

## **Agenda Item 15**

### **Executive Board**

**23 November 2015**

**Report of the  
Assistant Chief Executive and Solicitor to  
the Council**

**Anti-Social Behaviour, Crime &  
Policing Act 2014 – Delegation of  
Powers**

#### **1 Summary**

- 1.1 This report seeks Board approval to delegate powers to Officers in respect of the new powers under the Anti-Social Behaviour, Crime & Policing Act 2014 (“the Act”).

#### **Recommendation to the Council**

**That the delegated powers detailed in the report be agreed and that the Constitution be amended accordingly**

#### **2 Consultation**

- 2.1 The Act applies to all Wards and no specific consultation has taken place. The Safer Communities Sub-Committee and the former Housing Sub-Committee have received reports earlier this year on the new powers.

#### **3 Background**

- 3.1 The new powers in the Act have been reported previously, albeit prior to the election. The report to the former Housing Sub-Committee is attached for information.
- 3.2 The Act provides a number of new powers and also consolidates some existing powers. It is necessary therefore to ensure that our delegation arrangements are updated to allow the Council to fully implement use of the powers. Most of the new powers are now in force and run alongside the existing powers for a period of time.
- 3.3 It is proposed that the powers in the Act are delegated as follows:
- Civil Injunction (Part 1 of the Act) – delegation to the Solicitor to the Council and the Assistant Director (Housing)
  - New Absolute Ground for Possession (Part 5) – delegation to the Solicitor to the Council and Assistant Director (Housing)
  - Criminal Behaviour Orders (Part 2) - delegation to the Solicitor to the Council and Assistant Director (Housing)

- Community Protection Notices (Part 4 Chapter 1) - delegation to the Solicitor to the Council, Assistant Director (Housing) and all Environmental Health Officers
- Public Spaces Protection Orders (Part 4 Chapter 2) - delegation to the Solicitor to the Council, Assistant Director (Housing) and all Environmental Health Officers
- Closure Powers (Part 4 Chapter 3) – delegated powers to the Chief Executive, Solicitor to the Council and Assistant Director (Housing)
- Community Remedy (Part 6) – powers to respond to Police consultation or in relation to a review of response to complaints delegated to the Solicitor to the Council

3.4 For the avoidance of doubt these delegation arrangements relate to all of the functions and powers contained in the Act.

#### 4 Report Implications and Links to the Council's Priorities

4.1 These are detailed in the attached report

The Contact Officer for this report is Steve Maxey (719438).

#### Background Papers

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
1	Home Office	Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for front line professionals	July 2014
2	North Warwickshire Borough Council	Report to Housing Sub-Committee	January 2015
3	North Warwickshire Borough Council	Report to Safer Communities Sub-Committee	Feb 2015

## **Agenda Item 9**

### **Housing Sub-Committee**

**5 January 2015**

#### **Report of the Assistant Director (Housing)**

#### **Anti-Social Behaviour, Crime & Policing Act 2014 – New Anti- Social Behaviour Powers**

### **1 Summary**

- 1.1 This report provides Members with an overview of the important new measures for tackling anti-social behaviour (ASB) contained within the Anti-Social Behaviour, Crime and Policing Act 2014. It also identifies the implications for North Warwickshire Borough Council and presents local plans for implementation.

#### **Recommendation to the Housing Sub-Committee**

- a That the new measures for tackling anti-social behaviour contained within the Anti-Social Behaviour, Crime and Policing Act 2014 are noted; and**
- b That the local plans for implementation are noted.**

### **2 Consultation**

- 2.1 An advanced copy of this report has been sent to the Chairman of the Sub-Committee (Councillor Winter) and the Opposition Spokesperson (Councillor Johnston) for comment. Any comments received will be reported verbally at the meeting.

