



Anti-Social Behaviour, Crime and Policing Act 2014

Community Protection Notice (CPN) Protocol

Protocol for dealing with Community Protection Notices
within West Berkshire

Introduction

Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014 provides for Community Protection Notices (CPNs) to be issued under Section 43.

The Community Protection Notice (CPN) is intended to deal with unreasonable, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible. The CPN can direct any individual over the age of 16, business or organisation responsible to do something or stop doing something in order to prevent the problem(s). The CPN could also require the person responsible to take reasonable steps to ensure it does not happen again.

The Protocol

This Protocol provides a West Berkshire wide framework and details the procedure for the serving of Community Protection Notices (CPN) under Part 4 of The Anti-Social Behaviour, Crime and Policing Act 2014 by West Berkshire Council (WBC) and partner agencies who have authority, explicit or through delegation to issue CPNs within the WBC area.

This Protocol can be read alongside:

- The Anti-Social Behaviour Crime and Policing Act 2014 (available on www.legislation.gov.uk or via the Senior Community Coordinator (Resolutions) and;
- The Home Office's 'Anti-Social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers, Statutory guidance for frontline professionals, updated December 2017' (available on www.gov.uk or via the Senior Community Coordinator (Resolution) from the Building Communities Together Team.

The Protocol was revised in July 2018.

Alex O'Connor
Senior Community Coordinator, Resolutions
Building Communities Together Team
West Berkshire Council

1. Legislative Framework

- 1.1 Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014 provides for Community Protection Notices (CPNs) to be issued under S.43.
- 1.2 West Berkshire Council amended its Scheme of Delegation by a meeting of Council on 18/09/2014. As a result, the Head of Public Protection and Culture, in consultation with the Head of Legal Services, was given delegated authority to serve Community Protection Notices in accordance with Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014.
- 1.3 By way of Statutory Instruments 2015 No. 749 on 17/03/2015 the Secretary of State made the order: For the purposes of S.53(1) (c) of the Anti-social Behaviour, Crime and Policing Act 2014, housing providers (within the meaning of section 20 of that Act) are specified, which allows local authorities to delegate authority to Registered Social Landlords.
- 1.4 WBC has agreed to delegate authority to Registered Social Landlords to issue CPNs. West Berkshire Council amended its Scheme of Delegation by a meeting of Council on 18/09/2014 C2886: That the Council also delegate the serving of Community Protection Notices to Registered Social Landlords in accordance with Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014.

2. Purpose

- 2.1 All Community Protection Notices (CPNs) issued within the WBC area will be done so through the process described in this Protocol, and in accordance with corresponding legislation and statutory guidance (and any subsequent amendments thereof).
- 2.2 All CPNs must be issued in accordance with this Protocol. Any CPNs issued outside the Protocol will be deemed as not being issued in accordance with the Protocol and may be invalid. In addition, if a CPN is issued in the WBC area outside of this Protocol, the delegated authority to that organisation may be reviewed and revoked.
- 2.3 Any organisation that intends to issue a CPN in the WBC area and has been given delegated authority to do so must sign this Protocol and adhere to its contents.
- 2.4 As authorised persons under S.53, Thames Valley Police and Registered Social Landlords who sign this Protocol will be required to name those specified persons authorized to issue CPNs.
- 2.5 Applications for a CPN will not be accepted if the applicant has not signed this Protocol and hence agreed to the terms within.
- 2.6 Adhering to this Protocol will ensure that there is a coordinated and uniformed approach to issuing CPNs within West Berkshire, avoiding duplication and reducing costs.

3. Process

- 3.1 The CPN is intended to deal with particular, persistent and continuous problems or nuisances which negatively affect the community's quality of life by targeting those responsible.

