

ANTI SOCIAL BEHAVIOUR AND HARASSMENT

1. Anti-social behaviour covers a wide range of day-to-day incidents from litter and vandalism, to public drunkenness or noisy or abusive neighbours which can cause misery, either to an individual or the wider community. In an effort to provide better protection for victims and communities, the government introduced the Anti-social Behaviour, Crime and Policing Act 2014 (the 2014 Act) which aims to provide simpler, more effective powers to tackle anti-social behaviour.

Criminal Behaviour Orders (CBOs) and Civil Injunctions

Introduction

2. Criminal Behaviour Orders (CBOs), made under Part 2 of the 2014 Act along with Civil Injunctions, prevent nuisance and annoyance.

Section 2 of the 2014 Act defines “anti-social behaviour” as

- (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
 - (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
 - (c) conduct capable of causing housing-related nuisance or annoyance to any person.
3. Both CBOs and Injunctions replaced Anti-Social Behaviour Orders (ASBOs). Local councils do not currently have the power to apply for CBOs or Civil Injunctions. However NALC appreciates that anti-social behaviour is an important issue for local councils and this Note is intended to give them an overview of the provisions so that appropriate representations can be made to those who do have the power to apply for them.

Who can apply for CBOs and Civil Injunctions?

4. The CBO will be available for use against seriously anti-social individuals and can be applied for on conviction for any criminal offence in any criminal court. The orders can only be made through an application by the Crown Prosecution Service. However this can either be through their own initiative or at the request of:
 - District or London Boroughs,
 - County and County Boroughs in Wales,
 - the Police.

5. The injunction is a civil order which is available in the County Court for adults and in the youth court for juveniles (those under 18). It is used to tackle low level anti-social behaviour including alcohol misuse.

6. The injunction is a flexible tool and the following can apply for an Injunction:
 - County and District Councils and the London Boroughs,
 - County and County Boroughs in Wales,
 - Police (including the British Transport Police),
 - NHS Protect,
 - Private registered providers of social housing,
 - Transport for London, and
 - The Environment Agency and Natural Resources Wales

7. An injunction can include a power of arrest in cases where the perpetrator has used or threatened violence, or if there is a significant risk of harm to others. However breach of the injunction would not be a criminal offence and so individuals would not be criminalised for low level, persistent anti-social behaviour. The idea being to allow perpetrators a chance to turn their lives around without the stigma of a criminal record.

What conduct could give rise to an Injunction or CBO?

8. Pursuant to section 1 of the 2014 Act, to obtain an injunction the court must be satisfied that the following two conditions are met:
 - The first condition is that, on the balance of probabilities, the respondent has engaged or threatens to engage in anti-social behaviour.

- The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.
9. The injunction can place sanctions on perpetrators aimed at anti-social behaviour prevention. The Courts can also include positive requirements, where perpetrators have to address the underlying reasons for their anti-social behaviour. Injunctions can be used to tackle low level anti-social behaviour such as alcohol, drugs, bullying, graffiti, and noise.
10. CBOs include prohibitions to stop the anti-social behaviour, (for example, the individual entering a defined area) and may also include requirements to address the underlying causes of the offender's behaviour, for example, attendance at a course to educate offenders on alcohol and its effects. The Court may make a CBO against an offender only on the application of the prosecution. For a CBO to be made, section 22 of the 2014 Act provides that:
- 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.
11. CBOs can be used to tackle anti-social behaviour including but not limited to criminal damage, hate crime, verbal abuse, assault or vandalism. A key difference between the previous ASBO and a CBO is that the new orders can include positive requirements, which the Court must be satisfied are both suitable and enforceable. The most significant difference between the two new remedies is that breach of a CBO would be a criminal offence, with a maximum sentence of up to five years' imprisonment or a fine, or both for an adult (section 30 of the 2014 Act).

Community Triggers and Community Remedies

12. If a local council is troubled by anti-social behaviour, the 2014 Act includes two additional new measures which are designed to give victims and communities a say in the way anti-social behaviour is dealt with:

- The Community Trigger gives victims the ability to demand action, starting with a review of their case, where the locally defined threshold is met; and
 - The Community Remedy which gives victims a say in the out-of-court punishment of perpetrators for low-level crime and anti-social behaviour
13. These new additions are designed to enable local communities and people to work together and share information. Early and informal interventions can also be effective in tackling local anti-social behaviour, and can include:
- Warnings – either written or verbal warnings between the individual causing anti-social behaviour and the police, council or housing officer;
 - Acceptable Behaviour Contracts - a written agreement between a perpetrator of anti-social behaviour and the agency or agencies acting locally to prevent that behaviour;
 - Parenting Contracts - where informal interventions are used against under 18s, the parents or guardians of the young person should be contacted in advance of the decision to take action. The parents or guardians can play an important role in ensuring the individual changes their behaviour.
 - Mediation - solving the issue by bringing all parties to the table. This can be very effective in neighbour disputes, family conflicts or lifestyle differences such as noise nuisance complaints; or
 - Support and Counselling – in cases such as substance misuse or alcohol dependency which can drive anti-social behaviour and low-level crime, professional support can have a positive impact.

Public spaces protection order ('PSPO')

14. These are set out in Part 4 of the 2014 Act and they are intended to deal with a particular nuisance or problem in a particular area that is detrimental to the local community's quality of life, by imposing conditions on the use of that area which apply to everyone. Whilst this new power is not available to local councils, they will nevertheless be consulted by the relevant principal authority and share information about the area and the problems being caused as well as discuss the practicalities of enforcement.

Types of behaviour that a PSPO might be used to tackle could include:

- Rough sleeping
- Street drinking

- “Boy racers”
- Skateboarders
- Vehicle nuisance
- Dog fouling
- Verge parking
- Grazing of horses
- Litter and Flytipping
- Illegal encampments

Community protection notice ('CPN')

15. In many areas, local councils already know that these are widely used by principal authorities in dealing with anti-social behaviour. CPNs are intended to deal with particular, ongoing problems or nuisances which negatively affect the community's quality of life by targeting those responsible.

Types of behaviour which may result in a CPN include:

- Feeding birds in town centre;
 - Untidy gardens;
 - Rave organisers;
 - Boy racer organisers;
 - Smokers' litter not being cleared; or
 - Pubs not clearing bottles from street when they have closed
16. A CPN can only be issued where a written warning has been given to the perpetrator (whether individual or body) stating that a CPN will be issued unless the conduct ceases to have a detrimental effect on the life of those in the locality. The agency issuing the CPN is responsible for enforcing a breach either by way of a Fixed Penalty Notice or, if necessary prosecution at a magistrates court or youth court, unless otherwise agreed locally.

Closure power

17. This power allows the police or principal authority to act quickly to close premises (prohibit access) that are being used, or are likely to be used to commit nuisance and disorder. There are two stages to this process:

- Closure notice – closes the premises for 24/48 hours (sections 76 and 77 of the 2014 Act)
 - Closure order – this is used if it is wished to close the premises for longer (section 80 of the 2014 Act).
18. Before issuing a closure notice the applicant must ensure that it consults anybody or individual they think is appropriate, including include local councils (section 76 (7) of the 2014 Act). Local councils are also key when a premise has been closed in ensuring that local people are made aware of the action that has been taken.

19. Harassment

20. The Protection from Harassment Act 1997 (the 1997 Act) sets out a number of measures which can be taken against individuals who cause harassment towards others. It is doubtful whether local councils would be able to take action under the Act themselves because section 222 of the Local Government Act 1972 only permits councils to issue legal proceedings in their own name where they “consider it expedient for the promotion or protection of the interests of the inhabitants of their area” to do so. Harassment is often targeted at a single individual and it may well be difficult, therefore, for a council to claim that any action it takes under the 1997 Act is for the benefit of the inhabitants generally.
21. The purpose of this part of this Note is to give councils an overview of the provisions so that appropriate representations can be made to the police (who have the power to take action under the Act in appropriate cases)

What does the Act do?

22. Section 1 of the 1997 Act states that a person must not pursue a course of conduct which amounts to harassment of another, and which he knows or ought to know amounts to harassment of the other.

What is a “course of conduct”?

23. Pursuant to section 7 of the 1997 Act, a “course of conduct” in relation to a single person must involve conduct on at least two occasions. “Conduct” includes speech.

How is “harassment” defined?

24. Harassment is not defined although it includes alarming a person or causing a person distress.

What happens if a person breaches the Act?

25. A person who pursues a course of conduct in breach of section.1 of the 1997 Act is guilty of an offence (by virtue of section 2), and is liable on summary conviction, to a term of imprisonment not exceeding six months or a fine not exceeding £5,000, or both.
26. Pursuant to section 4 of the 1997 Act, a person whose course of conduct (on at least two occasions) causes another to fear that violence will be used against him, is guilty of an offence if he knows, or ought to know, that his conduct will cause the other so to fear on each of those occasions. A person guilty of an offence under this section is liable on conviction on indictment to imprisonment for a term not exceeding five years, or a fine, or both, or on summary conviction, to imprisonment for a term not exceeding six months, or a fine not exceeding the statutory maximum, or both.
27. Additionally, pursuant to section 5 of the 1997 Act, a court sentencing or otherwise dealing with a person (“the defendant”) convicted of an offence may (as well as sentencing him or dealing with him in any other way) make a further order known as a restraining order. A restraining order is made to protect the victim of the offence, or any other person mentioned in the order, from conduct which amounts to harassment, or will cause a fear of violence, and can prohibit the defendant from doing anything described in the order.

Are there any civil remedies?

28. Pursuant to section 3 of the 1997 Act, an actual or apprehended breach of the 1997 Act may be the subject of a claim in civil proceedings by the person who is or may be the victim of the course of conduct in question. In such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment. The court may also grant an injunction for the purpose of restraining the defendant from pursuing any conduct which amounts to harassment. Where the victim claimant considers that the defendant has done anything from which he is prohibited by the injunction, the claimant may apply to court for the issue of a warrant for the defendant’s arrest.

Other types of harassment

29. In 2005, further provisions in respect of harassment were introduced by the Serious Organised Crime and Police Act 2005. These include new offences of:

- harassment intended to deter lawful activities (section 125); and
- harassment of a person in his home (section 126).

30. The new offences made corresponding provision for civil remedies (including claims for damages) and injunctions.

Other Legal Topic Notes (LTNs) relevant to this subject:

LTN	Title	Relevance
13	Policing Your Area	Gives further advice in respect of tackling crime.
15	Legal Proceedings	Explains s.222 of the LGA 1972 in further detail.
22	Disciplinary & Grievance Arrangements	Sets out arrangements for dealing with employment issues.
23	Health and Safety	Sets out the responsibilities of employers to their staff in terms of health and safety.

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