### **3 Background**

- 3.1 The Housing Sub-Committee agreed an Introductory Tenancy Scheme at its meeting in October 2014. One of the key objectives of introducing introductory tenancies for new tenancies is to assist the Council to be proactive in dealing with any tenancy breaches early in the tenancy. At the meeting it was agreed that members would be provided with an update on the new powers contained within the Anti-Social Behaviour, Crime and Policing Act 2014.
- 3.2 The Anti-Social Behaviour, Crime and Policing Act 2014 is a new Act refreshing the powers available to the police, local authorities and others to tackle anti-social behaviour. The tools under Parts 2-6 of the Act have been available to use from 20<sup>th</sup> October 2014 (apart from the amendments to the discretionary ground for possession which came into force on 13<sup>th</sup> May 2014). These tools include: Civil Injunction, Criminal Behaviour Orders, dispersal

power, Community Protection Notices, Public Spaces Protection Orders, Closure power, new absolute ground for possession, Community Remedy and the Community Trigger. There will be a delay to the introduction of Part 1 of the Act, the civil injunction, as amendments to the Legal Aid, Sentencing and Punishment of Offenders Act 2012 are required to ensure that applications for advocacy assistance can be assessed for those involved in civil injunction hearings. This is expected to be completed by the end of January 2015 at the latest. The Act introduces the largest change in ASB powers since their introduction in 1998. It looks at some other areas of work within crime and policing, such as forced marriages and firearms, however the focus of this report is to provide an update on ASB legislation (parts 1-6 of the Act).

3.3 The Act, which applies in England and Wales, takes forward measures to:

- focus the response to anti-social behaviour on the needs of victims
- empower communities to get involved in tackling anti-social behaviour
- ensure professionals can protect the public quickly through faster, more effective powers and speed up the eviction of the most anti-social tenants

3.4 The anti-social behaviour provisions in the Act consolidate the existing 19 ASB powers into 6 more flexible powers. The new powers, the Community Trigger and Community Remedy, have been introduced to help focus the response to such behaviour on the needs of victims. Appendix 1, Figure 1 gives an overview of the consolidation of the existing 19 powers into 6. A summary of each of these new tools and powers is also provided.

## 4 Overview of the new powers

### 4.1 Civil Injunction

4.1.1 Part 1 of the Act makes provision for a Civil Injunction to prevent nuisance and annoyance. Civil Injunctions replace Anti-social Behaviour Injunctions (ASBOs), intervention orders and individual support orders. This is a power the Council can apply for which offers a quicker and more effective protection to victims and communities, stopping the alleged perpetrator's behaviour from escalating. The case will be heard in a County Court where, if the behaviour meets the nuisance and annoyance test (using civil standard of proof on the balance of probabilities), an injunction will prohibit an individual from certain behaviours for 2 years and can require them to do something to address their behaviour (i.e. address a substance misuse problem with support services). A breach of order can result in a maximum 2 years imprisonment for over 18 years of age as it is considered to be a contempt of court.

### 4.2 Criminal Behaviour Orders (CBO)

4.2.1 Part 2 of the Act makes provision for an Order on conviction to prevent behaviour which causes harassment, alarm or distress. These orders are issued by any criminal court against a person who has been convicted of an offence, and will tackle the most persistently anti social individuals who are

also engaged in criminal activity. The CBO can deal with a wide range of anti-social behaviours following the individual's conviction for a criminal offence for example, threatening violence against others in the community, and persistently being drunk and aggressive in public or criminal damage.

4.2.2 Both the Council and the police can request a CBO, usually via the Crown Prosecution Service, after the offender has been convicted of a criminal offence. The CBO hearing will occur after, or at the same time as, the sentencing for the criminal court. An application for a CBO does not require a link between the criminal behaviour which led to the conviction and the anti-social behaviour; for it to be issued by the court. The court must be satisfied beyond reasonable doubt that the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person and that the court considers making the order will help in preventing the offender from engaging in such behaviour. The CBO must clearly describe the details of what the offender is not allowed to do (prohibitions) as well as what they must do (requirements). Orders can include prohibitions or requirements or both. It is up to the court to decide which are needed to help prevent further anti-social behaviour and which measures are most appropriate and available to tackle the underlying cause of the behaviour.

