



To: The Leader and Executive Councillor for Strategy:
Councillor Lewis Herbert

Report by: Director of Customer and Community Services

Relevant scrutiny committee: Strategy & Resources 29/9/2014
Scrutiny Committee

Wards affected: Abbey Arbury Castle Cherry Hinton Coleridge
East Chesterton King's Hedges Market Newnham
Petersfield Queen Edith's Romsey Trumpington
West Chesterton

ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014

Not a Key Decision

1. Executive summary

- 1.1 The Anti-social Behaviour, Crime and Policing Act 2014 received Royal Assent on 13th March 2014, with full implementation of the Act due on 20th October 2014. It contains some wide ranging reforms around a number of previous Acts, including the law relating to dangerous dogs, terrorism and forced marriages. This report will look specifically at the reforms in the Act that are designed to address anti-social behaviour and that will have an impact on services such as Safer Communities, City Homes, Environmental Health and Streets and Open Spaces.
- 1.2 The Act contains two new measures which are designed to give victims and communities a say in the way anti-social behaviour is dealt with, they are: The Community Trigger; and the Community Remedy.
- 1.3 The Community Trigger gives victims and communities the right to request a review of their anti-social behaviour case and bring agencies together to take a joined up, problem solving approach to find a solution. The draft [threshold and procedure](#) for the Community Trigger, which are presented for approval by the Executive Councillor, have been developed through consultation with the representatives of the statutory bodies and members of the public. Home Office Guidance suggests that the threshold and procedure should be tested in practice for six months and then reviewed.

- 1.4 The Community Remedy gives victims a say in the out-of-court punishment of perpetrators for low-level crime and anti-social behaviour. The Police and Crime Commissioner will publish the Community Remedy Document following consultation. Details of the Community Remedy are included here for information; there is no decision required by the Executive Councillor.
- 1.5 The Act also makes provision for six new powers to address anti-social behaviour, which replace 19 currently available. ([Appendix 2](#))
- 1.6 Operational managers, whose services are affected by the new legislation, have been consulted and although the changes are wide-ranging the consensus is that the new powers can be used according to operational needs as and when appropriate.
- 1.7 There are however, some changes that the Executive Councillor may like to discuss in more detail, whilst leaving the operational decisions to be made by managers on a case by case basis. For example, civil injunction can be used for under 18s and it is suggested that officers should develop a procedure and checklist for assessing when this is appropriate.
- 1.8 Councils can designate social landlords to issue Community Protection Notices (CPNs) in their area and the Executive Councillor may want to do this if social landlords are willing. It is suggested that we monitor how CPNs operate in practice and bring a report back with recommendations on the appropriateness of this designation.
- 1.9 The procedure towards introducing individual Public Spaces Protection Orders will require careful consideration and consultation and would need to be discussed by Strategy and Resources Scrutiny Committee before a final decision is taken by the Executive Councillor. Although the test for introducing a PSPO is broad, conditions included in the test are that the behaviour being targeted is, or is likely to be persistent, unreasonable and justifies the restrictions imposed. It is suggested that this report should go to each Area Committee and request any comments that they may have on the use of powers in the Act, including the Community Trigger, and that they review if any areas may merit consideration for PSPOs.
- 1.10 The Closure Notices will require consideration by the CEX with regard to designation of officers at an appropriate level to authorise notices for periods exceeding 24 hours.

- 1.11 The new Dispersal Powers are purely police powers and details are included in the report for information as the previous powers, that is, Section 30 Dispersal Powers and Section 27 Direction To Leave, were used extensively in the past and the changes will be of interest.
- 1.12 There are a number of delegation issues to be addressed in relation to the new Act. It is suggested that the levels of delegation are maintained where they are broadly similar to those currently in place. Current relevant delegations and suggestions for additions or amendments are attached as [Appendix 3](#)

