2015/749.

<sup>13</sup> Lords Hansard, 25 Nov 2013, Col 1194.

<sup>14</sup> Training needs to consider aspects of procedure eg on the application of PACE, RIPA etc as much as technical skills. More on recommended training and experience in noise investigations can be found in section 3.3 of *Neighbourhood Noise Policies and Practice for Local Authorities – a Management Guide*, CIEH, 2006 at:

[http://www.cieh.org/uploadedFiles/Core/Policy/Publications\\_and\\_information\\_services/Policy\\_publications/Publications/NoiseManagementGuideSeptember2006.pdf](http://www.cieh.org/uploadedFiles/Core/Policy/Publications_and_information_services/Policy_publications/Publications/NoiseManagementGuideSeptember2006.pdf)

<sup>15</sup> Sets of competences for noise investigations compiled by BRDO can be found here: <http://rdna-tool.bis.gov.uk/toolsections.aspx>

from exercising their powers in those neighbourhoods.

2.5 Where the conduct complained of takes place, or an offence is committed, in the areas of more than one local authority, s.53 provides that a CPN or a FPN may be issued by any one of them. A FPN may be issued by an authorised person notwithstanding the antecedent CPN was issued by another authorised person. In any event, the fixed penalty is payable to the local authority in whose area it was issued.

## 3 Tests

3.1 The definition of anti-social behaviour in s.43 encompasses both the conduct and its impact on victims and communities. It is a different definition from that used in Part 1 with regard to civil injunctions. The tests for CPNs are as follows.

### 'Conduct'

3.2 A CPN can be issued by a designated person if they are satisfied on reasonable grounds that the conduct of the individual or body (eg a business or other organisation):

- is having a detrimental effect on the quality of life of those in the locality, and
- it is unreasonable, and
- the conduct is persistent or continuing in nature.

3.3 The definition of 'conduct' under s.57 includes a failure to act as well as acts of commission. In the case of a failure to act agencies should consider to what extent (if any) the subject is under some other obligation to act, whether by statute or contract. If so, a more appropriate remedy may be available, or the failure to act may be considered reasonable in the circumstances.

### 'Detrimental effect'

3.4 In deciding whether the conduct complained of is having a sufficiently detrimental effect on the quality of life of those in the local community, investigating officers should base their decisions on relevant evidence. Normally, they should speak to victims to obtain first-hand accounts of the conduct, its characteristics such as frequency and duration, and of the seriousness and breadth of its impact. This will also help to ensure that victims feel that the problem is being taken seriously. Investigating officers should make a record of complainants' accounts. Complainants should be warned that they may be asked to provide a written statement or to give oral evidence in court at a future stage.

3.5 Investigating officers must form an objective opinion of the conduct, excluding possible exaggeration, prejudice or unusual sensitivity; and they should remain uninfluenced by their own norms. It is essential that officers do not use CPNs to curtail reasonable or innocent activities, which others simply do not like, or those which do not fully meet the tests in s.43.

#### **KEY POINTS**

**Where ASB amounts to a statutory nuisance it must be dealt with accordingly.**

**CPNs are not intended to be used for single incidents.**

**CPNs should not be issued lightly or where the impact of the conduct is insignificant.**

**Only practitioners with sufficient training and experience should issue CPNs.**

**Police officers and community support officers and social landlords contemplating issuing a CPN should first consult with the local authority.**

'Quality of life of those in the locality'

3.6 The character of the particular locality is relevant in deciding whether the quality of life has been sufficiently affected to justify issuing a CPN. Individuals who are particularly sensitive to disturbance may subjectively feel that their quality of life has been seriously affected, but this may not be sufficient to reach the objective standard implied by the test for 'those in the locality'. The Act does not specify the boundary or standard whereby the quality of life has been sufficiently compromised to justify the issue of a CPN. It is submitted that a CPN should be considered when the detrimental effect on the quality of life is reasonably believed to be significant.

'Persistent or continuing'

3.7 CPNs cannot be issued prospectively to prevent conduct that has yet to occur. In general, the detrimental effect must be present around the time of issuing a CPN. A history of persistent or continuing conduct meeting the threshold needs to have occurred; that history need not be continuous but may be intermittent. CPNs should not be issued in respect of conduct that has ceased to have the prescribed impact, unless there are good grounds to believe it may soon recur.

