

EXPANSION OF USE OF POWERS CONTAINED WITHIN THE ANTI-SOCIAL BEHAVIOUR, CRIME & POLICING ACT 2014

REPORT OF: HEAD OF CORPORATE RESOURCES
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Wards Affected: All
Key Decision: No
Report to: Cabinet
11th February 20019

Purpose of Report

1. To inform the Cabinet on proposals to expand the use of enforcement powers under the Anti-Social Behaviour, Crime and Policing Act 2014 (ASBCP) to help tackle ASB issues in the District

Summary

2. In the October 2014 Cabinet Report¹, MSDC acknowledged a full range of powers available to local authorities under the new powers contained within the ASBCP. The powers set out in the new legislation placed a greater emphasis on the use of Fixed Penalty Notices (FPN's) to enforce and change behaviour. Specifically, the Act introduced Community Protection Notices and Public Space Protection Orders (PSPO's), where a breach could result in a Fixed Penalty Notice. In that same report Cabinet approved an expansion of use of powers contained within the Clean Neighbourhoods and Environment Act 2005, specifically to expand the use of Fixed Penalty Notices.
3. Further to Council approval on 27 September 2017, the Council updated its dog control measures on 17 October 2017, introducing four Public Space Protection Orders (PSPO) under legislation contained in the ASBCP Act, to replace the existing 'Dog Control Order' legislation. This was agreed for an initial period of 3 years, with the intention of reviewing after that period (October 2020). Due to the agreed timeframe, a review of the PSPO's for dog control measures will be out of the scope of this report.
4. However, since the adoption of these powers, other ASB issues have arisen in the District such as car cruising/anti-social vehicle use, anti-social and nuisance behaviour in public places by children & young people and other environmental ASB.
5. Under the ASBCP, there are additional powers and/or expansion of current powers which could be effectively utilised independently and / or alongside other existing powers to help tackle these issues, details of which can be found later in this report.
6. Whilst the Council is able to use the powers unilaterally, it is important to acknowledge that any decision to use the powers will typically be taken in consultation with Sussex Police and other relevant agencies.
7. Adoption and/or expansion of the powers is not a panacea for resolving all crime and anti-social behaviour in the District, however, they are an important tool in helping the

¹ MSDC. (2014). 'Fixed Penalty Notice Expansion'. October 20 2014.

Council work with statutory partners to respond to the most persistent, unreasonable and impactful behaviours in the community. By their nature, these cases can involve individuals with complex and challenging needs and it is important to find balance in the approach to resolution.

Recommendations

8. Cabinet is recommended to:
 - i) Note the contents of this report and agree to adopt the additional powers under the ASBCP Act 2014 for the uses specified.
 - ii) Approve delegation of authority to specified officers to use those powers.
 - iii) Approve authorisation to further extend the scope of the powers to be at the discretion of the relevant Head of Service.

Introduction

9. This report has previously been considered by the Scrutiny Committee for Community, Housing & Planning on 29 January 2019.
10. The Anti-Social Behaviour, Crime and Policing Act 2014 (ASBCP) received royal assent on 13 March 2014. The aim of the Act was to provide simpler and more effective powers to deal with anti-social behaviour (ASB), and to enable victims and communities to have more control over the way in which their complaints were handled².
11. Since the introduction of the legislation, MSDC has adopted a range of powers under the Act for issues such as dog control. It is now proposed that these powers be expanded to assist with tackling a wider range of ASB issues that have been encountered in the District over the past 18 months.

Background

12. The Council has been using powers under The Clean Neighbourhoods and Environment Act 2005 (CNE) to address anti-social behaviour following Cabinet approval on 8 October 2007, with additional powers pertaining to Dog Control Orders approved on 23 July 2008³.
13. In addition, the Council uses powers contained within the Environmental Protection Act 1990 to issue Abatement Notices for statutory nuisance and Section 215 of the Town & Country Planning Act 1990.
14. Following the changes in legislation and the subsequent 2014 Cabinet report, MSDC expanded its powers contained within the CNE Act, supported by the ASBCP Act legislation. These powers provided authorised Council officers with the authority to issue Fixed Penalty Notices (FPNs) of £75 for specific offences as an alternative to prosecution. However, the charge was reduced to £50 if it was paid within 10 working days and increased to a maximum of £1000 for failure to pay⁴. The offences included; littering (including fly tipping), illegal transportation of waste, graffiti and a range of dog control measures.

² HM Government. (2014). Anti-Social Behaviour, Crime and Policing Act. Accessed on 26 November 2018. Home Office.

³ MSDC. (2014). 'Fixed Penalty Notice Expansion'. 20 October 2014.

