

1st September 2014

Anti-Social Behaviour Crime and Policing Act 2014

Ward(s) All

Portfolios Cllr K Hussain - Portfolio holder, Community, leisure and culture.

1.0 Executive Summary

- 1.1 The purpose of this report is to provide a broad overview of a number of the key provisions contained within the Anti-Social Behaviour Crime and Policing Act 2014 and detail what these will mean locally as agencies work collectively to tackle crime and disorder.
- 1.2 The Anti-Social Behaviour Crime and Policing Act 2014 Act was introduced in the House of Commons on 9 May 2013 and received Royal Assent in March 2014. The act introduces simpler, more effective powers to tackle anti-social behaviour that provide better protection for victims and communities
- 1.3 Although the act covers a wide range of matters relating to crime, policing and community safety this report will focus on the new tools and powers introduced primarily to tackle the broad spectrum of anti-social behaviour. It will briefly consider their implications and where possible at this time how these will be implemented locally.
- 1.4 The act also introduces or amends existing legislation to tackle irresponsible dog ownership and the use of illegal firearms by gangs and organised criminal groups, strengthen protection afforded to the victims of forced marriage and those at risk of sexual harm, enhance the professional capabilities and integrity of the police and amends existing provisions around port and border security and extradition arrangements.
- 1.5 Although the Act contains a broad range of provisions parts 1 to 6 relate specifically to ASB and introduce the new powers. The provisions in parts 1 to 4 replace the existing 19 powers to deal with anti-social behaviour with six faster, more effective ones, whilst part 5 gives landlords powers to deal swiftly with the most serious anti-social behaviour committed by their tenants. Part 6 gives victims the power to ensure that action is taken to deal with persistent anti-social behaviour through the new ASB Reviews and a greater say in what form of sanction an offender receives out of court through the new Community Remedy.
- 2.1 The six new powers include Civil Injunctions to Prevent ASB and Criminal Behaviour Orders, both of which can now include positive requirements in addition to prohibitions. The Act also includes powers for the police to disperse people causing harassment, alarm or distress and powers to deal with community protection making provision for Community Protection

Notices, Public Spaces Protection Orders and to close premises associated with nuisance and disorder.

- 2.2 The Act and the Tools and Powers it introduces could potentially impact across a number of services within the council and across many of the partner agencies that collectively make up Safer Walsall Partnership. Noting there is still some work to do to support their introduction planning for these new provisions is well under way locally focussing on their implications and the development of consistent policies and procedures. These will be included within a borough ASB Manual of Guidance currently under development. Regional discussions have also taken place in relation to a number of the powers with a view to adopting a consistent approach and common/agreed working practices.
- 2.3 The Home Office has published the commencement date for the new tools and powers in the act to tackle anti-social behaviour, along with the community trigger and community remedy. These will all have effect from Monday 20 October 2014.

2.0 Reason for scrutiny

- 2.1 To provide Elected Members with an on overview of the new ASB tools and importantly of the ASB Case Reviews or 'Community Trigger'. To give members an opportunity to comment upon the new legislation and an understanding of the implications locally.

3.0 Recommendations

- 3.1 The Panel is asked to note and comment upon the contents of this report and identify any areas on which it would like to receive further information at a future scrutiny panel meeting.

4.0 Background papers

- 4.1 Draft Safer Walsall Partnership ASB Review Process (Appendix 1).

5.0 Resource and legal considerations

- 5.1 Walsall Council has a statutory requirement under the Crime and Disorder Act (1998) to bring responsible authorities together to tackle crime and disorder. The community safety partnership (CSP) in Walsall is the Safer Walsall Partnership. This consists of the Local Authority, Police, Probation Services, Public Health, the Fire and Rescue Service and NHS, as well as representation from whg and the voluntary sector. The work of the Partnership is overseen by Walsall's Policing and Crime Board which consists of the responsible authorities and representatives from the area partnerships, voluntary and business sector.
- 5.2 The Partnership has a statutory responsibility to produce a strategy detailing how it will reduce crime and disorder in its area based on the findings of a comprehensive Strategic Assessment which uses data from across the partnership to provide a detailed analysis of crime and disorder issues in the borough. The Safer Walsall Partnership has recently authored its three year

Community Safety Plan 2014-17 based on the 14/15 Strategic Assessment. The 2014-17 plan continues to identify Tackling anti-social behaviour as one of the boroughs Strategic Priorities. Tackling anti-social behaviour therefore remains at the forefront of partner activity to build a safer Walsall for all who live and work in the borough.

- 5.3 The new tools and powers referred to in this report are designed to improve the way in which we collectively work to tackle this key community priority building on already strong and collaborative working practices. It should also enable us to more effectively protect the most vulnerable members of our community.

6.0 Citizen impact:

- 6.1 Crime and anti- social behaviour have a huge impact on every aspect of our communities from the health and well-being of our residents to the boroughs economy. Strong, cohesive communities where people get along and take responsibility for themselves and each other are less likely to be the location for crime and disorder. The 'broken window' effect can quickly lead to areas becoming targets for crime, where residents live in fear and isolation. Such areas can negatively impact upon perceptions and may ultimately affect economic confidence and potential investment.

7.0 Environmental impact:

- 7.1 Anti-social behaviour includes a wide range of behaviours, many of which will impact upon the environment. Any tool, mechanism or process which reduces the incidents or prevalence of ASB will reduce this negative environmental impact.

8.0 Performance management

- 8.1 The implementation and effectiveness of the new Tools and Powers will be reported to and monitored by the Safer Walsall Local Policing and Crime and Operations Boards. Operational progress/performance will managed through a multi agency working group

9.0 Equality Implications


- 9.1 An Equality Impact Assessment is to be completed to support the introduction of the new practices for dealing with Anti-Social Behaviour. Equality implications are considered across Partnership activity. Any improvements in the way in which we collectively tackle ASB will benefit all communities within Walsall

10 Consultation

- 10.1 The implementation of the new tools and powers and associated activity including the development of appropriate policies and procedures is being progressed by a multi agency working group comprising of representatives from the Council, West Midlands Police and key Registered Providers within the borough

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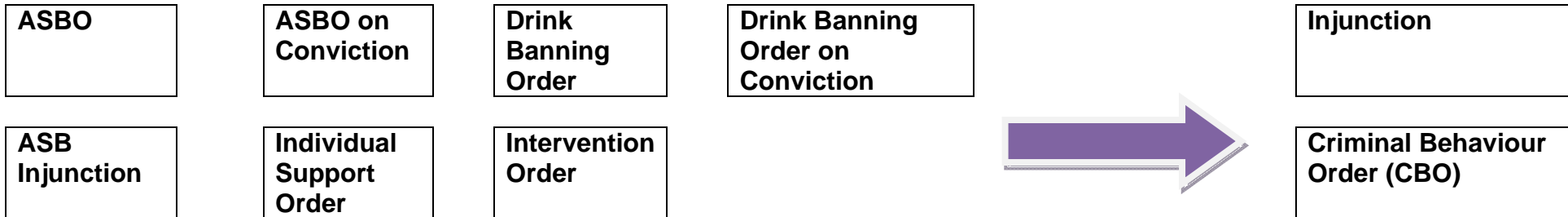
REPORT