- 3.2.1 A CPN can be issued by an authorised person (under S.53 Anti-Social Behaviour, Crime and Policing Act 2014) if they are satisfied on reasonable grounds that the conduct of the individual, business or organisation is having a detrimental effect on the quality of life of those in the locality; is persistent or continuing in nature, and is unreasonable.
- 3.3 Consideration for CPNs within the WBC local authority area are likely to be referred via 3 sources:
- MAPS (a strategic multi agency problem solving meeting that meets every four weeks) and Mini-MAPS (a culmination of Neighbourhood Tasking, the West Berkshire Anti-Social Behaviour Action Group (ASBAG) which looks at addresses of concern including County Lines, anti-social behaviour, housing, environmental health issues and vulnerability).
 - WBC departments
 - Registered Social Landlords
- This is not an exhaustive list. Requests may come from other sources i.e. residents, local councillors and parish councils. (There is nothing in the legislation to say where referrals can come from, only who is authorised to issue the CPN).
- 3.4 All referrals, applications, written warnings, CPNs and FPNs should be scanned and emailed, with 'CPN' in the email's subject line to a secure email address yet to be confirmed. All documentation will be logged on the appropriate West Berkshire Council and Thames Valley Police systems
- 3.5 Initial consideration and applications for all CPNs within the WBC local authority area will be made to the Senior Community Coordinator (Resolutions) from the Building Communities Together Team (BCT), the Anti-Social Behaviour (ASB) Officer and the Problem-solving team Sergeant for West Berkshire local policing area, Thames Valley Police (TVP) where they will be logged. This will help avoid duplication, provide a central point of contact and ensure that any decision to issue a CPN is consistent, appropriate and legally binding to avoid appeals.
- 3.7 If relevant and appropriate, Town/parish councils, social landlords and other agencies that may have involvement in the issue will also be consulted.
- 3.8 The Senior Community Coordinator (Resolutions) and the ASB Officer will reject the application, if the applicant has not signed this Protocol and hence agreed to the terms within.
- 3.9 It will be the applicant's responsibility, in liaison with the Senior Community Coordinator and ASB Officer to maintain links with the complainants/victims of the anti-social behaviour throughout the whole process. The applicant should talk to potential victims and understand the wider harm to the community. This will assist with building a case and gathering evidence of the conduct in question and the identity of the perpetrator.
- 3.10 If the result of the initial consultation between the Senior Community Coordinator, ASB Officer and Problem-Solving Team Sergeant indicates that applying for a CPN is an appropriate course of action, a decision will be taken on the most appropriate lead agency – the Police or the Council. Whatever the decision is, both agencies will work together on the contents of any Warning and/or Notice that is issued, the monitoring of breaches and on any prosecuting discussions and decisions. It is most likely that the Police will lead on those cases where there is a criminal element or the person(s)/premises are linked to crime and disorder. It is expected that West Berkshire Council will lead on those cases around noise, litter, graffiti, out of control animals etc. Both agencies will support the other in the gathering of evidence and the supporting of breaches.
- 3.11 If the most appropriate lead is the Police, the Senior Community Coordinator will be kept informed of all progress by the ASB Officer.

- 3.12 If the most appropriate lead is the Council, the Senior Community Coordinator (Resolutions) will inform the Head of Public Protection & Culture (who has the delegated authority to issues CPNs) and Legal Services. This will ensure that all other avenues are discussed at the outset i.e. Environmental Protection Act 1990 to ensure that a CPN is the most appropriate course of action and take the final decision on whether or not to proceed with a CPN.
- 3.13 All CPNs irrelevant of who the issuing authority is, will be logged and monitored by the Senior Community Coordinator, WBC and ASB Officer, TVP.
- 3.14 All applications for CPNs will be looked at with an expectation that it will be breached. By taking this approach agencies will ensure that for every CPN issued, there is enough evidence to support a successful prosecution in the Magistrates' Court if breached.

4. When a Community Protection Notice will be considered

4.1 To apply for a CPN to be issued the following criteria must be met:

4.1.1 To apply you must be an authorised person under the Act:

- A constable; **Police constable (S.53 (1)) or Police Community Support Officer**
Thames Valley Police use of the CPN will be in the context of partnership problem solving/initiatives. Although PCSOs have been designated by the Chief Constable with the power to issue CPNs they will not do so in West Berkshire at the decision of the Area Commander.
- The relevant local authority is (local authority whose area the conduct stated in the Notice has been taking place) **West Berkshire Council (S.53 (2))**.
- **Person designated by the relevant Local Authority.** West Berkshire Council (WBC) has delegated power to Registered Social Landlords through its Scheme of Delegation (approved under S.53 (1)c). A named officer employed by a Registered Social Landlord and whose organisation has signed this Protocol will be able to issue CPNs.

4.1.2 The applicant will be required to provide details showing there is sufficient evidence that fulfils the test for issuing a CPN. The Senior Community Coordinator and ASB Officer will agree to the issuance of a CPN if they are satisfied on reasonable grounds that:

- a) the conduct of the individual, business or organisation is having a **detrimental effect**, of a **persistent or continuing nature**, on the **quality of life** of those in the locality and
- b) The conduct is **unreasonable**

4.2 The applicant will need to include a report of the issues i.e. include start date, times, issues and types of evidence gathered, the effect on the community and any recommendations. The evidence should be considered carefully. **If the report is not complete or there are outstanding issues, it will be returned to the applicant.**

4.3 The applicant will need to provide evidence that there is conduct which is:

- **'Having a 'Detrimental effect'** - What is the frequency and duration, seriousness and breadth of the impact? This needs an objective opinion of the conduct – excluding exaggeration, prejudice, and unusual sensitivity and be uninfluenced by their own norms. The conduct must be felt at community level not just by a single neighbour - conduct is public rather than private nuisance.

