

Title of Report:	Anti Social Behaviour, Crime and Policing Act 2014
Report to be considered by:	Council
Date of Meeting:	18 September 2014
Forward Plan Ref:	C2886

Purpose of Report: To appraise Members of the Anti Social Behaviour, Crime and Policing Act 2014 in relation to changes required to be made to the Council's Scheme of Delegation.

Recommended Action: That the Council's Scheme of Delegation be amended as follows:

- (i) That the Head of Culture and Environmental Protection, in consultation with the Head of Legal Services, be given delegated authority to serve Community Protection Notices in accordance with Part 4 of the Anti Social Behaviour, Crime and Policing Act 2014.
- (ii) That the Council also delegate the serving of Community Protection Notices to Registered Social Landlords in accordance with Part 4 of the Anti Social Behaviour, Crime and Policing Act 2014.
- (iii) That the Council also delegate the serving of Community Protection Notices and Fixed Penalty Notices in the event of a breach to Police Community Support Officers in accordance with Part 4 of the Anti Social Behaviour, Crime and Policing Act 2014.
- (iv) That the Head of Legal Services, in consultation with the Head of Care Commissioning, Safeguarding and Housing, be given delegation authority to seek a Civil Injunction in accordance with Part 1 of the Anti Social Behaviour, Crime and Policing Act 2014.
- (v) That the Head of Strategic Support, in consultation with the Head of Legal Services, be given delegated authority to make a PSPO in accordance with Chapter 2 of the Anti-Social Behaviour, Crime and

Policing Act 2014.

- (vi) That the Council's partners (Neighbourhood Wardens, Street Rangers etc) be approached to ascertain whether they intend to use the PSPO powers.
- (vii) That the Head of Legal Services or his nominee, in consultation with the Head of Strategic Support, be granted delegated authority to issue a Closure Notice and apply for a Closure Order in accordance with Chapter 3 of the Anti-Social Behaviour, Crime and Policing Act 2014.

Reason for decision to be taken: To ensure that the Council's Scheme of Delegation reflects the requirements of the Anti Social Behaviour, Crime and Policing Act 2014.

Other options considered: N/A

Key background documentation: Anti Social Behaviour, Crime and Policing Act 2014

The proposals contained in this report will help to achieve the following Council Strategy priority:

CSP2 – Promoting a vibrant district

The proposals will also help achieve the following Council Strategy principle:

CSP8 - Doing what's important well

The proposals contained in this report will help to achieve the above Council Strategy priorities and principles by:
ensuring that the Council's Constitution is up to date and that the Council's overall governance is robust.

Portfolio Member Details

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Date Portfolio Member agreed report:	

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Implications

Policy:	The requirements of the Act will require new policies and procedures to be established and particularly processes with the Council's partners to ensure that duplication does not occur
Financial:	It is clear at this stage that there will be costs associated with the implementation of the Act going forward but it is difficult to assess the level. There is potential for increased workload in Legal and the Safer Communities Partnership
Personnel:	N/A
Legal/Procurement:	The Act requires effective delegation and processes to be in place in order to implement the wide ranging powers available. Consideration of evidential and other matters in a number of differing venues will involve careful assessment throughout the process. The Council is required to ensure that its constitution is up to date to ensure that its decision making is accountable and transparent.
Property:	N/A
Risk Management:	Ability to record evidence and procedures accurately and effectively across a variety of partner bodies will be necessary to ensure effective enforcement of the various Orders/Notices

Is this item relevant to equality?	Please tick relevant boxes		Yes	No
Does the policy affect service users, employees or the wider community and:				
• Is it likely to affect people with particular protected characteristics differently?			<input type="checkbox"/>	X
• Is it a major policy, significantly affecting how functions are delivered?			<input type="checkbox"/>	X
• Will the policy have a significant impact on how other organisations operate in terms of equality?			<input type="checkbox"/>	X
• Does the policy relate to functions that engagement has identified as being important to people with particular protected characteristics?			<input type="checkbox"/>	X
• Does the policy relate to an area with known inequalities?			<input type="checkbox"/>	X
Outcome (Where one or more 'Yes' boxes are ticked, the item is relevant to equality)				
Relevant to equality - Complete an EIA available at www.westberks.gov.uk/eia			<input type="checkbox"/>	
Not relevant to equality			<input type="checkbox"/>	

Is this item subject to call-in?	Yes: <input type="checkbox"/>	No: X
If not subject to call-in please put a cross in the appropriate box:		
The item is due to be referred to Council for final approval		X

Executive Summary

1. Introduction

- 1.1 The Anti Social Behaviour, Crime and Policing Act received Royal Assent on 13 March 2014. The Act proposed a number of reforms to existing legislation and to put the victim at the heart of the response to anti social behaviour and provide professionals with greater flexibility to deal with any given situation.