1.0 Background

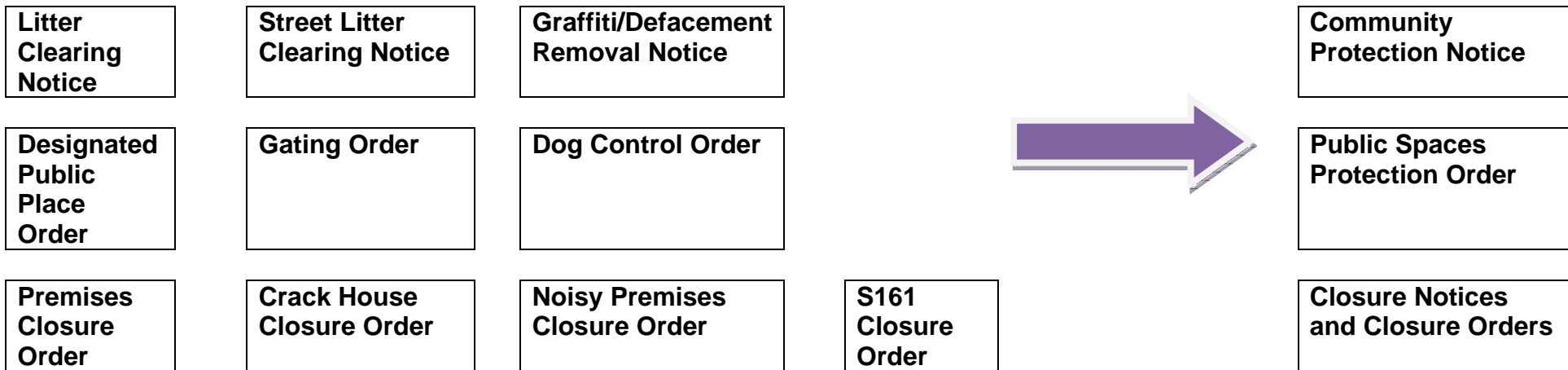
- 1.1 The Anti-Social Behaviour Crime and Policing Act 2014 received Royal Assent in March 2014. The act introduces simpler, more effective powers to tackle anti-social behaviour that provide better protection for victims and communities. It is intended to put the victim at the heart of the response to anti-social behaviour and give professionals the flexibility they need to deal with any situation.
- 1.2 Although the Act contains a broad range of provisions parts 1 to 6 relate specifically to ASB and introduce the new powers. The provisions in parts 1 to 4 replace the existing 19 powers to deal with anti-social behaviour with six faster, more effective ones, whilst part 5 gives landlords powers to deal swiftly with the most serious anti-social behaviour committed by their tenants. Part 6 gives victims the power to ensure that action is taken to deal with persistent anti-social behaviour through the new ASB Reviews and a greater say in what form of sanction an offender receives out of court through the new Community Remedy.
- 1.3 Diagram 1 illustrates this reduction in powers and the move to a more streamlined tool kit. These new powers include Civil Injunctions to Prevent ASB, Criminal Behaviour Orders, powers for the police to disperse people causing harassment, alarm or distress, Community Protection Notices, Public Spaces Protection Orders and powers to close premises associated with nuisance and disorder.
- 1.4 An overview of each of these new tools will now be provided with where applicable some consideration of the implementation and implications locally. Measures designed to give victims and communities a greater say in how ASB is dealt with including the ASB Review or 'Community Trigger' process being developed for Walsall will then also be outlined.
- 1.5 It is of note that whilst the new powers are designed to be flexible and as such adaptable to protect victims in a wide range of situations the government still recognises the importance of complementing them with effective case management built around an effective assessment of risk, strong partnership working, appropriate exchange of information and the continued use of early and informal interventions.
- 1.6 These early and informal interventions include verbal and written warnings, community resolution, mediation, Acceptable Behaviour Contracts, Parenting Contracts and other forms of support and counselling. These should continue to be considered and utilised in our overall approach to tackle this high priority issue.
- 1.7 Work with partners is well underway to develop consistent and coordinated processes in relation to the provisions within the act. This supports a cross partnership piece of work to build on existing strong partnership activity to improve the way we collectively tackle anti-social behaviour. This includes an improved tasking process for anti-social behaviour based on an improved data set, common working practices/procedures and the development of a borough wide ASB Manual of Guidance.

DIAGRAM 1 – Streamlining the Tool Kit

PEOPLE



PLACES



POLICE POWERS



2.0 Civil Injunction

2.1 The Civil Injunction is a civil power which can be applied for to deal with anti-social individuals and is summarised in table 1 below.

Table 1 –Civil Injunction

Purpose	To stop or prevent individuals engaging in anti-social behaviour quickly, nipping problems in the bud before they escalate.
Applicants	<ul style="list-style-type: none">• Local councils;• Social landlords;• Police (including British Transport Police);• Transport for London;• Environment Agency and Natural Resources Wales; and• NHS Protect and NHS Protect (Wales)
Test	<p>On the balance of probabilities;</p> <p>Behaviour likely to cause harassment, alarm or distress (non-housing related anti-social behaviour); or</p> <p>Conduct capable of causing nuisance or annoyance (housing-related anti-social behaviour); and</p> <p>Just and convenient to grant the injunction to prevent anti-social behaviour.</p>
Details	<p>Issued by the county court and High Court for over 18s and the youth court for under 18s.</p> <p>Injunction will include prohibitions and can also include positive requirements to get the perpetrator to address the underlying causes of their anti-social behaviour.</p> <p>Agencies must consult youth offending teams in applications against under 18s.</p>
Penalty on breach	<p>Breach of the injunction is not a criminal offence, but breach must be proved to the criminal standard, that is, beyond reasonable doubt.</p> <p>Over 18s: civil contempt of court with unlimited fine or up to two years in prison.</p> <p>Under 18s: supervision order or, as a very last resort, a civil detention order of up to three months for 14-17 year olds.</p>
Appeals	<p>Over 18s to the High Court; and</p> <p>Under 18s to the Crown Court.</p>
Important changes/ differences	<p>Available to a wider range of agencies than Anti-Social Behaviour Injunctions.</p> <p>Obtainable on a civil standard of proof unlike Anti-Social Behaviour Orders (ASBOs).</p> <p>No need to prove “necessity” unlike ASBOs.</p> <p>Breach is not a criminal offence.</p> <p>Scope for positive requirements to focus on long-term solutions.</p>