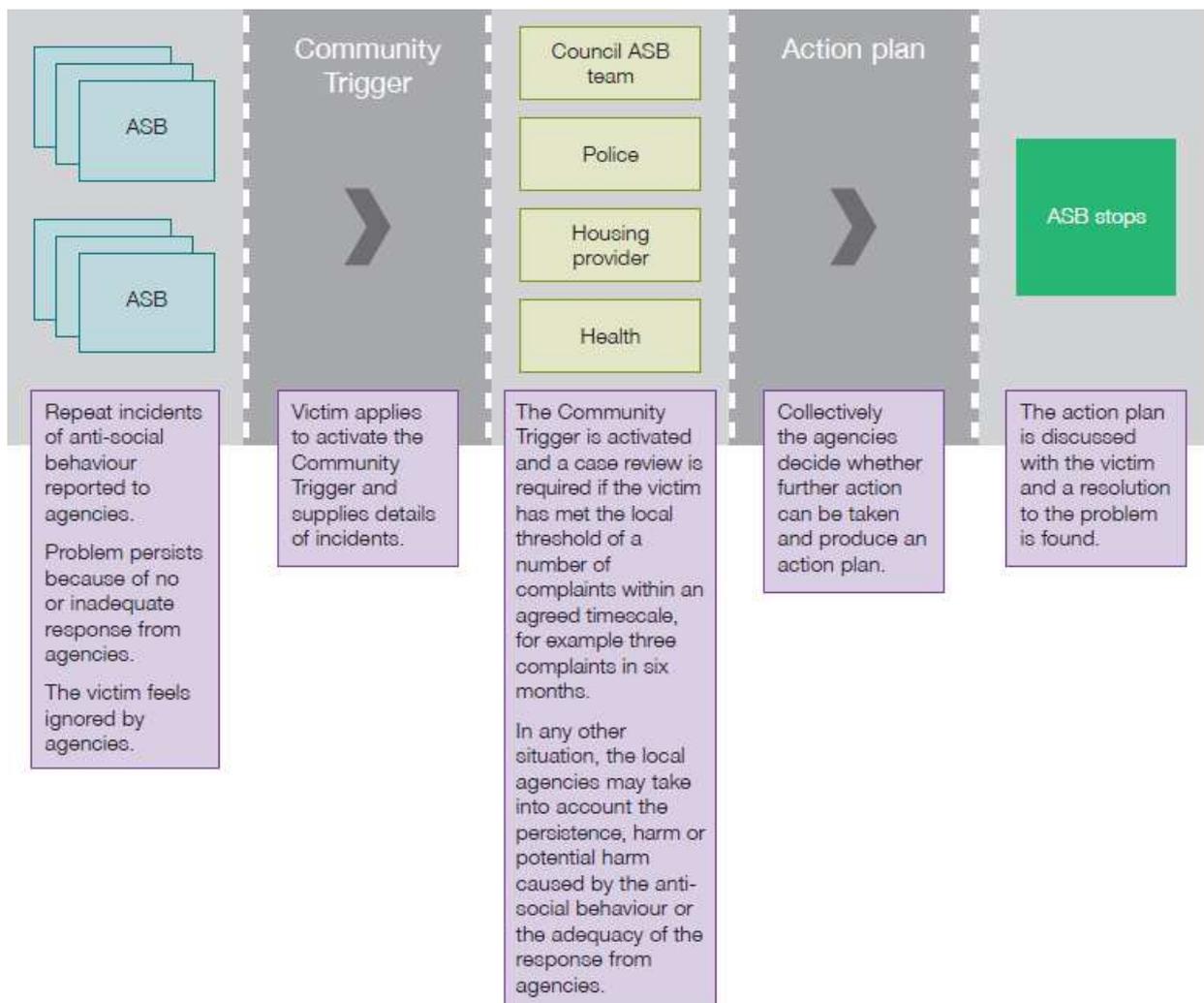
2. Recommendations

- 2.1 The Executive Councillor is recommended:
- 2.1.1 To note the new measures being introduced to address anti-social behaviour, as detailed in this report;
 - 2.1.2 To approve the [threshold and procedure](#) for the Community Trigger and to agree to test the threshold and procedure and to review the process in six months with a further report to Strategy and Resources Scrutiny Committee at that point;
 - 2.1.3 To agree to test Community Protection Notices in practice and bring a further report to Strategy and Resources Scrutiny Committee with recommendations around the appropriateness of designating the power to social landlords;
 - 2.1.4 To take this report to Area Committees and request that they review if any areas merit consideration for PSPOs; and
 - 2.1.5 To approve the delegation additions and amendments as detailed in [Appendix 3](#)

3. Background

- 3.1 This paper concentrates on those aspects of the Act that may impact on policy and procedures in delivering services across the council and gives some background details for those areas that will be of interest operationally but that do not require any decisions at this time.

Community Trigger



- 3.2 Anti-social behaviour, for the purposes of the community trigger, is defined as behaviour causing harassment, alarm or distress to a member or members of the public. One of the aims of the community trigger is to encourage those who are most vulnerable, or may not otherwise engage with agencies, to report incidents of anti-social behaviour.
- 3.3 An application for a community trigger can be made by any individual, business or community group to a single point of contact, in the local authority area, for a review of the actions carried out on any anti-social behaviour reports that meet the locally agreed and published threshold.
- 3.4 The responsible authorities and relevant bodies, who must work together to agree the threshold and the local procedure, are the Council, Police, Clinical Commissioning Groups and registered providers of social housing. The Cambridge steering group for developing the threshold and procedure is made up of representatives from City Council, Police, City Homes, Hundred Housing,

Metropolitan, Cambridge Housing Society and Cambridgeshire and Peterborough Clinical Commissioning Group.

3.5 Rules governing the threshold and procedure

The threshold for making a community trigger application must be **no higher than three complaints of anti-social behaviour in a six months period** and;

- α the anti-social behaviour must have been reported within one month of the alleged behaviour taking place and;
- α the application to use the Community Trigger must be made within six months of the report of anti-social behaviour.

3.6 Where a person makes an application for a case review and the number of qualifying complaints has been made, the threshold for a review is met.

3.7 The harm or potential harm caused to the victim, the persistence of the anti-social behaviour and the adequacy of the response should be taken into account in determining whether the threshold is met.

3.8 The procedure should as a basic outline include the following steps:

- α A victim or someone acting on their behalf makes an application to use the Community Trigger;
- α The relevant bodies decide whether the threshold is met; and
- α If the threshold is met, the relevant bodies share information about the case, consider whether any new information needs to be obtained, review previous actions and propose a response. The victim is informed of the outcome or agencies will work with the victim to devise and implement an action plan.

3.9 Representatives from the responsible authorities and relevant bodies worked together to develop the Cambridge City draft threshold and procedures. The local community have been consulted through fora made up of 9 Cambridge residents including a representative from the Disability Forum and 1 voluntary sector manager. Some representatives were self-selecting in answer to publicity on the City Council website and others came through invitations sent out through the steering group organisations.

3.10 The consultation response was generally positive about the draft procedure and threshold and the groups felt this was a welcome initiative. Among the points raised were requests to:

- α keep the threshold clear and uncomplicated (the threshold was simplified to meet this request);
- α consider whether it needs to be as high as 3 complaints in 6 months. The number of complaints has not been reduced as the

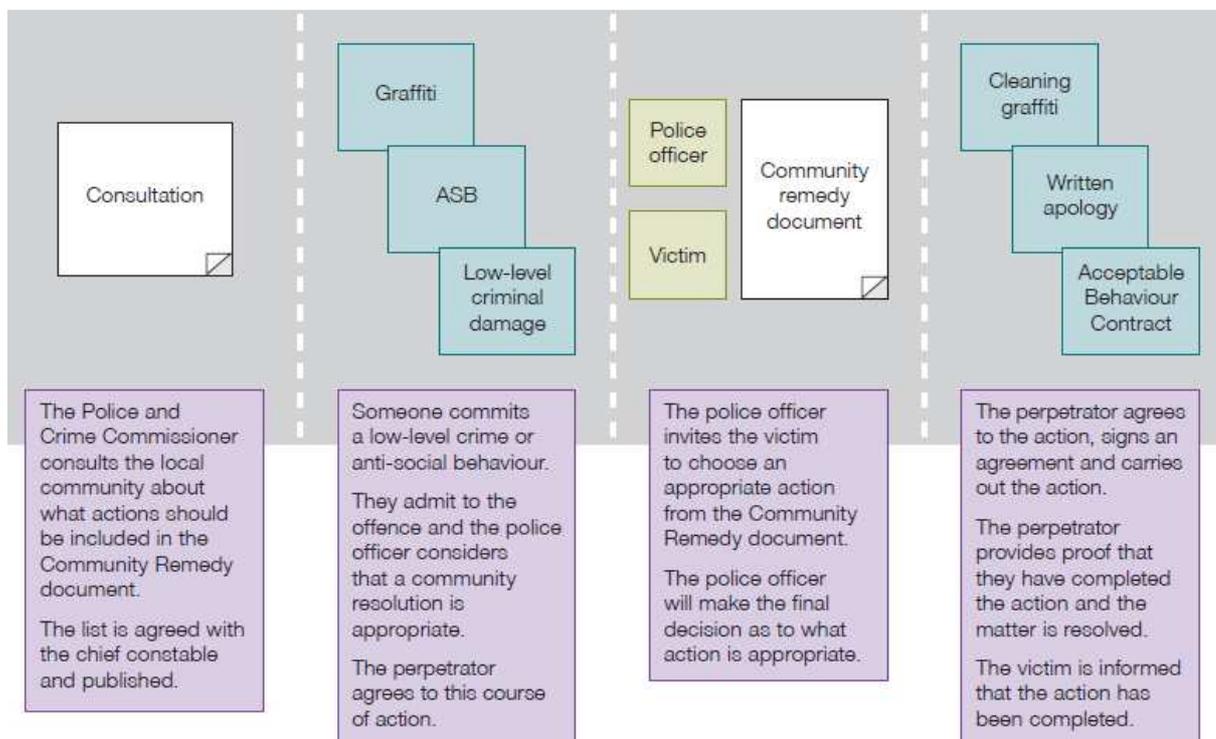
steering group already discussed in detail the issue of resource if we have to deal with a large volume of applications. We can review this after 6 months as advised in the guidance;