3.8 Decisions on whether conduct is persistent or continuing should be taken on a case-by-case basis by investigating officers. Where it takes place regularly over many months proving persistence may be straightforward. Cases where the conduct continues over a short period, but still amounts to more than an incident, may still meet the criterion. A 'one-off' incident – even if serious – would not meet this test. If repeated once or twice, where there was a low chance of further repetition, it would be arguable whether this is persistent or continuing.

'Unreasonable'

3.9 The investigating officer must also make a judgment as to whether the conduct is in itself unreasonable. This implies an objective standard, so what would be unreasonable to the average person in the locality is the test, not whether the complainant believes that the conduct is unreasonable or intolerable. Distinguishing between conduct that is inherently unreasonable and conduct which is exacerbated by extrinsic factors will be important. For instance, where there is poor sound insulation between two properties, it would not be unreasonable to watch television at a moderate volume even though it is audible in a neighbouring home.

3.10 Particularly careful consideration should be given to cases in which it is known, or suspected, that either complainants or those complained about suffer from mental ill-health or disability<sup>16</sup>. Note that under s.43(6) of the Act a 'person issuing a community protection notice must first inform any body or individual the person thinks appropriate', and this includes Social Services departments.

## 4 Consultation

4.1 The duty to consult under s.43(6) of the Act is broad. As the Government has made clear<sup>17</sup>, where the issue of a CPN is contemplated by the Police or designated persons, prior consultation should take place with the local authority. In relevant cases, the local authority itself should consult with the Police, social landlords, and others where appropriate.

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<sup>16</sup> Relevant guidance is given in Note 13: 'Dealing with persons with mental disorder' in: *Neighbourhood Noise Policies and Practice for Local Authorities – a Management Guide*, CIEH, 2006, and in: *Hoarding and how to approach it*, CIEH, 2012, at [http://www.cieh.org/uploadedFiles/Core/Policy/Publications\\_and\\_information\\_services/Policy\\_publications/Publications/Hoarding\\_PPN\\_May09.pdf](http://www.cieh.org/uploadedFiles/Core/Policy/Publications_and_information_services/Policy_publications/Publications/Hoarding_PPN_May09.pdf)

<sup>17</sup> Lords Hansard, 20 Nov 2013, Col 1049.

4.2 Local authorities have much experience of dealing with anti-social behaviour. Therefore, Police Constables and persons designated by the local authority to serve CPNs should always regard the local authority as an appropriate body with whom to consult. Local authorities should establish and maintain clear points of contact for this purpose, which is likely to be within the Environmental Health Service.

4.3 A protocol, such as a jointly agreed Memorandum of Understanding, should facilitate the effective sharing of relevant information about ASB between agencies. Such a protocol is also essential to avoid unnecessary duplication, and to avoid conflicts arising from the service of CPNs in circumstances where statutory duties under Part 3 of the EPA 1990 may apply.

4.4 Where a Police Constable or designated person serves a CPN, it is important that the local authority knows it is in operation in its area, and it should be provided with a copy as soon as possible.

## 5 The written warning

5.1 Before a CPN can be issued, s.43 provides that a written warning must be issued to the person whose conduct is complained of. A prior written warning is required before service of a CPN, even where informal or verbal warnings have previously been given about the conduct in question. Issuing a written warning is an important decision, giving notice that if it is not complied with service of a CPN may follow.

### Contents

5.2 No form has been prescribed for written warnings, but it is recommended that they should contain:

- the name and address of the person to whom the warning is issued;

- an outline of the conduct considered to be causing the detrimental effect;
- an outline of that effect;
- the time period allowed for the effect to have ceased;
- a warning that if the effect has not ceased within that time a CPN will be issued;
- the implications of a CPN being issued and the potential sanctions if breached;
- the date of issue and the name and the authority of the issuer.

5.3 Enough time should be allowed between the issue of a written warning and the issue of a CPN to enable the individual or body to deal with the matter. It will be for the issuer to decide how long to allow in the particular circumstances. For instance, in a case where a patch of land is to be cleared of rubbish, several days may be required to enable the individual to make suitable arrangements. Even so, it would not be sensible to leave the period for compliance open, so using terms such as 'within two weeks after the date of this written warning' would be suitable. However, where, for example, the ASB has arisen from an individual singing loudly in a street, the issuer could require the conduct to stop 'forthwith'. If the written warning is ignored, a CPN could then be issued 'on the spot'.