- 2.2 It is of note that in addition to the use of the civil standard of proof the civil injunction also includes the lower, 'capable of causing nuisance and annoyance' test for anti-social behaviour where it relates to the victims occupation of residential premises, whilst the current Anti-Social Behaviour Order requires the higher threshold 'causing harassment alarm and distress' to be met. Unlike the current Anti Social Behaviour Injunction (ASBI) which is only available to Registered Providers this new injunction and the lower test it incorporates is also now available to both the police and council.
- 2.3 In addition to prohibitions the injunction also allows for the imposition of positive requirements to address an offender's behaviour. It can be used to deal with a wide range of behaviours and in serious cases to exclude a perpetrator from the home. Injunctions can also be applied for 'without notice' being given to the perpetrator in exceptional circumstances to stop serious harm to victims. A power of arrest can be attached to an injunction if the anti-social behaviour in which the respondent has engaged, or threatens to engage, consists of or includes the use, or threatened use, of violence against other persons or if there is a significant risk of harm to other persons from the respondent.
- 2.4 Locally partners are working to develop a consistent approach to the way in which injunctions are obtained and importantly recorded, in order to ensure there use is effectively coordinated and policed.

3. Criminal Behaviour Order (CBO)

- 3.1 The Criminal Behaviour Order (CBO) is available on conviction for any offence and in any criminal court. The order is intended to tackle serious and persistent offenders whose behaviour has brought them before a criminal court. The CBO is summarised in table 2.
- 3.2 Although these new orders will primarily be applied for by the CPS the council could also apply if it is pursuing a criminal matter through the courts. Importantly and unlike the current CBO's the new order no longer requires a link between the criminal behaviour which resulted in the conviction and the anti-social behaviour for it to be issued by a court. Both of these points increase the usefulness of and situations in which this tool can now be utilised. As with the Civil Injunction both prohibitions and positive requirements can be included as part of the order.
- 3.3 The CBO hearing will occur after, or at the same time as the sentencing for the criminal conviction. It is a criminal offence if an offender fails to comply with a CBO and partners are working to develop a consistent approach to the way in which these orders are utilised and recorded within Walsall.

Table 2 –Criminal Behaviour Order

Purpose	Issued by any criminal court against a person who has been convicted of an offence to tackle the most persistently anti-social individuals who are also engaged in criminal activity.
Applicants	The prosecution, in most cases the Crown Prosecution Service (CPS), either at its own initiative or following a request from the police or council.
Test	<p>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</p> <p>The court considers that making the order will help prevent the offender from engaging in such behaviour.</p>
Details	<p>Issued by any criminal court for any criminal offence.</p> <p>The anti-social behaviour does not need to be part of the criminal offence.</p> <p>Order will include prohibitions to stop the anti-social behaviour but it can also include positive requirements to get the offender to address the underlying causes of the offender's behaviour.</p> <p>Agencies must find out the view of the youth offending team (YOT) for applications for under 18s.</p>
Penalty on breach	<p>Breach of the order is a criminal offence and must be proved to a criminal standard of proof, that is, beyond reasonable doubt.</p> <p>For over 18s on summary conviction: up to six months imprisonment or a fine or both.</p> <p>For over 18s on conviction on indictment: up to five years imprisonment or a fine or both.</p> <p>For under 18s: the sentencing powers in the youth court apply.</p>
Appeals	<p>Appeals against orders made in the magistrates' court (which includes the youth court) lie to the Crown Court.</p> <p>Appeals against orders made in the Crown Court lie to the Court of Appeal.</p>
Important changes/ differences	<p>Consultation requirement with YOTs for under 18s.</p> <p>No need to prove "necessity" unlike Anti-Social Behaviour Orders.</p> <p>Scope for positive requirements to focus on long-term solutions.</p>

4.0 Dispersal Powers

- 4.1 The dispersal power is intended to be a flexible power for use by the police in a range of situations to provide an immediate and short term response to issues that arise. This new power replaces the current S27 (for alcohol related anti-social behaviour) and S30 (Dispersal Order) dispersal powers. The new Dispersal Power is summarised in table 3.

Table 3 – Dispersal Power

Purpose	Requires a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours.
Used by	Police officers in uniform; and Police Community Support Officers (if designated the power by their chief constable).
Test	Contributing or likely to contribute to members of the public in the locality being harassed, alarmed or distressed (or the occurrence of crime and disorder); and Direction necessary to remove or reduce the likelihood of the anti-social behaviour, crime or disorder.
Details	Must specify the area to which it relates and can determine the time and the route to leave by. Can confiscate any item that could be used to commit anti-social behaviour, crime or disorder. Use in a specified locality must be authorised by a police inspector and can last for up to 48 hours. A direction can be given to anyone who is, or appears to be, over the age of 10. A person who is under 16 and given a direction can be taken home or to a place of safety.
Penalty on breach	Breach is a criminal offence. Failure to comply with a direction to leave: up to a level 4 fine and/or up to three months in prison although under 18s cannot be imprisoned. Failure to hand over items: up to a level 2 fine.
Appeals	A person who is given a direction and feels they have been incorrectly dealt with should speak to the duty inspector at the local police station. Details should be given to the person on the written notice.
Important changes/ differences	It is a more flexible power; it can be used to provide immediate respite to a community from anti-social behaviour, crime or disorder. An area does not need to be designated as a dispersal zone in advance. Although there is no requirement to consult the local council, the authorising officer may consider doing so in some circumstances before authorising use of the dispersal. Police Community Support Officers may use all elements of the dispersal power (if designated the power by their chief constable).

- 4.2 The dispersal power can be used by a police officer in uniform and a PCSO if this power is designated for use by a Chief Constable. The dispersal order is authorised (for a period of up to 48 hours) by an officer of Inspector rank and above and the

locality it covers should be defined as a specific geographic location, the power can then be used only in that locality.

- 4.3 The direction should be given where practicable in writing and specify the location to which the direction relates and for how long the individual must leave the area. In addition the officer can impose requirements as to the time by which the area must be vacated and can include the route which must be taken. The direction can be given to anyone who appears to be over the age of 10 and if the officer believes the person receiving the direction is under 16 they can be taken home or to another place of safety.
- 4.4 The officer can require the person given the direction to hand over items causing or likely to cause anti-social behaviour, these could be any items but will likely include alcohol, fireworks and spray paint.
- 4.5 Although when authorised the dispersal power requires the identification of a specific locality there is no longer the requirement for the pre-designation of a "dispersal zone" and the consultation requirements have been relaxed. It can therefore be used in any location almost immediately and can fit into current operational/tasking processes. The new power can also now be used to disperse individuals without the requirement that two or more people are engaged in the offending behaviour.
- 4.6 It is envisaged that this is a flexible power that is used to provide immediate/short term respite to a local community. It is intended to be a preventative power used to deal with situations before they escalate and that where problems are longer term partners will work together to resolve them. It is also suggested that the publication/use of data on use of the dispersal power will help identify areas in which these longer term solutions are required.