- be aware when publicising the availability of the trigger that many people do not have access to computers; and
- ensure the applicant is kept informed during the process.

3.11 The draft Community Trigger review [threshold and procedure](#) are attached as [Appendix 1](#) for consideration by the Executive Councillor with the recommendation to approve them as presented.

3.12 The Home Office Guidance suggests that the threshold and procedure should be tested in practice for six months and reviewed at that time. Environmental Health Managers would like the opportunity to consider how the Community Trigger applications link with the corporate complaints procedure and how best to incorporate it. It is therefore suggested that we test the threshold and procedure as suggested in the guidance and bring a report back to Strategy and Resources Scrutiny Committee with an update at that point.

Community Remedy



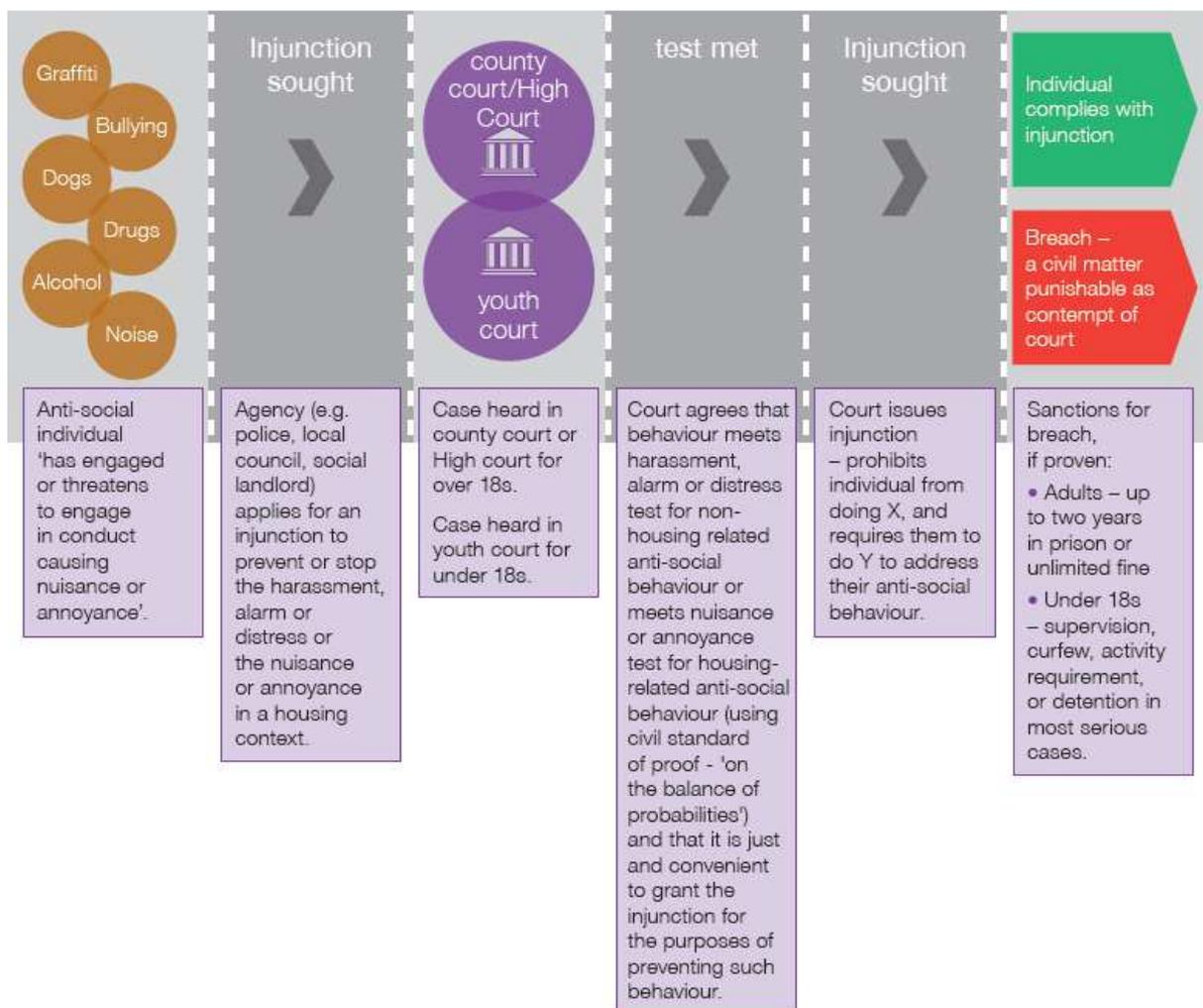
3.13 Following consultation, the Police and Crime Commissioner will publish the Community Remedy document which will be used as part of the existing process for delivering community resolutions. It will give victims of low-level crime and anti-social behaviour a say in the punishment of perpetrators out of court. The Community Remedy may also be used when a conditional caution or youth conditional

caution is given, as a means of consulting the victim about the possible conditions to be attached to the caution.