#### Issue

5.4 Issuing the written warning may be undertaken in different ways. For example, where the conduct has been going on for a period of time, a written warning may be issued in person, or sent by post or left at his 'proper' address. In appropriate cases, a written warning may be given 'on the spot'. In any event, agencies are likely to find it convenient to adopt a pre-printed form of words that can be completed to suit individual cases.

## 6 Issuing a CPN

6.1 Where a written warning has not been heeded, a Community Protection Notice may be issued by an authorised person to an individual (over the age of 16) or to a body whose conduct he is reasonably satisfied meets the s.43(1) criteria. The authorised person must base the decision to issue the CPN on evidence, whether his own or that of one or more competent third parties<sup>18</sup>.

6.2 Service of a CPN is governed by s.55. In the case of an individual, this is effected by handing it to him, or by leaving it at his 'proper' or last known address, or by posting it to him at that address. In the case of a corporate body, the CPN may be delivered or posted to the body's registered or principal office as its proper address. CPNs addressed to corporate bodies may, but need not, be posted to their secretaries or clerks<sup>19</sup>. Although a shop manager may be thought responsible for the anti-social behaviour, he cannot be issued with a CPN in connection with the conduct of the business unless it can be shown that he was a 'directing mind' of that business. Where the business is issued with a CPN, service should be to its registered or principal office, and a shop or other outlet should not be used as a substitute mailbox. The business may, however, designate as its proper address a different address from its registered or principal office, and this could include a shop or other outlet.

6.3 Corporate bodies may nominate a person (perhaps a solicitor or accountant) to accept service of statutory notices on their behalf. CPNs directed at partnerships may be addressed to any partner having control or management of the business,

<sup>18</sup> Preferably in the form of statements made under s.9 Criminal Justice Act 1967, perhaps supplemented by photographs etc.

<sup>19</sup> Companies are no longer obliged to appoint secretaries or clerks – Companies Act 2006.

and in the case of unincorporated clubs or associations, to their secretary.

6.4 CPNs sent by post are deemed to be issued at the time at which the letter would be delivered in the ordinary course of post. Evidence of issue by whatever method should be retained. A certificate of posting or the deliverer's signed statement in the case of delivery by hand is sufficient. The safety of the person issuing the CPN should always be considered<sup>20</sup>.

6.5 In some situations, as provided by s.45, a CPN may be issued by addressing it to 'the owner' or 'the occupier' (as appropriate) and affixing it to the premises. This applies where the detrimental effect of the ASB arises from the condition of any premises or from their use<sup>21</sup>. The procedure is available in circumstances where the owner or occupier is deemed liable, but that person's name or address cannot, after reasonable enquiry, be found<sup>22</sup>.

6.6 Assistance in discovering the name and address of a person to whom Notices might be issued is available from a number of public sources and, in the case of a local authority, by use of the power under s.16 Local Government (Miscellaneous Provisions) Act 1976. Under s.50 Police Reform Act 2002, a Police Constable in uniform may require the name and address to be given by any person he has reason to believe is, or has been, acting in an anti-social manner

within the meaning of s.2<sup>23</sup>. Failure to comply is an arrestable offence<sup>24</sup>.

### Community Protection Notices and Statutory Nuisance

Besides the aim of filling gaps left by earlier legislation, Part 4 of the Anti-social Behaviour Crime and Policing Act 2014 was enacted in order to 'put victims first'<sup>25</sup>. In many cases of statutory nuisance, there is also an element of anti-social behaviour. The overlap between Part 4 and the statutory nuisance provisions in Part 3 of the Environmental Protection Act 1990 (EPA) means that policies and procedures need to be in place at the local level to ensure that victims are properly protected and persons believed responsible for ASB are dealt with fairly.

Persons authorised to utilise the CPN provisions need to be aware of the potential for overlap with statutory nuisance, otherwise confusion, duplication and conflict will render enforcement problematic. This is another reason for securing an enforcement protocol, to be agreed by the relevant parties in the local authority, the police service and social landlords.

#### *Duties v. powers*

Part 3 of the EPA places statutory duties on local authorities:

- a) to inspect for, and investigate complaints of, statutory nuisances, and
- b) where they are satisfied that a statutory nuisance exists, or is likely to occur or to

<sup>20</sup> For further guidance, see section 3.4 of *Neighbourhood Noise Policies and Practice for Local Authorities – a Management Guide*, CIEH, 2006.