5.0 Community Protection Notice

- 5.1 The Community Protection Notice (CPN) is intended to deal with particular on going problems/nuisances which have a negative impact on the community's quality of life by targeting those responsible. Many of the issues covered by a CPN are already dealt with by council's however recognising multi agency working the CPN's can now be issued by police officers and upon designation by the council registered providers of social housing in the area. It is anticipated that where appropriate consultation with the council will take place in these cases. The CPN is summarised in table 4.
- 5.2 The test for a CPN is intentionally broad and focuses on the impact the anti-social behaviour is having on the community and it is suggested that the issuing officer should consider speaking to potential victims to assess this wider impact. It can be issued to any individual aged 16 and over but the issuing officer must be able to prove that the person receiving the CPN should reasonably be expected or able to control the behaviour in question.
- 5.3 It is of note that issuing a CPN does not discharge the council from its duty to issue an Abatement Notice where the behaviour constitutes a statutory nuisance for the purposes of part 3 of the Environmental Protection Act 1990. This encompasses a wide range of behaviours including the state of a premise and noise emitted from it.

Whilst a CPN may be issued for behaviour that constitutes a statutory nuisance it is a principle of law that a specific power should be used in preference to a general one. Also as the CPN's are to be used for behaviours that are persistent and unreasonable the police or registered provider will have time to liaise with the council if they believe that the behaviour for which they are considering issuing the CPN could constitute a statutory nuisance. In all cases the interaction between the two powers need to be considered.

Table 4 – Community Protection Notice

Purpose	To stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life.
Who can issue a CPN	<ul style="list-style-type: none"> • Council officers • Police officers; • Police community support officers (PCSOs) if designated; and • Social landlords (if designated by the council).
Test	Behaviour has to: <ul style="list-style-type: none"> • have a detrimental effect on the quality of life of those in the locality; • be of a persistent or continuing nature; and • be unreasonable.
Details	<p>Written warning issued informing the perpetrator of problem behaviour, requesting them to stop, and the consequences of continuing.</p> <p>Community protection notice (CPN) issued including requirement to stop things, do things or take reasonable steps to avoid further anti-social behaviour.</p> <p>Can allow council to carry out works in default on behalf of a perpetrator.</p>
Penalty on breach	<p>Breach is a criminal offence.</p> <p>A fixed penalty notice can be issued of up to £100 if appropriate.</p> <p>A fine of up to level 4 (for individuals), or £20,000 for businesses.</p>
Appeals	<p>Terms of a CPN can be appealed by the perpetrator within 21 days of issue.</p> <p>The cost of works undertaken on behalf of the perpetrator by the council can be challenged by the perpetrator if they think they are disproportionate.</p>
Important changes/ differences	<p>The CPN can deal with a wider range of behaviours for instance, it can deal with noise nuisance and litter on private land not open to the air.</p> <p>The CPN can be used against a wider range of perpetrators.</p> <p>The CPN can include requirements to ensure that problems are rectified and that steps are taken to prevent the anti-social behaviour occurring again.</p>

- 5.4 The CPN must be proceeded by a written warning and enough time must elapse between the issue of both the warning any subsequent CPN for the individual or body to deal with the matter. Failure to comply with the CPN is an offence for which a number of options are available to the issuing authority. These include Fixed Penalty

Notices (FPN's), Remedial Action, Remedial Orders, Forfeiture Orders and Seizure (by way of a court warrant).

- 5.5 Locally the implications of the CPN and in particular the delegation to registered providers and the link to/consideration of statutory nuisance and the issue of legal primacy are being considered. This will then be used to support the development of appropriate procedures/protocols.

6.0 Public Spaces Protection Order

- 6.1 Public Spaces Protection Orders (PSPO's) are intended to ensure that the law abiding majority can enjoy public spaces free from anti-social behaviour. This they achieve by dealing with a specific nuisance(s) or problem(s) in a particular area that is/are having a detrimental effect on the quality of life of the community. The PSPO is summarised in table 5.

Table 5 – Public Spaces Protection Order

Purpose	Designed to stop individuals or groups committing anti-social behaviour in a public space
Who can make a PPO	Councils issue a public spaces protection order (PSPO) after consultation with the police, Police and Crime Commissioner and other relevant bodies.
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. Be unreasonable; and Justifies the restrictions imposed.
Details	Restrictions and requirements set by the council. These can be blanket restrictions or requirements or can be targeted against certain behaviours by certain groups at certain times. Can restrict access to public spaces (including certain types of highway) where that route is being used to commit anti-social behaviour. Can be enforced by a police officer, police community support officers and council officers.
Penalty on breach	Breach is a criminal offence. Enforcement officers can issue a fixed penalty notice of up to £100 if appropriate. A fine of up to level 3 on prosecution.
Appeals	Anyone who lives in, or regularly works in or visits the area can appeal a PSPO in the High Court within six weeks of issue. Further appeal is available each time the PSPO is varied by the council.
Important changes/ differences	More than one restriction can be added to the same PSPO, meaning that a single PSPO can deal with a wider range of behaviours than the orders it replaces.

- 6.2 Councils are responsible for making the order but must consult with local police formally through the Chief Police Officer and the Police and Crime Commissioner. The council must also consult whatever community representatives it deems are appropriate and with the owner/occupier of the land. A draft order must be published prior to a PSPO being made.
- 6.3 A PSPO can include a number of requirements/restrictions and can be used to prohibit certain activities such as drinking alcohol in addition to placing requirements on individuals undertaking certain activities such as ensuring that dog walkers keep their pets on a lead. These restrictions and/or requirements can be targeted at specific groups/people and designed to apply only in specific circumstances or at specific times. It is of note also that activities that can be covered by a PSPO are not limited to those covered by the orders it is replacing and as such that this is intended to be a more flexible order that can deal with a range of community concerns. When the PSPO and the measures it contains are agreed this information must be published.
- 6.4 The fact that a PSPO can be used to restrict the consumption of alcohol (where the test has been met) will certainly be of interest although as with the Designated Public Place Order (DPPO) it replaces there are a number of limitations to its use. The PSPO can also be used in certain circumstances to restrict access to a Right of Way or to restrict/prevent certain activities from being undertaken upon them.
- 6.5 The maximum term for a PSPO is three years but they can be used for a shorter period particularly where the impact of the restrictions imposed is uncertain. Following further consultation the order can be extended for up to three years at any time before it expires where it is considered necessary to prevent the original behaviour from occurring. The terms of the order can also be varied if a new issue arises in the area it covers that is not already covered. The council can also seek to discharge the order at any time.
- 6.6 If a person does anything prohibited in the PSPO or fails to comply with a requirement specified within it without reasonable excuse they commit an offence. Anyone guilty of an offence is liable on summary conviction to a fine not exceeding level 3 on the standard scale. Interestingly when used to prohibit the consumption of alcohol it is not an offence to drink alcohol in a controlled zone but it is an offence to fail to comply with a request to cease drinking or to surrender the alcohol. This offence is liable on summary conviction to a fine not exceeding level 2 on the standard scale. In addition depending on the nature of the behaviour in question the enforcing officer may determine that a Fixed Penalty Notice is in this case the most appropriate form of sanction.
- 6.7 In circumstances where a Designated Public Place Order, Gating Order or Dog Control Order are currently in place they will continue to be valid for a further three years following the commencement of the new power. At this point they will revert to a PSPO. However the council may review orders currently in place to ensure they are fit for purpose and still required in view of the new enforcement landscape. This is particularly relevant given the borough wide DPPO currently in place for Walsall.

- 6.8 In addition to consideration of current orders currently in place within Walsall we are working locally on developing clear, uniform and transparent procedures and processes for the implementation of the DSPO's.

7.0 Closure Power

- 7.1 This power which can be used by either the council or police is intended to be a flexible and quick means to protect victims and communities. The Closure Power is summarised in table 7.

Table 7 – 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.
Applicants	Local council. Police.
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.
Details	A closure notice is issued out of court in the first instance. Flowing from this the closure order can be applied for through the courts. Notice: can close a premises for up to 48 hrs out of court but cannot stop owner or those who habitually live there accessing the premises. Order: can close premises for up to six months and can restrict all access. Both the notice and the order can cover any land or any other place, whether enclosed or not including residential, business, non-business and licensed premises.
Penalty on breach	Breach is a criminal offence. Notice: Up to three months in prison; Order: Up to six months in prison; Both: Up to an unlimited fine for residential and non-residential premises.
Appeals	Any person who the closure notice was served on; Any person who had not been served the closure notice but has an interest in the premises; The council (where closure order was not made and they issued the notice); The police (where closure order was not made and they issued the notice).
Important changes/ differences	A single closure power covering a wider range

- 7.2 A closure notice (if the required test has been met) can be issued for a 24 hour period although can be extended to 48 hours (or issued for that period in the first instance) by the councils Chief Executive Officer (or a designate thereof) or a Police Superintendant. A Closure Order can then subsequently be issued by a court if it is satisfied that the conditions of the further/higher test have been met. A Closure Order can be granted for a maximum of 6 months.
- 7.3 It is of note that every issue of a Closure Notice must be accompanied by an application to the magistrates court for a Closure Order. Where it is intended that the notice will be cancelled prior to its full term because a further order is not deemed necessary this must be communicated to the court at the point of application. Only the higher Closure Order can be used to prohibit access to those who routinely live on the premises.
- 7.4 The Closure Notice process requires that consultation should take place with everyone that the police or council thinks is appropriate. This should include the victim but could also include others affected positively or negatively by the closure. An offence is committed by anyone who without reasonable excuse remains on or enters a premise in contravention of a Closure Notice or Closure Order or by anyone obstructing a council or police officer serving a notice or who is entering or securing a premises.
- 7.5 Locally we are working to include the closure power into the broader range of policies and procedures being developed to support more integrated working and the implementation of the Anti-Social Behaviour Crime and Policing Act. Although this is a power that can be used by the council it is envisaged that this will be led largely or at least heavily supported by the police.

8.0 Absolute Ground for Possession

- 8.1 The new absolute ground for possession has been introduced to speed up the possession process in cases where crime or anti-social behaviour has already been proven by another court. Existing processes are often lengthy, expensive and prolong the suffering of witnesses and the community. The new absolute ground is intended for use in the most serious cases and is available to both social and private rented sector landlords. As this is a power used by landlords and the council has very limited housing stock the power will not be outlined here in any further detail. It is however summarised in table 8 and will support cross partnership work to tackle anti-social behaviour.

Table 8 – Absolute Ground for Possession

Overview	The Act introduces a new absolute ground for possession of secure and assured tenancies where anti-social behaviour or criminality has already been proven by another court.
Purpose	To expedite the eviction of landlords' most anti-social tenants to bring faster relief to victims.

Applicants who can use the new ground	<ul style="list-style-type: none"> • Social landlords (local authorities and housing associations). • Private rented sector landlords.
Test	<p>The tenant, a member of the tenant's household, or a person visiting the property has met one of the following conditions:</p> <p>Convicted of a serious offence (specified in Schedule 2A to the Housing Act 1985);</p> <p>Found by a court to have breached a civil injunction;</p> <p>Convicted for breaching a criminal behaviour order (CBO);</p> <p>Convicted for breaching a noise abatement notice; or</p> <p>The tenant's property has been closed for more than 48 hours under a closure order for anti-social behaviour.</p>
Details	<p>Offence/breach needs to have occurred in the locality of the property or affected a person with a right to live in the locality or affected the landlord or his or her staff/ contractors;</p> <p>Secure tenants of local housing authorities will have a statutory right to request a review of the landlord's decision to seek possession. Private registered providers are encouraged to adopt a similar practice.</p>
Result of action	If the above test is met, the court must grant a possession order (subject to any available human rights defence raised by the tenant, including proportionality) where the correct procedure has been followed.
Important changes/ differences	<p>Unlike the existing discretionary grounds for possession, the landlord will not be required to prove to the court that it is reasonable to grant possession. This means the court will be more likely to determine cases in a single, short hearing;</p> <p>This will offer better protection and faster relief for victims and witnesses of anti-social behaviour, save landlords costs, and free up court resources and time;</p> <p>It will provide new flexibility for landlords to obtain possession through this faster route for persistently anti-social tenants;</p> <p>The court will not be able to postpone possession to a date later than 14 days after the making of the order except in exceptional circumstances, and will not be able to postpone for later than six weeks in any event.</p>

9.0 ASB Case Reviews – “The Community Trigger”

9.1 The Anti-Social Behaviour, Crime and Policing Act 2014 introduced as part of a victims centered approach a provision for individuals to request a review of the way in which an anti-social behaviour case has been dealt with. This ASB Case Review which is also referred to as the “Community Trigger” is designed to provide additional accountability and a mechanism to require agencies to take action to deal with persistent anti-social behaviour. ASB Case Reviews are summarised in table 9.