3.14 The community remedy is for anti-social behaviour and low-level criminal offences.

3.15 The role of the City Council was to respond to the Cambridgeshire and Peterborough consultation and the City Council also accommodated the consultation by including the link to the survey and information on the Council website, highlighting its presence to all Councillors and members of the Community Safety. The results of the consultation were not available when publishing this document.

Civil Injunction



3.16 The injunction is a civil power which can be applied for by local councils and other agencies, such as police, housing providers and NHS Protect to deal with anti-social individuals. The 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.

- 3.17 The injunction will include relevant prohibitions to stop the anti-social behaviour. It can also include positive requirements to get individuals to deal with the underlying cause of their behaviour.
- 3.18 The injunction can be used to deal with a wide range of behaviours, in both housing related and non-housing related situations. This can include vandalism, public drunkenness, aggressive begging, irresponsible dog ownership and noisy and abusive behaviours towards neighbours.
- 3.19 Agencies must make reasonable and proportionate judgement before applying for an injunction.
- 3.20 There are two tests for an injunction:
- α Non-housing related
For anti-social behaviour in a non-housing related context the test is conduct that has caused or is likely to cause, harassment, alarm or distress to any person. It applies where the behaviour has occurred, in a public place, such as a city centre, shopping mall or local park, and where the behaviour does not affect the housing management functions of a social landlord or people in their homes.
 - α Housing related
For anti-social behaviour in a housing context the nuisance or annoyance test will apply, that is, where the conduct is capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises or the conduct is capable of causing housing-related nuisance or annoyance to any person. Only social landlords, local councils or the police will be able to apply for an injunction under these provisions in the legislation. In the case of social landlords only, "housing-related" means directly or indirectly relating to their housing management function.
- 3.21 Power to issue an injunction to children
The new civil injunctions can be issued against anyone who is 10 years or over. Applicants must consult the local youth offending team (YOT) if the application is against someone under the age of 18 and inform any other body or individual the applicant thinks appropriate. Applications for injunctions against anyone who is under 18 must be made to the youth court.

It is suggested that officers should develop a procedure and check list for assessing when it is appropriate to apply for an injunction for a person under 18 and decisions can then be made on a case by case basis.

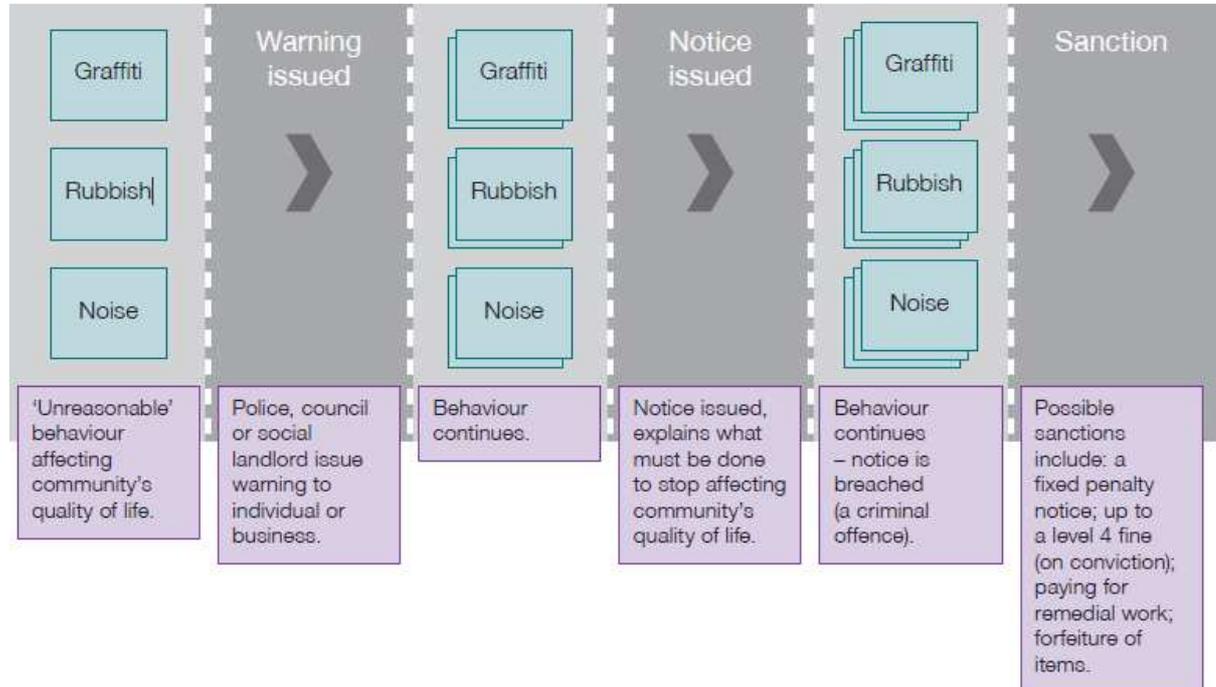
3.22 Exclusion from home

Councils and police can apply for an injunction to exclude private tenants or owner-occupiers, over the age of 18, from their homes where the ASB includes the use, or threatened use of violence or there is a significant risk of harm. It is not expected that the power of exclusion will be used often, and applications should only be made where the higher threshold is met.

3.23 Publishing details of Injunctions

Councils and police can decide to publish details of the terms of the order including details of the perpetrator, unless the Court has made a section 39 order (Children and Young Persons Act 1933) prohibiting the publication. When deciding whether to publicise the injunction, public authorities (including the courts) must consider that it is necessary and proportionate to interfere with the young person's right to privacy, and the likely impact on a young person's behaviour. This will need to be balanced against the need to provide re-assurance to the victims and the wider community as well as providing them with information so that they can report any breaches. Each case should be decided carefully on its own facts.

Community Protection Notices



3.24 Community protection notices (CPN) are designed to deal with particular, ongoing instances of anti-social behaviour that spoil the community's quality of life, such as graffiti, rubbish and noise. The anti-social behaviour must be persistent or continuing and unreasonable. They can be used against individuals over 16,

businesses or organisations, and can be issued by the police, and authorised officers of the council or staff of social housing providers.

3.25 Statutory nuisance is dealt with by the Environmental Health Team using the powers available through the Environmental Act 1990. The issuing of a CPN does not and cannot discharge the Council from its duty to issue Abatement Notices if the behaviour is considered to constitute a statutory nuisance.