<sup>21</sup> Under s.57, 'premises' includes any land.

<sup>22</sup> Under s.57, 'owner' in relation to any premises means - (a) a person (other than a mortgagee not in possession) entitled to dispose of the fee simple of the premises, whether in possession or reversion; (b) a person who holds or is entitled to the rents and profits of the premises under a lease that (when granted) was for a term of not less than 3 years.

<sup>23</sup> That is: (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person, (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or (c) conduct capable of causing housing-related nuisance or annoyance to any person.

<sup>24</sup> Section 24 Police and Criminal Evidence Act 1984.

<sup>25</sup> *Reform of anti-social behaviour powers: statutory guidance for frontline professionals*, Home Office, July 2014, pp.42-3.



recur, to serve an Abatement Notice on the person responsible.

By contrast, Part 4 the 2014 Act is enabling legislation, which provides discretionary **powers** but not statutory **duties**. Generally, duties will outrank powers, because a local authority is placed under a legal obligation to carry out a duty. Thus, the local authority will be under a duty to serve an abatement notice on the person responsible when satisfied that a statutory nuisance situation has arisen<sup>26</sup>.

#### *Avoiding conflicting enforcement*

Where an investigation is being carried out under the EPA, it would usually be inadvisable to issue a CPN. However, it may be appropriate to issue a CPN, for example if:

- an investigation is taking a long time to establish whether or not a statutory nuisance exists;
- in a statutory noise nuisance case, where the local authority believes an alternative to serving an abatement notice is likely to be effective<sup>27</sup>;
- where the investigation concludes that a statutory nuisance is not made out.

#### *Different legal tests*

There are different legal tests governing the CPN provisions of the 2014 Act as compared with Part 3 of the EPA. The range of behaviours that could be anti-social is not limited in the 2014 Act; it even includes allowing an invasion of Japanese Knotweed onto neighbouring land<sup>28</sup>. By contrast, statutory nuisances are limited to the list provided in s.79(1) of

the EPA, and some apply only to interferences on industrial, trade and business premises. So, for example, cooking smells from domestic premises could not be a statutory nuisance, but could amount to ASB under the 2014 Act. This is because this Act does not set limits on the type of behaviour that could be anti-social.

The legal tests are also different in the sense that the threshold for statutory nuisance is a high one. Under the nuisance limb of statutory nuisance, material and substantial interference with personal comfort is the test. Mere annoyance would fall below the threshold for statutory nuisance, but would be enough in a case of ASB, provided that all the ingredients of s.43 were made out.

Thus the conduct would need to:

- have a detrimental effect on the quality of life of those in the locality;
- be of a persistent or continuing nature; and
- be unreasonable.

#### *Parallel proceedings*

A person should not be exposed to the risk of being charged with two offences for the same illegal act<sup>29</sup>. This is another reason why a local enforcement protocol should be in place: to ensure that the relevant agencies share information about issuing CPNs, and are aware of the possibility of other investigations being carried out involving the same person or persons. Besides the different parts of the EPA 1990 dealing with such matters as depositing of waste, fly-tipping and statutory nuisance, the use of local authority powers under various other Acts may overlap with controlling ASB<sup>30</sup>.

<sup>26</sup> For further details, see: R. Malcolm & J. Pointing, *Statutory Nuisance: Law and Practice*, 2011 (2<sup>nd</sup> Edition), OUP, Ch.14.

<sup>27</sup> The local authority has a period of 7 days to delay serving an abatement notice in these circumstances, as provided by s.80(2A)-(2C) Environmental Protection Act 1990.

<sup>28</sup> *Reform of anti-social behaviour powers: Japanese Knotweed and other invasive non-native plants*, Home Office, Note, 2014.

<sup>29</sup> There are exceptions to this such as when a person is charged with two offences in the alternative, but he or she can only be convicted for one of them.

<sup>30</sup> Powers available to the local authority under other legislation that may be relevant to anti-social behaviour include those under: Noise Act 2006, Clean Air Act 1993, Licensing Act 2003, Clean

As CPNs can only be issued in respect of the effects of persistent or continuing conduct, Police Officers or designated persons contemplating the issue of a CPN will always have time to consult with the relevant council team if they suspect that a situation may involve a statutory nuisance or other statutory controls. In such cases, very careful consideration should be given to whether issuing a CPN is really necessary given the powers and duties of councils under other legislation.