Table 9 – ASB Case Reviews (The ‘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.
Relevant bodies and responsible authorities	<ul style="list-style-type: none"> • Councils; • Police; • Clinical Commissioning Groups in England and Local Health Boards in Wales; • Registered providers of social housing who are co-opted into this group.
Threshold	<p>To be defined by the local agencies but not more than: three complaints in the previous six month period.</p> <p>May also take account of: the persistence of the anti-social behaviour; the harm or potential harm caused by the anti-social behaviour; the adequacy of response to the anti-social behaviour.</p>
Details	<p>When a request to use the Community Trigger is received, agencies must decide whether the threshold has been met and communicate this to the victim;</p> <p>If the threshold is met, a case review will be undertaken by the partner agencies. Agencies will share information related to the case, review what action has previously been taken and decide whether additional actions are possible. The local Community Trigger procedure should clearly state the timescales in which the review will be undertaken;</p> <p>The review encourages a problem-solving approach aimed at dealing with some of the most persistent, complex cases of anti-social behaviour;</p> <p>The victim is informed of the outcome of the review. Where further actions are necessary an action plan will be discussed with the victim, including timescales.</p>
Who can use the Community Trigger	<p>A victim of anti-social behaviour or another person acting on behalf of the victim such as a carer or family member, Member of Parliament or councillor.</p> <p>The victim can be an individual, a business or a community group.</p>

9.2 Relevant bodies in an area which include council's, the police , local health teams and providers of social housing have a duty to undertake a case review upon request when specified criteria have been met. Whilst legislation stipulates a minimum threshold for a review to be called the detailed determination and the way in which the trigger is to be implemented is to be agreed locally. At a multi agency regional meeting it was collectively agreed that the trigger implemented in the West Midlands would be as detailed below.

If you (as an individual) have complained to the Council, Police or a Registered Housing Provider (social landlord) about three separate incidents in the last six months

Or

If five individuals in the local community have complained separately to the Council, Police or Registered Housing Provider (social landlord) in the last six months

The Community Trigger is part of a coordinated harm centred approach to tackling anti-social behaviour and in addition to the persistence of the anti-social behaviour about which the original complaint was made the harm, or potential harm caused by the behaviour must also be considered as part of the trigger process and when determining if the trigger for a case review has been met. This is important as individuals who are more vulnerable are likely to be less resilient to anti-social behaviour.

- 9.3 The legislation to prevent the use of historical incidents to trigger a review further clarifies what is considered a 'qualifying complaint'. This includes the point that the anti-social behaviour must be reported within one month of the alleged behaviour taking place.
- 9.4 The ASB Case Review or "Community Trigger" can also be used by any person on behalf of a victim. This could include a family member, friend, carer or Elected Member. The victims consent should however be requested before requesting a review on their behalf.
- 9.5 Legislation also stipulates that in addition to publishing a mechanism for carrying out a review a point of contact for making an application locally must be identified. This point of contact must then ensure that all applications are passed to the Relevant Bodies. The Relevant Bodies undertaking a review can then make recommendations to a person who exercises a public function in respect of any matters arising from the review, the legislation then placing a duty on that person to have regard to those recommendations. This means that although not obliged to carry them out they should acknowledge them and may be challenged if they are not carried out without good reason. These recommendations will be in the form of an agreed multi agency action plan. Details about the number of reviews and the outcomes of those reviews must then be published.
- 9.6 Prior to inclusion within the legislation the trigger was trialled at a number of locations across the country with the results of those trials published by the Home Office. Based on the legislation and the results of the trials partners have worked together in Walsall to prepare a Community Trigger process. This process detailed in **appendix 1** is to be included as part of the borough ASB Manual of Guidance currently being developed through a multi agency working group. The process has to date been before the Safer Walsall Board and ASB/Registered Providers Strategic Group for approval/comment. It is currently in draft form following recent guidance issued by the Home Office and minor changes made to the final/enacted legislation. The process will be finalised in the near future based on comments received and consultation with the Police and Crime Commissioner.
- 9.7 When the threshold has been met and a case review undertaken, partner agencies will share relevant information in relation to the case. The reviews will undertake a

problem solving approach and will not seek to lay blame for any potential failings as would be the approach of a complaints investigation.

- 9.8 In addition to the trigger process under which a complainant will actually request an ASB Review Walsall will also supplement this via the proactive identification of potential ASB Case Reviews through the ASB Tasking Process. This process will identify potential “Community Trigger” cases through the monthly tasking documents produced by the Walsall Intelligence Network (WIN). These documents are based on overlaid multi agency anti-social behaviour data and will drive a consistent anti-social behaviour tasking process through the Confidential Partner Tasking and Coordination Meetings. These meetings will discuss identified potential triggers and ensure all necessary steps are being undertaken to address the issue. This should reduce the potential number of triggers that are to be raised. Officers within the WIN are currently investigating the best way of supporting this process.
- 9.9 Details of Community Triggers will be recorded centrally on the Doc Manager system. This data will be used to provide regular updates to the SWP Board and to meet the legislative requirement to publish (as soon as practicable after the end of a reporting period) the following information.
1. The number of applications for ASB case reviews.
 2. The number of times it was decided that the threshold was not met.
 3. The number of ASB case reviews carried out.
 4. The numbers of ASB case reviews carried out that have resulted recommendations being made.
- 9.10 The approved final ASB Review/Community Trigger Process in addition to inclusion within the borough ASB Manual of Guidance will be subject to a structured communication plan which importantly will include reaching the most vulnerable members of our communities. Although specifically designed to deal with anti-social behaviour it is recognised that a number of these incidents can be motivated by hate and consideration is being given to the inclusion of hate crimes within the process/procedures.

10. Community Remedy

- 10.1 Supporting a victim centred approach the legislation introduces the Community Remedy which gives victims a say in the out of court punishment for low level crime and anti-social behaviour. The Community Remedy Document is a list of actions a victim will be invited to choose from when a community resolution is to be used. The lists are agreed locally by the Chief Constable and Police and Crime Commissioner.
- 10.2 The document is designed to improve public confidence in out of court disposals and could include, a written or verbal apology, Acceptable Behaviour Contract, paying for damage, Restorative Justice or participation in structured activities. Typically community resolutions (which are entirely voluntary) are used when dealing with low level crime and anti social behaviour and require an admission of guilt from the perpetrator. Action included within the document must of course be appropriate to the offence and compatible with the perpetrators human rights. The document will be used by the police investigating officer and as this essentially a matter for the police

will not be discussed in any detail here. It has however been included as it may be of interest to Members and is summarised in table 10.