#### **4.3 Dispersal Powers**

4.3.1 Part 3 of the Act contains a power for the police to disperse people causing harassment, alarm or distress. This will enable officers to require a person who has committed, or is likely to commit, anti-social behaviour to leave a specified area and not return for up to 48 hours. Police Community Support Officers will need to be designated the power by the Chief Constable.

4.3.2 Unlike Section 30 of the Anti-Social Behaviour Act 2003, the power does not require the pre-designation of a 'dispersal zone' in which the power can be used by a police officer or PCSO. While the new power mirrors aspects of section 27 of the Violent Crime Reduction Act, it does not restrict the use of powers to alcohol-related harm.

4.3.3 Authority of an Inspector (or above) is required before a dispersal notice can be issued. This safeguard is deemed necessary given the new dispersal power is a much broader, more powerful tool that is not restricted to alcohol related anti-social behaviour. Although there is no requirement to consult the local Council, the authorising officer may consider doing so in some circumstances before authorising use of the dispersal.

4.3.4 As this is a police only power it will have minimal impact on NWBC though it will have a role with partners in monitoring areas where dispersals are frequent, especially if involving young people, to ensure suitable diversionary activities exist.

#### **4.4 Community Protection Notices (CPNs)**

- 4.4.1 The CPN is intended to deal with particular, on going problems or nuisances which negatively affect the community's quality of life by targeting those responsible. District Councils are identified as the lead authority in issuing these kinds of notices, which are similar to but do not replace the powers and procedures operating within Environmental Health for such offences as smoke nuisance from bonfires, noise and fly tipping, under the statutory nuisance powers of part 3 of the Environmental Protection Act 1990.
- 4.4.2 A CPN can be issued where responsible authorities have reasonable grounds to be satisfied that the conduct is:
- having a detrimental effect on the quality of life of those in the locality
  - is persistently or continuing in nature
  - is unreasonable
- 4.4.3 An overview of the process is a three staged response; an initial warning, a formal notice, and finally a sanction for non compliance. Issuing a CPN does not discharge the Council from its duty to issue an Abatement Notice where the behaviour constitutes nuisance under part 3 of the Environmental Protection Act 1990.
- 4.4.4 Where appropriate, councils can designate registered social landlords (RSLs) in their areas to use these powers. However the police and RSL need to consult with relevant agencies before using these powers and in particular Environmental Health, to ensure the behaviour is not a statutory nuisance.
- 4.4.5 The CPN can deal with a wider range of behaviours for instance it can deal with noise nuisance and litter on private and not open to the air, it can be used against a wide range of perpetrators and can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again.

#### **4.5 Closure Notice and Orders**

- 4.5.1 Closure power can be used by either the Council or police. It is intended to be a flexible and quick means to protect victims and communities. It allows the Council to quickly close premises that are causing nuisance or disorder. The process involves the Council issuing a notice and thereafter, where appropriate, applying to the court for a closure order.

#### **4.6 Public Space Protection Orders (PSPOs)**

- 4.6.1 Public Space Protection Orders replace Designated Public Place Orders (DPPO). They are intended to deal with particular nuisance or problems in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of the area. They are designed to ensure the law-abiding majority can enjoy public spaces. This power is applied for by the local authority.
- 4.6.2 District Councils can make a PSPO on any public space within its own area and that one order can cover a multitude of prohibitions, replacing other such

orders on public spaces such as dog control orders. There must be consultation with local community groups, Police, Parish and County Councils. It can be used to regulate certain activities such as drinking alcohol, in addition to placing requirements on individuals undertaking certain activities such as ensuring that dog walkers keep their pets on a lead.

#### **4.7 Absolute grounds for possession**

4.7.1 To speed up the possession of secure and assured tenancies in cases where ASB or criminality has already been proven by another court. Local authorities, social and private landlords will no longer need to prove that it is reasonable to grant possession, the court will be more likely to determine cases in a single short hearing. The new absolute ground is intended for the most serious cases of anti-social behaviour and landlords should ensure that the ground is used selectively.

