



**AGENDA ITEM: 6(f)**

**CABINET: 16 September 2014**

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**Report of: Assistant Director Community Services**

**Relevant Managing Director: Managing Director (People and Places)**

**Relevant Portfolio Holder: Councillor D Sudworth**

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**SUBJECT: ANTI-SOCIAL BEHAVIOUR, CRIME AND POLICING ACT 2014**

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Wards affected: Borough wide

**1.0 PURPOSE OF THE REPORT**

1.1 To update the Scheme of Delegation to Chief Officers to prepare the Council for the enactment of certain provisions of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the Act") due to come into force on 20 October 2014.

**2.0 RECOMMENDATIONS**

2.0 That it be noted that the Leader will delegate authority as set out in Annex 1 to this report and the Scheme of Delegation will be updated accordingly, with effect from 20 October 2014

2.2 The initial Community Remedy thresholds detailed at paragraph 4.17 of the report be approved.

2.3 That a report be provided to Members in 12 months as detailed in 5.4

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### **3.0 BACKGROUND**

- 3.1 Anti-social behaviour (ASB) is a broad term used to describe the day-to-day incidents of crime, general nuisance and disorder that can make many people's lives in this country a misery – from litter and vandalism, to public drunkenness or aggressive dogs, to noisy or abusive neighbours. Such a wide range of behaviours means that responsibility for dealing with anti-social behaviour is shared between a number of agencies, particularly the police, councils and social landlords.
- 3.2 There have previously been numerous attempts made to tackle anti-social behaviour. Through more than ten separate pieces of legislation, a variety of powers have been introduced, however, this led to a variety of very similar tools being developed to deal with slightly different problems, which created some confusion amongst practitioners nationally.
- 3.3 Many of these powers have proved over time to be slow and ineffective, and are now used less and less. For example, the number of Anti-Social Behaviour Orders (ASBOs) issued nationally has declined to just 1,664 in 2010 compared with 4,122 in 2005. And over half of ASBOs are breached at least once, with 42% of these being breached more than once.
- 3.4 Despite all of this attention, nationally anti-social behaviour remained stubbornly high. In 2010/11, 3.2 million incidents of anti-social behaviour were recorded by the police – which are likely to still only be the tip of the iceberg, as many incidents are reported to other agencies or not at all.
- 3.5 As a result, in May 2012 the Home Office issued a white paper entitled “Putting Victims first – more effective responses to Anti-social behaviour” which outlined their proposals for change. It was clear that a key component of the proposed legislation was that the needs of victims were to be put first. Following consultation, The Act was enacted in May 2014. The full act can be found using the following link: <http://www.legislation.gov.uk/ukpga/2014/12/contents/enacted>.

### **4.0 DETAILS OF THE LEGISLATION**

- 4.1 The Act contains a range of new/replacement powers which are available in relation to ASB. The Act is divided into 14 Parts, of which 6 of these directly affect the Council, in its dealings with ASB.
- 4.2 The provision of Community Safety is the responsibility of the Assistant Director Community Services (“ADCS”). The Council's Community Safety team includes the Anti-Social Behaviour team, who operate out of what is known as the Multi Agency Problem Solving (MAPS) offices at Ormskirk Police Station and deal with all reports of serious ASB. As the management of this team falls under the ADCS the delegations required under this new legislation will be to his service, however the ASB team do undertake ASB work for Housing and therefore a number of delegations will be mirrored to the Assistant Director Housing and Regeneration (“ADHR”) in relation to his Housing Management functions.