- Evidence that the behaviour occurring is having a negative impact. If the issuance of the CPN relies on witness statements alone the possibility of appeal must be considered and the case built accordingly.
- **'Persistent or continuing'** - the detrimental effect must be present at time of issue and cannot be issued prospectively to prevent conduct yet to occur, unless there are good grounds to believe the conduct may soon recur.
- its effect could be regarded as persistent. It can be over a long period of time (waste problems) or relatively short period of time (noisy parties and loud music).
- **'Quality of life of those in the locality'** - the detrimental effect must be felt at a community level and not just by a single neighbour. So the conduct is more public, rather than private, nuisance.
- **'Unreasonable'** – there is a need to distinguish between conduct which is inherently unreasonable and conduct, the effect of which, is exacerbated by extrinsic factors i.e. TV noise being heard in neighbouring house due to poor sound proofing. Normal domestic noise may be having a detrimental effect on those living next door and could be persistent but it may not be reasonable to issue a CPN.
- Consideration must be given to the impact the behaviour is having and whether steps have been taken to alleviate the impact. In deciding whether behaviour is unreasonable, officers should consider the impact the behaviour is having on the victim(s), whether steps could be taken to alleviate this impact and whether the behaviour is necessary.

4.4 If there are not reasonable grounds for issuing a CPN, it will be determined that a CPN is not to be issued. The lead agency will inform the applicant that a CPN is not to be issued and the reasons why.

5. When a Community Protection Notice is not appropriate

5.1 The Senior Community Coordinator and the ASB Officer in the first instance will not approve any applications where a CPN is inappropriate. The following are examples of where a CPN will not be appropriate. This list is not exhaustive:

- Children under 16yrs old. S.43 ensures that a CPN can only be issued to an individual aged 16 or over. If the application concerns a young person aged 18 years old or younger it would be appropriate for a multi-agency meeting to be held to discuss alternatives to a CPN.
- Case of statutory nuisance. Part 3 of Environmental Protection Act 1990 places a duty on local authorities. The issuance of a CPN does not discharge the Council from its duties under this Act nor does it replace the statutory nuisance regime.
- WBC has specific powers under other legislation to deal with some detrimental effects – Noise Act 2006, Clean Air Act 1993, Licensing Act 2003, Clean Neighbourhoods and Environment Act 2005 and the Town and Country Planning Act 1990 may be used in preference to issuing a CPN. Initially informing the Head of Public Protection & Culture will allow consideration to be given as to whether issuing a CPN is necessary given the powers and duties of WBC under other legislation. Where a specific power exists it should be used in preference to a general one.
- Where a CPN is being requested to stop 'reasonable' activities which are not causing anti- social behaviour.

5.2 Approval will not be given to any applications deemed to be inappropriate.

5.3 The Senior Community Coordinator or ASB Officer, depending on who is lead agency, will return declined CPN applications to the applicant with an explanation.

6. **West Berkshire Council as Lead Agency**

6.1 Where it is decided that the Council will be the lead agency, the Head of Public Protection & Culture will be notified by the Senior Community Coordinator. The process for discussing the CPN will need to be agreed. The Senior Community Coordinator will liaise with the ASB Officer to ensure that the Police are informed throughout the process.

6.2 If the decision is that a CPN is an appropriate course of action in the circumstances, a written warning will first be issued. A written warning must be issued prior to issuing a CPN. A written warning may negate the need for a CPN (see below).

6.3 If Sovereign is the applicant, although the Police or West Berkshire will be the lead agency, Sovereign as a Registered Social Landlord has a been granted the delegated power through West Berkshire Council's Scheme of Delegation (approved under S.53 (1)c) and so it can issue the written warning and CPN.

6.4 If the application is deemed inappropriate it will be returned to the applicant with reasoning by the Senior Community Coordinator.

7. **Community Protection Notice Procedure**

7.1 If the application is deemed appropriate by the lead agency after the necessary consultations have taken place, the procedure will follow the process as outlined in the Act and Guidance:

- S.43 (6) requires that any person, prior to issuing a CPN, to inform any body or individual person it thinks appropriate.
- Under S.43 a Written Warning (prescribed wording see appendix) must be issued to the person committing the anti-social behaviour.
- The lead agency will decide who is best placed to liaise with the original complainant.

