

# Resources

## Serving notice

*Community protection notices can be served to control anti-social behaviour.*  
**John Pointing and David Horrocks** explain how they should be used



**Q: What are the aims of the Anti-social Behaviour, Crime and Policing Act 2014?**

**A:** The legislation is designed to control a wide range of conduct by businesses, companies or other organisations, as well as individuals, that amounts to anti-social behaviour and to provide the means for controlling issues that 'fall through the gaps' of existing legislative provisions.

**Q: What role can community protection notices (CPNs) play?**

**A:** CPNs are intended to deal with repeated or ongoing conduct, not occasional or 'one off' acts. The test for such conduct is set out in Section 43 of the act, which requires that the local authority (LA)'s designated officer be satisfied, on reasonable grounds, that the conduct of the individual or body is:

- Unreasonable.
- Persistent or continuing in nature.
- Having a detrimental effect on the quality of life of those in the locality.

A warning letter must be issued before serving a CPN. CIEH's revised professional practice note sets out the type of information that might be included in the warning letter and the CPN.

**Q: Does the revised note better explain the conduct test?**

**A:** Yes. All references to malign intent, substantial effect, public nuisance and the need for the effect to be felt at a community level have been deleted from the updated version of the guidance. There is no evidence that it was parliament's intention that these matters be satisfied before issuing CPNs and nowhere are these matters stated or implied in the separately published Home Office guidance.

It's important to understand that 'conduct' includes a failure to act and that 'those in the community' means individuals (for example, a single neighbour) as well as the community at large.

**Q: How important is it for LA officers to maintain objectivity?**

**A:** It is essential that an independent and objective approach is adopted by all investigating officers. Although these powers are described as 'victim-centred', this does not mean it is officers' job to champion complainants' causes. They must form an objective judgement about any complained of conduct by excluding any possible exaggeration, prejudice or unusual sensitivity, and they should remain uninfluenced by their own norms. Officers must not use CPNs to curtail activities that are innocent, reasonably conducted, or they simply do not like.

**Q: How do the CPN powers relate to established statutory nuisance powers?**

**A:** The two regimes should be seen as complementary, not mutually exclusive. CPNs are intended to be used with 'low level' matters reflecting the lower threshold test of 'detrimental effect on quality of life'. This could encompass annoyance and inconvenience, whereas with the nuisance limb of the statutory nuisance regime, the threshold test is set much higher, requiring 'a material and substantial interference with personal comfort'.

There is a potential overlap between the act's powers and Part 3 of the Environmental Protection Act 1990 (EPA), which is why we advocate that LAs have in place published and transparent enforcement policies and procedures, including the requisite memoranda of understanding with other enforcement agencies, including the police. This is essential in order to avoid confusion, conflict and duplication of effort in the use of enforcement powers.

Ordinarily, when undertaking an investigation that involves elements of anti-social behaviour under the EPA, it would be

Statutory Nuisance Solutions offers bespoke training courses to local authority enforcement officers and to businesses on the law and the practical application of statutory nuisance and anti-social behaviour powers. For more information, go to: [www.statutorynuisancesolutions.co.uk](http://www.statutorynuisancesolutions.co.uk)



inadvisable to issue a CPN. However, under certain circumstances, it may be appropriate to issue a CPN, such as when:

- An investigation is taking too long to establish if a statutory nuisance exists.
- The LA believes a CPN, as an alternative to serving a noise abatement notice, is likely to be effective (see *Southampton CC v Odysseas* [2017] EWHC 2783 (Admin)).
- The investigation concludes there is no statutory nuisance.

An important point to bear in mind is that CPNs, unlike abatement notices served under Section 80 of the EPA, cannot be issued prospectively to prevent conduct that has not yet happened. The detrimental effect must be present around the time of issuing the CPN and a history of persistent or continuing conduct meeting the threshold test needs to have occurred; that history need not be continuous and it may be intermittent.

#### Q: What issues might be dealt with using CPNs?

A: Unlike Section 79 of the EPA, which prescribes the matters that can be defined as amounting to a statutory nuisance, the act does not set limits on the type of behaviour that could be judged to be anti-social. This is important and very helpful to LAs, which are now empowered to deal with a whole host of matters, for which there was previously no effective statutory remedy. This includes the infamous problem of Japanese knotweed.

In the parliamentary debates that took place during the passage of the bill, Lord Taylor stated that: 'Conduct can just as easily be interpreted to mean inaction, so not taking action to remove it can come under a CPN... [There is nothing specific in this bill concerning Japanese knotweed, so] any invasive species can be controlled and a CPN issued to force a passive landowner to take control measures.'