3.26 Who can issue a CPN

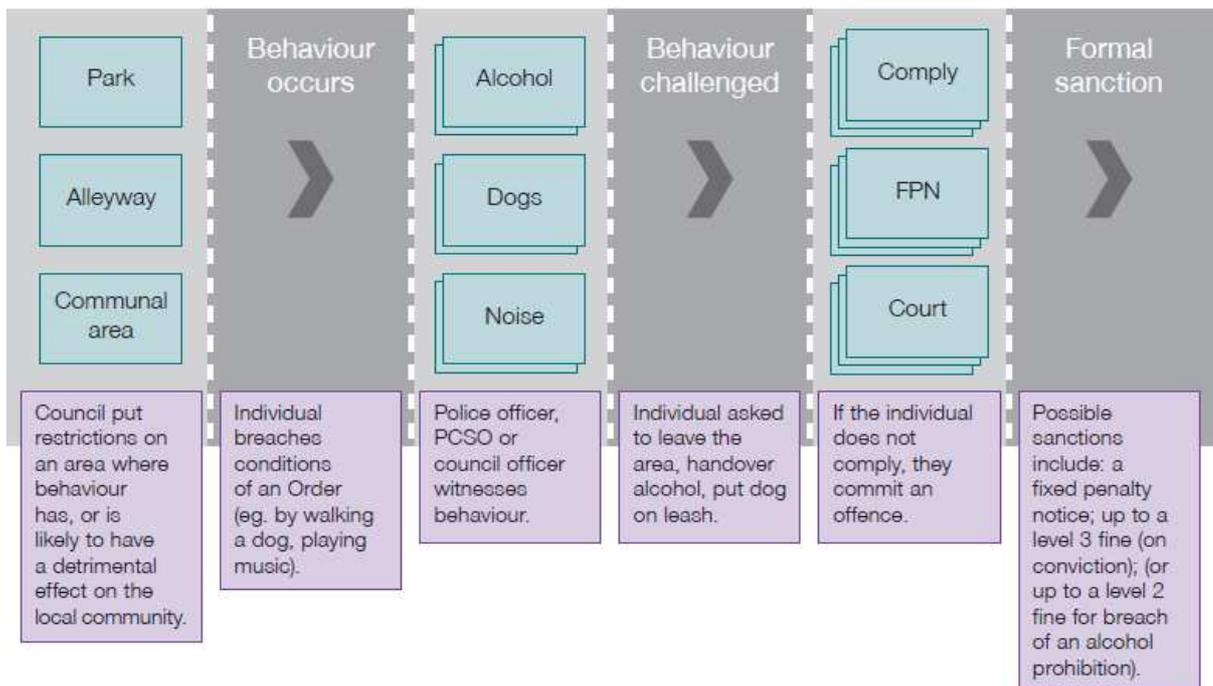
Council Enforcement officers have in the past taken the lead in dealing with these kinds of environmental issues and now police officers and police community support officers will also be able to issue CPNs.

3.27 In addition, there is a formal role for social landlords. Where it is appropriate, local councils can designate social landlords in their area to issue CPNs. It is suggested that we monitor how CPN are operating in practice and report back to committee before a decision is made to designate social landlords to issue them.

3.28 The CPN must be written for the situation and can contain any or all of the following:

- α Requirement to stop doing specific things;
- α Requirement to do specific things; and
- α Requirement to take reasonable steps to achieve specified results.

Public Spaces Protection Orders (PSPO)



3.29 The PSPO is designed to stop individuals or groups committing anti-social behaviour in a public space. A local authority can make these orders, following consultation with the police, Police and Crime Commissioner and other relevant bodies.

3.30 The test is designed to be broad and focus on the impact anti-social behaviour is having on victims and communities. A PSPO can be made by the council if they are satisfied on reasonable grounds that the activities carried out, or likely to be carried out, in a public space:

- α have had, or are likely to have, a detrimental effect on the quality of life of those in the locality;
- α is, or is likely to be, persistent or continuing in nature;
- α is, or is likely to be, unreasonable; and
- α justifies the restrictions imposed.

3.31 Where can the PSPO apply

The council can make a PSPO on any public space within its own area. The definition of public space is wide and includes any place to which the public or any section of the public has access, on payment or otherwise, as of right or by virtue of express or implied permission, for example a shopping centre. Before the PSPO is made, the council also has to publish the draft order in accordance with regulations published by the Secretary of State.

3.32 Penalties for breaching an order

Depending on the behaviour in question, the enforcing officer could decide that a fixed penalty notice (FPN) would be the most appropriate sanction. The FPN can be issued by a police officer, PCSO, council officer or other person designated by the council. In making the decision to issue a FPN, the officer should consider that if issued, payment of the FPN would discharge any liability to conviction for the offence. However, where the FPN is not paid within the required timescale, court proceedings can be initiated (prosecution for the offence of failing to comply with the PSPO).

3.33 What can be included in a PSPO

A PSPO can include multiple restrictions and requirements in one order. It can prohibit certain activities, such as the drinking of alcohol as well as placing a requirement on people to do certain things such as keep their dog on a lead. The PSPO is intended to make public spaces more welcoming to the majority of law abiding people, for this reason the requirements or restrictions can be targeted at specific people, designed to apply only at certain times or apply in certain circumstances.

3.34 Challenging a PSPO

Any challenge to the PSPO must be made in the High Court by an interested person within six weeks of it being made. An interested person is someone who lives in, regularly works in, or visits the restricted area. This means that only those who are directly affected by the restrictions have the power to challenge. This right to challenge also exists where an order is varied by a council.

3.35 Interested persons can challenge the validity of a PSPO on two grounds. They could argue that the council did not have power to make the order, or to include particular prohibitions or requirements. In addition, the interested person could argue that one of the requirements (for instance, consultation) had not been complied with. When the application is made, the High Court can decide to suspend the operation of the PSPO pending the verdict in part or in totality. The High Court has the ability to uphold the PSPO, quash it, or vary it.

3.36 Restricting alcohol

The PSPO cannot be used to restrict the consumption of alcohol where the premises or its curtilage is licensed for the supply of alcohol.