7.2 *The Written Warning (Part 1)*

7.2.1 Whoever the lead agency is (The Police or the Council) they will consult with the other over the content of the written warning which will be drafted in partnership with the applicant where they are an authorised person under the Act i.e. a Registered Social Landlord who has signed this Protocol.

7.2.3 Any written warning issued by the Council will be authorised by the Head of Public Protection & Culture.

7.2.4 To ensure a consistent approach a written warning template will be used by agencies.

7.2.5 The written warning will:

- Outline the conduct that is considered anti-social and also explain how the conduct is considered to be causing the detrimental effect. This will ensure there is little doubt over what needs to be done to avoid the CPN being issued.
- Include a Schedule of Conduct listing incidents and behaviours that contribute to the conduct that is considered anti-social.
- Clearly set out what the recipient of the warning needs to do /not do to avoid a CPN being issued.
- Make it clear to the individual that if the anti-social behaviour doesn't stop and they fail to adhere to the written warning, they could be issued with a CPN.
- Set out the time frame to deal with the issues outlined
- Identify the broad effect of a CPN and sanctions of a breach
- Include the date of issue of the warning and name of issuing authority.

7.2.6 The recipient of the warning must be given a reasonable period time between the issuing of the warning letter and any issuing of a CPN to allow the recipient time to deal with the issues outlined in the warning letter.

7.2.7 The most appropriate way of issuing the written warning will be decided by the lead agency and the applicant. Consideration will be given if the written warning is to be delivered to a young person under 18 years old - an appropriate adult should be present to assist in the understanding of the written warning. Any CPN warning or notice that is issued to a person under 18 years old will be done in consultation with the Youth Offending Team (YOT).

7.2.8 The lead agency will issue the written warning as per 2.3.1. In the case of a Registered Social Landlord applying for a CPN the lead agency may be either the Police or the Council but as an authorised person under the Act, they will issue the written warning as per 2.3.1.

7.2.9 Whoever issues the written warning should inform the community affected that a warning has been issued and give an explanation of the next steps if breached.

7.2.10 A copy of the written warning will be kept and the date of issue logged by the Senior Community Coordinator and ASB Officer. The warning letter will give the recipient a time frame to deal with the issues, and this will also be logged. The applicant will need to monitor if the warning letter is being adhered to or if the conduct is continuing.

7.2.10 The Senior Community Coordinator and ASB Officer will liaise with the applicant and any other agency deemed appropriate when the warning letter time frame is due to expire, to ascertain the current status of the warning letter.

7.3 *Proceeding to CPN (Part 2)*

7.3.1 If it is deemed that the recipient of the warning has had sufficient time to deal with the matter and the conduct is continuing, then a CPN can be considered if:

- a written warning as described at 6.2 above that states a CPN may be issued has been given; and
- the authorising person is satisfied that despite the individual or body having had enough time to deal with the matter, the conduct is continuing, persistent and still having a detrimental effect.

- 7.3.2 It is therefore important that the applicant remains in contact with the original complainants to keep a view of the situation and be able to provide evidence that the conduct has or hasn't improved.
- 7.3.3 If the conduct is no longer having the detrimental effect and the recipient has adhered to the warning letter, the Senior Community Coordinator, ASB Officer and the applicant will make the decision not to issue a CPN. In the instance of the Council having issued the CPN Warning, the Head of Public Protection & Culture and Legal Services will be notified. If a CPN is not issued the case will be closed and logged as such. The applicant will send confirmation to the recipient of the warning letter that it has been complied with, and will include a warning that if the unacceptable conduct recommences further action may be taken.

8. Issuing a CPN

- 8.1 In the case of a written warning issued by the Council, if the decision is taken to proceed and issue a CPN, the Senior Community Coordinator will do so in liaison with the ASB Officer, the Head of Public Protection and Culture and Head of Legal and the applicant (draft template attached – Appendix 2).
- 8.2 In the case of a CPN warning issued by the Police, if the decision is taken to proceed and issue a CPN the ASB Officer will liaise with the Senior Community Coordinator.
- 8.3 From the original discussions consideration will have been given to suitable requirements to ensure the behaviour does not reoccur, including what is deemed reasonable behaviour and appropriate timescales for monitoring the cessation of behaviour.
- 8.3 The requirements set out in the CPN (see below) must be reasonable in order to prevent the detrimental effect from continuing or recurring, or to reduce the risk of its continuance.
- 8.4 The CPN **must identify the conduct referred to and explain the option of appealing** against the Notice, remedial action by the local authority, failing to comply with the notice, remedial orders and forfeiture and seizure of items used in the commission of offence. More specifically:-