4.7.2 The new ground is based on the existing process for ending introductory tenancies for local authority tenants and existing mandatory grounds for possession for rent arrears for housing association tenants. Unlike the existing discretionary grounds for possession, the landlord will not be required to prove to the court that it is reasonable to grant possession. This means the court will be more likely to determine cases in a single short hearing and would have the benefits of saving landlord costs and freeing up court resources and time. The Court must grant possession provided the landlord has followed the correct procedure, if at least one of the following five conditions is met by the tenant, a member of the tenant's household, or a person visiting the property:

- convicted of a serious offence, for example malicious wounding, harassment, serious sexual offences, carrying an offensive weapon or knife, burglar and certain drug related offences
- found by a court to have breached a civil injunction
- convicted of breaching a noise abatement notice
- the tenants property has been closed for more than 48 hours under a closure order for ASB

4.7.3 Landlords are able to choose to use the new ground in addition to, or instead of the existing discretionary grounds for ASB where one or more of the above five conditions are met. The landlord must serve a notice of proceedings setting out the reasons why they are seeking possession which must be served within 12 months of the relevant conviction or finding of the court or within 3 months where the tenants property has been closed under a closure order. The tenant has a statutory right to request a review.

4.8 In order to ensure that victims are put at the heart of the responses to ASB, the Act introduces 2 new measures: the community remedy and the community trigger:

##### **4.8.1 Community Remedies**

4.8.1.1 This tool gives victims a say in the out of court punishment of offenders for low level crime and ASB. The Act places a duty on the Police and Crime Commissioner to consult with members of the public and community representatives on what punitive, restorative or rehabilitative actions they would consider appropriate to be on the Community Remedy document. This could include:

- The offender signing an Acceptable Behaviour Contract – where they agree not to behave anti-socially in the future, or face more formal consequences
- Reparation for the victim (e.g. repairing damage or scrubbing graffiti off a wall)
- Reparation for the Community (e.g. doing local unpaid work for up to 10 hours)

#### 4.8.2 **Community Trigger (ASB Case Review)**

4.8.2.1 The Community Trigger came into force on 20 October 2014 and gives victims and communities the right to request a review of their case and bring agencies together to take a joined up, problem solving approach to find a solution. The process starts with a review of their case where the locally defined threshold is met. A victim or third party acting on behalf of the victim can activate this process.

The basic procedure for the trigger involves:

- a victim, or third party, making an application to use the Trigger
- the relevant bodies deciding whether the threshold has been met
- If yes, then relevant bodies share information about the case, consider if further information is needed, review what previous actions have been taken. Where further action can be taken, a plan is agreed and actively monitored with regular updates being provided to the victim.

4.8.2.2 Having a Community Trigger procedure is a statutory duty for district councils, police, Clinical Commissioning Groups (CCGs) and Registered Social Landlords (RSLs). Additionally there is a duty to publish the contact point and the process to enact a Trigger and to publish the number of Community Triggers activated, where the threshold has been met, annually to the police and Crime Commissioner (PCC).

4.8.2.3 The Local Government Association has issued guidance on implementing the Community Trigger; this is provided at Appendix 2. The Warwickshire Community Trigger process is provided at Appendix 3 and has been based on feedback from agencies including each District and Borough Councils and is designed to enable local flexibility whilst keeping the process as consistent as possible.

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4.8.2.4 The Warwickshire Community Trigger has been determined as being when:

- A person has reported 3 separate incidents relating to same problem in the past 6 months to the Council, Police or their landlord and feels that insufficient action has been taken to resolve the matter.

OR

- At least 5 people have made reports about the same problem in the past 6 months to the Council, Police or their landlord and feel that insufficient action has been taken to resolve the matter.