3.37 Restricting access

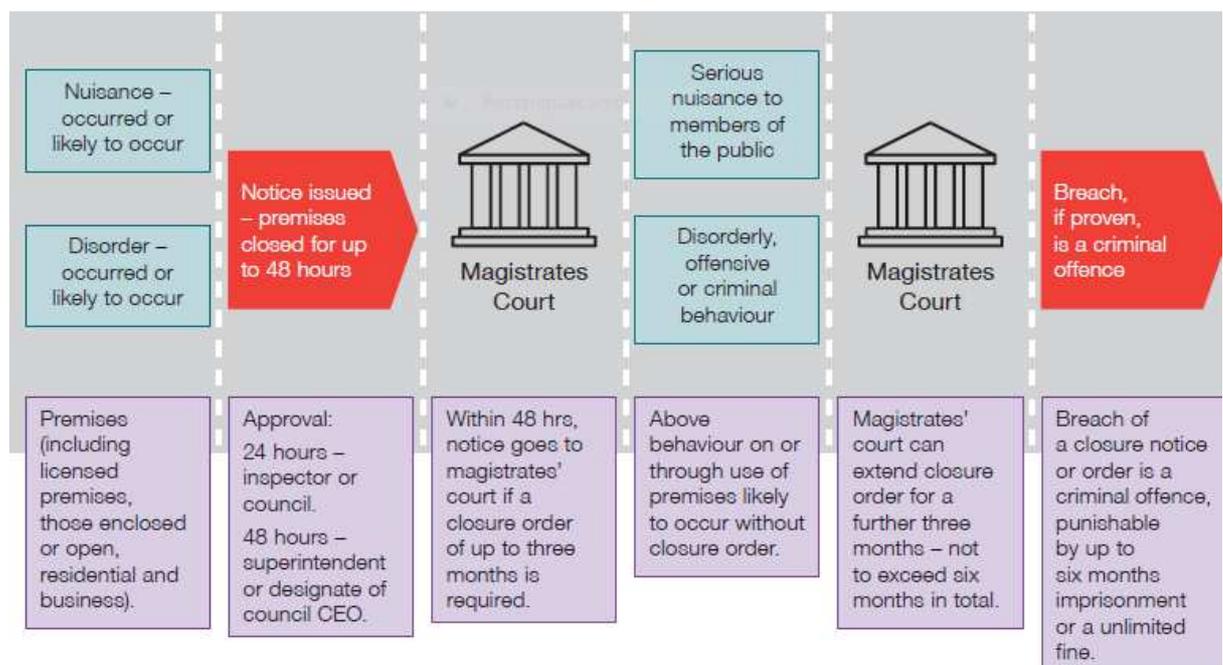
If the order is to be used to restrict access to a public right of way, a number of things need to be considered. What impact will the restriction have, for example is there a reasonably convenient alternative route. It may be more reasonable to restrict activities causing the ASB rather than restricting access. Consultation with affected parties is required if access is to be restricted.

3.38 Decision on the introduction of a PSPO

The detail on PSPOs is included for information. The procedure towards introducing individual orders will require careful consideration and consultation and would need to be taken to Strategy and Resources Scrutiny Committee before a final decision by the Executive Councillor.

3.39 The City Council's Annual Report 2014 states that the Council will work to 'introduce targeted Public Spaces Protection Orders (PSPOs) in areas where problem drinking and the behaviour of street drinkers is proving to be a public nuisance, subject to consultation'. It is planned that this report should go to each Area Committee and that, in addition to seeking views on the Community Trigger and other aspects of the Act, Area Committees be asked if they want to identify any areas that merit potential consideration for PSPOs.

Closure Power



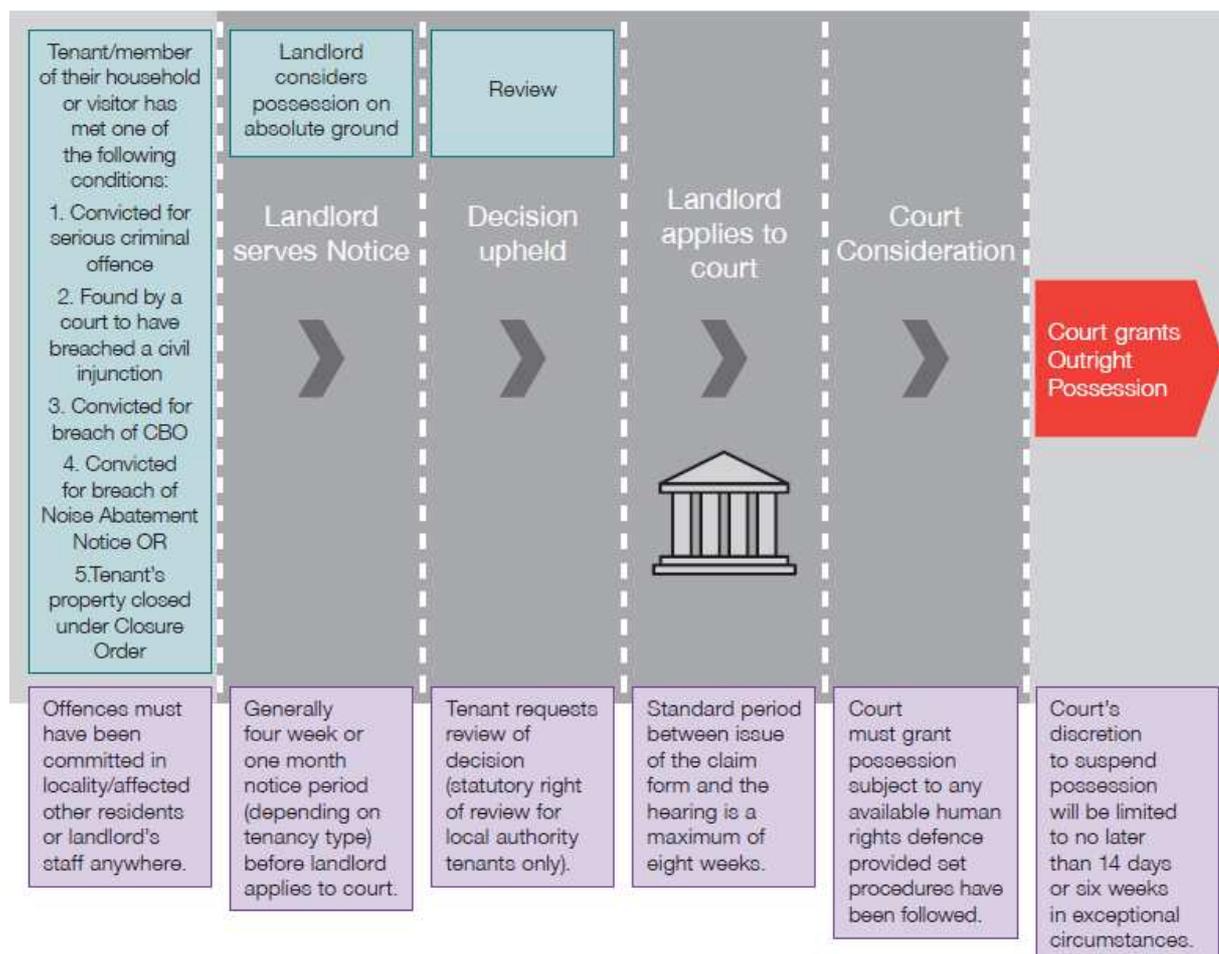
3.40 The closure power is a fast, flexible power that can be used to protect victims and communities by quickly closing premises that are causing nuisance or disorder. It replaces current closure orders and is similar in process to Premises Closure.