It should contain elements specific to the case:-

- Name and address of person to whom it is issued
- A statement that a written warning was issued on (date) and that the time period stated in the warning which was considered sufficient for the conduct and resulting detrimental effect to have ceased has expired but the conduct/effect continues
- Outline the conduct considered to be causing the detrimental effect
- An outline of what that detrimental effect is
- A statement that the conduct is unreasonable
- The CPN can impose any of the following requirements on the individual or body issued with it:
 - S.43 (3) a) Requirement to stop doing specified things;
 - S.43 (3) b) Requirement to do specified things;
 - S.43 (3) c) Requirement to take reasonable steps to achieve specified results
- Clear statement of the requirements. These requirements must be reasonable to impose in order:
 - S.43 (4) a) to prevent the detrimental effect from continuing or recurring or
 - S.43 (4) b) to reduce the effect or reduce the effect of its continuance or recurrence.
- Potential consequences if the CPN is breached

- How to appeal against the CPN or any of its terms together with the time limit
- Date of issue and the name of issuing authority
- Where an appeal is made any requirement under S.43 (3) (b) or (c) will be suspended until the outcome of the appeal. However the requirement to prohibit specified things under S.43 (3) (a) continue to have effect.
- Details around owner/occupier responsibility where applicable (i.e. you have been sent this notice as the registered owner of the premises where the conduct described is taking place
- Remedial works or work in default can be added to the Notice immediately or once the individual, business or organisation has had sufficient time to comply with the requirements. CPN can state that if a requirement is not complied with in a given time period the issuer will authorise works in default on a given date at a given cost. (In undertaking remedial works or works in default, the local authority is exempt from liability in the event of any damage caused by works carried out in good faith and with due care and attention).

9. Serving a CPN

- 9.1 A CPN must be served on the person who can reasonably be held responsible for the anti-social conduct and in accordance with the Anti-Social Behaviour, Crime and Policing Act, 2014.

Issued	Sent to	Deemed Service
Personal Service	Handed to person	On delivery
Hand delivered to property	Last known address	On delivery
1st Class Post	Last known address	2 Working days after posting

- 9.2 If the applicant is an authorised person under the Act i.e. Thames Valley Police or a Registered Social Landlord who has signed this Protocol, they will issue the CPN as per 2.3.1. If the applicant is a WBC Service Area, the CPN will come from the Head of Public Protection and Culture who has the delegated authority.
- 9.3 If the recipient is a corporate body the Notice can be delivered or posted to the registered office. If issued to a company, the covering letter should be addressed to the company secretary and the applying authority must be able to prove that the person served with the CPN can be reasonably expected to control or affect the behaviour. Evidence of service should be retained and will be logged by the Senior Community Coordinator for those CPNs issued by the Council or other authorised persons i.e. Registered Social Landlord or by the ASB Officer for CPNs issued by the Police (in accordance with current Data Protection requirements for a period of 7 years).
- 9.3 Conduct on or affecting premises that a person who owns, leases, occupies or otherwise controls, operates or maintains is treated as the conduct of that person, so long as they can reasonably be expected to control or affect it. Consideration will be given as to what extent such persons have authorised or condoned the conduct or to what extent they are themselves, victims of it.
- 9.4 If it is proving difficult to identify the name or address of the occupier of a premise and the CPN has been issued due to the detrimental effect of the conduct arises from the condition or use of the premises, if after reasonable enquiries S.45 allows that an authorised person may enter the premises and the CPN can be served by posting it on those premises.
- 9.5 In the event of a CPN being served on the premises the issuing officer needs to demonstrate that reasonable enquiries have been made to identify the owner or occupier without success. The CPN will be deemed as being served to the occupier of the premises (or if unoccupied, the owner) at the

time the notice is posted. The enquiries and service details (certificate of service may be completed) will be logged with the Senior Community Coordinator for those CPNs issued by the Council to other authorised persons i.e. Registered Social Landlord or by the ASB Officer for CPNs issued by the Police

- 9.6 Details of any CPN issued will be given to the appropriate neighbourhood police team and neighbourhood wardens and any other agency deemed appropriate to assist with monitoring compliance and breaches. Collection and preservation of evidence of any breach of a CPN will be needed and the Senior Community Coordinator and ASB officer advised.