⁴ MSDC. (2017). 'Implementation of Public Spaces Protection Orders for Dog Control'. 27 September 2017.

15. A Public Space Protection Order (PSPO), a power contained within the ASBCP Act was introduced to supersede Dog Control Orders legislation. This specifically related to dog control measures, including; fouling of land by dogs; dog exclusion; dogs on lead when requested; maximum number of dogs.
16. Since October 2014, no FPN notices have been issued within the authorised categories and there have been no prosecutions under the PSPO's which came into force in October 2017.
17. Since the adoption of those powers, the District has encountered an increase in other types of anti-social behaviour. Whilst the Council will continue to use powers such as those contained within Section 215 of the Town & Country Planning Act 1990 and; Environmental Protection Act 1990, this expansion of powers will give greater flexibility in addressing persistent ASB.
18. The ASBPC powers are designed to compliment rather than replace existing powers, and it remains a principle of law that a specific power should still be used where appropriate and if the threshold for use of that specific power is met.
19. Consequently, it is proposed that additional powers under the ASBCP, such as expansion of use of PSPOs, Community Protection Notices (CPNs) and Criminal Behaviour Orders should be considered and adopted where appropriate. A description of the aforementioned powers and the specific issues they can be utilised for can be found below.

Public Space Protection Order (PSPO)

20. A PSPO is an enforceable form of bylaw with Fixed Penalty Notice powers attached. In addition to supporting existing bylaws they have the potential to enhance local control over a range of matters including Planning and Highways enforcement, Anti-Social Behaviour, Dog Management, and Parks and Waste Management for District Councils, thus returning greater control to Local Authorities.
21. Before a PSPO can be imposed, there must be an initial consultation with the community.
22. The PSPO's that Mid Sussex District Council have already instigated are: fouling of land by dogs; dog exclusion; dogs on lead when requested; maximum number of dogs.
23. Crawley Borough Council is in the advanced stage of seeking committee approval to use this power to tackle anti-social vehicle use and car cruising. In March 2018, Elmbridge Borough Council used this power to tackle youth and general anti-social behaviour in public spaces in Walton-on-Thames.
24. ASB issues that PSPO's could be utilised for in Mid Sussex include:
 - Car cruising/Anti-Social Vehicle Use (an issue currently being encountered in Burgess Hill).
 - ASB and nuisance behaviour by Children & Young People (there has been an increase in this type of ASB in Burgess Hill & Hassocks over the past 12 months).

25. A breach of the order is immediately criminal in nature and could lead to a fine (via Fixed Penalty Notice), and/or confiscation of relevant items and / or a prosecution with custodial sentence.

Community Protection Notice (CPN)

26. Community Protection Notices are designed to have a broad use and should focus on how victims and communities are affected.
27. CPNs have replaced Litter Clearing Notices and Defacement & Removal Notices, and can be issued to anyone above the age of 16. Over the past 18 months, they have been successfully utilised by several Local Authorities (see case studies). In order for a CPN to be issued, one of the designated authorities must be satisfied on reasonable grounds that the conduct of the individual or organisation is;
- having a detrimental effect on the quality of life of those in the locality;
 - persistent or continuing in nature; and
 - unreasonable
28. These 'tests' must be considered on a case by case basis.
29. It is proposed that the use of the powers will be brought in on a phased approach, which will commence with the enforcement of;
- General nuisance & anti-social behaviour in public places
 - Bonfires
 - Rodent infestations
 - Untidy gardens
30. CPNs follow a phased process which starts with the issuing of a Community Protection Warning (CPW), which sets out conditions that must be adhered to. The CPW can usually be imposed for a period of 12 months. It is a warning letter which cannot be appealed. In the event that the conditions outlined in the CPW are not adhered to, it can be escalated to a CPN, which carries criminal sanctions if breached. Unlike a CPW, a CPN can be appealed which must take place within 21 days of the notice and will incur a cost of £200, payable by the defendant.
31. The aim of the CPN is to stop behaviour and put in place 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.
32. For example, in a situation where a notice is served on a parent of someone under 16 relating to their behaviour, the condition could require the parent to ensure that their

child abides by a set curfew; or doesn't allow named associates into the family home etc. In addition, a condition could be included requiring the parent to engage in a parenting programme and/or engage with other specified professional support services.