- 4.3 Part 1 of the Act introduces ASB Injunctions replacing injunctions that the Council could obtain under the Housing Act 1996 and also ASBO's that the Council could obtain under the Crime and Disorder Act 1999. The Council will be able to apply for injunctions against any person aged 10 years or over. Previously if the person was aged under 18 or the behaviour was not related to a Housing management function the Council had to apply for an ASBO and if it was Housing related and the person was over 18 the Council applied for an injunction. The Police could also apply for ASBOs.
- 4.4 The new powers will allow the Council to apply for, vary or discharge injunctions, issue committal applications against anyone who breaches this injunction and request warrants of arrest to have the perpetrator arrested for a breach. In Annex 1 the delegations detailed at (A)1(i) to 1(iv) and (B)1(i) to (iv) are to allow Officers to apply for such orders.
- 4.5 If the Council wishes to apply for, vary or discharge, an injunction for someone over 18, it must inform any body or individual it deems appropriate. The Government has indicated in guidance examples of parties the Council should be informing. Council Officers attend the Community Safety Partnership's Local Priorities Group and the Strategic Review Group and it will use these meetings to inform the various parties of an injunction application, unless it is urgent, where a protocol will be agreed with these parties so that consultation can be carried out between meetings. For this reason the delegation (A)3 at Annex 1 is requested. If the Council wish to apply vary or discharge an injunction for someone under 18, in addition to the duty to inform parties it must consult with the Youth Offending Team and inform the Court of their views. In order for Officers to consult, the delegation (A)2 at Annex 1 is requested granting permission to do so.
- 4.6 Part 2 of the Act gives the Council the power to apply for a Criminal Behaviour Order ("CBO"). This replaces the existing Criminal ASBO. Once a person has been prosecuted for an offence, the Prosecution can apply for a CBO against the Defendant, including those under 18 years old. It is important to note that the ASB does not have to be linked to the circumstances that gave rise to a prosecution. The CBO can only be applied for by the prosecutor and thus can only be applied for by the Council on prosecutions it undertakes. There are also duties, as with the injunctions, to consult with various parties and therefore Officers seek delegations, (A) - 1(v) to 1(vi) and (A)2 and (A)3 in respect of CBO applications contained in Annex 1. Although the application has to be made by the Prosecution the Council may request that a CBO be applied for by another prosecuting authority. Therefore the ADCS seeks authority to request other prosecution authorities to apply for a CBO on our behalf, which could include, but is not limited to, the CPS, neighbouring Local Authorities or the Environment Agency. The Council cannot require those authorities to apply, but Officers would seek authority to make the request on behalf of the Council and thus seek delegation (A)4 at Annex 1.
- 4.7 A welcome change to injunctions and to the old CRASBO powers (now replaced by the CBO's) is that conditions of these Court Orders may place positive obligations on the Defendant. For example, someone whose behaviour is linked to drugs may be required to attend a drug treatment programme and if they don't,

this would be a breach of the Court Order. If the Court Order contains a positive obligation, the compliance with this has to be monitored and the result of this compliance, either positive or negative, has to be communicated to the Chief Officer of the Police and thus Officers seek delegation (A) 5 of Annex 1. Further, if a Defendant fails to comply with the requirements of the CBO, it is a criminal offence and Officers seek the Delegation to prosecute where appropriate. This delegation is contained at (A)6(i) of Annex 1.

- 4.8 Part 4 of the Act allows the Council to invoke various community protection tools. These include Community Protection Notices (“CPN”), Public Space Protection Orders (“PSPO”) and Closure Orders (“CO”). The CPN can be served on a person or a body where their conduct is having a detrimental effect on the quality of life in the locality and the conduct is unreasonable. The Council is required to warn those persons in writing that a notice will be issued if they do not address this conduct. If they fail to do so, the Council has the power to issue a notice, which if breached, gives various powers to the Council, which include prosecution, as a breach of a notice is a criminal offence. Also if the person or body is in breach of a CPN, the Council can enter land and carry out work and recover the costs of doing so, if that party was required to do works and failed to do so. Therefore Officers seek the delegations to issue such notices and prosecute where appropriate which are contained at (A)6(ii) and (A)7 and delegations to enter the land to carry out the works and recovery expenditure at delegation (A)8 of Annex 1.
- 4.9 The Council will be able to apply for a warrant to temporarily seize goods used in breaching a CPN. In addition, the Court can, following a successful Prosecution for a breach of a CPN, order the Defendant to hand over goods used in the breach to the Police or Local Authority and for the relevant authority to dispose of these goods or goods seized as a result of a warrant. Officers therefore seek delegations (A)1(vii) and (A)9 of Annex 1 to apply for a warrant to seize goods and dispose of any goods if ordered by the Court.
- 4.10 A PSPO is a wide ranging order that can apply to any specified anti social behaviour in a designated area and can also include issues relating to alcohol. Unlike the CPN this applies to a public area and affects any person that breaches the PSPO in that area. It can include positive or negative restrictions and cannot be for a period of more than 3 years. As this will affect a wide range of people in an area of the Borough, Officers seek permission to impose an Order in consultation with the Leader and the Portfolio Holder and if alcohol or licensing conditions are proposed, the Chairman of the Licensing and Gambling Committee. Officers therefore ask for delegation (A)14 of Annex 1.
- 4.11 A CO is where the Council have the power to close premises and deny access to any persons that were accessing the property for a period up to 48 hours. This is particularly useful in properties where drugs are being used or sold. Under the legislation a CO can be issued by an Officer below the rank of Chief Executive for up to 24 hours. There is a requirement to consult various appropriate bodies with regard to CO’s and Officers would request delegations (A)3 regarding consultation and (A)12 regarding issue. If the Council wish to close the premises for up to 48 hours, this has to be approved by a Chief Executive Officer and therefore officers request the delegation to the Managing Directors at (C)1 of