10. Appeals

- 10.1 Anyone issued with a CPN has the opportunity to appeal it by making a complaint to a Magistrates Court within 21 days. The appellant will need to prove to the civil standard of proof (on balance of probabilities) that it was unreasonable for a CPN to be issued on one or more of the following substantive grounds (S.46):

- The behaviour did not take place.
- The behaviour had not had a detrimental effect on the quality of life of those in the locality.
- The behaviour was not persistent or continuing.
- The behaviour was not unreasonable.

OR

- **Individual cannot reasonably be expected to control or affect the behaviour.** In issuing the CPN the authorising officer must make a judgment as to whether the individual, business or organisation can be reasonably expected to do something to change the behaviour and should be prepared to justify this decision in court.
- **Any of the requirements are unreasonable.** Requirements should prevent the anti-social behaviour continuing or reoccurring or reduce the detrimental effect and should be related to the behaviour in question.
- **Material defect or error with the CPN.** Failure to comply with a requirement in the Act i.e. failure to provide a written warning.
- **Issued to the wrong person.** Posted to the wrong address or wrong person was identified in a business or organisation.

- 10.2 On appeal, any requirement under S.43(3) (b) or (c) namely a requirement to do specified things or take reasonable steps to achieve specified results, is suspended until the outcome of the appeal. However, requirements under S.43 (3) (a) namely stopping the individual from doing specified things continue to have an effect.

- 10.3 A Magistrates Court hearing an appeal against a CPN may:-
- a) Quash the CPN
 - b) Modify the CPN
 - c) Dismiss the appeal (CPN will remain in effect as issued)

11. Consequences of breaching a Community Protection Notice

- 11.1 If there is a failure to comply with a CPN the Senior Community Coordinator and ASB Officer must be notified. The Council and the Police consider what action, if any, should be taken (for additional information on each, please see paragraphs under 12. below):-
Caution

Fixed Penalty Notice (FPN)
Remedial Action or
Prosecution

- 11.2 Where West Berkshire Council is the lead agency it is the prosecuting authority.
- 11.3 For CPNs issued by the police, any prosecution will be dealt with by the Crown Prosecution Service (CPS).

12. Offence of failing to comply with a Community Protection Notice

12.1 Offence

12.1.1 Failure to comply with a CPN is a summary offence under S.48. If the recipient fails to comply and has not appealed there are a number of options available. Breach of any condition without reasonable excuse is a criminal offence, subject to:

- a) **prosecution** - A person guilty of an offence under this section is liable on summary conviction to i) in the case of an individual, by a fine not exceeding level 4 on the standard scale, or ii) to a fine not exceeding £20,000 in the case of a body.
- b) **fixed penalty notice** - an authorized person may issue an FPN (maximum of £100) allowing the defendant to discharge their liability to prosecution if paid within 14 days.

12.1.2 The offence is one of strict liability subject to statutory defence that:

- The defendant took all reasonable steps to comply with the CPN, or
- There was some other reasonable excuse for the failure to comply

12.1.3 If there is failure to comply and/or breach of a CPN that has been issued by the Council or authorised person i.e. registered social landlord the Senior Community Coordinator will liaise with the ASB Officer, applicant and Head of Public Protection & Culture to decide if formal action should be considered. Legal services will be instructed to review the details of the case and decide whether to proceed with a prosecution, issue a FPN, recommend other action or take no further action. When making a decision the Prosecutor will apply the Code for Crown Prosecutors. Proceedings start by laying Informations in writing before the relevant Magistrates Court which must be done within 6 months of the commission of the first alleged offence/breach. All parties must be mindful of this deadline when considering the case and, if appropriate, referring the matter to WBC's Legal Services.

12.1.4 Where there is a breach of a CPN that was issued by the Council or a registered social landlord that is witnessed by a member of Thames Valley Police the following procedure will be followed:

1. Warn the person/body that they have breached the CPN and their details will be passed on to the issuing authority
2. Witness statement will be sent to the issuing authority outlining the incident that constituted a breach
3. Will be available to give evidence if required to do so
4. Where an independent witness comes forward to a member of Thames Valley Police regarding an alleged breach, their details will be passed on to the issuing authority for further investigation.

12.1.4 If there is failure to comply and/or breach of a CPN that has been issued by the Police, the ASB Officer will liaise with the Senior Community Coordinator. Any FPN issued will be by

the Council but a decision to prosecute will be by way of reporting the offence. Case directors at Thames Valley Police will make the decision on whether to authorise for a summons to be raised.

“On (specify date) at (specify location), (enter name of individual/body in receipt of the CPN), being an individual/body to whom a community protection notice had been issued, failed to comply with the notice in that (specify nature of the non-compliance), contrary to section 48(1), (2)(a) and 52 of the Anti-Social Behaviour Crime and Policing Act, 2014.”