2. Proposals

- 2.1 The reforms set out in Parts 1-6 of the Act are intended to ensure that professionals from a number of agencies dealing with a variety of anti social behaviours have effective powers that are quick, practical and easy to use to provide better protection to victims and communities whilst acting as a deterrent to perpetrators. 19 existing powers are replaced with 6 simpler and more flexible ones but their implementation will require effective and coordinated consideration by all the agencies involved.
- 2.2 In adopting the powers it will be necessary to amend the Council's Scheme of Delegation (Part 3 of the Council's Constitution) and be aware of the additional pressures that could be placed on some services.
- 2.3 In setting out the new powers, this Council will always to seek restorative solutions to issues and only use these powers as a last resort.

3. Equalities Impact Assessment Outcomes

- 3.1 This item is not relevant to equality.

4. Conclusion

- 4.1 The Anti Social Behaviour, Crime and Policing Act 2014 requires the Council to adopt several provisions which will require the Scheme of Delegation (Part 3 of the Council's Constitution) to be amended but also require close and coordinated working with partner organisations.

Executive Report

1. Introduction

- 1.1 The Anti Social Behaviour, Crime and Policing Act 2014 received Royal Assent on 13 March 2014. The Act proposed a number of reforms to existing legislation and to put the victim at the heart of the response to anti social behaviour by providing professionals and organisations with greater flexibility to deal with any given situation.
- 1.2 The reforms set out in Parts 1-6 of the Act are intended to ensure that professionals have effective powers that are quick, practical and easy to use to provide better protection to victims and communities and act as a deterrent to perpetrators. 19 existing powers are replaced with 6 simpler and more flexible ones.
- 1.3 In setting out the new powers, this Council will always to seek restorative solutions to issues and only use these powers as a last resort. This will mean that appropriate Service Units across the Council and partners working with the people and communities affected by these powers must be engaged and involved in the decision making.
- 1.4 Attached to this report as Appendix A is a schematic which shows the old ASB powers which were in place and the new powers. The new powers are:

Community Protection Notice

- 1.5 A Community Protection Notice (CPN) is intended to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible. These include graffiti, rubbish and noise. A CPN does not discharge the Council from its duty to issue an Abatement Notice where the behaviour constitutes a statutory nuisance for the purposes of Part 3 of the Environmental Protection Act 1990.
- 1.6 The test to be applied in issuing a Community Protection Notice is broad and focuses on the impact anti social behaviour is having on victims and communities. A CPN can be issued by the Police, Council or registered social landlords if they are satisfied on reasonable grounds that the conduct of the individual, business or organisation:
 - (i) is having a detrimental effect on the quality of life of those in the community;
 - (ii) is persistent or continuing in nature; and
 - (iii) is unreasonable.
- 1.7 The Council will need to assess who is likely to use these powers the most in any given period and how the enforcement of them will be dealt with between the various agencies. It is suggested that a review takes place after 12 months to assess usage and determine whether or not the most effective procedures are in place.
- 1.8 Under the procedure outlined in the Guidance which accompanies the Act a written warning has to be served followed by the CPN then at a later stage a Fixed Penalty

Notice (FPN) may be issued for non-compliance. In addition the CPN can be appealed within 21 days of service. All these processes need to be recorded and evidenced and the Council and its partners will need to ensure that there is an effective monitoring arrangement in place because of the appeal process and potential for prosecution. Some form of 'gate keeping' arrangement may be required in order to avoid duplicate actions by partner organisations

1.9 Failure to comply with a CPN can result in one of the following sanctions:

- (i) Fixed Penalty Notice
- (ii) Remedial Action
- (iii) Remedial Orders
- (iv) Forfeiture Orders
- (v) Seizure

Recommendations:

- (i) That the Head of Culture and Environmental Protection, in consultation with the Head of Legal Services, be given delegated authority to serving Community Protection Notices in accordance with Part 4 of the Anti Social Behaviour, Crime and Policing Act 2014.**
- (ii) That the Council also delegate the serving of Community Protection Notices to Registered Social Landlords in accordance with Part 4 of the Anti Social Behaviour, Crime and Policing Act 2014.**
- (iii) That the Council also delegate the serving of Community Protection Notices and Fixed Penalty Notices in the event of a breach to Police Community Support Officers in accordance with Part 4 of the Anti Social Behaviour, Crime and Policing Act 2014.**

Civil Injunction

1.10 The injunction is a civil power which can be applied for to deal with anti social behaviour. It replaces six orders formerly available to the Council and Police. A civil 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.

1.8 A number of agencies can apply for Civil Injunctions. These include:

- (i) Local Authority
- (ii) Housing provider
- (iii) The chief of police for the local area
- (iv) The chief constable of the British Transport Police
- (v) Transport for London

(vi) The Environment Agency

(vii) NHS Protect

1.11 Anyone seeking to apply for a civil Injunction must have evidence (to the civil standard of proof – on the balance of probabilities) that the respondent is engaged in or threatened to engage in those activities set out below:

- (i) conduct that has caused, or is likely to cause harassment, alarm or distress to any person;
- (ii) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises; or
- (iii) conduct capable of causing housing related nuisance or annoyance to any person.

