

# **PROCEDURES FOR USE OF ANTI-SOCIAL BEHAVIOUR CRIME AND POLICING ACT 2014**

## COMMUNITY PROTECTION NOTICE (CPN)

An authorised person can issue a CPN to an individual aged over 16 if they are satisfied that:

- The conduct of the individual or body is having a detrimental effect on the quality of the life of those in the locality
- The conduct is of a persistent nature *and*
- The conduct is unreasonable

The notice imposes the requirement to:

- Stop doing specified things
- Do specified things
- Take reasonable steps to achieve specified results

The only requirements that can be imposed are those that are reasonable to:

- Prevent the detrimental effect from continuing or recurring
- Reduce the detrimental effect or reduce the risk of its continuance or recurrence

The notice can only be issued when:

- A written warning has been given that the notice will be issued unless the conduct ceases to be detrimental
- The officer is satisfied that despite having had enough time to deal with the matter the conduct is still having an effect

### 4.1 Types of behaviour that a CPN might be used to tackle

The following list is intended to be indicative and not exhaustive:

Feeding birds in town centre Escaping dogs Unruly gardens Anti-Social neighbours	Smokers' little not being cleared Pubs not clearing bottles from the street when they have closed Unlicensed scrapyards	Running a business from home Noise issues Litter Graffiti
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### 4.2 Before a CPN is issued

It has been identified that the best way of monitoring and maintaining considerations and issuing of CPN's should be done via a central point of contact. CEC's ASB Team have been identified as the most appropriate team within CEC in order to do this at least for an initial pilot period. It is hoped that this will assist with the following:

- (i) Reduced risk of duplication
- (ii) Professional advice and guidance on the use of/issuing of a CPN
- (iii) Consistency across Cheshire East in relation to notices that are served
- (iv) Allow for consistency and best practice on a sub-regional basis across Cheshire where possible via links with Cheshire wide ASB leads.

The following must take place before consideration is given to the issuing of a CPN

- Relevant member of staff/officer must notify CEC ASB Team to discuss the case with the team and allow for the relevant checks to be made to clarify/consist of;
  - (i) If the ASB Team already have a case open in relation to the issues that have been reported
  - (ii) Analysis of interventions that have already taken place/been attempted in relation to resolving the problem
  - (iii) As to whether a CPN or a CPN warning has been issued in relation to the address/business or individual already
  - (iv) A standard process to be undertaken that if all the above have been satisfied a “threshold check” can be made using standard set criteria to enable consistency.
  - (v) To allow for advice, guidance and signposting in cases whereby after the checks above a CPN/CPN warning is not deemed as appropriate.

## **4.2 Who can issue a CPN?**

### **Cheshire East Council**

Cheshire East Council will choose which officers to delegate these powers to in line with their operational structures for areas such as tackling ASB, Environmental Protection, Trading Standards etc. matters. Currently the Community Wardens have these powers delegated to them. Consideration to the following officers (as an example and not an exhaustive list) within the local authority may be given with reference to delivering the appropriate training and authorisations as and when notices are issued depending on the type of behaviour:

- Environmental Protection Officers
- Trading Standards Officers
- Planning Enforcement Officers
- Licensing Officers
- Housing Standards/Housing Officers
- Anti-Social Behaviour Coordinators
- Civil Enforcement (parking) Officers
- Park Rangers

### **Police**

Cheshire Constabulary Police Officers have powers automatically delegated, but will need to receive training as and when required on the issuing of the FPN's as these will be Local Authority notices. Authorisation has also been given to PCSO's in relation to issuing FPN's for the powers and will also require the relevant identified training before issuing of an FPN can be made.

## **Registered Providers**

Registered providers can be delegated by CEC the power to issue CPN's for housing stock that is their responsibility. Registered providers within CEC have not yet delegated these powers, but will be considered once the process has been rolled out within the local authority and the relevant processes are in place.

## **Other partners/agencies**

Consideration may be given in relation to delegating any commissioned companies within the council that are employed to undertake work on behalf of the Council, such as ANSA and leisure services where appropriate.

## **Delegation of powers**

Where CEC is considering delegation of powers to serve CPN's or FPN's on failure to comply with such notices consideration should be given with reference to the following in terms of an agreed memoranda of understanding:

- Requirement to undertake the relevant training which will be supplied by CEC with reference to CPNs and the issuing of FPN's (where necessary)
- Requirement to report any considerations of the issuing of a CPN or FPN to the CEC Anti-social behaviour team to allow for checks on a central system and consistency with CPN's issued/warnings sent.
- Reference made that CEC further reserves the right to vary or cancel any designation at any time and for any reason.

## **Enforcement**

The Act allows the offence of breaching the CPN to be discharged with a Fixed Penalty Notice. This will be the case for minor infringement of a CPN. The Local Authority, when making this decision, must ensure that it is proportionate and in line with CEC Enforcement Policy. In making the decision to issue an FPN, the officer should be mindful that if issued, payment of the FPN would discharge any liability to conviction for the offence. In order to allow the individual to pay the FPN, no other associated proceedings can be taken until at least 14 days after the issue.