## 5 Local Implementation

5.1 The Act recognises that dealing with ASB is rarely simple and that the new powers are likely to work best when complimented by working in partnership, sharing information and using early and informal interventions. North Warwickshire Borough Council already has an agreed information sharing protocol with Warwickshire Police and is also a signatory for the Warwickshire Sharing Information Protocol. Strategic and operational meetings between the Council, Police and other relevant agencies take place regularly and are attended by officers of North Warwickshire Borough Council including officers within the Housing Division. The Council also work closely with the Warwickshire Priority Families' initiative which provides multi agency support to families in North Warwickshire who meet the criteria.

5.2 Building on the collaborative working across teams and services will be essential and the existing system of ASB case reviews will support the sharing of information to ensure that the best remedies for a situation are identified collectively and any safeguarding issues are flagged.

5.3 The Council, with partners, will initially seek restorative and informal solutions to ASB reports and use the new powers as a last resort unless the severity of the incident or issue warrants earlier use of the powers. Early intervention, especially through informal approaches, can be successful in stopping the anti-social behaviour committed by the majority of perpetrators. For example, a 2013 HouseMark survey showed that over 80% of anti-social behaviour cases dealt with by social landlords were successfully resolved through some form of early or informal intervention. Early and informal interventions can establish clear standards of behaviour and reinforce the message that anti-social behaviour will not be tolerated. In many cases, awareness of the impact of their behaviour on victims and the threat of more formal enforcement tools can be a sufficient incentive for an individual to change their behaviour. Alternatively, there may be cases where informal intervention is not the appropriate first step, perhaps because the victim is at risk of harm and in these cases progression directly to formal sanctions may be necessary. The types of informal interventions that can be used include:

- Verbal and written warnings – where a verbal or written warning is issued and where it should be made clear to the individual what behaviour is causing the issue and what effect this is having on the

victim or community and the consequences of non-compliance explained clearly.

- Community resolution/Good Neighbour Agreements – where an informal agreement is made between the parties involved as opposed to progression through a legal process.
- Mediation – where a mediator facilitates a conversation between all parties in order to reach a solution. An agreement can be drawn up if required for all parties to sign to formalise what has been agreed.
- Acceptable Behaviour Contracts - a written agreement between a perpetrator and the Council or other agency acting locally to prevent anti-social behaviour.
- Parenting contracts - these are similar to ABCs but are signed by the parent or guardian.
- Support and counselling – referrals can be made to other support agencies for example substance misuse or alcohol dependency can drive anti-social behaviour and low-level crime and support can have a positive impact. The Council can refer its tenants to the priority families' initiative where there is a wider support programme that can be put in place.

5.4 North Warwickshire Borough Council is able to deal with the majority of the nuisance and anti-social behaviour cases using informal solutions. Most of the anti-social behaviour is low level; a breakdown of the main complaints for the year to date is below:

- Noise (76)
- Garden nuisance (74)
- Youth (44)
- Pets (30)
- Rubbish (19)
- Parking (18)
- Drug/Alcohol/Substance misuse (11)

The Council has had to serve 7 non-rent notice of seeking possessions during 2014-15:

- Noise Nuisance/ASB (3)
- No access for gas servicing (2)
- Tenants no longer living at the property (2)

5.5 The Council will need to review its current policies and procedures to ensure they remain fit for purpose. The Housing Division has already begun to review its policy and procedure for dealing with nuisance and anti-social behaviour in light of the new powers. We will also look to strengthen our case management procedures and ensure our risk assessment matrices are robust. The policy and procedures will be reviewed in light of the new powers and will incorporate the following key areas:

- Effective case management – This will underpin all activity to deal with anti-social behaviour starting from when the complaint is received until the

matter is resolved. The welfare, safety and well-being of victims must be the main consideration at every stage of the process.