Table 10 – Community Remedy

Purpose	The Community Remedy gives victims a say in the out-of-court punishment of perpetrators for low-level crime and anti-social behaviour.
The Community Remedy Document	The Act places a duty on the Police and Crime Commissioner to consult with members of the public and community representatives on what punitive, reparative or rehabilitative actions they would consider appropriate to be on the Community Remedy document.
Applicants who can use the Community Remedy	<ul style="list-style-type: none"> • 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.
Community Resolutions	When dealing with anti-social behaviour or low-level offences through a community resolution the police officer may use the Community Remedy document as a means to engage the victim in having a say in the punishment of the perpetrator.
Test	<p>The officer must have evidence that the person has engaged in anti-social behaviour or committed an offence;</p> <p>The person must admit to the behaviour or the offence (and agree to participate);</p> <p>The officer must think that the evidence is enough for court proceedings including for a civil injunction, or impose a caution, but considers that a community resolution would be more appropriate.</p>
Conditional Cautions	The Community Remedy document should be considered when it is proposed that a perpetrator be given a conditional caution or youth conditional caution as a means of consulting the victim about the possible conditions to be attached to the caution.
Failure to Comply	If the perpetrator fails to comply with a conditional caution or youth conditional caution they can face court action for the offence.
Important changes/differences	The Community Remedy document is a list of actions which may be chosen by the victim for the perpetrator to undertake in consequence of their behaviour or offending.

11 Council Wide Implications

- 11.1 The tools and powers included within the Anti-Social Behaviour Crime and Policing Act have implications and uses that cut across a number of services within the council and on going work around their implementation is taking into account the wide area of business on which they can potentially impact upon. To this end the views of officers within both Environmental Health and Trading Standards have been sort and are now briefly summarised.
- 11.2 Previously the authority has considered the use of Dog Control Orders although at the time there seemed limited public support for this measure. PSPO's could be considered for use in locations where the behaviour of dogs is considered an issue.

It is also suggested that a PSPO could potentially be used to restrict access to certain areas of highway that are historically subject to fly tipping and which the authority can not or does not wish to close. In this instance it may be possible to take action against an individual even if they are not actually witnessed dumping or fly tipping waste. Consideration may also be given to use of these orders in areas in which horses are inappropriately tethered, the current process for dealing with this being both time consuming and expensive.

- 11.3 There are certain locations in the borough which are particularly vulnerable to unauthorised encampments and which have been subject to repeat incidents in recent years. Consideration could be given to the use of the Public Space protection Order (PSPO) to protect a selected number of specific locations against such activity. There are specific appeal provisions against PSPOs but due consideration would need to be given to a challenge via judicial review. People who choose to live a travelling lifestyle have protections under the Human Rights Act to live that lifestyle and so care needs to be taken that these are not breached. Another related scenario which presents itself is where a particular family or group of people want to stay in the area and as they are evicted from one site move onto another site nearby. In this instance it may be possible/appropriate to serve a Community Protection Notice (CPN) on the individuals in the group to stop them setting up successive camps that impact on the quality of life of people living in the vicinity.
- 11.4 The sale of counterfeit goods in the vicinity of markets is an issue in certain areas of the borough and whilst work is undertaken with the organisers of markets to prevent the sales of counterfeit goods from official pitches, there is a problem in the borough of people fly-pitching in the vicinity of that market and selling counterfeit products from these unofficial pitches. Whilst legislation exists under which action may be taken for selling counterfeit goods or street trading, there is a requirement to catch these individuals in the act. A PSPO prohibiting such activity may act proactively to prevent such activity taking place in the first instance.
- 11.5 The use of PSPO's and CPN's in relation to Doorstep Crime and Rogue Trading should also be considered. Whilst No Cold Calling Zones provide reassurance and confidence to residents and discourage cold calling, they have little teeth when it comes to enforcement. A PSPO may be used to prohibit cold calling in a particular location with clear sanctions for breach. In other circumstances, it may be appropriate to use a CPN to restrict the activities of particular individuals or businesses in relation to cold calling.
- 11.6 Chugging is an activity which it is currently difficult to control under the legislation that controls street collections. Whilst most people would agree that the organisations for which 'chuggers' are raising money are worthwhile, they often find the methods used to be aggressive or a nuisance. The PSPO may be a tool which can be used to limit and or control this activity such that it does not cause a nuisance to visitors to the town and district centres.
- 11.7 The use of private Houses for illegal trading activity could potentially be addressed by measures contained within this new legislation. This activity includes a range of issues that are relevant to trading standards and wider council services including smoking houses which sell illicit tobacco from a private dwelling rather than business premises and often engage in under age sales, non-duty paid and counterfeit

products for sale, the production and sale of counterfeit goods, the sale of alcohol and sales of general products. Whilst there is legislation under which we can prosecute offenders, this does not always serve to prevent the activity taking place initially. A number of the powers including housing related Civil Injunctions and Community Protection Notices may provide additional tools which could be used to alleviate the nuisance that these activities cause.

- 11.8 Community Protection Notices may be a useful tool to tackle low level and persistent offenders who currently fall within the remit of Environmental Health. In particular the potential use of CPN's by registered providers to deal with low level waste/refuse and unkempt properties has been highlighted. Current powers available to registered providers (including Anti- Social Behaviour Injunctions and Notices Seeking Possession) are not always proportionate for low level matters which then places a burden on the Environmental Health Service to get involved for example in the removal of waste. The issue of a CPN could potentially quickly and cheaply remedy this problem in many cases. The CPN's and the issue of these by a range of agencies could also help to deal with the large number of noise complaints received by the authority although work to clearly identify when this becomes a statutory nuisance and on uniform working practices and procedures would need to be undertaken in the first instance. Powers to seize a dog that isn't kept well and creating a noise nuisance may also be of particular use.

12 Conclusion

- 12.1 It can be seen that the new tools and powers potentially have a wide range of uses impacting across council services and its partner agencies. Whilst work in Walsall is underway in respect of developing a consistent approach and supporting processes for the implementation of the provisions within the act, as with all new legislation both its full potential and any pitfalls may only become apparent as these are used/tested across the country and supporting case law and evidence developed. Whilst overall these certainly seem positive measures they will only be effective if they can be effectively enforced/policed and are supported by continued communication and strong partnership working. Partners in Walsall already having a strong track record in respect of both of these.

