

Report on the Introduction of the Anti-Social Behaviour, Crime and Policing Act (2014)

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1. Purpose

To provide an update on the introduction and commencement of the Anti-Social Behaviour, Crime and Policing Act (2014), to outline the implications for Oldham Council and the wider CSCP, and to make recommendations regarding policy and procedural implementation within Oldham.

2. Background

- 2.1 In 2010 the new Government announced plans to reform the legislation in relation to anti-social behaviour (ASB), specifically to reduce the number of different powers which had been introduced through a variety of separate pieces of legislation following the introduction of the parent ASB legislation – the Crime and Disorder Act in 1998. The intention of the review was to ensure that the new powers would ensure Crime and Disorder Reduction Partnerships (now renamed Community Safety Partnerships) were able to take swift action.
- 2.2 Following a number of high profile cases involving vulnerable persons, the protection of victims was put at the heart of the reforms and this has remained consistent from the publication of the White Paper through to the introduction of the Anti-Social Behaviour, Crime and Policing Act which received Royal Assent on the 13th March 2014.

3. New Tools and Powers

- 3.1 The legislation has created six new tools and powers.

4. Injunction

4.1 The commencement of this power has been delayed until 2015.

- 4.2 The new Injunction replaces the stand alone Anti-Social Behaviour Order (ASBO) and the Anti-Social Behaviour Injunction (ASBI). The current ASBI can only be used by Registered Providers of Social Housing and Local Authorities, where the behaviour is relevant to their housing stock and there is a negative impact on the housing management function.
- 4.3 Locally, the new Injunction can be applied for by Oldham Council, the Police and Registered Providers. There are two conditions which must be met and two thresholds of behaviour to be proven, one where behaviours are linked to housing, and one for more generalised behaviour in the borough.
- 4.4 The Injunction can be applied for against any person over the age of 10. Applications against adults must be made in the County Court and applications against juveniles in the Youth Court at the Magistrates'. The Youth Offending Service must be consulted in cases involving juveniles.
- 4.5 The burden of proof for Injunctions is balance of probability i.e. more likely than not, and breach is a contempt of Court, not a criminal offence. Breach must be proven beyond reasonable doubt.
- 4.6 There is a financial implication as Court fees are payable for Injunctions. At the current time the application fee is £200.00 and a defended hearing fee is £500.00. Disbursements will also be payable if external Counsel are instructed.
- 4.7 The Injunction also allows for the inclusion of positive requirements which are enforceable. It is envisaged that these will be used in cases where individuals have failed to engage with services on a voluntary basis, e.g. engagement with alcohol treatment services.
- 4.8 The resource for a potential positive requirement must be identified and confirmed before inclusion in an Injunction. Any requirement must be time limited and a supervising Officer must be identified to ensure compliance.
- 4.9 Existing ASBIs and stand alone ASBOs will remain in force for a period of 5 years (or until their expiry date if earlier) following the commencement. Applications for ASBIs and stand alone ASBOs already with the judicial system will remain as ASBIs and stand alone ASBOs if they are made.

5. Criminal Behaviour Order

5.1 This power commenced on the 20th October 2014.

5.2 The Criminal Behaviour Order (CBO) replaces the Anti-Social Behaviour Order on Conviction.

5.3 The burden of proof for the new CBO is beyond reasonable doubt. There are two conditions which must be met. The first is that behaviour causing or likely to cause harassment, alarm or distress is proven and the second is that the Order will be helpful in preventing further anti-social behaviour. The helpfulness test replaces the previous test of necessity.

5.4 Application must be made ancillary to a criminal prosecution in either the Magistrates' or Crown Court, and must be made by the prosecuting body.

5.5 There is also a provision to include positive requirements within a Criminal Behaviour Order, however it is likely that such requirements will be included within sentencing.

5.6 Breach of a CBO is a criminal offence.

5.7 There is a legal presumption of publicity of CBOs, including those made against juveniles. This is to allow for policing, agency and community monitoring of the Order.

5.8 A joint working protocol and a suite of agreed documents has been agreed between all AGMA Authorities, Greater Manchester Police, the Crown Prosecution Service and Her Majesty's Court Service.

5.9 Unlike the Order on Conviction the CBO can be used to control behaviour of persons within the same household, so can be used in cases of domestic violence. An example would be when a victim does not support the imposition of a Restraining Order but there are wider safeguarding concerns, e.g. for children in the household or the wider community.

5.10 Greater Manchester Police can also apply for a Criminal Behaviour Order in cases where breaches of Domestic Violence Protection Orders are successfully prosecuted, again using the rationale of wider safeguarding.

5.11 Existing Orders on Conviction will remain in force for a period of 5 years (or until their expiry date if earlier) following the commencement. Applications for Orders on Conviction already with the judicial system will remain as Orders on Conviction if they are made.

6. Community Protection Notice

6.1 This power commenced on the 20th October 2014.

6.2 The Community Protection Notice (CPN) has been introduced as a quick, enforceable measure to tackle ASB.

6.3 A CPN can be issued for a wide variety of behaviours. Existing powers for statutory nuisance must take precedence, however the CPN can be used in parallel.

6.4 Oldham Council and GMP can issue CPNs immediately upon commencement. There is a provision for the Council to designate the power to Registered Providers, however across GM, it has been agreed to allow a six month period following commencement to elapse prior to any designation to RPs. The rationale being that this allowed for the process and procedures to bed in and be evaluated and any difficulties or problems resolved. The Home Office was advised of this and agreed this was a sensible course of action.