Note:

- (ii) only applies where the injunction is applied for by a housing provider, local authority or chief officer of police.
- (iii) only applies where the injunction is applied for by a housing provider or local authority.

1.12 Unlike other proposals in the Act this process is applied through the County Court for persons over 18 and in the Youth Court for under 18's. Evidence and statements from witnesses will be required to support the application but will also vary depending upon the type of conduct which it is sought to restrict such as harassment or causing annoyance to the occupation of premises. It is clear that the latter would be of use to the Council and to social housing providers. The procedure is indicated to be swift but a good deal of preparation will be required before going before the Court as well as ensuring an urgent date can be obtained.

1.13 Where any action is to be taken against a person under 18 years old in a Youth Court then the Youth Offending Team should be part of the decision making process.

Recommendation:

That the Head of Legal Services, in consultation with the Head of Care Commissioning, Safeguarding and Housing, be given delegated authority to seek a Civil Injunction in accordance with Part 1 of the Anti Social Behaviour, Crime and Policing Act 2014.

Public Spaces Protection Order

1.14 The Public Spaces Protection Order (PSPO) is designed to stop individuals or groups committing anti-social behaviour in a public space. Local Authorities alone are able to issue PSPO after consultation with the Police and Police and Crime Commissioner. An effective means of consultation will be required to ensure quick effective and recorded consultation takes place for evidential purposes at later stages in the process.

- 1.15 PSPO's can have blanket restrictions or requirements applied or can be targeted against certain behaviours by certain groups and at certain times. PSPO's can restrict access to public rights of way where that route is being used to commit anti-social behaviour. They can last for up to three years but any individual has the right to appeal to the High Court on the grounds that the Council did not have the power to make the order or included a particular prohibition which was inapplicable or could challenge whether or not effective consultation which had been carried out.
- 1.16 In seeking a PSPO the behaviour being restricted has to:
- (i) Be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;
 - (ii) Be persistent or continuing in nature; and
 - (iii) Be unreasonable.
- 1.17 Breaching a PSPO is a criminal offence and for those enforcing, either Council or Police officers they may issue a fixed penalty notice of up to £100 if appropriate. A fine of up to £1,000 can also be imposed on prosecution. Again there will be a need to ensure adequate recorded evidence is available for potential future Court proceedings

Recommendation:

- (i) **That the Head of Strategic Support, in consultation with the Head of Legal Services, be given delegated authority to make a PSPO in accordance with Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014.**
- (ii) **That the Council's partners (Neighbourhood Wardens, Street Rangers etc) be approached to ascertain whether they intend to use the PSPO powers and once established the Head of Strategic Support be given delegated authority.**

Closure Power

- 1.18 The Closure Power allows the Police or Council to quickly close premises which are being used, or likely to be used to commit nuisance or disorder. A Closure Notice is issued out of Court in the first instance. Following from this the Closure Order can be applied for through the Magistrates Court.
- 1.19 Both the Council and Police can issue a Closure Notice (CN) and guidance requires that it must be approved at a senior officer level for those issuing CN's of 24 hours. Following the issue of a CN the legislation requires that a series of notifications must be undertaken once a CN has been served particularly if the intention is to seek a Closure Order (CO). The Magistrates Court is required to hear the application within 48 hours and this will require close working with the Court Service
- 1.20 In addition before serving a CN or seeking a CO the Council and police must ensure that they consult widely including the victim, community representatives other organisations and users of the premises under investigation. Record keeping and evidential matters will be a key consideration and an agreed procedure will need to be established with partner bodies.

- 1.21 A notice can close a premise for up to 49 hours out of court but cannot stop the owner or those who live there accessing the premises. An order can close premises up to 6 months and can restrict all access. Both the Notice and the Order can cover any land or any other place, whether enclosed or not including residential, business and licensed premises.
- 1.22 Breaching a Closure Order will be a criminal offence. Breaching a Notice can carry a custodial sentence of up to 3 months and breaching an Order 6 months in prison. Both carry an unlimited fine for residential and non-residential premises.
- 1.23 Prior to seeking a Closure Order, it will be important that appropriate service units in the Council (eg Children's Services and Housing - where this relates to residential premises) are consulted.

Recommendation:

- (i) **That the Head of Legal Services or his nominee, in consultation with the Head of Strategic Support, be granted delegated authority to issue a Closure Notice and apply for a Closure Order in accordance with Chapter 3 of the Anti-Social Behaviour, Crime and Policing Act 2014.**

1.24 Conclusion

The provisions of the 2014 Act will give the Council and its partner organisations a more effective means of tackling anti social behaviour in certain areas where it is prevalent. However there will be a need for an effectively coordinated monitoring process to be established with partner bodies and the requirement for a single point of contact within the Council. It will be essential that all officers involved in these new process are effectively trained and that the additional workload is monitored in the first year of operation.

Appendices

Appendix A - Schematic of old ASB powers and the new powers that have replaced them.

Consultees

Local Stakeholders:

Officers Consulted: Andy Day David Holling

Trade Union: