

Ealing Council Housing &
Environment

**Anti-Social Behaviour (ASB):
Statement of Policy & Procedures**

Safer Communities – September 2024

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1. EXECUTIVE SUMMARY

- 1.1. Ealing Council's safer communities team is responsible for investigating and responding to reports of anti-social behaviour (ASB) made by Ealing residents. The team deliver Ealing's statutory duty to manage ASB reports relating to or affecting Ealing Council tenants and leaseholders.
- 1.2. The safer communities team works with Police and other partners to tackle local crime and disorder and to investigate and resolve concerns relating to anti-social behaviour. This document sets out the approach taken by the team in investigating and tackling ASB.
- 1.3. The Council recognises that resolving anti-social behaviour means developing and maintaining strong partnerships between the council, residents, Police and other statutory and voluntary sector partners. By working in partnership, and by using collective resources, knowledge, skills and enforcement powers, Ealing is committed to ensuring that residents can enjoy the safety, security and enjoyment of their homes and the community they live in.
- 1.4. Anti-social behaviour is defined within the *Anti-Social Behaviour, Crime and Policing Act (2014)* 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*
- 1.5. A 'person' in the above definitions of anti-social behaviour includes:
 - anyone who has a right to live in a property owned or managed by the Council
 - people living in any other property in the neighbourhood (for example, owner, occupiers and leaseholders)
 - anyone else who is lawfully in such property or in the locality (for example people working or using local facilities in the area)
- 1.6. *Housing related* means directly or indirectly relating to the housing management functions of:
 - a housing provider, or
 - a local authority
- 1.7. Housing management functions of a housing provider or a local authority include:
 - functions conferred by or under an enactment
 - the powers and duties of the housing provider or local authority as the holder of an estate or interest in housing accommodation
- 1.8. The following list, which is not exhaustive, provides examples of activities that fall within the scope of matters the council's safer communities team will investigate and respond to:
 - **Domestic Abuse**
 - **Hate related crime** – including disability, faith, gender, LBGT and race
 - **Physical Violence / Threat of Physical Violence** – other than domestic abuse
 - **Drug / substance misuse & dealing** – including taking drugs, discarding drug paraphernalia, "crack houses", presence of dealers and users

- **Alcohol related nuisance** – street drinking
- **Noise** – including noisy neighbours, loud music, loud parties and alarms
- **Aggressive begging**
- **Sex working & brothels**
- **Verbal Abuse, Harassment & Intimidation**
- **Misuse of communal areas/public space/loitering** – including urinating in communal area's belonging to the Council and impeding access to communal areas
- **Damage to the Council's property**
- **Neighbour Disputes**
- **Groups Congregating**

2. AIMS AND OBJECTIVES

- 2.1 This document sets out the council's policy and procedures in relation to nuisance and anti-social behaviour matters. It informs and explains to residents, as well as to partners and to council officers, the role of the council in investigating and responding to ASB and the specific enforcement powers and legal basis for their use.
- 2.2 The Council ensures that enforcement decisions are in line with its Corporate Enforcement Policy and are consistent, well-balanced, fair and related to common standards both locally and nationally.
- 2.2 This document also sets out the full enforcement approaches by using the range of non-legal and legal tools available, locally, and nationally. It ensures the safer communities team act in compliance with the requirements of key legislation, specifically the *Anti-Social Behaviour, Crime and Policing Act (2014)*.
- 2.4 This document specifically focuses on ASB and housing-related nuisance and does not include issues that require investigation, intervention or enforcement within other legislative frameworks.

3. SAFER COMMUNITIES TEAM SCOPE

- 3.1 The council's safer communities team respond to complaints of crime and anti-social behaviour and work in conjunction with the Police and other key partners to resolve them. The team adopts a problem-solving approach in co-ordinating a response to cases that come to their attention and works jointly to find a solution. This can include information and intelligence gathering/sharing, providing expert advice and referrals to partner agencies.
- 3.2 The team will consider all appropriate interventions, including warnings, acceptable behaviour contracts (ABCs) and mediation. However, if a problem persists, the team will also decide on which enforcement powers (including actions like injunctions, possession proceedings or closure notices / orders) may be appropriate.
- 3.3 An underpinning principle of Ealing's Community Safety Partnership (*the Safer Ealing Partnership or SEP*) is for services to work collectively to resolve ASB and safeguard vulnerable individuals in cases.

3.4 The following consideration will influence which regulatory body will take the **lead** in investigation and tackling instances of anti-social behaviour within the London Borough of Ealing:

3.4.1 The council's safer communities team has a statutory duty to council tenants and leaseholders, and where incidents of ASB take place on any housing land belonging to the London Borough of Ealing. The team will also act in the interest of members of the public who live, work and visit Ealing.

3.4.2 The Metropolitan Police Service (MPS) will lead where an individual, or group of individuals' behaviours, results in a criminal offence being committed on any land.

3.4.3 Registered Social Landlords (RSLs or Housing Associations) will lead where incidents of anti-social behaviour (not resulting in a criminal offence) are attributable to persons who are residing in, or who are otherwise on, premises provided or managed by a Registered Social Landlord or persons who are in the vicinity of such premises.

SAFER COMMUNITIES TEAM – MINIMUM STANDARDS

The Safer Communities team will always:

- Treat all incidents of ASB seriously when taking a report, which will be recorded on our systems. The reporter will be treated fairly, with dignity and respect and we will respond to a report promptly in a timely, supportive and professional way.
- Assess the severity, likelihood of escalation and potential risk of harm/impact by completing an assessment during the initial report. This will determine the most appropriate and efficient response.
- Investigate the complaint fully and uphold the tenancy agreement in relation to ASB for Council tenants. As part of the investigation, the Safer Communities Team will establish the facts, offer guidance and options regarding the case and collecting the evidence and agree an action plan with the reporter.
- Consider a multi-agency problem solving approach and co-ordinate a response. A lead agency will be identified, and an action plan will be formed with the reporter.
- Ensure that each service which has been identified with a role to play addresses the relevant element of the complaint appropriately.
- Communicate with the reporter of how the complaint is being progressed and review the situation if the Safer Communities Team are the lead agency. The reporter will also be provided with a named contact should further concerns need to be raised.
- Offer referrals to the relevant support services should this need be identified or raised.
- Be empathetic to the needs of the reporter, balancing them out with that of the community and our service requirements.

- Signpost to relevant organisations who we believe will be more effective in relation to the report
- Deal with identified individuals and hotspots appropriately and proportionately, using tools and powers available such as formal warnings, ABC's, injunctions, possession, closure orders for premises causing significant/persistent ASB.
- Providing residents with the right to complain if effective action is not taken by local agencies.

SAFER COMMUNITIES TEAM STRUCTURE

- 3.5 The safer communities team are based in four geographical area teams (Acton, Ealing & Hanwell, Southall and Greenford, Northolt and Perivale or GNP), which mirror the historic delivery of local police teams
- 3.6 Ealing area team is led by a team leader, supported by two Safer Communities Officers and a Noise and Nuisance Officer.
- 3.7 The model incorporates all 24 wards as follows:

<p style="text-align: center;">Acton team</p> <p style="text-align: center;">North Acton South Acton East Acton Southfield Hanger Hill</p>	<p style="text-align: center;">Ealing & Hanwell team</p> <p style="text-align: center;">Pitshanger Ealing Broadway Ealing Common North Hanwell Hanwell Broadway Northfields Walpole</p>
<p style="text-align: center;">Southall team</p> <p style="text-align: center;">Dormers Wells Lady Margaret Norwood Green Southall Broadway Southall Green Southall West</p>	<p style="text-align: center;">Greenford, Northolt and Perivale (GNP) team</p> <p style="text-align: center;">Greenford Broadway Central Greenford North Greenford Northolt Mandeville Northolt West End Perivale</p>

- 3.8 The safer communities team are supported by a crime prevention project officer, who leads on crime prevention initiatives and has oversight of the borough's alley-gating scheme.

Ealing Community MARAC

- 3.9 Ealing's Community Multi-Agency Risk Assessment Conference (EC MARAC) is a partnership forum, with key agencies represented at a senior officer level, to respond to complex and high-risk community safety cases. The conference primarily receives referrals for cases with issues that cut across multiple agencies and involve one or more person who is vulnerable.
- 3.10 Attached to the EC MARAC are an Intervention and Support Officer (with remit for coordinating enhanced support for vulnerable victims and perpetrators), and an Enforcement Officer (with remit to lead on rapid enforcement work, ensuring all of the partnership's potential enforcement options against high risk offenders have been considered and exercised appropriately).

NOISE AND ENVIRONMENTAL NUISANCE

- 3.11 Noise and nuisance officers are responsible for investigating reports of noise and other environmental disturbance (such as light, smoke, dust and odour) within their dedicated cluster, liaising where necessary with safer communities officers and Police colleagues to ensure the most effective intervention and enforcement actions are taken.
- 3.12 Noise Officers are responsible for the investigation of complaints of 'statutory nuisance' under Sections 79 and 80 of the *Environmental Protection Act (1990)*. They can also take enforcement action under *The Control of Pollution Act (1974)*, which gives local authorities powers for controlling noise and vibration from construction sites and other similar works. These powers may be exercised either before works start or after they have started. Additionally, the *Clean Neighbourhoods and Environment Act (2005)*, allows local authorities to enter a premises for the purpose of silencing an alarm if this has been sounding continuously for more than twenty minutes or intermittently for more than one hour.
- 3.13 The Noise Officer provide a specialist service for residents experiencing disturbance from noise and other environmental nuisances, such as smoke and odour. The team attend locations to witness incidents when they are occurring and provide critical witness evidence for enforcement action.

The following matters may be considered to give rise to a 'statutory nuisance' but is not exhaustive:

- Noise emitted from premises to be prejudicial to health or a nuisance whether in a residential, commercial or entertainment premises
 - Noise that is prejudicial to health or a nuisance and is emitted from or caused by a vehicle, machinery or equipment in a street
 - Smoke emitted from premises so as to be prejudicial to health or a nuisance
 - Fumes or gases emitted from premises so as to be prejudicial to health or a nuisance
 - Any animal kept in such a place or manner as to be prejudicial to health or a nuisance
 - Any dust, steam, smell or other effluvia arising on industrial, trade or business premises and being prejudicial to health or a nuisance
 - Artificial light emitted from premises so as to be prejudicial to health or a nuisance
- 3.14 *Poor sound insulation* between adjoining properties is a cause of many complaints throughout the country. It may make every day sounds of ordinary living intolerable, for example, the playing of children. Unfortunately, following several court cases, it was decided that a lack of sound insulation between premises leading to noise nuisance cannot be remedied under the Environmental Protection Act 1990. These cases found that it is not reasonable to expect neighbours to behave especially quietly because sound insulation between their properties is poor. Subsequently, normal, everyday noise will not constitute a statutory nuisance. Therefore, no Local Authority can require a landlord to improve the sound insulation between properties. The landlord is only required to maintain the properties to a standard that they were built too. Residents can take their own action under Section 82 of the Environmental Protection Act 1990.

- 3.15 The noise and nuisance service provides a 9am – 5pm direct reporting service for all residents, as well as an out of hours (evenings and weekends) offer.

4. LEGAL FRAMEWORK

- 4.1 The *Anti-Social Behaviour, Crime and Policing Act (2014)* was introduced by Parliament in March 2014 which established simpler, more effective powers to tackle anti-social behaviour that provided better protection for victims and communities. The Act also expanded law enforcement powers in addressing the most serious anti-social behaviour.
- 4.2 The focus of *Anti-Social Behaviour, Crime and Policing Act 2014* was to put victims first by introducing measures that give victims a say in the way anti-social behaviour is dealt with. The second was introducing new effective enforcement powers that are designed to be quicker to implement so that victims get respite from anti-social behaviour faster.
- 4.3 The new powers allow Police, Local Authorities, Social Landlords and others to deal with problems quickly. However, local agencies still work together where appropriate to ensure the best results for victims. Each agency brings with it a range of expertise and experience that when brought together can assist in resolving issues more effectively.
- 4.4 With the exception of a Criminal Behaviour Order and breaches of specific enforcement powers, the remainder of enforcement powers can be processed through Civil Courts which allows for a lower burden of proof. A breach of a Civil Injunction Order although, is not a criminal offence but must be proven to the criminal standard.
- 4.5 Case law has established that in civil matters, the standard burden of proof is the '**balance of probabilities**' This is a lesser standard than the proof required in relation to criminal matters which is '**beyond all reasonable doubt**'
- 4.6 The legal definition of 'balance of probabilities' is *the standard of proof in civil cases, demanding that the case that is the more probable should succeed. This is the kind of decision represented by the scales of justice. The court weighs up the evidence and decides which version is most probably true.*
- 4.7 'Beyond all reasonable doubt' is the standard of proof in a criminal case that must be met by the prosecution in order to convict the Defendant, It means that evidence is fully satisfied, all the facts are proven and the guilt is established.

Anti-Social Behaviour, Crime and Policing Act: Giving Victims a say

- 4.8 Two new measures were introduced under Part 1 of the Act which were designed to give victims and communities a greater say in the way their reports of anti-social behaviour are dealt with.

Community Trigger

Purpose:

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.

Threshold:

- Three complaints in the previous six-month period

- Persistence of the anti-social behaviour
 - The harm or potential harm caused by anti-social behaviour
 - The adequacy of response to the anti-social behaviour
- 4.9 The Community Trigger process is managed internally by the Safer Communities Team and the process can be used by individuals, businesses and community groups. Requests for a Community Trigger made anonymously are unable to be considered. The process of a Community Trigger request is as follows:
- a) The Safer Communities Team will assess the Community Trigger against the threshold and decide if the threshold is met. They will have five working days to establish if the threshold has been met.
 - b) The Safer Communities Team will write to the complainant to advise if the threshold has not been met, advising them a referral has been made to the relevant agency to respond to them directly.
- Or
- c) The Safer Communities Team will contact the complainant to inform them if their request has met the trigger threshold, as well as establishing the complainant's desired outcomes in resolving the issue. The Safer Communities Team will outline the process involved in the Community Trigger including, the Community Trigger Review Panel who will have five to ten working days, depending on the risk level, to convene a meeting to discuss the complaint.
 - d) The Safer Communities Team will co-ordinate a review panel with the responsible authorities including any other relevant agencies i.e. mental health or substance misuse services to conduct a review of the case. The panel meeting will be chaired by an appropriate manager within the Safer Communities Team.
 - e) At the meeting, the Panel will determine which agency will take the lead on communicating with the resident. Relevant bodies come together at the panel and access actions taken to date. An action plan is agreed by partners and minutes are circulated.
 - f) Within fifteen working days, the Safer Communities Team will provide a written response to the complainant outlining the decision on whether the threshold is met, the outcome of the review and any recommendations made as an outcome of the review.

Community Remedy

Purpose:

Gives victims a say in the out-of-court punishment of perpetrators for low-level crime and anti-social behaviour.

Applicants who can use the Community Remedy:

- Police Officer
- An investigating officer (which can include Police Community Support Officers for certain offences, if designated the power by their chief constable)
- A person authorised by a relevant prosecutor for conditional cautions or youth conditional cautions

Test:

- The officers must have evidence that the person has engaged in anti-social behaviour or committed an offence
- The person must admit to the behaviour or the offence (and agree to participate)
- The officer must think that the evidence is enough for court proceedings including for a civil injunction order, or impose a caution but considers that a community resolution would be more appropriate

4.10 A Community Remedy is not used by the Council's Safer Communities Team, but officers will assist the Metropolitan Police in obtaining supporting evidence from victims and/or communities affected by crime or anti-social behaviour committed.

Anti-Social Behaviour, Crime and Policing Act: More Effective Powers

4.11 The new powers are designed to be flexible allowing professionals to adapt them to protect victims in a wide range of situations.

4.12 The Council recognises that anti-social behaviour can be a serious problem that affects the quality of life of individuals, families and communities. It is committed to tackling anti-social behaviour and will use the full range of powers and resources available, both criminal and civil, to ensure that it, together with its partners, take an effective stand against perpetrators.

Civil Injunctions

Purpose:

To stop or prevent individuals engaging in anti-social behaviour quickly, nipping problems in the bud before they escalate.

Test:

- On the balance of probabilities
- Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or
- Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and
- Just and convenient to grant the injunction to prevent anti-social behaviour

Criminal Behaviour Orders (CBO's)

Purpose:

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

Test:

- If the court is satisfied beyond reasonable doubt that the offender has engaged in behaviour that has caused or is likely to cause harassment, alarm or distress to any person; and
- The court considers that making the order will help prevent the offender from engaging in such behaviour

Community Protection Notices (CPN's)

Purpose:

To stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life

Test:

Behaviour has to:

- Have a detrimental effect on the quality of life of those in the locality;
- Be of a persistent or continuing nature; and
- Be unreasonable

Public Spaces Protection Order

Purpose:

Designed to stop individuals or groups committing anti-social behaviour in a public space

Test:

Behaviour being restricted has to:

- Be having, or be likely to have, a detrimental effect on the quality of life of those in the locality;
- Be persistent or continuing nature; and
- Be unreasonable

Premises Closure Power

Purpose:

To allow the police or council to quickly close premises which are being used, or likely to be used, to commit nuisance or disorder

Test:

The following has occurred, or will occur, if the closure power is not used:

Closure Notice (up to 48 hours)

- Nuisance to the public; or
- Disorder near those premises

Closure Order (up to six months)

- Disorderly, offensive or criminal behaviour
- Serious nuisance to the public; or
- Disorder near the premises

Absolute Ground for Possession

Purpose:

Possession applications of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court.

Test:

The tenant, a member of the tenant's household, or a person visiting the property has met one of the following conditions:

- Convicted of a serious offence
- Found by a court to have breached a civil injunction order
- Convicted for breaching a criminal behaviour order

- Convicted of breaching a noise abatement notice
- The tenant's property has been closed for more than 48 hours under a Closure Order for anti-social behaviour.

Relevant Requirements and Legislation Considered in the Preparation of this Policy

4.13 This policy is designed to reflect the following sources of legislation, advice and guidance in connection with the management of anti-social behaviour

- Anti-Social Behaviour, Crime and Policing Act (2014)
- Crime and Disorder Act (1998) (as amended)
- Police Reform Act (2002)
- Anti-Social Behaviour Act (2003)
- Drugs Act (2005)
- Police and Justice Act (2006)
- Policing and Crime Act (2009)
- Violent Crime Reduction Act (2006)
- Local Government Act (2000)
- Housing Acts (1985 and 1996)
- Environmental Protection Act (1990)
- Equality Act (2010)
- Human Rights Act (1998)
- Data Protection Act (2018)
- The Control of Pollution Act (1974)
- Noise Act (1996)
- Cleaner Neighbourhoods & Environment Act (2006)
- Licensing Act (2006)
- Children Act (2004)

Enforcement Concordat (Cabinet Office 1998); Enforcement Concordat: Good Practice Guide for England and Wales

4.14 This policy takes into account the principles of the *Enforcement Concordat* which the Council signed up to in March 1998 which are: Standards, Openness, Helpfulness, Complaints, Proportionality and Consistency.

<https://webarchive.nationalarchives.gov.uk/+/http://www.berr.gov.uk/files/file10150.pdf>

Crown Prosecution Service: The Code for Crown Prosecutors

4.15 Issued under Section 10 of the *Prosecution of Offences Act 1985*

[Prosecution of Offences Act 1985 \(legislation.gov.uk\)](https://www.legislation.gov.uk/ukpga/1985/20/section-10)

4.16 When deciding whether to prosecute, Ealing Council has regard to the provisions of *The Code for Crown Prosecutors* as issued by the Director of Public Prosecutions. The Code is a public document that sets out the general principles to follow when decisions are made in respect of prosecuting cases. The Code sets out two tests that must be satisfied commonly referred to as the 'Evidential Test' and the 'Public Interest Test':

A. Evidential Test – is there enough evidence against the Defendant?

When deciding whether there is enough evidence to prosecute, Ealing Council will consider what evidence can be used in court and is reliable. We must be satisfied there is enough evidence to provide a "realistic prospect of conviction" against the alleged offender.

B. Public Interest Test – *is it in the public interest for the case to be brought to court?*

Ealing Council will balance factors for and against prosecution carefully and fairly, considering each case on its merits.

Data Protection and Information Sharing

- 4.17 The power under Section 115 of the Crime and Disorder Act 1998 and under Schedule 2, Part 1, Paragraph 2 of the Data Protection Act 2018 allows agencies to disclose information for the detection and prevention of crime and anti-social behaviour.

Equality and Diversity

- 4.18 The Council's Safer Communities Team will apply this policy consistently, fairly, and will not discriminate against anyone based on any relevant characteristics, including those set out in the Equality Act 2010.

5. PRINCIPLES OF GOOD ENFORCEMENT

Standards

- 5.1 Clear standards will be drawn up which set out the level of service and performance people can expect to receive. These standards are set out in our service standards and other documents which are available to the public. Performance and delivery of these standards will be reported and monitored by Councillors and senior officers.

Openness

- 5.2 Information and advice will be provided in plain language and will be offered through a variety of means, including braille and translation into different languages where required.
- 5.3 The Council will be open about how it works, including any charges set. General issues specific compliance failures or problems will be discussed with anyone experiencing difficulties. A clear distinction between compulsory statutory requirements and advice or guidance about what is desirable will be applied. Where appropriate, advice will be put in writing. The reasons for any remedial work that may be necessary will be explained and a reasonable time scale for completion will be given.

Helpfulness

- 5.4 The Council will provide a courteous, helpful and efficient service and our staff will identify themselves by name, where it is appropriate to do so.
- 5.5 A contact point and range of contact options will be provided, and people will be encouraged to seek advice and information. Applications for enforcement will be dealt with efficiently and promptly.
- 5.6 The Council will ensure that our enforcement services are coordinated both internally and with outside bodies to minimise unnecessary overlaps and time delays.

Proportionality

- 5.7 When deciding on the type of enforcement action to take, officers will consider the circumstances of the case and the attitude and history of the parties involved. The Council will ensure that any remedial action required is proportionate to the risks and/or disadvantage created by the non-compliance and that it reflects any advice issued by Central Government or other coordinating bodies. Where a simple caution or prosecution is being considered, officers will consider the Home Office Guidance and *The Code for Crown Prosecutors*.

Consistency

- 5.8 Enforcement officers will be expected to exercise judgement in individual cases. In doing so that Council will ensure that their duties are carried out in a fair and equitable manner and will promote arrangements that ensure consistency.
- 5.9 The Council will liaise with other authorities and enforcement bodies to ensure consistency and to explore and develop best practice.

6. ADMINISTRATION

Confidentiality

- 6.1 The Council will ensure that the identity of persons contacting the Safer Communities Team, and any information supplied by persons, is not revealed to a third party except: -
- a) Where the law requires or
 - b) Where the case goes to court; or
 - c) With the prior agreement of the person supplying the information

Persons wishing to remain anonymous may do so and information supplied in connection with breaches of enforcement will be investigated where possible and feasible to do so.

Complaints

- 6.2 The Council will respond to complaints about the service it provides in accordance with the Corporate Complaints Procedure.

Implementation

- 6.3 Responsibility for implementation of the policies and procedures outlined in this document falls within the remit of the Council's safer communities team. When a safer communities officer takes the view that enforcement action is required, this will be discussed with the relevant team leader, who will decide on the appropriate action to be taken. This discussion should be recorded on the case file. Implementation will then be monitored by the team leader with oversight of the Head of Community Safety, who is the signatory on legal referrals.

Review of Policy

- 6.4 This policy will be reviewed and updated as required by legislation, guidance or other circumstances which may impact on the principles set out in this document.

7. ENFORCEMENT

- 7.1 The aim of the council's safer communities team, is to improve the quality of life for all individuals, taking action to tackle and reduce anti-social behaviour and its impact on residents. The council recognises that anti-social behaviour can be a serious problem that affects the quality of life of individuals, families and communities. It is committed to tackling anti-social behaviour and will always consider the full range of powers and resources available (both criminal and civil) to ensure that, together with its partners, it takes an effective stand against perpetrators and ensures victims are supported.
- 7.2 It is recognised that many cases of anti-social behaviour can be resolved by informal means, such as the provision of advice and guidance and through mediated resolutions and verbal or written warnings. However, where this approach is not effective or in cases where such an approach is not appropriate, more direct means of enforcement will be considered as the circumstances of each case dictate. Enforcement interventions will be proportionate, necessary and justified.

Informal Enforcement Action

- 7.3 Early and informal interventions can establish clear standards of behaviour and provide a clear message to individuals involved that anti-social behaviour will not be tolerated. Simple measures, such as making the individuals aware of the impact of their behaviour on victims of anti-social behaviour and the consequence of formal enforcement action, can sometimes be sufficient for the behaviour to cease.
- 7.4 In some cases informal enforcement action may not always be appropriate, depending on the circumstances of the ASB or crime taking place, as well as the impact and / or risk to the victim or the community. Safer Communities Officers must consider progressing a case directly to formal enforcement action in such instances.

Mediation

Officers will consider a referral to *Ealing Mediation Service* which is an early intervention tool to support parties to resolve a conflict or dispute. The service offers an impartial and confidential process that provides an opportunity for both parties to reach an agreement on a range of issues such as noise, rubbish, pets, parking, damage to property, harassment, boundaries, and shared areas. Consent must be sought from at least one and (in most cases) preferably both parties, prior to any referral and the service is voluntary.

Mediation may not be undertaken if there is legal action already being taken against either one or both parties. Mediation is also not normally appropriate in cases involving violence or where notable criminal offences have occurred or are being investigated.

Warning letters

These are sent when the Safer Communities Team have evidence that the alleged perpetrator is responsible for the anti-social behaviour as set out in tenancy agreement with the London Borough of Ealing. Their aim is to notify the alleged perpetrator that we believe ASB has occurred and to remind them of obligations stated within the tenancy agreement. The letter informs the perpetrator that unless the ASB ceases, we will consider legal action.

Interview the alleged perpetrator

The aim is to contact, interview and advise the alleged perpetrator of the nature of the complaint, to hear their side and provide advice and guidance in how best to resolve these matters. If the problem can be resolved at this stage no further action is required. However,

Safer Communities Officers can make the decision to issue a verbal or written warning, regardless whether the alleged perpetrator is a Council tenant or not.

During such interviews, Safer Communities Officers provide perpetrators of ASB with a caution to ensure that perpetrators are aware that such interviews are not Police led and not under PACE. The caution also provides a warning to perpetrators that information discussed or disclosed throughout the interview, may be used in Civil proceedings should the Council need to take such action.

Verbal or written warnings

Before taking any legal action, warnings may be issued to the alleged perpetrator regarding the anti-social behaviour. Warnings provide the alleged perpetrator advance notice that, if certain identified behaviours continue, legal action may be considered. In using any type of warning, Safer Communities Officers should make clear to the perpetrator what behaviour is causing the issue and what effect this is having on victims or the community, as well as ensuring the consequences of non-compliance are explained clearly.

All warnings, whether verbal or written, will be documented on the Safer Communities case management system and followed up in writing to the perpetrator given that it may be used as evidence in court proceedings if required.

Trespass Notices / 'Banning' Letters

These may be used where individuals have been identified as causing ASB in or around an area of housing land managed by the Council and where the individuals in question do not live there and have no reasonable reason to be there. A trespass letter may be hand served or sent to the individual's home (where known), and confirms that:

- The individual has come to notice because of their ASB in or around the named estate
- They do not live on the estate and have no established clear reason to be there
- They are prohibited from returning to the estate for a period of 3 months, on threat of further action if they do return within the specified timeframe

Trespass notices are not in themselves legally enforceable but breach may provide helpful evidence for legal proceedings. Trespass notices warn individuals that the Council takes the behaviour and impact seriously, and they can often be successful in deterring perpetrators from returning to a particular location, without the need for formal legal action.

Acceptable Behaviour Contract (ABCs)

The Acceptable Behaviour Contract process seeks to eliminate anti-social behaviour by voluntary agreement. ABCs can be used in connection with children over the age of 10 years old (most often their parent or guardian), young adults and older adults. An Acceptable Behaviour Contract is a formal agreement in written form which is made between an individual and the Council.

Acceptable Behaviour Contracts are personalised and individually written to meet individual circumstances and needs. When signed, individuals agree that they will not display or act in an anti-social manner in the future and will not carry out certain types of activity that are connected to the behaviour identified.

Acceptable Behaviour Contracts are monitored for a period of up to six months and can be amended at a later date, should a further problem arise or have been identified. Although ABCs are not legally binding, if the individual continues to act in an anti-social manner, the

agreement can be used as evidence of attempts to amend the behaviour if legal action must be taken. This also applies should the individual refuse to enter into an ABC agreement.

Parental Agreements (PAs)

Similar to ABCs, Parental Agreements are voluntary and invite the cooperation of the parents or guardians to be effective. The Parental Agreement is aimed at improving the conduct of individuals under ten years of age as an individual younger than this is not responsible for his or actions by law. The Parental Agreement outlines the expected behaviour of the child and they are usually entering into in conjunction with an ABC for children/young people. These agreements normally last up to the six months.

Support and counselling

There may be underlying causes which increase the anti-social behaviour that an individual is displaying such as a mental health diagnosis, alcohol dependency or substance misuse and these factors can often drive anti-social behaviour and low-level crime. Providing an individual with a clear path to an adequate level of support, may reduce the chances of legal action being taken against a person and can provide those individuals with an opportunity to make positive changes.

Within the *Anti-Social Behaviour, Crime and Policing Act (2014)*, new powers allow professionals to actively deal with a range of issues through the use of positive requirements, however support services can be offered to individuals prior to formal court action. Some examples of local support services can include:

- Ealing RISE
- West London Mental Health NHS Trust
- Floating Support Services
- Adults & Children Social Care Services
- Housing
- St Mungo's
- Women's Wellness Zone
- IDVA Services
- Victim Support
- Ealing Mediation Services
- Integrated Youth Services
- Prevent
- Local Community Support Services or Groups
- Charities

Formal Enforcement Action

- 7.5 Where it is deemed that informal interventions are unlikely to resolve reported problems or indeed the on-going ASB, the Council's Safer Communities Team will take appropriate legal action as the next step.
- 7.6 In priority cases involving the use or threat of violence towards person, property and or where there is a serious risk of harm, the Safer Communities Team may not take any informal actions and instead take legal action in the first instance.
- 7.7 Enforcement tools used by the Council's Safer Communities Team will primarily fall under the Anti-Social Behaviour, Crime and Policing Act 2014 which seeks to ensure legislation is victim-centred, easy to use and dependent upon local decision-making.

Legal Bundles

- 7.8 Once a decision has been reached to commence enforcement action, the safer communities officer will compile a full legal bundle, with all the documentary evidence obtained during the investigation.
- 7.9 Legal bundles will slightly differ for each specific enforcement tool being used and a list of documents will be listed under the relevant section. There are some compulsory documents that are required in all legal bundles.

- **Instruction to Legal**

Outlines the action being sought, details of the individual/Defendant, Witness details and a checklist for the Equality Act Assessment and relevant Police information/action. Signed off by Head of Service.

- **Equality Act Assessment**

An assessment to assist the person responsible for instructing Legal Services to commence legal proceedings in ensuring that the Officer has considered all matters that they are required to under the Equality Act 2010 and Children Act 2004. The purpose of the assessment is to demonstrate to the court that Officers have had regard to the Defendant's disability and have reached a view on the appropriateness of taking legal proceedings. Signed off by Safer Communities Operations Manager.

Instructions to Legal Services will not be accepted without a completed and signed EAA

EAA's are only required in the Defendant has a protected characteristic

- **Lead Statement**

In the form of a witness statement, a lead statement is prepared by the Safer Communities Officer and should address briefly the ASB that the Council wish to address. The lead statement provides a case summary of the history, exhibits the necessary evidence we wish to rely on, a steer as to the behaviour we wish to stop and the impact of the behaviour. Unless the lead officer has actually witnessed ASB they should not be giving evidence of the ASB.

All lead statements must include a Statement of Truth, be signed and dated.

Statement of Truth:

*"I believe that the facts stated in this witness statement are true. I understand that proceedings for **contempt of court** may be brought against anyone who makes, or causes to be made, a false statement in the document verified by a statement of truth without an honest belief in its truth".*

- **Civil Procedure Rules**

Further rules and practices to use when following civil procedures can be found at

[PRACTICE DIRECTION 32 – EVIDENCE - Civil Procedure Rules \(justice.gov.uk\)](https://www.justice.gov.uk/practice-directions/32-evidence-civil-procedure-rules)

Evidence

- 7.10 Legal bundles will contain a range of documentary evidence obtained during the course of the investigation. Evidence will be referenced within the lead statement and outlined within

an **Exhibit Notice**. All exhibits will be marked appropriately with the exhibit number, date, and a brief description of what the evidence is. Examples of evidence include:

- Photographs
- CCTV footage (several copies will need to be made)
- Letters
- Interview notes
- Warnings
- Previous ASB case related history
- S115 Police Disclosure
- Parkguard patrol service reports
- Copies of any relevant referrals and redacted minutes that may be relevant from professional or case management meetings
- Relevant MG11's (Police statements) used in criminal proceedings or prosecutions
- Certificate of conviction
- PNC record (spent convictions redacted and not used as evidentiary material)
- Contemporaneous notes
- Other relevant material

Witness Statements

7.11 Witness statement's within legal proceedings can also be relied upon from a variety of professionals as well as residents/victims.

- **Police Supporting Statements**

Can be provided by SNT Officers or ASB Police Officers based within the Council's Safer Communities Team. This type of statement provides an overview of Police written records and is usually dated within a 6 – 12-month timeframe. Statements need to focus on the behaviour we wish to prohibit.

- **Police Impact Statements**

Are usually provided by SNT Officers whereby they can document any professional dealings they may have had with the Defendant in addition to detailing the impact the behaviour has had on the local community, what residents have told them and any relevant action taken. Statements need to focus on the behaviour we wish to prohibit.

- **Professional Statements**

Statements from other professionals involved in the case i.e. Housing Officers, Social Workers, Mental Health Care Coordinators, Parkguard Officers etc

- **Resident or Victim Statements**

Residents or Victims are encouraged to provide their own impact statement in support of legal proceedings. These types of statements can strengthen the case as a court will be able to see and hear the direct impact the Defendant's behaviour has had on residents and/or the local community.

Statements must include the full name of the person providing the statement and a brief description of their address i.e. "I am a resident of Crown Street" and not specific their exact address. Despite providing a named statement, it is still the duty of the Council to safeguard residents or victims.

If a resident or victim has provided a named statement, they must also be willing to attend court to provide evidence based on their statement and/or be cross examined by the Defendant or their legal representation should the need for this arise.

The Court can implement special schemes such as a room to sit in, a separate entrance and exit into the court room and erect screens around the box when a witness is providing evidence against a Defendant if they choose. This must be requested to the Court in writing in advance of any scheduled hearing.

Resident or Victim Statements can also be made anonymously.

▪ **Anonymous Statements**

Residents or Victims can opt to provide anonymous statements as part of supporting legal action against Defendant's in Civil proceedings. Anonymous statements can be provided for various reasons such as in fear of reprisals if their identity is discovered, at risk of harm from the Defendant/s or simply just wish not to be known. There are 3 possible versions of an Anonymous Witness Statement

- a) *A statement from the anonymous witness with personal details redacted and signature redacted. With a unredacted version available for a Judge. The lead officer could refer to the circumstances in which that statement was taken in the lead statement. That would include background, if known to the Council, when ASB was first reported if the statement given is consistent with other evidence.*
- b) *If the officer who the statement, is different to the officer who provides the lead statement, that officer completes a covering statement detailing the circumstances in which the statement was taken and exhibits the anonymous statements.*
- c) *An officer takes the statement from the anonymous person to make a statement detailing the statement of the anonymous person.*

Anonymous statements still must be signed and dated by the person providing the statement and this copy will be submitted to the court as part of the legal bundle. All other copies will be P.P by the lead officer and will also state "original signed".

Anonymous statements must not include the name, address or any link that can directly or indirectly identify the person providing the statement.

Hearsay Evidence

- 7.12 Hearsay evidence is now admissible in civil proceedings to a greater extent than in criminal proceedings, provided the correct procedures are followed. The rules regarding hearsay evidence in civil cases is governed by the Civil Evidence Act 1995, which explicitly provides that in civil proceedings evidence shall not be excluded on the ground that is it hearsay. Hearsay is defined as 'a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated'. Hearsay evidence can be provided by a Police Officer, Healthcare Official, or any other professional who has interviewed the witness or victim directly.

[Civil Evidence Act 1995 \(legislation.gov.uk\)](http://legislation.gov.uk)

[The hearsay rule in civil proceedings CM 2321 \(publishing.service.gov.uk\)](http://publishing.service.gov.uk)

Contempt of Court

7.13 Contempt of court is behaviour that opposes or defies the authority, justice, and dignity of the court and can also happen when someone risks unfairly influencing a court case. It may stop somebody from getting a fair trial and can affect a trial's outcome.

Civil contempt generally involves the failure to perform an act that is ordered by a court as a means to enforce the rights of individuals or to secure remedies for parties in a civil action. Criminal contempt involves behavior that assaults the dignity of the court or impairs the ability of the court to conduct its work. Criminal contempt can occur within a civil or criminal case.

Contempt of court includes:

- Disobeying or ignoring a court order such as:
 - Failure to attend a court despite a summons requiring attendance
 - Failure to comply with a court order such as a Civil Injunction Order
- Taking photos or shouting out in court
- Refusing to answer the court's questions if you're called as a witness
- Publicly commenting on a court case, for example on:
 - Social media
 - Online news articles
- Providing a dishonest statement and making a false statement of truth

7.14 Contempt charges may be brought against parties to proceedings including lawyers. Other court officers, jurors, witnesses or people who insert themselves in a case. If an individual or business is found to be in contempt of court, it is punishable by imprisonment for up to two years, a fine or both.

[Contempt of Court Act 1981 \(legislation.gov.uk\)](http://legislation.gov.uk)

Civil Injunction Order

7.15 Civil Injunction Orders can be applied for under Part 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 to stop a person or persons aged 10 or over from engaging in anti-social behaviour, prevent that behaviour from escalating and to set a clear standard of expected behaviours. Orders are issued by the county court and High Court for over 18's.

Applications where the person is aged between 10 – 17 will be applied for through the Youth Court.

To obtain an injunction, the court must be satisfied that two conditions are met:

a) On the balance of probabilities, that the Defendant has engaged or threatens to engage in anti-social behaviour

and

b) it is just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.

For the purposes of preventing a person from engaging in anti-social behaviour, an Injunction Order can:

a) prohibit the Defendant from doing anything described in the injunction order

and

b) require the Defendant to do anything described in the injunction

7.16 Injunctions are considered a quick remedy and can last for a fixed or indefinite period for adults. In the case of under 18's, the prohibitions or requirements must have a specified time limit, and the maximum term is 12 months.

7.17 The Safer Communities Team recognises that making the public aware of the person accused and the terms of the order helps local residents to identify and report breaches, but can also reassure communities that appropriate action has been taken in response to the reported anti-social behaviour. Unless the Court has made a Section 39 Order under the Children and Young Persons Act 1933, which prohibits publication, the decision to publicise injunctions will be taken by the Safer Communities Team and Police through its regular communication processes.

Power of Arrest

7.18 A court may attach a power of arrest to any prohibition, requirement, or the whole order. A request for a power of arrest must be supported by the written evidence within the lead statement. For the court to consider a power of arrest, the following grounds must be met

a) the Defendant has engaged or threaten to engage in the use or threatened use of violence against other persons

or

b) there is a significant risk of harm to other persons from the Defendant

7.19 A power of arrest cannot be applied to a positive requirement.

Without Notice

7.20 Some injunction applications may be made without notice being given to the person in exceptional cases to stop or prevent serious harm to victims. Reasons for why a without notice application is being submitted to the court, must be detailed within the lead statement. Once a without notice application is made, the court must either:

a) Grant an interim injunction order and adjourn the proceedings for a full hearing

b) Not grant an interim injunction order and adjourn the proceedings for a full hearing

c) Dismiss the application

Interim Injunctions

7.21 If an interim injunction order is granted on a without notice application, the court may grant the interim order to last until the final (on notice) hearing or until further order, if the court thinks it is just to do so.

7.22 The court may also grant an interim injunction where a standard application is adjourned. The interim injunction can only include prohibitions, not positive requirements.

Variation and Discharge of Injunctions

7.23 Upon application, the court has the power to vary or discharge the injunction by either the Defendant or the applicant. Officers must consider applying to vary the injunction in response to changes in the respondent's behaviour. The powers of the court to vary the injunction include:

- To remove a prohibition or requirement
- To include a prohibition or requirement
- To reduce the period for which a prohibition or requirement has effect
- To extend the period for which a prohibition or requirement has effect
- To attach a power of arrest, or extend the period for which a power of arrest has effect

7.24 To apply for a variation or discharge, the lead officer must set out the reasons and evidence within a lead statement to the court.

Youth Injunctions

7.25 Officers must consult with the YOT (Youth Offending Team) if the application is against someone under the age of 18 and inform any other organisation or individual the Officer thinks may be appropriate. The consultation requirement does not allow for the Youth Offending Team to *reject* the application but it is important that Officers fully consider and take into account representations from YOT and other bodies as part of partnership working involving young people.

7.26 Conditions set by the Youth Court are monitored by the responsible officer in the Youth Offending Team and can assist with tailoring positive requirements to the needs of the young person.

7.27 The consultation requirement does not apply to a without notice application but must take place once the court has adjourned a without-notice application, prior to the first on-notice hearing.

Positive Requirements

7.28 Positive Requirements can be requested in parallel with prohibitions on a Community Protection Notice or a Civil Injunction in a considered and balanced approach that accounts for tackling drivers of ASB/crime and employs the use of interventions to address offending behaviours by way of prevention, reduction, reparation or rehabilitation. The applicant will have discretion to tailor the positive requirements in each case to address the respondent's individual circumstances, behaviour and needs.

7.29 Positive requirements must not interfere with the times when the Defendant normally works or attends school or any other educational establishment. Any positive requirements must also avoid any conflict with any other court order which the Defendant is subject to.

7.30 Positive requirements must specify the individual or organisation who will supervise the requirement, which will also include:

- A duty to make the necessary arrangements
- Promote compliance
- Inform the Applicant of compliance/non-compliance

- Defendant must keep in touch with the supervisor and notify them of any change of address
- 7.31 Before a positive requirement is made, the court must receive evidence about the suitability and enforceability of the requirement. A statement must be prepared by the appropriate service supervisor as part of the overarching application.
- 7.32 Written statements of the appropriate service and lead statement will need to document how any positive requirement will help stop or prevent the Defendant from engaging in or threatening to engage in anti-social behaviour in the future.
- 7.24 Further guidance on use and application of Positive Requirements can be found in the Safer Communities Sharepoint drive.

Injunction Procedure

- 7.25 Once a Civil Injunction Order (interim or full) has been granted by the court, there are several commitments that are required by Safer Communities Officers:
- a) A copy of the order and bundle (application and evidence) must be served on the Defendant and it is good practice to read to the Defendant in full to ensure they have full understanding of the order, the prohibitions, any upcoming or additional hearings that have been scheduled and the power of arrest (if granted) so they are aware of any breach consequences.
 - b) The Defendant should also be advised to seek legal advice or representation.
 - c) A statement of service will need to be completed once personal service has been achieved, signed copies sent to Legal Services and uploaded to the Safer Communities case management system.
 - d) A copy of the order is sent to the Police to be uploaded to PNC along with a copy of the internal Arrest Procedure if a power of arrest was granted to part of or the full order. Depending on the circumstances of the order and prohibitions, it may be worthwhile circulating via email to any local SNT's that the order affects.
 - e) A copy of the order, application and personal service should be uploaded to the Safer Communities case management system and documented clearly under the relevant Enforcement tab.
 - f) Any witnesses who have provided evidence, or who have been named or protected within the order should be notified that the order has been granted, the prohibitions and provided clear instructions on how to report a breach
 - g) A copy of the order should be circulated to the relevant Housing Hub if the Defendant is a Council tenant.
 - h) Depending on the circumstances of the order/prohibitions i.e. prohibited from entering a named Council estate, the decision to publicise injunctions will be taken by the Safer Communities Team and Police through its regular communication processes. In order to complete this, the lead officer must submit via Police a Form 728 - *DPA request to release custody image to LBE Council for public release* along with the details of the Defendant and prohibitions of the order. This document is signed off by the BCU Commander and a custody image is released to the lead officer who will complete an Injunction Leaflet to be publicised.

Enforcement of orders

Breach with Power of Arrest

- 7.26 Where a power of arrest is attached to an injunction, a Police Officer (rank of Constable or higher) may arrest a Defendant without warrant if they have reasonable cause to suspect that the Defendant is in breach of a provision of the injunction which carries power of arrest.

Following an arrest, the Defendant must be brought before the County Court which issued the injunction within 24 hours of arrest. The 24-hour rule starts from the time of arrest, but does not apply on Sundays, Good Friday and Christmas day. If an arrest occurs on one of these days, at the discretion of the relevant Police Custody Sergeant, the Defendant may remain in custody until the County Court is open.

Example – if a Defendant is arrested on a Saturday at 11.00am and provided the Defendant can be brought before the court before 11.00am on the following Monday will be covered by the rule that Sundays do not count in calculating the 24 hour period.

Once the Defendant has been arrested, the Police must contact the appropriate Safer Communities Officer and Team Leader to notify them of the breach and to send a copy of their witness statement or in MG11 to the lead Safer Communities Officer. The burden of proof on a breach of injunction is the criminal standard 'beyond reasonable doubt'.

It is preferable for the arresting officer to attend court along with the Defendant; the arresting officer may also need to attend any subsequent hearings if the Defendant denies the allegation and/or requests legal representation or any other action is taken that results in the matter being adjourned by the court.

Committal Application

- 7.27 If a breach of injunction occurs where there is no power of arrest attached to the order or a specific prohibition, the lead Safer Communities Officer can apply to the court via a Committal Application. In some cases the committal route may also be taken in the event of arrestable offences having occurred / been witnessed but where an arrest for whatever reason did not take place.

An affidavit (*written statement confirmed by oath or affirmation, for use as evidence in court*) will need to be completed by the witness, along with any relevant evidence. Affidavits can be completed by any professional such as the Lead Officer, a Police Officer etc in addition to any residents or other witnesses to the breach. The affidavit will need to be signed and sworn before an external Solicitor.

Once the affidavit/s have been completed, the documents are sent to Legal Services who will complete a Committal Application and send to the court for a hearing date to be scheduled.

When the court has listed a hearing, the legal bundle containing the application for committal and evidence (affidavit and any relevant evidence) along with the court order detailing the hearing details will need to be personally served on the Defendant, with a statement of service completed once personal service has been completed. Any witnesses that provided affidavit's will also need to be notified of the court date for them to attend and provide evidence.

Remand & Bail

7.28 The court has the power to remand a Defendant in custody or on bail after they have been arrested for suspected breach of the injunction (with or without warrant). Under 18-year-olds can only be remanded in custody on medical grounds. The court has discretion as to whether to remand a person on bail or in custody. If bailed by the court, the Defendant must provide the court with an up to date address.

Possible Court Outcomes

7.29 On finding that a Defendant has breached the injunction order, the court has the power to impose a number of penalties, once any aggravating and mitigating factors have been taken into account.

- Note a breach, but make no order on it
- Unlimited Fine
- Send to hospital for a report to be complete
- Suspended Sentence
- Imprison for up to 2 years

For Youth Injunctions:

- Note a breach, but make no order on it
- Curfew
- Activity Requirement
- Supervision Order
- Civil Detention Order of up to 3 months for 14 – 17-year olds

Criminal Behaviour Order (CBO)

7.30 A Criminal Behaviour Order is available on conviction for any criminal offence in any criminal court. The order is aimed to tackle the most serious and persistent offenders when their behaviour has brought them before a criminal court.

For a CBO to be made:

a) 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

b) That the court considers making the order will help in preventing the offender from engaging in such behaviour

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. Orders can include both prohibitions and positive requirements.

Applicants

7.31 Primarily, CBO's are applied for by the Police and the CPS but in some cases local council can also apply for a CBO after the offender has been convicted of a criminal offence.

When to apply

- 7.32 The court cannot consider a CBO application at a hearing after the offender has been sentenced, unless court proceedings have been adjourned from the sentence date for the application to be considered. Therefore, it is necessary for the notice of intention to apply for a CBO be served as soon as practical i.e. when an offender has been arrested/charged and prior to the offender being brought before the court.

Interim Orders

- 7.33 The CPS can apply for an interim order to be made when an offender is convicted but the court has been adjourned for sentencing or the CBO hearing has been adjourned until after sentencing has taken place. An interim CBO can be granted, if the court thinks it is just to do so.

Duration

- 7.34 A CBO granted on adults aged 18 and over can be for a minimum of two years up to indefinite period (until further order). For under 18's CBO's must be between one and three years. The duration of any order will be documented on the order itself.

Youth CBO's

- 7.35 Formal consultation with the local YOT (Youth Offending Team) is a requirement when applying for a CBO where the offender is under 18. The views of the YOT should be included in the application and evidence when referred to the CPS.

Variation and Discharge of CBO's

- 7.36 A CBO can be varied or discharged by the court which made the original order. Either the offender or the prosecution can make an application, but if this is dismissed by the court neither party can make a subsequent application without the consent of either the court or the other party.

Penalty on Breach

- 7.37 Breach of a criminal behaviour order is a criminal offence and must be proved to the criminal standard of proof: beyond reasonable doubt.

Over 18's on summary conviction

- Up to six months imprisonment
- Fine
- Or both

Over 18's on conviction on indictment (*serious crime*)

- Up to five years imprisonment
- Fine
- Or both

Under 18's:

- Sentencing powers in youth court apply (refer to page 24, section 7.28)

Community Protection Warnings/Notices

- 7.38 Community Protection Notices are designed to have a broad use and should focus on how victims and communities are affected. Safer Communities Officers should therefore talk to

potential victims and understand the wider harm to the community; this will give reassurance to communities and assist with building a case and gathering evidence against the person.

In order to issue a Community Protection Warning or Notice, the Lead Officer must be satisfied that the conduct of the individual, business or organisation is or has:

- Having a detrimental effect on the quality of life of those in the area
- Persistent or continuing in nature, and
- Unreasonable

A CPN can be issued to any person aged 16 or over, a business or an organisation. If a CPN is being issued to a person, it should be served in person. However, where not possible, posted or left at a proper address. If a CPN is being issued to a business, it must be served to the most appropriate person who can reasonably control or affect the behaviour, either in person or posted to them. If the owner cannot be determined, the Lead Officer can post the CPN to the premises; provided reasonable enquiries have been made to identify them.

Issuing a Written Warning

7.39 Before a CPN can be issued, a written warning must be issued to the person committing the anti-social behaviour. It must state that if the individual does not cease, they could be issued with a CPN. The CPN must also:

- Outline the behaviour that is considered anti-social
- State the time by which the behaviour (or its impact) is expected to have changed
- Set out the potential consequences of not complying with a CPN Warning, and the sanctions if breached

It is the responsibility of the Lead Officer to decide how long should be given for the matter to be dealt with; several days or weeks may be deemed as reasonable but with immediate effect could also be expected.

Issuing a Notice

7.40 If the recipient of the warning letter has not ceased their behaviour within the timescales set, a CPN be issued.

The aim of the CPN is to stop behaviour and put in place reasonable steps to ensure it will not reoccur. It should be adapted to the situation and can include any or all of the following:

- A requirement to ***stop doing*** specific things
- A requirement ***to do*** specific things
- A requirement to take reasonable steps to achieve specific results within the set timescales

Any restrictions, requirements and timescales included in a CPN must be considered in the context of partnership problem solving and initiatives to resolve ongoing anti-social behaviour. The requirements will vary depending on the situation and this is to ensure requirements are appropriate and can be monitored by the agencies involved. Similar to a Civil Injunction Order, there must be relevant evidence or incidents which Lead Officers will use as a steer to the behaviour we wish to stop.

Consultation & Participation Process

7.41 Although the legislation states that consultations have purposefully been kept to a minimum, the Safer Communities Team have implemented an internal consultation and participation process primarily for when issuing a Community Protection Written Warning to 16 – 17-year olds. The participation process involves:

- Consulting with Social Care or the Youth Offending Team
- Completing a consultation document
- Informing the young person and their Parent/Guardian
- Arranging a participation meeting with the young person, parents and social worker/ Youth offending team
- Listening to the views and opinions of all parties
- Co-constructing the Community Protection Warning

7.42 Further guidance on use and application of Community Protection Notice and Young People can be found in the Safer Communities Sharepoint drive.

Non-Compliance

7.43 In the event of non-compliance with a CPN a number of options exist:

- Issued with a Fixed Penalty Notice in the sum of £100
During this period no further action can be taken, to allow time for payment. Payment of the FPN discharges any liability for the offence
- Prosecution and conviction where the maximum penalty is a fine not exceeding level 4 on the standard scale (currently £2,500 for an individual, and up to £20,000 for a business or organisation)
- On conviction for the offence of failing to comply with a CPN the court may be asked to impose a Remedial Order and/or a forfeiture order. This could be for a number of reasons, for instance: A remedial order may require the defendant:
 - to carry out specified work (this could set out the original CPN requirements); or
 - to allow work to be carried out by, or on behalf of, a specified local authority.

Appeals Process

7.44 *Written Warning*

Appeals must be made in writing to safertools@ealing.gov.uk

Appeals will then be referred to the Ealing Community MARAC. The chairs for EC MARAC will review the appeal and make a decision on the outcome. Any evidence to support the CPN Written Warning must be submitted by the relevant Cluster Team that issued the warning.

7.45 *Community Protection Notice*

Any person issued with a CPN can appeal. The appeal will be heard in a Magistrates Court and can be made on the following grounds:

- The behaviour did not take place
- The behaviour has not had a detrimental effect on the quality of life of those in the locality
- The behaviour was not persistent or continuing
- The behaviour was not unreasonable
- The individual cannot reasonably be expected to control or affect the behaviour

- The requirements are considered unreasonable
- There is a material defect or error with the CPN, or
- The CPN was issued to the wrong person

Any appeal must be made within 21 days of the issue of a CPN. Any requirements to do a specific activity to achieve a specific result must be put on hold until the outcome of the appeal. Requirements to stop people doing specific things will continue to have effect.

Public Spaces Protection Order

7.46 Public spaces protection orders (PSPOs) are designed to deal with a particular nuisance or problem in a defined 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. They are intended to ensure the majority of citizens can use and enjoy public spaces, safe from anti-social behaviour.

Applicants, Test and Consultation

7.47 A PSPO can be made by Local Authorities if they are satisfied on reasonable grounds that the activities carried out or likely to be carried out in a public space: -

- Have or are likely to have, a detrimental effect on the quality of life of those in the locality
- Is, or is likely to be, persistent or continuing in nature
- Is, or is likely to be unreasonable and
- Justifies the restrictions imposed

Before making a PSPO, the council must consult with the local police. This should be done formally through the Police and Crime Commissioner, but details could be agreed by working level leads. This is an opportunity for the police and council to share information about the area and the problems being caused as well as discuss the practicalities of enforcement. In addition, the owner or occupier of the land should be consulted.

The council must also consult whatever community representatives they think is appropriate. This could relate to a specific group, for instance the residents' association or an individual or group of individuals, for instance regular users of a park or people who participate in specific activities such as street entertainment. Before the PSPO is made, the council also has to publish the draft order in accordance with regulations published by the Secretary of State.

Where can a PSPO apply?

7.48 A PSPO can apply on any public space within its own area/authority. 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.

Duration of PSPOs

7.49 The maximum duration of a PSPO is three years, but they can last for shorter periods of time where appropriate.

At any point before expiry, the Council can extend a PSPO by up to three years if they consider that it is necessary to prevent the original behaviour from occurring or recurring. A

formal consultation process should take place with the local police and other community representations they think appropriate before any extension of a PSPO is agreed.

What to include in a PSPO?

- 7.50 A PSPO can include multiple restrictions and requirements. It can prohibit certain activities, such as the drinking of alcohol as well as placing requirements on individuals carrying out certain activities such as providing a name and address to an authorised officer when asked to do so. A PSPO can be designed to be used more flexibly to deal with local issues which can be sourced during the consultation period with community representatives to meet their needs of those living or working nearby.

Restricting Alcohol

- 7.51 A PSPO can be used to restrict the consumption of alcohol in a public space where the test has been met, apart from where a premises' is licensed for the supply of alcohol.

A PSPO cannot prohibit the consumption of alcohol in a designated area, however a PSPO can require people to cease drinking or surrender their alcohol if requested by authorised officer in a PSPO area because they have been involved in anti-social behaviour. Alcohol can be disposed of by an authorised officer if they choose to confiscate it.

Restricting Access

- 7.52 A PSPO can also be used to restrict access to a public right of way, however when deciding this approach, the Council must consider a number of factors, including what impact will the restriction have and whether there are any alternatives. A further consultation is required when considering restricting access via a PSPO including for those who regularly use the right of way, as well as the impact on those who live nearby.

Variation and Discharge of PSPOs

- 7.53 The Council can vary the terms of a PSPO order at any time, this can include the size of the restricted area or the specific requirements or restrictions. A council can also seek to discharge it at any time.

Penalty on Breach & Enforcement

- 7.54 It is an offence for a person, without reasonable excuse to:
- Do anything that the person is prohibited from doing by a PSPO (other than consume alcohol)
 - Fail to comply with a requirement to which the person is subject under a PSPO

If the behaviour does not cease when asked to do so by a Police Officer, a Police Community Support Officer, or a person designated to enforce a PSPO by the Council, and there is no reasonable excuse for the continued behaviour, the person may:

- Issued with a Fixed Penalty Notice (fine) of £100
- If the Fixed Penalty Notice is not paid, the person may be prosecuted and convicted.

The maximum penalty is a fine not exceeding level 3 on the standard scale (£1000) or level 2 on the standard scale (£500) if you do not stop drinking when asked to do so not surrender your alcohol when asked to do so

Appeals

7.55 If any 'interested person' (a person living in, working in, or regularly visiting the affected area) wishes to appeal a PSPO, they must do so on one of the two grounds (Section 66 of the Anti-Social Behaviour, Crime and Policing Act 2014):

- The Council did not have the legal power to make the PSPO
- The Council did not follow all the requirements listed in Chapter 2 of the Anti-Social Behaviour, Crime and Policing Act 2014

The interested person(s) must appeal the PSPO with an application to the High Court within six weeks of the PSPO being made.

Premises Closure Order

7.56 A premises closure order is a robust, fast and flexible power that can be used to protect victims and communities by quickly closing a premises where significant nuisance or disorder has occurred.

Applicants

7.57 The power comes in two stages: the closure notice and the closure order. The closure notice can be used by the council or the police out of court. Following the issuing of a closure notice, an application must be made to the magistrates' court for a closure order. Unless the closure notice has been cancelled.

For approval for a closure notice for a period of 24 hours, a notice must be signed off by a Police Inspector or Council.

For approval for a closure notice for a period of 48 hours, a notice must be signed off by a Police Superintendent or a designated officer assigned by the Council Chief Executive Officer.

The Council's Safer Communities Team primarily use a 48-hour closure notice, prior to attending a magistrates' court for a closure order.

Consultation

7.58 Consultation is a requirement prior to issuing a closure notice. The Council and Police must ensure they consult one another, in addition to anyone else they think appropriate for example the victim, community representatives and other organisations and bodies such as registered social landlords.

Test

7.59 *Closure Notice*

A closure notice can be issued if the Council or a Police Officer (of at least the rank of inspector) is satisfied on reasonable grounds:

- That the use of particular premises has resulted, or (if the notice is not issued) is likely soon to result, in nuisance to members of the public; or
- That there has been, or (if the notice is not issued) is likely soon to be, disorder near those premises associated with the use of those premises, and that the notice is necessary to prevent the nuisance or disorder from continuing, recurring or occurring.

A closure notice cannot prohibit access in respect of anyone who habitually resides at a premises. This means that the notice cannot prohibit those who routinely or regularly live at those premises from entering or being in the address.

Closure Order

A closure order can subsequently be issued if the court is satisfied:

- That a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises or
- That the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public or
- That there has been, or (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, and that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

A closure order if granted by the court can prohibit access to anyone, including those who routinely live at a premises, for the full period of the order granted.

An application for a closure order must be made with every issue of a closure notice. If there is intention to cancel the notice prior to the end of the 48 hour period because a closure notice or temporary order is no longer deemed necessary, this should be communicated to the court via the application for a hearing for the closure order.

Process

7.60 The below process for Closure powers may vary slightly depending on each application's circumstances:

- ➡ Identify premises where nuisance and/or disorder has occurred or likely to occur. Complete Premises Closure Order application and submit to Legal Services.
- ➡ Once a date has been scheduled by the Magistrates court for a hearing, the Closure Notice should issued/served on premises for up to 48 hours with the relevant court date. Copies of the court application should also be issued/served at the address and on the Defendant.
- ➡ Within 48 hours, notice and application goes to Magistrates court
- ➡ If granted, Magistrates court can close premises via a Closure Order for up to three months. Copies of the Closure Order will need to be issued/served at the premises, replacing the Closure notice. Courts can also grant a partial Closure Order and will determine what the conditions are for the partial order i.e. allow the name tenant to remain living in the premises, but no other individuals will be able to access or enter.
- ➡ Magistrates court can extend a closure order for a further three months but not exceed six months in total. An application will need to be made to Legal Services and submitted to the court for a Closure Order extension, prior to the expiry date of the original order.
- ➡ Breach, if proven is a criminal offence

Temporary Orders

7.61 The Magistrates Court have the power to grant an extension of the closure notice if required. If granted, the court can order that a closure notice is to stay in force for a further 48 hours if satisfied it meets the test required for a closure notice.

Additionally, the court can also order that a closure notice to continue in force for a period, no more than 14 days in circumstances where a hearing is adjourned.

Access

7.62 Upon a full Premises Closure Order being granted, it is advisable to organise for contractors to secure the premises including entrance and exit points and sometimes, windows. This will assist in preventing access to any individuals that may put them in breach of the Closure Order.

The Council and the Police will use their discretion in either allowing access temporarily to enable individuals to collect or retrieve an item or belongings or allow an individual to retrieve an item or belonging on behalf of the Defendant.

Penalty on breach

7.63 An offence is committed when a person, without reasonable excuse, remains on or enters a premises in contravention of a closure notice or a closure order.

Closure Notice and Temporary Orders

Breaching a closure notice or temporary order is a **criminal offence** carrying a penalty of either.

- Imprisonment for a period of up to three months
- Unlimited fine
- Or both

Closure Order

Breaching a closure order is a **criminal offence** carrying a penalty of either:

- Imprisonment for a period of up to six months
- Unlimited fine
- Or both

Obstruction

It is a **criminal offence** to obstruct a police officer or a local council employee who is:

- Serving a closure notice, cancellation notice or variation notice
- Entering the premises or
- Securing the premises

This offence carries a penalty of:

- Imprisonment for a period of up to three months
- Unlimited fine
- Or both

Appeals

7.64 A closure notice cannot be appealed.

A closure order can be appealed. Appeals are to the Crown Court and must be made within 21 days beginning with the date of the decision to which the appeal relates. An appeal against the decision to issue the order may be made by.

- A person who was service the closure notice
- Anyone who has an interest in the premises upon whom the notice was not served

Where the court decides not to issue a closure order the following may appeal:

- The Police may only appeal where they issued the closure notice
- The local council may only appeal where they issued the closure notice

Possession (ASB Mandatory Grounds and ASB Discretionary Grounds)

- 7.65 Where possession proceedings are issued under the Housing Act 1985, the court has discretion as to whether or not grant a possession order on the basis of anti-social behaviour. The person accused of anti-social behaviour can be the council tenant or someone living with or visiting a tenant and the behaviour complained of is a breach of the terms of the tenancy agreement, or, in the case of secure tenants, one of the grounds for possession as defined by the Housing Act 1985.
- 7.66 The Anti-Social Behaviour, Crime and Policing Act 2015 introduced a new absolute ground for possession, with the purpose to speed up the possession proceed in cases where anti-social behaviour or criminality has been already proven by another court.

The new absolute ground (commonly referred to as Ground 2) is intended for the most serious cases of anti-social behaviour and landlords should ensure that the ground is used selectively. Subject to any human rights defence raised by the tenant and provided the landlord has followed the correct procedure and at least one of the five conditions are met, the court must grant possession.

Ground 1

Rent lawfully due from the tenant has not been paid or an obligation of the tenancy has been broken or not performed

When the tenant is a secure tenant the court must also be satisfied that it is reasonable to evict the tenant on the basis of the anti-social behaviour that has been evidenced. Courts must also give particular consideration to the actual or likely effect which the anti-social behaviour has had or could have had on others when considering whether it is reasonable to grant a possession order on the grounds of nuisance or annoyance.

Example of cases where eviction would be considered using **Ground 1** include:

- Involvement in criminal activity
- Threats of violence and/or violence against a person, staff and contractors
- Domestic abuse
- Drugs
- Damage to property
- Harassment by reason of age, disability, race, gender, religion, culture or sexuality

Ground 2

Condition 1: Conviction of serious offence

The tenant, a member of the tenant's household, or a person visiting the property, has been convicted of a serious offence.

[Anti-social Behaviour, Crime and Policing Act 2014 \(legislation.gov.uk\)](http://legislation.gov.uk)

Condition 2: Breach of a Civil Injunction Order

The tenant, a member of the tenant's household, or a person visiting the property has been found by a court to have breach a civil injunction.

Condition 3: Breach of a Criminal Behaviour Order

The tenant, a member of the tenant's household, or a person visiting the property has been convicted for breaching a criminal behaviour order.

Condition 4: Closure Order

The tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour

Condition 5: Noise Nuisance

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

Notice Seeking Possession

7.67 Under Section 83 of the Housing Act 1985, the Council are required to service a Notice Seeking Possession prior to any court proceedings. This is the first step towards requiring a tenant to give up possession of the dwelling.

A notice seeking possession must state the following information:

- The full name of the tenant
- Address of the property
- The grounds for possession
- Particulars of that ground
- Minimum notice period
- Inform the tenant of the right to request a review for mandatory anti-social behaviour grounds
- Inform the tenant that if they require help, advice and what to do about the Notice Seeking Possession by liaising with a Citizen's Advice Bureau, a housing aid centre, a law centre or a solicitor
- The date after which court proceedings can be brought

A Notice Seeking Possession must be served on the property, however best practice is to serve personally on the tenant, particular if they are not using the property at the time of issuing the Notice Seeking Possession.

Notice Requirements

7.68 ***Discretionary Grounds (Ground 1)***

A 4 weeks' notice period is provided with a Sunday expiration when issuing a Notice Seeking Possession, relying on Ground 1. This is the date the tenant can voluntarily give up possession of the dwelling, without the Council applying to the court.

Court proceedings can begin immediately or at any time during 12 months from the date of Notice Seeking Possession is served. Once the 12 months are up, the Notice Seeking Possession will lapse, and a new notice must be served before possession can be sought.

Mandatory Grounds (Ground 2)

In order to seek possession under Ground 2, the Council will need to serve a notice seeking possession of the proceedings on the tenant.

If the Council is relying on Conditions 1 Conviction of serious offence or Condition 2 Breach of a Civil Injunction Order, the notice must:

- State the conviction on which the Council proposes to rely (Condition 1)

- Set out the finding on which the Council proposes to rely (Condition 2)
- Be served within 12 months of the conviction or finding, if the conviction is appealed or if there is an appeal against the finding within 12 months of the appeal being determined, abandoned or withdrawn.

If the Council is relying on Condition 3 Closure Order, the notice must:

- State the relevant closure order
- Be served within 3 months of the closure order being made, or if there is an appeal against the order, within 3 months of the appeal being determined, abandoned or withdrawn

The minimum notice period is 4 weeks and the notices are valid for 12 months. If a notice is being served, relying on Ground 2, tenants have a statutory right to request a review of the Council's decision to seek possession under the Absolute Ground.

Review Procedure

7.69 A statutory review procedure applies to Council tenants when issuing a Notice Seeking Possession relying on the Absolute ground for possession. The review procedure is set out as follows:

- The request for a review must be made in writing within seven days of the notice to seek possession being served on the tenant.
- The review must be carried out before the end of the notice period
- The Council must communicate the outcome of the review to the tenant in writing
- If the decision is to overturn the original decision to seek possession, the Council must also notify the tenant of the reasons for the decision
- If the review upholds the original decision, the Council will proceed by applying to the court for the possession order

Process

7.70 In summary, the steps the Safer Communities Team will follow when taking possession of a property for ASB will include:

- ➡ Ensuring that all other appropriate interventions have been considered and liaison completed with Social Services and other support agencies if the tenant is vulnerable or there are children under the age of 18 residing in the property. These actions must be documented with the Equalities Act Assessment (EAA). A Notice of Seeking Possession cannot be served without an EAA being completed.
- ➡ Issue a Notice Seeking Possession
- ➡ Interviewing the tenant, if possible, to discuss the particulars of the breaches of tenancy. Officers may wish to consider monitoring the ASB for a period of time should this be appropriate
- ➡ Refer the possession application, evidence and any relevant witness statements to Legal Services. It is advisable for officers and witnesses to continue recording any further incidents of nuisance or other breaches of tenancy.
- ➡ Once a court hearing date has been listed, this should be confirmed to the tenant and any witnesses. You may also be asked to personally serve the relevant court order, application and evidence on the tenant.

Possible Outcomes

7.71 The court may refuse to grant a possession order, or if it grants one, it has powers to adjourn, stay, suspend or postpone the date of possession and can impose conditions.

Where the Court grants possession it has a number of possible options:

- **Outright Order:** This grants possession to the Council forthwith or after a specified period, typically 28 days.
- **Suspended Order:** The possession order is suspended, either for a fixed period or indefinitely, subject to *conditions* to which the tenant must adhere. Where possession has been sought due to ASB, the suspension of the order is ordinarily based on the ASB stopping. If the ASB continues, then the Safer Communities Team may apply to the court for the order to be enforced
- **Undertaking:** The court may accept an undertaking from the tenant to the court not to continue committing the nuisance or ASB. Breach of an undertaking given to a Court is contempt of court and proceedings may be issued for contempt.
- **No order:** If the court is not satisfied that either a ground for possession has been proved or that it is reasonable to make any order for possession, it must refuse to make an order for possession

Eviction

7.72 Unless the tenant voluntarily surrenders possession on or before the date set by the court when it granted the outright order, a bailiff's appointment must be arranged before the tenant is evicted.

Legal Services will apply for a warrant to enforce the possession order with the court bailiffs. Once an appointment has been agreed, the Safer Communities Team will coordinate necessary attendance from partners (generally including Police and locksmith) and inform any witnesses that an eviction has been scheduled, without giving the precise date. It is advisable for the Lead Officer to attend the eviction, complete the necessary inventory and Voids documents and to arrange for a lock change at the time the eviction has carried out. If for any reason the Lead Officer is unable to attend, arrangements must be made for another member of the Safer Communities team to be appropriately briefed and attend in their absence.

Noise Abatement Notice

7.73 Section 80 of the *Environmental Protection Act (1990)* allows Councils to serve a Noise Abatement Notice where it is satisfied that a statutory noise nuisance exists or is likely to occur or recur.

Councils must serve an abatement notice on people responsible for statutory nuisances; where the person responsible for the nuisance cannot be found or the nuisance has not yet occurred, the notice should be served on the owner or occupier of the premises. The notice will impose the abatement of the nuisance or prohibiting or restricting its occurrence and recurrence. The local authority can impose requirements with regards to the execution of works in order to prohibit or limit the said nuisance, and the taking of such other steps, specifying the time or times within which the requirements of the notice to be complied with.

In determining whether a noise problem amounts to a statutory nuisance, regard should be had to a number of factors including:

- The level and type of noise

- Duration
- Time of day or night when the noise occurs
- Whether any aggravating characteristics are present
- Any particular sensitivity of the complainant
- The character of the neighbour where the noise occurs
- The number of persons affected

For issues to count as a statutory nuisance it must do one of the following:

- Unreasonably and substantially interfere with the use or enjoyment of a home or a premises'
- Injure health or be likely to injure health

An abatement notice must be served on the premise's owner or occupier if either of the following apply:

- The person responsible cannot be found
- The nuisance has not yet happened but is likely to happen in the future

Penalty for non-compliance

7.74 Failure to comply with an abatement notice is a **criminal offence** for which the offender may be subject to criminal proceedings brought forward by the Council.

- Unlimited fine (amount is set by the court)
- Further fines for each day they fail to comply (amount is set by the court)

Councils can also take action to stop or restrict the nuisance by:

- Carrying out works and making the person given the notice pay for them (this can include **seizure or confiscation** of equipment and forfeiture order for the equipment to be destroyed)
- Applying to the High Court for an injunction (if prosecution is not adequate)

Appeals

7.75 Those served with an abatement notice may appeal to a Magistrates court with 21 days of service of the notice. Grounds for appeal include:

- Legal test has not been met to evidence that the disturbance amounts to a statutory nuisance
- The notice was served on the wrong person
- The notice is otherwise defective

Prosecution in Magistrates Court

7.76 The Council will use discretion in determining whether to bring a prosecution. Any decision made to prosecute will take in account the guidance set down by the 'The Code for Crown Prosecutors'. No prosecution may go ahead unless there is sufficient evidence to provide a realistic prospect of conviction and that prosecution would be in the public interest.

[Code-for-Crown-Prosecutors-October-2018.pdf \(cps.gov.uk\)](#)

Where the circumstances warrant it and the evidence to support a case is available, the Council can prosecute without warning or recourse to alternative sanctions.

Works in Default

- 7.77 Where a statutory notice has been breached and the offender has demonstrated that they are unable or unwilling to abate a nuisance or prevent its recurrence, the Council may take necessary and proportional steps to abate or prevent the recurrence of nuisance. Such steps include the power to seize noise making equipment.

High Court Injunctions

- 7.78 Where a statutory abatement notice has been served and serious and persistent breaches of the notice continue, an application to the High Court to seek an injunction may be considered and actioned.

Other Enforcement Action

- 7.79 When taking action against perpetrators of Noise Nuisance, officers may consider other enforcement action avenues such, as a Civil Injunction Order or Community Protection Warning and Notices following the case process as set out above.

For more serious cases, where a person has been convicted for breaching a noise abatement notice or order and the person responsible is a Council tenant, Officers may consider issuing possession proceedings, relying on Absolute ASB Grounds, Condition 5.