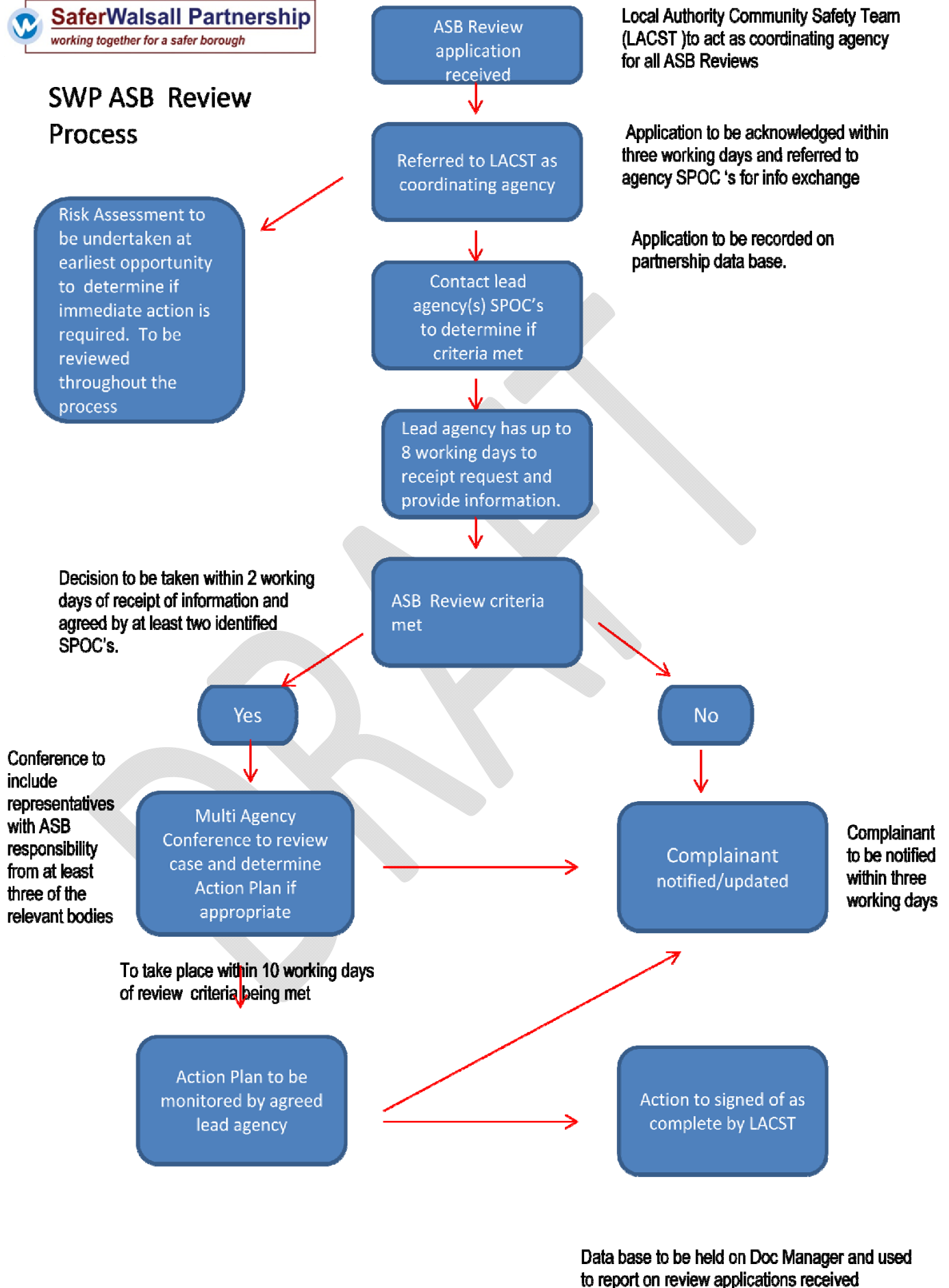
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SWP ASB Review Process



SWP ASB Review Process Supporting Information

The Anti-Social Behaviour (ASB), Crime and Policing Act 2014 introduced a provision for individuals to request a review of the way in which an ASB case has been dealt with. This “Community Trigger” is designed to provide additional accountability and a mechanism to require agencies to take action to deal with persistent ASB. Relevant bodies in an area which include council’s, the police, local health teams and providers of social housing have a duty to undertake a case review upon request when specified criteria have been met.

ASB Review Threshold

If you (as an individual) have complained to the Council, Police or a Registered Housing Provider (social landlord) about three separate incidents in the last six months.

Or

If five individuals in the local community have complained separately to the Council, Police or Registered Housing Provider (social landlord) in the last six months about similar incidents of anti-social behaviour.

The review will also include a consideration of the harm being caused to the individual(s) concerned and is part of a victim focused risk centred approach. When deciding if the threshold has been met the following can also be considered:

- **The persistence of the anti-social behaviour about which the original complaint was made;**
- **The harm caused, or the potential for harm to be caused, by that behaviour;**
- **The adequacy of the response to that behaviour.**

The ASB Review process in Walsall will sit within/work along side the existing tasking arrangements.

ASB Review Process

Walsall’s approach to ASB Reviews is as detailed below.

1. The Local Authority Community Safety Team will act as the point of contact for all ASB Review requests and will coordinate activity in relation to them.
2. All referrals/requests will be made through the existing ASB reporting lines via **01922 648291** or **asb@walsall.gov.uk**
3. All requests will be recorded on a centrally held data base; the data base will be maintained on the Doc Manager system and will be the source of information for any required returns.
4. At the point at which an initial request is made the case in question will be risk assessed to determine if immediate action is required. This risk assessment will be on going throughout the process.

5. Upon receipt of an application an acknowledgement letter will be sent by the Local Authority Community Safety Team SPOC to the applicant within 3 working days.
6. Details of the review application to be sent to identified SPOCS within the lead agency(s) for initial investigation.
7. Lead agency(s) SPOCS have up to 8 working days to gather and submit all relevant information to the Local Authority Community Safety Team SPOC. This will include information of discussions/actions undertaken at the Confidential Area Tasking meetings at which it is anticipated that a large proportion of these cases will have been discussed/addressed.
8. Community Safety Team SPOC and at least one other partner agency SPOC to agree if the criteria for a case review has been met based on the criteria outlined above and within two working days of receipt of the information. Decision to be based on the number element of the criteria (e.g. 3 incidents in the last 6 months) and the harm experienced by the victim.
9. If a decision is reached that the criteria has not been met the complainant will be notified by the Local Authority SPOC within 3 working days.
10. If a decision is reached that the criteria has been met a multi agency case review conference will be called. This will include representatives from at least 3 of the Relevant Bodies. At least one of which will ideally have had no previous involvement in the case. The conference will be chaired by an agency that has had no or the least involvement in a case and in no instances by the lead agency. Conference to be held within 10 working days of the decision being made that the criteria has been met. The reviews will undertake a problem solving approach and will not seek to lay blame for any potential failings as would be the approach of a complaints investigation.
11. The Case Conference will determine if a case has been effectively managed or if any further actions are required and agree an action plan as appropriate. Action plan to clearly identify the SPOC with responsibility for ensuring a specific action is undertaken and specify a clear timeframe. An overall owner of the plan will also be agreed.
12. Update of case and any Action Plan to be uploaded to Doc Manager. Action plan to be regularly updated by nominated SPOCS. Local Authority SPOC will monitor progress against the delivery of the plan.
13. Complainant to be notified of the outcome of the case conference within 3 working days of it taking place.
14. Action plan to be signed off as completed by the Community Safety Team SPOC when all actions have been undertaken and following communication with the complainant.
15. The ASB review will have to be integrated within and supported by existing agency complaint procedures and the appropriate route/options made clear to complainants at the point of initial referral.

Although the Trigger includes clearly identified timeframes it will not in anyway preclude/delay immediate action being taken where warranted/required.