Points to prove:

1. Date and location of the breach
2. How the individual or body failed to comply with the community protection notice

Investigator actions:

- Confirm proposed charge is appropriately authorised (Police or CPS)
- Ensure compliance with investigator’s obligations regarding disclosure
- Consider if the case is suitable for referral to Financial Investigations Unit and CPS for asset recovery
- Guilty plea by letter procedure may be offered for this offence

12.2 Cautions

12.2.1 It may be the decision of WBC’s Legal Services upon reviewing the case, to offer the offender a caution. A caution can be issued where a) the offender admits their guilt and b) the offender consents to the caution. WBC Legal Services will advise the Senior Community Coordinator.

12.3 Fixed Penalty Notice (FPN)

12.3.1 As an initial alternative to prosecution for a breach of a CPN, S.52 provides that an authorised person may issue a fixed penalty notice (FPN).

12.3.2 If a FPN is issued and paid this would discharge any liability to conviction for the offence but the anti-social behaviour for which the CPN was issued, may still be ongoing; issuing a FPN may not solve the problem for the community.

12.3.3 All FPN payments go to the local authority. This is regardless of which agency issued the warning letter and subsequent CPN. Existing delegated powers are sufficient to enable the Head of Public Protection & Culture to issue a FPN under the Act.

12.3.4 It is proposed that any FPNs issued for breach of a CPN in West Berkshire will be in letter format and will be sent from the Head of Public Protection & Culture. Monies are payable to WBC.

12.3.5 The FPN can be no more than £100 and can specify two amounts i.e. a lower payment if settled early i.e. The charge is £100 for payment within 14 days and £60 for payment within 10 days. If issued, payment would discharge any liability to conviction of the offence.

12.3.6 If a FPN has been issued but not paid, once the 14 days to pay has expired, the file should be passed to WBC’s Legal Services to consider prosecution.

- 12.3.7 The Fixed Penalty Notice must contain:
- Reasonably detailed particulars of the circumstances alleged to constitute the offence;
 - Specify amount or amounts payable;
 - Specify permissible methods of payment (cash, cheque, bank transfer) and that payment cannot be made in instalments;
 - State the name and address of the person to whom the FPN should be paid; and
 - Consequences of failing to pay the FPN within the period specified

12.4 Remedial Action by West Berkshire Council

- 12.4.1 Where a CPN has not been complied with, the decision may be taken to instigate remedial action (S.47) as necessary to put the situation right. West Berkshire Council may have work carried out to remedy the failure. Such work may, for example, include clearing a garden of rubbish, erecting a fence, to comply with the CPN.
- 12.4.2 If works are to be taken on land 'open to the air', West Berkshire Council or their agent can undertake these works without the consent of the owner or occupier. A power of entry is provided (S.47 (5)).
- 12.4.3 Consent is required where the premise is NOT open to the air (i.e. indoors). WBC can issue a notice to the perpetrator (or owner/occupier) specifying the work it intends to complete to ensure that they Notice is complied with. This will specify an estimated cost of the work and invite the defaulter to consent to the work being carried out. WBC may proceed to have the work carried out if permission is given. Without consent the Council cannot proceed with remedial action.
- 12.4.5 If consent is given and the works completed; WBC will give the perpetrator (or owner/occupier) details of the work completed and the final amount payable. The person issued with the CPN becomes liable to WBC for the amount. The perpetrator may appeal to a Magistrates Court within the period of 21 days on the ground that the cost of the work is excessive. A court hearing on appeal must confirm the amount or amend the amount.

12.5 Prosecution

12.5.1 Post Conviction Remedial Orders

If a conviction is secured for breach of the CPN the court can issue a fine under S.48 (2). In addition, it has the powers set out below. The Senior Community Coordinator and ASB Officer should provide the appropriate prosecutor, with instructions as to what, if any, of the following may or may not be appropriate circumstances, in order that the prosecutor may advise and/or apply to the Court:

- To order forfeiture and destruction of any item used in the commission of the offence;
- To issue a warrant allowing a Constable or local authority to seize such items S.51;
- To impose a Remedial Order and/or Forfeiture Order.

12.5.2 Remedial Order

On conviction for an offence of failing to comply with a CPN, S.49 provides that the prosecuting authority (West Berkshire Council) may ask the Court to impose a Remedial Order because:

- The matter is so serious a court order is warranted
- Works to be carried out need consent and that is not forthcoming

A Remedial Order may require the defendant:

- To carry out specified work (typically the CPN requirements); or
- To allow specified work to be carried out by, or on behalf of, West Berkshire Council

The defendant's consent is still required before West Berkshire Council or its agent can proceed and carry out works to indoor premises. Consent does not have to be given but failure to do so may constitute contempt of Court.