If, nevertheless, it is believed that there are compelling reasons to issue a CPN in parallel, they should take the advice of the relevant council team to ensure that any restrictions or requirements to be imposed by a CPN do not conflict with those that may be included in any other existing or future statutory notice, permit etc.

## **7 Vicarious liability**

7.1 Section 44 provides that a person who owns, leases, occupies or otherwise controls, operates or maintains any premises (other than government premises) may be held responsible for conduct on, or affecting those premises. Liability will not carry over where such a person cannot reasonably be expected to control or affect the detrimental conduct. This liability is, of course, distinct from that of any other person whose conduct meets the criteria in s.43.

7.2 Agencies will need to consider both how and to what extent a vicariously liable person has authorised or condoned the conduct. They should also be mindful of the possibility that those who might be vicariously liable, could, in the alternative, be victims of the conduct in question.

## **8 What to include in a CPN**

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Neighbourhoods and Environment Act 2005 and the Town and Country Planning Act 1990.

8.1 No form has been prescribed for CPNs. Like written warnings, it is recommended that they should contain some elements specific to the case:-

- the name and address of the person to whom it is issued;
- an outline of the conduct considered to be causing the detrimental effect;
- an outline of that effect;
- a statement that the conduct is unreasonable;
- a statement that a written warning was issued on (date) and that the time period stated therein has expired but the effect continues;
- what (if any) specified things they were required to stop doing; and/or
- what (if any) specified things they were required to do; and/or
- what (if any) reasonable steps they are required to take to achieve specified results (in particular, to prevent recurrence).

And to include some generic elements:-

- the potential sanctions if the CPN is breached;
- how to appeal against the CPN or any of its terms together with the time limit; and
- the date of issue and the name and the authority of the issuer.

8.2 The things or steps the recipient may be required to do or take must be reasonable to impose. These should aim:

- to prevent the detrimental effect from continuing or recurring; or
- to reduce the effect, or reduce the risk, of its continuance or recurrence.

Such requirements should spell out in clear terms what the recipient needs to do and the timescale involved for compliance. CPNs are designed to deal with short or medium-term issues and the Home Office advises<sup>31</sup> that imposing particularly onerous or long-term conditions would be

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<sup>31</sup> *Reform of anti-social behaviour powers: statutory guidance for frontline professionals*, Home Office, July 2014, p.42.

more appropriately dealt with by civil injunction.

8.3 By analogy with Part 3 of the Environmental Protection Act 1990, a CPN may be withdrawn, unless an appeal has already been made and a summons issued by the Magistrates' Court.

## 9 Communication

9.1 In order to give effect to the policy of 'putting victims first', victims should be kept informed of the progress of any investigation and subsequent enforcement action<sup>32</sup>. Where a CPN has been issued, agencies should inform those affected of the fact and, broadly, of the intended effect of the Notice (including timescales). Agencies may request assistance in monitoring any breach, in which case victims should be warned that they may be asked to give evidence in court at a future stage. Issuers should recognise the possibility of retaliation against victims by those issued with CPNs and be prepared to offer appropriate support.

## 10 Appeals

10.1 Any person issued with a CPN may appeal against it by making a Complaint to a Magistrates' Court within 21 days of its issue. Details of how to appeal and the time limit should be included in the CPN. Section 46 provides that an appeal may be made on any of the following substantive grounds:

- the specified conduct did not take place;
- the conduct has not had a detrimental effect on the quality of life of those in the locality;
- the conduct was not of a persistent or continuing nature;
- the conduct is not unreasonable;

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<sup>32</sup> *Reform of anti-social behaviour powers: statutory guidance for frontline professionals*, Home Office, July 2014, p.42.

- the conduct is that which the person cannot reasonably be expected to control or affect.

Other grounds for appeal include:

- any of the requirements in the CPN, or any of the periods within which or times by which they are to be complied with, are unreasonable;
- there is a material defect or error in, or in connection with, the CPN, eg a failure to provide a prior written warning or that it was not signed by an authorised person;
- the CPN was issued to the wrong person (or posted to the wrong address).

10.2 An appeal can also be made where the requirements of a CPN conflict with those of enforcement measures being taken under alternative powers. This underlines the need for consultation between agencies.