33. Furthermore, any articles deemed to be used in the commission of the offence can be seized if a breach occurs. Courts will also be empowered to impose fines of up to £2500 for an individual or unlimited if a recognised body.
34. The two stage CPW/CPN process allows for signposting to professional support to encourage a positive change in behaviour. Positive engagement with professional support services can also be made a condition of a CPN and failure to comply will be considered a breach. This is also an important aspect to protecting the most vulnerable. The main positive of the aforementioned is that it provides an opportunity to modify behaviour before it escalates into criminality.
35. In addition to the utilisation of powers under the ASBCP Act 2014, it is suggested that consideration should be given to educational strategies for example; working with the car cruising community and other partners to plan and deliver a positive engagement event and; providing parents with access to positive parenting courses.
36. A breach of a CPN is a criminal offence and will be dealt with via a criminal court. If a conviction related to a CPN is secured, a Criminal Behaviour Order can be applied for by a Local Authority.

Criminal Behaviour Order (CBO)

37. CBOs have replaced Anti-Social Behaviour Orders (ASBOs). If a person breaches the terms of a CPN or fails to pay the associated FPN then the case will immediately become criminal at which point the Local Authority can apply for a CBO. A breach of a CBO could lead to a jail term.
38. In the case of social housing tenants it is important to acknowledge that the issuing of a CBO by the courts to anyone residing in the household would be sufficient grounds for the landlord to serve a Section 8 notice of seeking possession. This is not an inevitable outcome of the CBO, however, and would be at the discretion of the social housing landlord and would be seen as a last resort. MSDC Officers will work closely with social housing landlords and other statutory agencies to achieve the most appropriate outcome.

Benefits

39. The benefits of adopting these powers, in addition to being necessary and proportionate methods of countering ASB, are that they;
 - Address the behaviour rather than the person, thus ensuring safeguarding of protected characteristics under the Equality Act 2010 (see Appendix C).
 - Can be used for domestic and business nuisance.
 - Can be led by the Local Authority, Police or other designated organisation. This flexibility is likely to increase positive outcomes.

- Can be issued to anyone aged 16+ or in the case of youth ASB, issued to the parent / guardian if they fail to act or comply with conditions.
- In addition to targeting the individual, can be used to target anyone involved regardless of whether their role is active or passive.
- Burden of proof is less within the civil realm and based on balance of probability until the case becomes criminal, as in the case of breaching a CPN or CBO.
- Have shown to achieve 90% compliance after initial warning letters alone, very few numbers lead on to CPNs and even fewer to court.
- Allow use of powers in conjunction with other legislation
- Can travel with the defendant; a CPN is not specific to an address.

Use of Powers with Juveniles/ Vulnerable People

40. At present, MSDC uses a range of interventions to deal with Juvenile ASB cases, with varying degrees of success. Some of these interventions include Acceptable Behaviour Contracts (ABCs), Parental Meetings, Early Help and working with partners. MSDC will continue to use these as a first line of response. Where behaviour escalates and parents or guardians fail to act, a CPW/CPN could be served on them as they are responsible for their child until 18 years of age. This can also apply to commercial children's homes and corporate parents.
41. The Council is also able to consider **injunctions** for those aged between 10-16 years. These injunctions are used to prevent behaviour that causes harassment, alarm and distress. If an injunction is breached, this will be considered as a contempt of court and may result in a supervision order being issued.
42. ASB issues that **injunctions** could be utilised for in Mid Sussex include;
 - Disruptive Behaviour by Children & Young People (There has been an increase in this type of ASB in Burgess Hill and Hassocks over the past 12 months)

Case Studies

43. There have been successful prosecutions using these powers under the ASBCP Act, including;
 - On 7 September 2018, Hartlepool Borough Council was granted a CBO against a resident who failed to comply with a CPN that was served⁵.
 - On 29 November 2018, Cheshire East Council was granted CBOs against a group of anti-social youths, aged between 13-15 years, in Crewe⁶.
 - In 2018, Crawley Borough Council was granted a CBO against an individual for aggressively begging in Crawley town centre.

⁵ Hartlepool BC. (2018). *Anti-Social Behaviour will not be tolerated, warn community safety chiefs*. Accessed 17 December 18

⁶ Palin, L. (2018). *Teenage Gang Punished Following Anti-Social Behaviour in Crewe and Congleton*. Accessed 17 December 2018. Cheshire Live.

44. These particular examples reflect how MSDC could use the powers to provide successful and measurable outcomes for some of the aforementioned ASB issues in the District. It is important to note that whilst adoption of the powers will provide the Council with important tools for addressing the most persistent, unreasonable and impactful behaviours in the community, they are not a panacea for resolving all crime and anti-social behaviour in the District. Cases can involve individuals with complex and challenging needs and it is important to find balance in the approach to resolution and to involve appropriate partners.