3.41 A closure notice prohibits access to the premises for a specified period up to a maximum of 48 hours. As a safeguard, the Act requires that closure notices issued by a local authority for periods exceeding 24 hours or extensions of 24 hour notices must be signed by the Chief Executive or a person designated by the Chief Executive. A closure order prohibits access to a premise for a maximum of three months and must be applied for to the magistrates' court no later than 48 hours after service of the notice closure.

3.42 Delegation

The Government guidance states that consideration needs to be given to the level or role of employee within the council who can issue a notice for periods not exceeding 24 hours. Suggestions for delegations which will fit with currently delegated powers are contained in [Appendix 3](#). The Act gives power to the Chief Executor Officer (or a person designated by her) to issue notices for periods up to 48 hours.

Recovery of possession of dwelling-house on anti-social behaviour grounds – mandatory possession

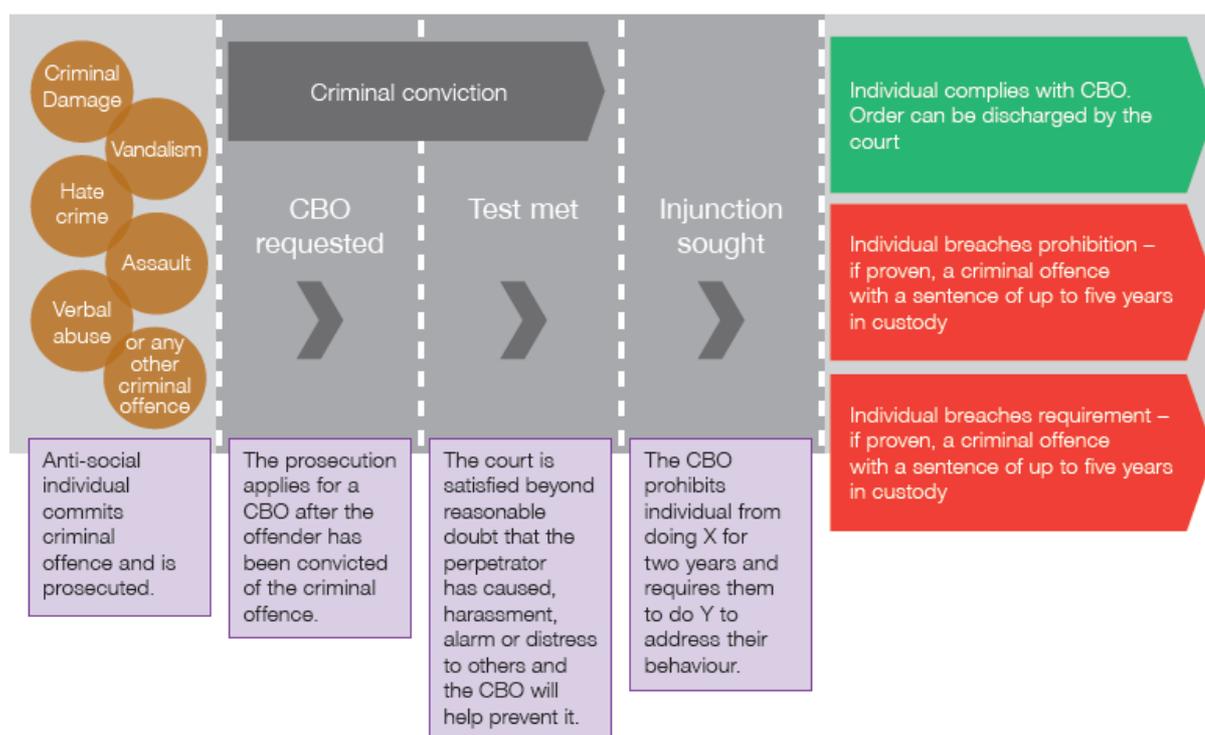


- 3.43 Prior to the 2014 ASB Act, the court had discretion as to whether to evict a tenant under the Housing Act 1985 and 1988 when the landlord sought possession of secure and assured tenancies because the tenant had been involved in anti-social behaviour. Landlords can now seek to evict tenants if it is proven that the tenant has been involved in anti-social behaviour or criminal activity and the court must evict them.
- 3.44 The Act introduces a new absolute ground for possession of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court.
- 3.45 Prevention and early intervention should be at the heart of all landlords' approaches to dealing with anti-social behaviour. The evidence shows this is the case with over 80% of anti-social behaviour complaints resolved by social landlords through early intervention and informal routes without resorting to formal tools.
- 3.46 It is, however, a source of frustration for landlords and victims that in exceptional cases where anti-social behaviour (or criminality) persists and it becomes necessary to seek possession, the existing process for evicting anti-social tenants is often very lengthy and expensive for landlords and the courts and, most importantly, prolongs the suffering of victims, witnesses and the community.
- 3.47 The court must grant possession (subject to any available human rights defence raised by the tenant, including proportionality) provided the landlord has followed the correct procedure and at least one of the following five conditions is met:
- α The tenant, a member of the tenant's household, or a person visiting the property has been convicted of a serious offence;
 - α The tenant, a member of the tenant's household, or a person visiting the property has been found by a court to have breached a civil injunction;
 - α The tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a criminal behaviour order;
 - α The tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour; or
 - α The tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a noise abatement notice or order.
- 3.48 The offence or anti-social conduct must have been committed in, or in the locality of, the property, affected a person with a right to live in the

locality of the property or affected the landlord or the landlord's staff or contractors.