10.3 Where an appeal is made, any requirement included under section 43(3)(b) or (c), namely a requirement to do specified things or take reasonable steps to achieve specified results, is suspended until the outcome of the appeal is decided. However, requirements stopping the individual or body from doing specified things, under section 43(3)(a), continue to have effect pending the appeal. Whether requirements are suspended or not pending the appeal should be highlighted in the CPN.

10.4 The court hearing the appeal will consider the facts pertaining at the date of issue of the CPN. The appellant needs to prove his case to the civil standard.

## 11 Non-compliance

11.1 Where an individual, business or other body has failed to comply with the terms of a CPN, a number of options are available to the agency which issued the notice. Due regard should be given to the

published enforcement policy of the agency.

## Prosecution

11.2 Failure to comply with a CPN is a summary offence under s.48. The offence is punishable on conviction: (a) in the case of an individual, by a fine not exceeding level 4 on the standard scale, or (b) in the case of a body, an unlimited fine. The offence is one of strict liability subject to the statutory defences that:

- the defendant took all reasonable steps to comply with the Notice, or
- there was some other reasonable excuse for the failure to comply.

11.3 The burden of proving the failure to comply, and, if raised by the appellant, that any excuse for the failure was not reasonable, lies with the prosecutor to the criminal standard. The burden of proving that the defendant took all reasonable steps to comply with the Notice lies with the defendant, on the balance of probabilities.

11.4 Proceedings are begun by laying an Information in writing before the relevant Magistrates' Court. This must be done within six months of the commission of the alleged offence<sup>33</sup>. Prosecutors have a discretion to prosecute and will need to bear in mind the tests in the Code for Crown Prosecutors<sup>34</sup>. In particular, prosecutors should consider in each case: (a) whether there is sufficient admissible evidence to provide a realistic prospect of conviction, and (b) whether prosecution is in the public interest.

11.5 In addition to imposing a penalty for the offence of not complying with a CPN, the court has a discretion to make Remedial Orders and Forfeiture Orders.

### *Remedial Orders*

When a person is convicted for failing to comply with a CPN, the prosecuting authority may ask the court to make a Remedial Order to give effect to the Notice. A Remedial Order made under s.49 may require the defendant:

- to carry out specified work (typically, the CPN's requirements); or
- to allow specified work to be carried out by, or on behalf of, the local authority which issued the CPN, or, where the CPN was not issued by a local authority, the local authority which might have issued it.

The defendant's consent is required before a local authority (or its agent) may carry out any work to the accommodation where he usually lives, or is living at the time the work is, or would be, carried out. Refusing consent amounts to a breach of the court's Order, possibly leading to further proceedings for contempt.

### *Forfeiture Orders*

The convicting court may make a Forfeiture Order on conviction for breach of a CPN, under s.50. The prosecuting authority may ask the court to order the forfeiture of any item used in the commission of the offence. Such an Order may require any person (not only the defendant) in possession of the item to deliver it, as soon as reasonably practicable, either to a Police Officer, or to an officer of the local authority, or to another person designated by the local authority to issue CPNs. The Order may require the item to be destroyed, or disposed of in another specified way.

Police forces and local authorities should make suitable arrangements for the destruction or disposal of items ordered to be destroyed or otherwise disposed of. If no arrangements are specified in the Order, they may make whatever arrangements seem appropriate to them.

<sup>33</sup> Section 127 Magistrates' Courts Act 1980.

<sup>34</sup> *The Code for Crown Prosecutors*, CPS, 2013, at [http://www.cps.gov.uk/publications/docs/code\\_2013\\_accessible\\_english.pdf](http://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf)

## Alternatives to prosecution

11.6 The decision to prosecute is a discretion which must be exercised properly. In deciding whether to prosecute for breach of a CPN, prosecuting authorities should have regard to any relevant Enforcement Policy as well as to the Code for Crown Prosecutors<sup>35</sup>. The wishes of the victim are relevant, and the need to bear victims in mind is highlighted both in the Code and in the Home Office Guidance<sup>36</sup>.

### *Fixed Penalty notices*

Section 52 provides that an authorised person may issue a Fixed Penalty notice (FPN) as an alternative to prosecution for breach of a CPN. Payment of the FPN within 14 days from the date of issue has the effect of discharging any liability to conviction for the offence.

A fixed penalty cannot be for more than £100. An FPN may specify two amounts, including a lower payment if settled within a specified period of up to 14 days from the date of issue. Fixed penalties are always payable to the relevant local authority, regardless of the agency which issued it.