When issuing a FPN it must:

- Give reasonably detailed particulars of the circumstances alleged to constitute the offence;
- State the period during which proceedings will not be taken for the offence (minimum 14 days)
- Specify the amount payable
- State the name and address of the person to whom the FPN should be paid and;

- Specify permissible methods of payment

A fixed penalty notice of up to £100 can be given for a breach and it is advised that CEC enforce the £100 fine with no opportunity for an early payment in line with all other FPN's that are currently used by Community Wardens.

The Council can also consider **Remedial action** if an individual fails to comply with a CPN. For instance, in a situation where the complaint relates to a significant build up of rubbish in someone's front garden, remedial action could take the form of clearing the garden on the perpetrators behalf. If the CPN has been issued by Police or another body then they must consult with the council if they consider Remedial action should take place to allow for consultation.

### **Appeals of CPN**

Appeals will be heard in a magistrates court and the CPN should provide details of the process and how an individual can appeal.

The person issued with a CPN will have 21 days to appeal from date of issue. Where an appeal is made any requirements made for the individual to "do" specified things will be suspended until the appeal is heard. However anything on the CPN that requires the individual "not to" do something or to "stop" something will remain in force until the results of the appeal have been finalised.

<b>PUBLIC SPACE PROTECTION ORDER (PSPO)</b>
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This allows the local authority to stop individuals or groups committing ASB in public places.

The local authority will identify the area that is to be covered by the order – known as the ‘restricted area’.

The PSPO can:

- Prohibit specified things being done in the area
- Require specified things to be done in the area

The prohibitions or requirements can be framed so that they:

- Apply to all persons, or only persons in specified categories, or to all persons except those in specified categories
- Apply at all times, or only at specified times, or at all times except those specified
- Apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified

The following conditions must be met before making the order:

- Activities carried out in a public place within the local authority’s area have a detrimental effect on the quality of life for those living in the locality *or*
- Is likely that activities will be carried out in a public place within the area that will have such an effect

The effect, or likely effect of the activities:

- Is, or is likely to be, of a persistent or continuing nature
- Is, or is likely to be, such as to make the activities unreasonable *and*
- Justifies the restrictions imposed by the order

### **The need for a PSPO to be identified**

This will come from a variety of routes – including, but not exclusively:

- Partnership problem solving (Multi Agency Action Group – MAAG)
- Complaints from members of the public
- Public consultation/residents meetings/residents groups
- Elected members/Parish Councils
- Neighbourhood groups
- Private land owners
- Registered Social Providers

The process to be followed is below. Responsibility for overseeing this process will lie within the Communities and Partnerships Department’s Anti-Social Behaviour Team. Depending on the focus of the PSPO certain elements of the process below

may well also be taken on by other departments within the local authority such as Environmental Protection or Trading Standards.

### **Examples of behaviour that a PSPO might be used to tackle**

The following list is intended to be indicative and not exhaustive

Legal highs – sale of/taking of	Verge parking
Boy racers	Parking outside schools
Congregating in car parks	Ball games
Cars for sale	Swimming in dangerous areas
Vehicle Nuisance	Ball games
Buskers	Grazing of horses
Dog fouling	Litter
Unruly Dogs/dogs out of control	Fly tipping
Rough sleeping	Cycling in pedestrian areas
Street drinking	Aggressive Charity Collectors (Chuggers)
Urinating or defecation	Begging
Prostitution	Placing yourself to beg
Dogging	Skateboards

### **Prior to formal consultation for a PSPO:**

It is important that the PSPO is used proportionately and that it is not seen to be targeting behaviour of the children/young people where there is a lack of tolerance and understanding by local people. Consideration must also be given to the Equality Act when setting out restrictions or requirements.

When making a PSPO Cheshire East Council will bear in mind the impact on other areas and the level to which displacement is likely to occur.

All requests/considerations for a PSPO will be nominated to the Communities and Partnerships Multi-Agency Action Group (MAAG). Initial thoughts and actions will be recorded at the meeting, and the relevant agencies will be nominated to take the request further once it has been agreed via an initial professionals meeting.