3.49 This new ground is an additional tool to provide more flexibility for landlords but will be applicable only in limited circumstances. Details are provided here for information and no decision is required from the Executive Councillor.

Criminal Behaviour Orders (CBO)



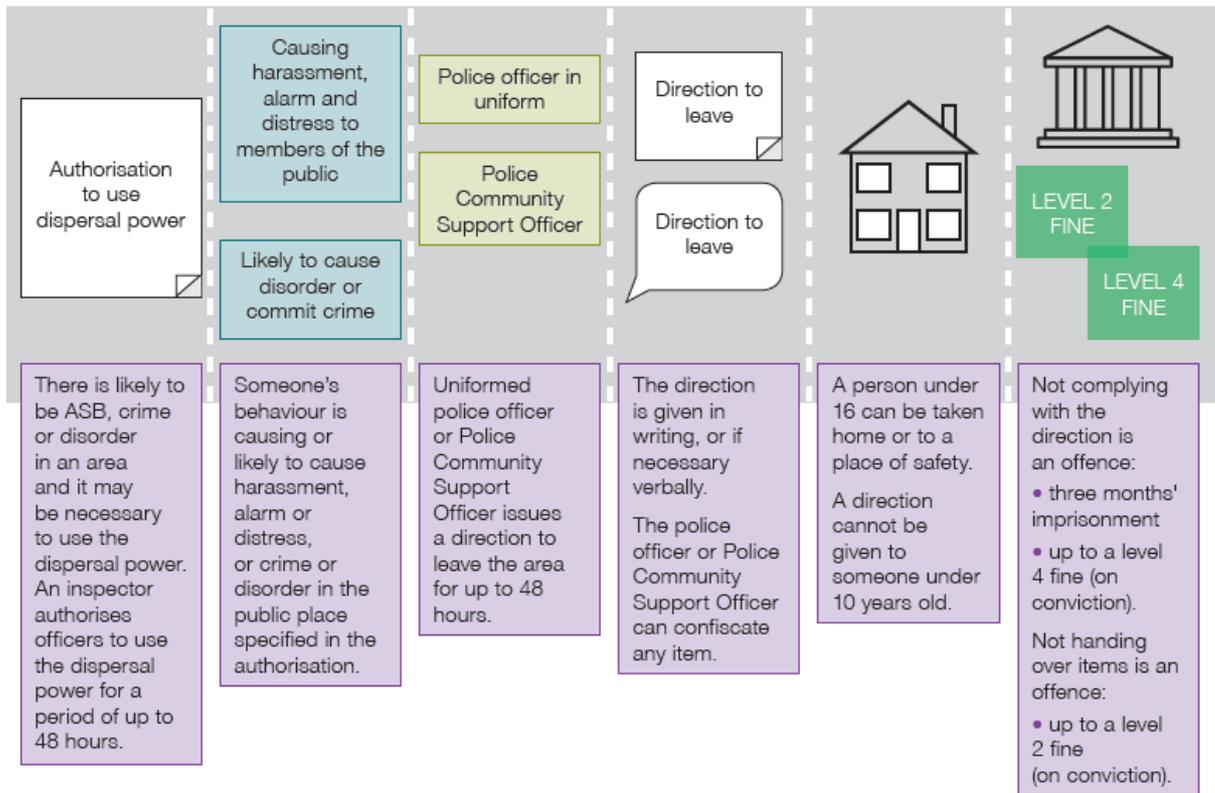
3.50 Criminal Behaviours Orders are issued by any criminal court against a person who has been convicted of an offence to tackle the most persistently anti-social individuals who are also engaged in criminal activity.

3.51 The prosecution, usually the Crown Prosecution Service (CPS), but in some cases it could be a local council, may apply for the CBO after the offender has been convicted of a criminal offence. The prosecution can apply for a CBO on its own initiative or following a request from a council or the police. The CBO hearing will occur after, or at the same time as, the sentencing for the criminal conviction.

3.52 For a CBO to be made the court must be satisfied, beyond reasonable doubt, that:

- α the offender has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to any person; and
- α that the court considers making the order will help in preventing the offender from engaging in such behaviour.

Dispersal Power (Police Power Only)



3.53 The dispersal power is a flexible power which the police can use in a range of situations to disperse anti-social individuals and provide immediate short-term respite to a local community. The power is preventative as it allows an officer to deal instantly with someone's behaviour and nip the problem in the bud before it escalates.

3.54 In areas where there are regular problems, the police force should work with the local council to find sustainable long-term solutions. In all instances, the impact on the local community should be considered before using the dispersal power.

NB: The process charts used in this report are extracted from the Home Office document "Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers – Statutory guidance for frontline professionals".

4. Implications

(a) Financial Implications

None at present.

(b) Staffing Implications (if not covered in Consultations Section)

None at present. However, we do not know how many Community Trigger applications we will receive and until this is tested we don't know what implications it has for our available resource.

(c) Equal Opportunities Implications

An EqlA has been carried out in relation to the Community Trigger procedure. Where the new powers have created policy changes EqlAs will need to be carried out accordingly.

(d) Environmental Implications

Nil: to indicate that the proposal has no climate change impact.

(e) Procurement

None

(f) Consultation and communication

- α Consultation carried out as stated in paragraph 3.9 and 3.10
- α Consultation has also been carried out with managers from Environmental Health, Street and Open Spaces, City Homes, Legal Department, Democratic Services
- α Consultation with Cambridgeshire and Peterborough Police Force and other districts has been carried out through workshops and a county wide steering group
- α Consultation with the Police and Crime Commissioner will be required to agree the appeal process for the Community Trigger
- α A communications plan for raising awareness of the Community Trigger has been developed.

5. Background papers

These background papers were used in the preparation of this report:

- α Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers – Statutory guidance for frontline staff

6. Appendices

Threshold and procedure for the Community Trigger
List of the six new powers Appendix 2
Delegations table Appendix 3

7. Inspection of papers

To inspect the background papers or if you have a query on the report please contact:

Author's Name: Lynda Kilkelly

Author's Phone Number: 01223 457045
Author's Email: lynda.kilkelly@cambridge.gov.uk