Earlier this year, the Court of Appeal upheld the decision of Cardiff county court to award damages against Network Rail in a case in which land owned by Network Rail had become infested with Japanese knotweed, which over time had encroached upon the land of two adjoining bungalows.

#### Q: What about the problems caused by barking dogs?

A: Traditionally, the EPA has delivered mixed results in tackling this problem and has been seen by many as using 'a sledgehammer to crack a nut'. In this context, a CPN may be a more appropriate remedy, since it can focus on what is effectively the anti-social behaviour of dog owners rather than the animals themselves.

For example, advice contained in guidance published by Defra in 2014, *Dealing With Irresponsible Dog Ownership: Practitioners' Manual*, could be cited in any CPN requiring

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the owner to undertake training on how to interact with his or her dog and deal with the issues giving rise to complaint.

#### Q: How might landlords be liable for the anti-social behaviour of their tenants?

A: In certain circumstances, such as an Airbnb apartment frequently let out and in which noisy parties are regularly being held, the landlord might be held to be vicariously liable by virtue of Section 44 of the act. With long-standing, persistent problems such as this, where the occupancies are short-term and transient, it may prove more effective to consider serving the landlord with a CPN requiring him in effect to take ownership of the problem by, for example, enforcing the terms of the lease or tenancy agreement.

#### Q: What are the powers available to LAs to seek civil injunctions for anti-social behaviour?

A: The power to obtain injunctions in matters involving statutory nuisance for LAs is well established. In cases, where the abatement notice procedure has proved ineffective in abating a statutory nuisance, the LA is empowered to institute proceedings for an injunction in the High Court (*The Barns (NE) Ltd & Suleman v Newcastle City Council* [2005] EWCA Civ 1274). In this sense, this intervention is seen as a remedy of last measure.

In contrast, injunctions for anti-social behaviour can be seen as a primary remedy designed to 'nip the problem in the bud', as reflected in the Home Office guidance, *Reform of Anti-social Behaviour Powers: Statutory Guidance for Frontline Professionals*, which suggests: '[Injunctions] should be considered early on in appropriate cases; [an injunction] can offer fast and effective protection for victims and communities and set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating.'

#### Q: Why did CIEH decide to update its professional practice note on CPNs?

A: The revised guidance to practitioners is intended to clarify how CPNs are to be used and to encourage local authorities to develop policies and intervention strategies. We believe that LAs should now be encouraged to review and use these powers fully. CPNs should be seen as a means of building on the long-established powers to deal with statutory nuisances by complementing traditional approaches, especially for cases that 'fall through the cracks' of provisions in the EPA.

**John Pointing and David Horrocks of Statutory Nuisance Solutions were commissioned by the CIEH to review and update CIEH's professional practice note on the use of community protection notices, published in November 2017**

## CASE NOTES



### Stone and Salhouse Norwich Ltd v Environment Agency [2018] EWHC 994 (Admin). Part two

Last month, Case Notes reported on a successful application to have a late appeal considered. The appellants were the company that owned a site in Norwich and one of its directors. The site had been leased to a business recycling mattresses, subject to a permit under the Environmental Permitting (England and Wales) Regulations 2010.

Salhouse Norwich Ltd had been convicted of various offences related to the continued storage of more than 400 tons of mattresses for at least a year after the operator had ceased trading. The offences under Regulations 12, 38, and 41 were for knowingly permitting the waste storage operation without a permit and the connivance of the director.

There were two legal issues for the High Court to consider. Was the storage of the remaining mattresses a continuing waste operation covered by the regulations and the Waste Framework Directive? And was it necessary for there to be a suitable act by the defendants, to demonstrate they 'knowingly permitted' this operation?

On a detailed review of the relevant UK and EU provisions, the High Court concluded that the mattresses were waste. It also confirmed that the storage of waste for either recovery or disposal was a regulated activity and the statutory exemptions for temporary storage before collection did not apply. The appellants agreed that their activities were not covered by a relevant permit.

Previous cases in respect of 'knowingly permitting' had decided that a failure to prevent pollution was covered, provided the defendants had knowledge of its existence. There was also a precedent that it was unnecessary for the defendants to know that there was a breach of a licence or permit, as long as they knew that waste operations were being carried out on their land.

On this basis there was no need to prove that the defendants had carried out any positive act, simply that they had known the waste operation was continuing and had done nothing to prevent it. While they had claimed at the original trial that they were simply engaged in clearing up, the evidence was clear that they had taken no effective steps over a protracted period. The magistrates had been right to convict them.

The High Court therefore dismissed both appeals.

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