Annex 1. If the Council wish to apply for a closure order over 48 hours or wishes to recover the costs of cleaning, securing and maintaining a closed premises this must be done by an application to the Magistrates' Court. Officers therefore request a delegation to the ADCS to instruct the Borough Solicitor to make such an application detailed at (A)1(viii) and 1(ix) of Annex 1

- 4.12 If any person breaches a PSPO or enters a premises subject to a CO they will have committed a criminal offence. As the body that imposed these Orders it would be the responsibility of the Council to prosecute these breaches; and therefore Officers seek a delegation to issue cautions for breaches or seek formal prosecutions for the offences. Delegation (A)6(iii) to (iv) of Annex 1 refers to these prosecutions. Breaches of a CPN or PSPO can be dealt with by way of a fixed penalty notice. The current maximum penalty for a fixed penalty notice has been set as £100. Officers seek approval to issue fixed penalty notices at the statutory maximum. Officers also seek a delegation to allow the ADCS to do so as detailed at (A)10 of Annex 1. All of these notices detailed above can be appealed; therefore Officers seek a delegation for the ADCS to instruct the Borough Solicitor to defend such appeals, delegation contained at (A)1(x) of Annex 1. Decisions on whether to deal with a breach by way of Fixed Penalty Notice or a Prosecution will be taken in line with the Council's Corporate Enforcement Policy.
- 4.13 In order to enforce various powers under the issue of the various notices and closure orders, a local authority is required to nominate authorised officers to undertake various tasks. The ADCS therefore seeks the delegation to authorise officers under this Act; detailed at delegation (A)13 of Annex 1
- 4.14 Part 5 of the Act extends the Council's powers in seeking possession of its residential properties. The Housing Act 1985 is amended to add absolute grounds for possession, where relevant criminal offences have been committed and the Court has no discretion when granting an order for possession unless exceptional circumstances can be shown. Also a further ground for possession has been added at 2ZA of Schedule 2 of the Housing Act 1985 to evict tenant's that have been linked to public riots. Officers seek to amend the Delegations to the ADHR to reflect these additional powers; and grant mirroring powers to the ADCS in consultation with ADHR. The relevant delegations are at (A)11, (B)2 and (B)3) of Annex 1.
- 4.15 Part 6 of the Act introduces Community Remedies. This is something that follows the principle of supporting victim's needs and allows victims and communities to request a review of their case. Victims will be able to use the Community Remedy to demand action (where none has occurred), starting with a review of their case. Agencies including councils, the police, local health teams and registered providers of social housing will have a duty to undertake a case review when someone requests one and the case meets a locally defined threshold.
- 4.16 To aid consistency across the Policing Division (Southern), a working group has been set up to look at this issue. The following remedy thresholds are proposed to be adopted across the Division initially

- a) **3 or more complaints** in the last 6 months from one individual about the same problem and you think no action has been taken, or;
- b) **5 individuals** complaining about the same or similar incidents in the last 6 months where you think no action has been taken, or;
- c) **1 incident** motivated by **hate** in the last 6 months from one individual where you think no action has been taken

and where these parties feel they have been ignored. These thresholds may be amended in future if appropriate.

- 4.17 Thus if an individual or person on their behalf (with appropriate permission), in the opinion of the ADCS meets one or more of these remedy triggers; relevant authorities must undertake a review. For the purposes of this part of the Act, relevant authorities will be the Council, Lancashire Constabulary and the Clinical Commissioning Group. A review will take place on a case by case basis and the ADCS will appoint an appropriate Officer to undertake this review with the relevant bodies and chair meetings as necessary. The findings of the reviews will be communicated back to the individual as soon as possible with details of any proposed action.
- 4.18 There is a requirement to publicise the existence of the remedy and any details of the numbers of requests made etc. It is proposed that this will all be done using the Council's website and that a press release will also be issued about the trigger itself. It is worth stressing that for all three triggers above if it can be shown that action has been taken by a relevant authority, a full review will not be necessary, however, it may be pertinent to examine whether further action is possible and to advise the individual accordingly.
- 4.19 Under Part 6 the Police are required to produce a Community Remedy Document. This is a list of actions that could be taken against an individual who is engaged in ASB and is not being dealt with by way of court action. It is a requirement of the Police to consult with the Local Authority. Officers therefore request a delegation to deal with any consultation and review resulting from a Community Remedy trigger being met. Detailed in delegation (A)15 of Annex 1.
- 4.20 Finally Part 7 relates to Dangerous Dogs and amends existing legislation and relevant delegations already exist for the extended powers.

## **5.0 ISSUES**

- 5.1 Currently the Council's ASB team (2 f.t.e. staff) enforce the current legislation in relation to ASB committed by, or affecting, Council Tenants. Other ASB is dealt with by the Police. The ASB team takes on the more serious cases following informal action from the Council's Housing staff. The Housing teams will write to and/or visit alleged perpetrators initially, but if their actions are ignored and ASB continues, the case will be passed over for enforcement. This enforcement currently generally takes the form of Anti-Social Behaviour Injunctions (ASBIs), eviction action or possibly Anti-Social Behaviour Orders (ASBOs). The team works extensively with the Police and shares information in line with the multi

agency information sharing protocol. This is done to ensure that all relevant action is taken and that police evidence is used where appropriate.

- 5.2 Some cases (either initially or after referral) also require the involvement of the Environmental Protection team. This can be either as a result of specialist monitoring equipment being necessary to gather evidence, because their legislation (generally the Environmental Protection Act 1990) is more suited to that case or because the issue is so serious a joint approach is necessary. The Environmental Protection team deals with complaints about noise from a property.
- 5.3 Whilst both the ASB team and the Environmental Protection team are operated by the same manager, the housing involvement and indeed the initial contact with Customer Services can mean that a member of the public deals with several officers through the course of a complicated case. I consider that there is some merit in the ASB and noise complaint handling/case handling procedures being reviewed at some point in the future. This would be to look for operational efficiencies and to help to streamline the “customer experience”. It may be that one team that has all the different legislative powers to deal with ASB and nuisance available to it operates with an improved efficiency. That team would be tasked with using the most appropriate legislation to resolve issues for residents.
- 5.4 As this is new legislation the full impact of the legislative changes will not be apparent at the outset, it is therefore envisaged that a report will be provided to Members in the Autumn of 2015.
- 5.5 Officers are also undertaking a review of relevant polices affected by the Act which will be brought before members in due course.

## **6.0 SUSTAINABILITY IMPLICATIONS/COMMUNITY STRATEGY**

- 6.1 Reducing anti-social behaviour can have a clear positive impact on the quality of life of individuals, including reducing crime and disorder, and this therefore links to the Sustainable Community Strategy. There are also direct links to the Council’s values and Corporate Priorities.