- Risk Assessment - An assessment of the risk of harm to the victim, and their potential vulnerability will be undertaken at the start of the case management process and continuously reviewed. This will help identify cases that are causing or could result in serious harm to the victim, either as a one-off incident or as part of a targeted and persistent campaign of anti-social behaviour against the victim.
- Effective use of tools and powers both informal and formal – the tools used will be determined based on the case and the most effective way to resolve the behaviour and issue for the victim.
- Witness support – supporting the witness by making it as easy as possible to report cases, agreeing an action plan so that they have a clear understanding of the process and maintaining regular contact with them throughout the case. Offering specialist support to victims and witnesses where additional safety measures are required.
- Support for vulnerable people – where risk assessments identify that a victim is vulnerable then additional support will be offered linking into other support agencies and family links if appropriate.
- Prompt escalation of cases – this is part of good case management. The procedure will include when and how cases should be escalated to a higher level of authority and/or action.
- Reporting – effective reporting of cases to the appropriate level of authority.

5.6 The use of introductory tenancies for new tenants will act to strengthen our objectives of dealing with issues and problems early in the tenancy. The Tenancy Agreement clearly specifies the conditions of tenancy and what will happen if there are any breaches. There is information in the tenant's handbook and we have drafted a new leaflet providing information to tenants about how we will deal with nuisance and ASB. The corporate website has recently been updated to include details about the Community Trigger and how it will operate. The Policy Support Manager, Robert Beggs will be the receiving officer for persons wishing to activate the Community Trigger. As he also has responsibility for corporate complaints this will ensure a coordinated response.

5.7 Some staff training on the new powers has already taken place; including a briefing organised by the Local Government Association attended by key staff on 17 December. Further training will take place in the new year including an event with other agencies to help build on our partnership working. It will be important to train staff on all relevant aspects and therefore training will be rolled out to all relevant staff in the new year.

5.8 The Home Office has produced useful guidance in its publication, 'Anti-social behaviour, Crime and policing Act 2014: Reform of anti-social behaviour powers statutory guidance for frontline professionals'. <https://www.gov.uk/government/publications/anti-social-behaviour-crime-and-policing-bill-anti-social-behaviour>

## 6 Report Implications

## **6.1 Finance and Value for Money Implications**

- 6.1.1 It is anticipated that implementation will be resourced from within existing budgets. However, the future resource implications for dealing with for example, the Community Trigger reviews and set up costs for public space protection orders which require consultation will require more work to fully determine.
- 6.1.2 There has been an immediate need to provide training for officers and this has been resourced from within existing budgets.
- 6.1.3 New leaflets and changes to the website can be accommodated using existing budgets.

## **6.2 Legal and Human Rights Implications**

- 6.2.1 There are no human rights implications. The Act supports human rights. The Community Trigger process builds in an added safety net and ensures a case management review is undertaken when the threshold is met.
- 6.2.2 The authorised powers of designated officers will need to be reviewed to take into account the changes arising from the Anti Social Behaviour, Crime and Policing Act 2014.

## **6.3 Equality Implications**

- 6.3.1 Equality impact assessments will be completed for any new or revised policies. The revised powers are aimed at putting the needs of victims first. The range of responses available through multi agency working should ensure that vulnerable victims are better supported in cases of anti social behaviour. The Home Office guidance on the new powers is intended to encourage local agencies to work together more effectively by taking into account the needs of the victim and the impact the behaviour has on their lives.

## **6.4 Environment and Sustainability**

- 6.4.1 The new powers should help to support the Council's objectives in dealing effectively with anti-social behaviour in the Borough therefore assisting to achieve its aim to ensure the neighbourhoods we serve are places where people choose to live by providing an active presence and acting quickly to resolve issues. In turn this will help make our homes and neighbourhoods more desirable, reduce turnover and help with re-letting empty homes.

## **6.5 Links to Council's Priorities**

- 6.5.1 Housing - Listening to and working with our tenants to maintain and improve our housing stock and provide affordable housing in the right places.
- 6.5.2 Crime and Disorder – Working with the police and other partners to tackle crime and anti-social behaviour.

### 6.5.3 Environment – Protecting and improving our local environment.

The Contact Officer for this report is Helen Hughes (719494).

#### **Background Papers**

Local Government Act 1972 Section 100D, as substituted by the Local Government Act, 2000 Section 97

Background Paper No	Author	Nature of Background Paper	Date
1	Home Office	Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for front line professionals	July 2014