6.5 Despite the recommendations made by the Group, two GM Councils had decided to designate the powers immediately to RPs and it was therefore agreed that these would be considered as pilots.

6.6 There has been a late decision made by the Home Office not to commence the part of the Act which allows designation to RPs. The reasons given for this are the exact reasons the GM Group gave to the Home Office.

6.7 Prior to a CPN being issued a written warning must be given and there must be ongoing ASB for a CPN to be served.

6.8 As both the Council and GMP can issue CPNs, there is a concern that there will be duplication and this must be monitored closely.

6.9 Breach of a CPN can be dealt with by way of fixed penalty notice (FPN) or prosecution.

6.10 With regards to the value of the fixed penalty notice for breach, there has been discussion across GM and locally. The legislation allows for a maximum value of £100.00. The GM group has recommended the value be set at £90.00 and £60.00 for early payment, in consideration of the seriousness of the ASB and the fact that a warning would have been issued and ignored prior to the issue of the CPN.

- 6.11 In Oldham the current FPN value for a littering offence is £80.00. The FPN for litter is issued for single instances, without warnings being issued first. The value of £90.00 for breach of a CPN would therefore be proportionate to the circumstances.

7. Public Space Protection Order

7.1 This power commenced on the 20th October 2014.

- 7.2 The Public Space Protection Order (PSPO) replaces the existing Gating Order, Dog Control Order and Designated Public Place Order.
- 7.3 The PSPO can include multiple controls over public spaces. There are consultation requirements for PSPOs however these are not as prescribed as for existing Orders, e.g. there is no requirement to advertise the application for the Order in the printed media.
- 7.4 There are specific rules which need to be considered in relation to PSPOs which restrict access over the highway and/or relate to the consumption of alcohol.
- 7.5 There are specific regulations regarding the publication of new Orders, and the variation or discharge of existing PSPOs.
- 7.6 PSPOs must be reviewed every three years.
- 7.7 Existing Gating Orders, Dog Control Orders and Designated Public Places Orders will continue for a period of 3 years following the commencement of the PSPO. After the 3 year period they were convert to PSPOs and be subject to the review periods.
- 7.8 PSPOs are enforceable and breach of a PSPO can be dealt with by way of fixed penalty notice (FPN) or prosecution.
- 7.9 I refer the reader to paragraphs 6.10 and 6.11 with regards to the value of the FPN.

8. Closure Power

8.1 This power commenced on the 20th October 2014.

- 8.2 The Closure Power replaces the Calls A Closure Order, the Premises Closure Order and the Brother Closure Order.

- 8.3 The new power includes the power to serve a 24 hour Closure Notice, which can be authorised by a designated Officer of Oldham Council or a Police Officer of at least the rank of Inspector.
- 8.4 An initial Closure Notice for 48 hours, or extension of a 24 hour Notice can be authorised by the Chief Executive Officer of the Council (or person designated by the Chief Executive Officer for the purpose of the relevant section) or by a Police Officer of at least the rank of Superintendent.
- 8.5 The meaning of Chief Executive Officer is clarified as the Head of the paid service of the Authority designated under section 4 of the Local Government and Housing Act (1989).
- 8.6 In order for a Closure Order to be made an application must be made to the Magistrates' Court within 48 hours of the first Notice being served.
- 8.7 If a Closure Order application is defended, the maximum Court adjournment is 14 days.

9. Dispersal Power

This power commenced on the 20th October 2014.

This power replaces the Dispersal Order and the Direction To Leave and can only be utilised by Greater Manchester Police.

A Police Officer of at least the rank of Inspector can designate an area, where for a period of up to 48 hours, persons can be dispersed from. The maximum dispersal period is 48 hours and breach i.e. unauthorised return to the area is a criminal offence.

10. Community Remedy

10.1 This power commenced on the 20th October 2014.

10.2 This power can only be used by Greater Manchester Police and is based on the restorative justice model.

10.3 The Community Remedy can be used for behaviours which meet the threshold(s) either for criminal prosecution or for an Injunction.

- 10.4 A schedule of actions which can be undertaken has been created by the Office of the Police and Crime Commissioner. The actions should primarily meet the needs of the victim, however the circumstances of the offender may dictate the remedies which may be ordered.
- 10.5 There is the possibility of financial recompense, however this has been a cause for concern, as there will be no financial assessment made with regards to affordability or hardship which may be caused.
- 10.6 There is no sanction for breach of the Community Remedy, however it's use, and/or any failed remedies can be relied upon in evidence for any future legal actions against the offender.

11. ASB Case Review (Community Trigger)

11.1 This power commenced on the 20th October 2014.

- 11.2 This power introduces the ability for any individual to ask for a case review where there have been three reports (to any or multiple agencies) within a six month period about the same issue.
- 11.3 The reports must be about behaviour which has met the threshold of causing or likely to cause harassment, alarm or distress.
- 11.4 The legislation create a two tier threshold – 3 reports from one individual or five reports from the locality. The proposal for Greater Manchester is a single 3 incident threshold, whether from the same individual or not.
- 11.5 The Oldham Community Safety and Cohesion Partnership is accountable to the Police and Crime Commissioner in respect of the Case Reviews.
- 11.6 Manchester City Council piloted the Case Review and it has been proposed that all Greater Manchester CSPs work to the same procedure, building on the learning from the pilot.
- 11.7 The introduction of this Review does not remove single agency complaints procedures and complainants should be reminded of these procedures if complaints relate to the performance of a single agency.