## **7.0 FINANCIAL AND RESOURCE IMPLICATIONS**

- 7.1 It is envisaged that as the legislation can be applied to a wider range of circumstances and to some extent to a lesser legal standard, more cases could be taken. As a result this could impact on the resources of the Council’s ASB and Legal teams. Additionally, the greater administrative requirements of the County Court may impact on the time that is available to commence and deal with cases. Consequently consideration may be given to the resource requirements of the Act through the Housing Revenue Account Budget setting process for 2015/16, alongside other bids. This can then ensure that the decision on whether to allocate additional resources to this area takes into account other HRA spending priorities as well as the views of tenants.

## **8.0 RISK ASSESSMENT**

- 8.1 The Council must exercise its powers under the Act appropriately, and failure to do so may render it liable to challenge, and which may result in a finding of a breach of its responsibilities under the Act. This may result in ombudsman complaints, costs awards and damages claims as well as a detrimental reputational impact. By not responding appropriately to ASB the Council may be leaving residents in a vulnerable position and would not be acting in accordance with its Corporate Priorities.
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### **Background Documents**

There are no background documents (as defined in Section 100D(5) of the Local Government Act 1972) to this Report.

### **Equality Impact Assessment**

There is a direct impact on members of the public, employees, elected members and / or stakeholders. Therefore an Equality Impact Assessment is required. A formal equality impact assessment is attached as an Appendix to this report, the results of which have been taken into account in the Recommendations contained within this report.

### **Appendices**

1. Delegations
2. Legislation summary
3. Equality Impact Assessment
4. Minute of Landlord Services Committee held on 11 September 2014



**SCHEME OF DELGATIONS**

**A. - To the Assistant Director Community Services – Constitution 4.2D (new delegations in 4.2D (iv) Community Safety)**

1. To instruct the Borough Solicitor to:
  - i) apply for injunctions under the provisions of Part 1 of the Anti Social Behaviour, Crime and Policing Act 2014
  - ii) apply for a warrant of arrest for any breaches of an injunction obtained under the provisions of Part 1 of the Anti Social Behaviour, Crime and Policing Act 2014
  - iii) apply for a variation or discharge of an injunction obtained under the provisions of Part 1 of the Anti Social Behaviour, Crime and Policing Act 2014.
  - iv) apply for a committal application on any breach of an injunction.
  - v) apply for a Criminal Behaviour Order under the provisions of Part 2 of the Anti Social Behaviour, Crime and Policing Act 2014 where a person is convicted of an offence following a Council lead prosecution and the behaviour of the offender was such that caused or was likely to cause harassment, alarm of or distress to any person.
  - vi) apply for a variation or discharge of a Criminal Behaviour Order obtained by the Council under the provisions of Part 2 of the Anti Social Behaviour, Crime and Policing Act 2014.
  - vii) apply for a warrant to seized items used in the offence of failing to comply with a Community Protection Notice
  - viii) apply for an extension of a closure order for a period of closure over 48 hours or discharge of a court extended closure order.
  - ix) apply to the Magistrates' Court for an order recovering the costs incurred to the Council in cleaning, securing and maintaining a premises subject to a closure order.
  - x) take all necessary steps to defend the Council against any appeals against the service of a Notice under Part 4 of the Anti Social Behaviour, Crime and Policing Act 2014
2. To consult with the relevant Youth Offending Team in respect of persons under 18 years old on the application for an injunction, criminal behaviour order or on

an application to vary or discharge an existing injunction or criminal behaviour order.