No form has been prescribed for Fixed Penalty notices, but they should clearly explain their purpose as an alternative to prosecution. Additionally, they should contain:

- reasonably detailed particulars of the circumstances alleged to constitute the offence;
- the period during which proceedings will not be taken for the offence;
- the amount or amounts payable;
- the name and address of the person to whom the fixed penalty should be paid;

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<sup>35</sup> *The Code for Crown Prosecutors*, CPS, 2013.

<sup>36</sup> *Reform of anti-social behaviour powers: statutory guidance for frontline professionals*, Home Office, July 2014.

- the permissible methods of payment (for example, cash, cheque, bank transfer).

In addition, they should set out the consequences of failing to pay the penalty on time.

### *Simple Cautions*

Another alternative to prosecution is where the prosecuting authority decides to exercise its discretion to issue the offender with a Simple Caution<sup>37</sup>. This can only be done where the evidence meets the evidential standard for prosecution and the alleged offender:

- (a) admits guilt, and
- (b) gives informed consent to the administration of the Caution.

A Simple Caution may be appropriate in the case of a first or a merely technical breach of a CPN, either by an individual or a corporate body. It can be administered either orally or, more usually, by letter. Simple Cautions form part of an individual's criminal record and may be cited in a like way to previous convictions in any subsequent proceedings.

## **12 Remedies not dependent on prosecution**

12.1 A key consideration of enforcement agencies, when faced with the breach of a CPN, is to decide on a course of action which alleviates the impact of that breach on victims and the community. Remedial works and seizure of items used in the commission of an offence generally take place when a prosecution is also involved in the case in question. But there are limited circumstances when these powers can be used without a prosecution and conviction for an offence.

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<sup>37</sup> See

<https://www.justice.gov.uk/downloads/oocd/adult-simple-caution-guidance-oocd.pdf>

## Seizure

12.2 Under s.51, an application for a Warrant of Seizure is made by Information given on oath to a Magistrate. The Magistrate needs to be satisfied that there are reasonable grounds for suspecting:

- (a) an offence under s.48 has been committed, and
- (b) an item used in the commission of the offence is present on specified premises.

12.3 Section 51 empowers the granting of a Warrant authorising any Police Officer, or a person designated by the local authority to issue CPNs or FPNs, to enter the premises, if need be by force, for the purpose of seizing the item. Local authority officers need to be specifically designated to exercise this power.

12.4 Generally a prosecution will be commenced after an item has been seized. But a seizure can still be properly effected even when it is subsequently decided not to prosecute. Section 51(4) provides that seized items must be returned within 28 days unless relevant criminal proceedings are commenced within that period.

## Remedial action

12.5 Whether or not the decision is taken to prosecute, where an individual or body fails to comply with a CPN, under s.47 the relevant local authority may carry out works to remedy that failure. Where the work is to be undertaken on land 'open to the air', the local authority (or their agent) may undertake the work without the consent of the owner or occupier. Such action may be appropriate, for example, where there is a significant build up of rubbish in a front garden<sup>38</sup>.

12.6 Where work to remedy the failure to comply with the CPN involves premises that are not open to the air, the local

authority will need to issue the recipient of the CPN with a notice. This notice should:

- specify the work it intends to have carried out; and
- provide the estimated cost of the work; and
- invite his consent (or that of the owner, if different) for the work.

12.7 If consent is not given with regard to premises that are not open to the air, in order to have the work carried out the local authority will need to prosecute for breach of the CPN. It will then need to obtain a Remedial Order from the convicting court under s.49.

12.8 Where the CPN was issued by the Police or a designated person and they believe remedial action to be an appropriate course of action, they may approach the local authority with a request that the authority arrange for the work to be done. A local authority may carry out the work on behalf of another agency, or appoint their own agent to do it.

12.9 Once the work has been completed - whether or not on land open to the air - the council should notify the person issued with the CPN of the details of the work and its cost. That person becomes liable to the authority for those costs, subject to a right of appeal to a Magistrates' Court within 21 days on the ground that the cost is excessive.