Where a Remedial Order is granted by the Court and the work has been carried out the individual has the opportunity to appeal on the grounds that the cost of the work being undertaken on their behalf is disproportionate.

12.5.3 Forfeiture Order

In addition to any penalty imposed by the Court, S.50 provides that on conviction for failing to comply with a CPN the prosecuting authority may ask the Court to issue a Forfeiture Order. This may include any item used in the commission of the offence i.e. spray paint, sound making equipment.

Such an Order may require any person (not only the defendant) in possession of the item to deliver it as soon as reasonably practicable either to a Police officer, officer of the local authority or other person designated by the local authority and may require the item to be destroyed or disposed of.

12.5.4 Seizure

Apart from prosecution for a breach of a CPN where a Magistrate is satisfied that there are reasonable grounds for suspecting a) offence under S.48 has been committed and b) an item used in the commission of the offence is present on specified premises S.51 empowers the granting of a warrant to any police officer, or other person designated by West Berkshire Council to issue CPNs and FPNs to enter the premises, if need be by force, to seize the item.

WBC officers will need to be designated specifically to exercise this power. Items seized must be returned within 28 days unless relevant criminal proceedings are commenced within that period.

13. The principles and processing of data exchange

- 13.1 Information sharing for the issuing of CPNs is governed by the West Berkshire Information Sharing Protocol and wider legislation such as the Data Protection Act 1998 and the Crime and Disorder Act 1998.

13.2 It is important that all agencies involved in the CPN process have signed the West Berkshire Information Sharing Protocol and this will be checked by the Senior Community Coordinator on application for a CPN.

14. Monitoring and Review

14.1 Community Protection Notices will be reviewed at the monthly Mini-MAPS meetings. A summary report will be submitted quarterly to the Building Communities Together Partnership.

14.2 Thereafter this Protocol will be reviewed every two years.

15. Designation of authority to social landlords

15.1 It is the responsibility of social landlords to ensure that officers who are using the powers available under Part 4, ASB, Crime and Policing Act 2014, are suitable trained and aware of the requirements of this protocol.

15.2 Applications from RSLs are submitted through officers named by the RSL as authorised to apply for CPNs (see 2.3.1).

15.3 Organisations who fail to adhere to this Protocol will fail to gain the outcomes that the power is designed to deliver and in extreme circumstances the designation may be rescinded. This will take place with the agreement of the Building Communities Together Partnership where TVP and WBC are both represented.

16. Signatories

16.1 The parties to the Protocol will provide a secure framework for the sharing of information between their agencies in a manner compliant with their statutory and professional responsibilities. The West Berkshire Building Communities Together Partnership Information Sharing Protocol must be signed by a representative of sufficient standing.

16.2 Signatories formally agree to the following:

- To subscribe to the principles contained in this Protocol
- To work to the procedures identified within the Protocol
- To fully implement the Protocol within our agencies, ensuring all staff know of its existence to support the work of the partnership
- To ensure that staff within our agency are aware that this Protocol exists and that it is adhered to.

West Berkshire Community Protection Notice Protocol Signatories

Organisation	West Berkshire Council – Building Communities Together
Officer	Susan Powell – Building Communities Together Team Manager
Signature & Date	By Susan Powell 20/11/2018

Organisation	West Berkshire Police Area, Thames Valley Police
Officer	Ch/Insp. Lindsey Finch – Deputy Area Commander
Signature & Date	By Ch/Insp Lindsey Finch 23/08/2018

Organisation	West Berkshire Council – Legal Services
Officer	Sarah Clarke – Interim Head of Legal
Signature & Date	By Sarah Clarke 12/10/2018

Organisation	West Berkshire Council – Public Protection & Culture
Officer	Paul Anstey – Head of Public Protection & Culture
Signature & Date	By Paul Anstey 20/11/2018

Organisation	West Berkshire Council – Youth Offending Team
Officer	Dave Wraight – YOT Services Manager
Signature & Date	By Dave Wraight 12/09/2018

Designated Organisations

Organisation	A2Dominion
Officer	
Signature & Date	

Organisation	Astor
Officer	
Signature & Date	

Organisation	Homegroup
Officer	
Signature & Date	

Organisation	Sanctuary
Officer	
Signature & Date	

Organisation	Sovereign Housing
Officer	
Signature & Date	

Organisation	Southern Housing
Officer	
Signature & Date	