### **Professionals meeting:**

This will be held by the ASB Team along with the relevant Partnership Manager/Local Engagement Officer, attendees may include the following:

- ASB Team representative – **Compulsory**
- CEC Partnership Manager or Local Engagement Officer – **Compulsory**
- Local Elected Member/Parish Council member – **will at least be informed**
- Land owner (If not CEC land) – **Compulsory**
- Police
- Housing/Registered Social Provider
- Other CEC departments
- Representative from the local community

The following will need to be identified either prior to this meeting or during this meeting:

- How many incidents have been reported and who to?
- What has been attempted in order to resolve this issue already?
- What is the exact area that all present would like a PSPO to cover?
- What sort of prohibitions would need to be considered?
- Are there any other people that need to be consulted as part of this process?
- What are the implications should a PSPO not be granted
- What are the risks if a PSPO is granted (displacement etc.)?
- Who would be responsible costs around publicity and signage (if not CEC land)?
- How would this be policed does any training need to take place with delegated local officers whom may not have had opportunity to enforce this type of order yet?
- Do the majority agree that a PSPO application should be requested? *(if the answer is no the issue will be referred back to the MAAG)*

### **Authorisation to begin Consultation**

Following the professionals meeting, should it be agreed to pursue a PSPO a summary of the problems and proposed PSPO will be presented to the nominated Portfolio Holder who will make a decision as to whether to progress to the consultation process being undertaken. If authorisation is not given, then the issue will be nominated back to the MAAG.

### **Consultation**

The Consultation that is undertaken will depend on the location and the particular issues to be addressed. The consultation will be proportionate but not excessive. At least 4 weeks will be allowed for the consultation process and as a minimum standard consultation details will be publicised via Cheshire East Council's Website.

Groups to be consulted may include:

Elected members Parish Councils Local residents Members of public using the area/facility via notice placed in area.	Community Groups Town Councils Pub watch SCOOT/shop watch or equivalent Chamber of Commerce
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The general public will be made aware of the plans through any of the following methods:

- Cheshire East Council website – *Compulsory*
- Press release
- Notice in the affected area



- Residents newsletters
- Leaflets
- Social media

*Cheshire East Council will ensure that the consultation is in line with its own consultation policy.*

Additionally (if not already done so)

- The owner of the land (if not the Council) will be contacted
- Cheshire Police and Police and Crime Commissioner

### **Decision is taken to make a PSPO**

The decision will be taken by elected members by the form of a Cabinet briefing paper. This will allow opportunity for elected members outside of the majority group the opportunity to scrutinise the decision.

If this is refused then the matter will be referred back to the MAAG.

### **Public are advised that the PSPO is coming into effect**

Cheshire East Council will ensure that the following principals are followed with reference to publicising a PSPO although some of the processes may vary from case to case:

- The publicity is proportionate and cost effective
- It takes account of the different languages spoken in the area
- Takes into account the need to manage people's expectations once the order is in place
- That at least one week prior to the PSPO coming into effect a multi-agency approach in relation to educating the relevant members of public and agencies on the new order coming into force and the implications of breach of this order
- During the first week of the order being in force, a campaign of education will continue followed by enforcement action
- That breaches will be monitored, as will any potential displacement which will all be recorded by Cheshire East Councils Partnerships and Communities/ASB Team with a view to the appropriate review processes/amendments taking place on the order.

General publicity may include:

- Press release

- Cheshire East Council website
- Other partner agency websites (i.e. Police, Registered Housing Providers)
- Residents' newsletters
- Leaflets
- Social media
- Parish Councils
- Community Groups
- Signage within the area

In the area affected signage may be used taking into account the different language spoken – using pictures where possible.

### **Enforcing the PSPO**

The power to enforce the PSPO has been given to:

- Cheshire Constabulary Police Officers
- Cheshire Constabulary Police Community Support Officers
- Designated Cheshire East Council Officers

Cheshire East Council may authorise an officer not on the above list (e.g.: Registered Social Provider or Commissioned agency/company) to issue FPN's where a senior officer within the agency to which that person belongs makes a written request to the Chief Executive of Cheshire East Council for that person to be designated.

A decision will then be made by Cheshire East Council as to whether that person should be authorised as a person who may issue FPN's in Cheshire East.

In each case any person who is so authorised will be required, prior to designation, to complete relevant training identified by Cheshire East Council.

Cheshire East Council reserves the right to vary or cancel any authorisation at any time and for any reason

### **Breaching the PSPO**

Those who are found to be breaching the PSPO will be given the opportunity to discharge the offence by way of a Fixed Penalty Notice (FPN).

- The level of FPN will have to be decided (not exceeding £100) suggested amount to remain at the higher rate of £100 with no early payment opportunity
- Agreement will be reached with Cheshire Constabulary about issuing of FPN's on a case by case basis and how this will be done

There will also need to be an awareness that if someone is taken to court and they are on benefits they can agree with the court to pay a weekly sum to clear a fine.

This option is not available with a FPN – unless they are taken to court for non-payment.

## **Transition**

There are a number of current orders which will be replaced by the PSPO:

- Designated Public Place Order
- Dog Control Order
- Gating Order

There is the ability to replace existing orders with a PSPO at the commencement. Alternatively they can continue for 3 years when they will transfer over to a PSPO. There are a number of gating orders and DPPO's within the Cheshire East area which will need to be considered in due course which will expire in their current form in October 2017. A task group will be set up to review this in due course which will decide whether:

- To leave as the current order and allow to move over in 3 years
- To replace immediately with a PSPO
- To discharge any of the existing orders as no longer needed