## 13 Civil injunctions

13.1 An injunction is a relatively quick and powerful remedy that can be ordered at the discretion of a civil court. Local authorities are able to seek injunctions in the High Court under s.81(5) of the EPA 1990 'for the purpose of securing the abatement, prohibition or restriction' of any statutory nuisance. Such applications have rarely been made because it is necessary to show that the defendant has been 'deliberately or flagrantly flouting the law' and that only an injunction is going to

<sup>38</sup> *Reform of anti-social behaviour powers: statutory guidance for frontline professionals*, Home Office, July 2014, p.44.

stop the activity causing the nuisance<sup>39</sup>. In practice, it is necessary to convince the High Court that use of the abatement notice procedure under s.80 of the EPA has failed to resolve the problem, or that compliance with the abatement notice is very unlikely.

13.2 Civil injunctions to control ASB are intended to be used as a **primary** remedy under Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014. In other words, an injunction sought under this statute should not be seen, like statutory nuisance injunctions, as a remedy of last resort. Injunctions - alongside the other measures laid down in the Act - are at the forefront of powers to control ASB<sup>40</sup>.

13.3 This primary role for the ASB injunction applies to all the agencies having powers to apply for it under Part 1 of the 2014 Act. The Statutory Guidance states that injunctions should be considered early on in appropriate cases: '[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'<sup>41</sup>.

13.4 The scope for seeking ASB injunctions is wider than as a remedy of last resort, such as when an earlier use of the CPN procedure has failed to resolve the problem. Agencies are recommended to devise an enforcement policy to include injunctions, which should be considered, in appropriate cases, alongside CPNs as a potential remedy for ASB.

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<sup>39</sup> *Vale of White Horse DC v Allen & Partners* [1997] Env LR 212, 214.

<sup>40</sup> Part 2 of the *Statutory guidance for frontline professionals*, Home Office, July 2014, considers the following measures provided by the 2014 Act: civil injunction, Criminal Behaviour Order, Dispersal power, Community Protection Notice, Public Spaces Protection Order, and closure power.

<sup>41</sup> *Reform of anti-social behaviour powers: statutory guidance for frontline professionals*, Home Office, July 2014, p.21.

Tests for anti-social behaviour injunctions

13.5 The tests are not the same for ASB injunctions as for CPNs. As provided in s.2(1)(a) of the Act, the test for an ASB injunction in a 'non-housing related' context is: **'conduct that has caused, or is likely to cause, harassment, alarm or distress to any person'**.

13.6 This sets quite a high threshold of harm; it applies to more serious forms of ASB, close to what would be required for a criminal offence. It is applicable where the ASB has occurred in a public place, such as a town or city centre, shopping mall, or local park. It is too high a test for when the ASB occurs in a housing context.

13.7 For ASB in a housing context the 'nuisance or annoyance' test will apply, and this sets a lower threshold compared to ASB in a public place. The test for an injunction in a housing context is where the conduct: **'is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises'**<sup>42</sup>. This test applies not just to occupiers of residential premises but also to any person affected by the 'housing-related' nuisance or annoyance<sup>43</sup>.

Who may apply for an injunction?

13.8 Applications should be made either to the County Court or the High Court, but to the Youth Court in respect of individuals under 18.

13.9 Only local authorities, social landlords or the police are able to apply for an injunction in respect of the 'housing-related' provisions, where it concerns a person's occupation of residential premises.

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<sup>42</sup> Anti-social Behaviour, Crime and Policing Act 2014, s.2(1)(b).

<sup>43</sup> Anti-social Behaviour, Crime and Policing Act 2014, s.2(1)(c).

13.9 For ASB in a 'non-housing related' context, the number of agencies is larger, comprising: local authorities, social landlords, police (including British Transport Police), Transport for London, Environment Agency and Natural Resources Wales, and NHS Protect and NHS Protect (Wales).

## **14 Conclusion**

14.1 This Professional Practice Note should be read in conjunction with the *Statutory Guidance for Frontline Professionals* published by the Home Office<sup>44</sup>. The powers to issue Community Protection Notices to deal with ASB should be seen as a means of building upon the long-established powers available to local authorities to deal with statutory nuisances. Accordingly, these enabling provisions to issue CPNs should be seen as complementary to traditional approaches, and should be useful in tackling cases that 'fall through the gaps' left by existing legislation, notably Part 3 of the Environmental Protection Act 1990.

14.2 Local authorities are encouraged to utilise these powers and it is hoped that this Professional Practice Note will encourage their use in tackling problems relating to ASB in a professional and transparent manner.

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<sup>44</sup> *Reform of anti-social behaviour powers: statutory guidance for frontline professionals*, Home Office, July 2014.