Partnership Working

45. Adopting these powers will provide MSDC with tools to further partnership working with Sussex Police, Social Housing Landlords, Youth Offending Service and other statutory partners. Furthermore, it will promote more effective decision making and information sharing, prevent duplication, and ensure a multi-agency approach to achieving positive outcomes for Mid Sussex residents, both victims and perpetrators.
46. The requirements for each case will vary depending on the situation and discussion at the local multi-agency fortnightly Mid Sussex Anti-Social Behaviour Risk Assessment Conference (ASBRAC) is recommended to ensure requirements are appropriate and can be monitored by the agencies involved for breaches. This is essential when a young person under 18 years of age is involved.
47. Importantly, this will include determining which organisation is best placed to lead in each specific case. This will either be the Council or Sussex Police. Whilst a local authority can delegate powers to registered social landlords, this is not an avenue that is proposed at the present time, albeit it may be appropriate to consider in the future.
48. Whilst CPWs can be issued by any professional, CPNs can only be issued by designated officers within MSDC or; Sussex Police who can authorise their Officers to issue CPNs under the Act.
49. The Council will work closely with statutory partners to ensure that policies and procedures are legally compliant; thresholds for applying specific powers are proportionate and clear; are joined up wherever possible and; consistently applied across the District.
50. Close liaison between the Council, police, registered social landlords and other key partners is essential when issuing a CPW or CPN to ensure the most effective power is used to protect victims. It also ensures all agencies are aware of the conditions placed on an individual or body so that enforcement/compliance of the warning or the notice can be monitored. In the case of the issue of a PSPO, partners will be consulted as part of the required public consultation process.
51. It is the intention of local partners to use the single case management system, ECINS, to manage cases. This will also ensure that any partner is able to progress or escalate cases and log / access evidence.

Delegation of Authority to Use Powers

52. The powers under the ASBCP are granted to local borough and district councils. Delegation of authority to relevant senior and front-line officers to use the powers must be sought through appropriate committees and senior management teams.

53. Authorised staff are those who have been given authority by the Council to operate using the relevant legislation.
54. Current authorised officers are within outdoor services, community safety and environmental protection; albeit this authorisation relates to the issuing of FPN's. With the expansion of powers other Council officers and teams could benefit from being authorised to use new powers.
55. It is recommended that authorisation to use new powers is applied to appropriate staff in community safety, legal services, environmental protection, planning enforcement and housing services, at the discretion of the relevant Head of Service.

Training

56. Senior Council Officers & Sussex Police colleagues recently attended a facilitated session with David Armstrong, Mallard Consultancy, pertaining to the use of the additional powers. Further training will be delivered by Mallard Consultancy to front line colleagues when the powers are ready to be used operationally.

Policy Context

57. The contents of this report support the Council's corporate priority of supporting Strong and Resilient Communities⁷ through effective enforcement of Anti-Social Behaviour.
58. The use of the powers will align with MSDC's Enforcement Concordat⁸ (See Appendix B).

Next Steps

59. The use of the powers will be brought in on a phased approach, which will commence with the enforcement of general nuisance & ASB, progressing to the use for environmental ASB issues that are deemed to be having a detrimental effect on the quality of life of those in the locality; is persistent or continuing in nature; and is unreasonable. It is recommended that authorisation to extend the scope of the powers be at the discretion of the relevant Head of Service.
60. Should the Council introduce these additional powers, the Council will notify stakeholders and the residents of Mid Sussex using local media, Mid Sussex Matters and other appropriate channels.

Financial Implications

61. The main financial implications of using the additional powers are the associated enforcement costs, and legal costs for non-payment of fines. However, it is envisaged that this will be low due to 90% cases being resolved after a formal warning letter has been issued⁹.

Risk Management Implications

62. There is the potential that the wider use of these powers will increase the workloads of certain Business Units, the Community Services and Legal Services Teams in

⁷ MSDC. (2017). Corporate Plan and Budget 2017/2018. Mid Sussex District Council.

⁸ MSDC. (1998). Enforcement Concordat. Mid Sussex District Council.

⁹ Armstrong, D. (2018). Mallards.

particular. However, as previously mentioned, 90% of cases are resolved with a formal warning letter, thus it is unlikely there will be a significant increase. In addition, the commitment to partnership working with Sussex Police and other partners and using shared case management systems & resources to gather evidence will mitigate impact on Officers.

63. Officers will work in partnership with other statutory organisations to monitor and provide evidence of possible breaches.
64. Carrying out a robust annual review of the scheme will enable the Council to consider and ultimately manage the risk.

Equality and Customer Services Implications

65. An Equality Impact Assessment has been completed and can be found at Appendix C.

Other Material Implications

66. None.

Background Papers

1. Fixed Penalty Notice Expansion (2014).
2. Implementation of Public Spaces Protection Orders for Dog Control (2017).
3. Reform of Anti-Social Behaviour Powers: Statutory Guidance for Frontline Professionals (2017).