3. To inform and/or consult any body or individual deemed appropriate or specified in Government Guidance on the application for an injunction, criminal behaviour order or Closure Order or on an application to vary or discharge an existing injunction or criminal behaviour order.
4. To request that the Crown Prosecution Service or any other prosecuting authority apply for a Criminal Behaviour Order under the provisions of Part 2 of the Anti Social Behaviour, Crime and Policing Act 2014 where a person is convicted of an offence and the behaviour of the offender was such that caused or was likely to cause harassment, alarm of or distress to any person working, residing or visiting the Borough.
5. To supervise compliance on behalf of the Council with any positive requirement contained in an injunction or Criminal Behaviour Order and to promote such compliance and to inform the appropriate Chief Officer of the Police when the Defendant has fully complied or failed to comply with the positive requirements of the order.
6. To issue formal cautions and to lay informations:-
  - (ii) under section 30 of the Anti Social Behaviour Crime and Policing Act 2014 for a breach of a Criminal Behaviour Order obtained by the Council
  - (iii) under Section 48 of the Anti Social Behaviour Crime and Policing Act 2014 for the offence of failing to comply with a Community Protection Notice
  - (iv) under section 63 or 67 of the Anti Social Behaviour Crime and Policing Act 2014 for failing to comply with the prohibitions imposed by a Public Spaces Protection Order.
  - (v) Under section 86 of the Anti Social Behaviour, Crime and Policing Act 2014 for remaining in or entering a premises subject to a Closure Order.
7. To issue Community Protection Notices under Part 4 of the Anti Social Behaviour, Crime and Policing Act 2014.
8. To enter land and premises open to the air and carry out any necessary works to ensure any failure to comply with a Community Protection Notice under Section 47 of the Anti Social Behaviour Crime and Policing Act 2014 and recover the costs of doing so.
9. To dispose of or destroy of any item used in the commission of the offence of failing to comply with a Community Protection Notice, which a court has ordered be handed over to the authority under section 50 of the Anti Social Behaviour, Crime and Policing Act 2014.
10. To issue fixed penalty notices, where he deems appropriate, for the offence of failing to comply with a Community Protection Notice or for failure to comply with

a Public Spaces Protection Order. The fixed penalty notice be issued for the maximum amount as set by the Anti Social Behaviour, Crime and Policing Act 2014 or amended by subsequent legislation.

11. To serve Notice to Quit, Notice to Terminate Introductory Tenancy and Notice Seeking Possession on grounds specified in section 84A and under Grounds 1, 2, 2ZA and 2A of Schedule 2 of the Housing Act 1985 and instruct the Borough Solicitor to and apply for possession and warrants for eviction obtained on these grounds in consultation with ADHR.
12. To issue, vary or discharge closure notices for a maximum 24 hour period under Part 4 Chapter 3 of the Anti Social Behaviour, Crime and Policing Act 2014.
13. To designate authorised officers to carrying duties specified under sections 51, 63 and 85 of the Anti Social Behaviour, Crime and Policing Act 2014.
14. To issue Public Spaces Protection Order in consultation with the Leader and Portfolio Holder, except where the Prohibitions relates to alcohol, where the Chairman of the Licensing and Gambling Committee shall also be consulted.
15. To undertake all steps necessary to comply obligations under Part 6 of the Anti Social Behaviour, Crime and Policing Act 2014 in relation to Community Remedies and consult where necessary with other statutory bodies.

**B - To the Assistant Director Housing and Regeneration – Constitution 4.2C  
(amends delegations 4.2C (iii) Housing (Operational) 13 to 15)**

1. As far as the alleged behaviour affects the Council's Housing Management functions, to instruct the Borough Solicitor to apply for
  - i) injunctions under the provisions of Part 1 of the Anti Social Behaviour, Crime and Policing Act 2014;
  - ii) a warrant of arrest for any breaches of an injunction obtained under the provisions of Part 1 of the Anti Social Behaviour, Crime and Policing Act 2014;
  - iii) a variation or discharge of an injunction obtained under the provisions of Part 1 of the Anti Social Behaviour, Crime and Policing Act 2014;
  - iv) a committal application on any breach of an injunction;
- 2 To serve Notice Seeking Possession on the mandatory grounds specified in section 84A of the Housing Act 1985.
- 3 To instruct the Borough Solicitor commence possession proceedings on section 84A and Ground 2ZA of Schedule 2 of the Housing Act 1985 and apply for warrants for eviction obtained on this ground.

**C – To the Managing Directors – Constitution 4.2 (*new delegation at 4.2 – 4.32*)**

1. To issue, vary or discharge closure notices for a maximum 48 hour period under Part 4 Chapter 3 of the Anti Social Behaviour, Crime and Policing Act 2014.

NB – Monitoring Officer powers will be used to remove any delegations no longer required following the repeal of legislation on the commencement of this Act or as and when the repeal provisions come into force whilst following any transitional arrangements.