



**Brighton & Hove
City Council**

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Brighton & Hove Community Safety Partnership

(Draft) Brighton and Hove Community Protection Notice Procedure and Guidance

Introduction

This document describes the procedure and gives guidance to Brighton and Hove City Council (BHCC) officers using Community Protection Notices (CPN) within Brighton and Hove, and should be read alongside the Home Office Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers: Statutory guidance for frontline professionals

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf

Local use of CPNs

We will use CPNs to address in particular (but not exclusively) the following behaviours:

1. **Animal Wardens** – In more complex cases or where the incident is of a serious nature, CPNs will be considered along with other enforcement tools, such as the Dogs Act 1871 and the Dangerous Dogs Act 1992 as amended. Could be used for professional dog walking activity that is causing a nuisance e.g. restricting the numbers of dogs people can walk. Could also be used for repeat strays where animals are straying in people's gardens.
2. **Cityclean** –Where households or businesses leave rubbish on the pavement for a significant period of time and have been advised to remove it, and with managing agents to address fly-tipping in the front of the properties after the occupiers move out.
3. **Community Safety Casework Team** – To address situations where the unreasonable action or inaction of individuals, businesses and organisations results in behaviour/situations that impact negatively on the local community and the reported behaviour doesn't meet the threshold for Civil Injunctions and/or criminal proceedings.
4. **Environmental Health** – Buskers who disturb businesses and residents, using amplification playing for many hours and repeating the same tunes. Licensed

Safe in the city

Brighton & Hove
Community Safety Partnership



**Brighton & Hove
City Council**

premises in the case of customers who persistently cause unreasonable disturbance in the street. Noise caused by people congregating in common ways or public areas in private sector housing.

5. **Housing (BHCC Housing, BHCC Temporary Accommodation & Empty Properties Team)** - Tackling the accumulation of rubbish or to clear overgrown gardens, the loud playing of music in common ways or public areas surrounding our housing stock, regular use of public areas for unauthorised activity such as repairing vehicles or disruptive social gatherings, and the smoking of cannabis, or allowing the smoking of cannabis in and around the property.
6. **Seafront Office** – To address seafront clubs and bars that do not manage their waste correctly, which leads to increased debris that gets used for beach fires, and general untidiness.

Delegated authority to exercise the Council's powers to issue warnings and Community Protection Notices and to issue Fixed Penalty Notices pursuant to sections 43 & 52 of the Anti-Social Behaviour, Crime and Policing Act 2014 has been given to managers and officers in the teams listed above.

Legislation, procedure and guidance

Legal threshold

Community Protection Notices (CPN) came in force as part of the ASB, Crime and Policing Act 2014 (ASBCPA 2014). They can be used by Local Authorities, Police, and Social Landlords (if designated by the council) to address behaviour that:

- Has a detrimental effect on the quality of life of those in the locality
- Is persistent or continuing nature; and
- Is unreasonable

Who can a CPN be issued to?

A CPN can be issued to any person aged 16 or over, a business, or an organisation

Young people

If a CPN is being considered for any person aged 16-17 years then consultation must take place with BHCC Children's Services **before** a CPN warning letter is served. The following services should be contacted:

Front Door For Families Service **Email:** FrontDoorForFamilies@brighton-hove.gcsx.gov.uk

B&H Youth Offending Service (YOS) **Email:** brighton-hove.yos@brighton-hove.gcsx.gov.uk

The Front Door For Families Service will inform the officer considering the CPN of

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Brighton & Hove
Community Safety Partnership



Brighton & Hove
City Council

services the young person is known to, and B&H Youth Offending Service (YOS) will inform the officer if the young person is known to the YOS, in order that a discussion can take place regarding whether a CPN warning letter and potential CPN is appropriate to use at this time and what requirements would be included the CPN warning letter and potential CPN. If the young person is not known to Children's Services a referral should be made to https://selfservice.brighton-hove.gov.uk/en/AchieveForms/?form_uri=sandbox-publish://AF-Process-68044e9a-41e1-43ab-a0b4-30360fd51a1c/AF-Stage7b29ef8c-29fc-4916-a2c8-1550278c3b64/definition.json&redirectlink=%2F&cancelRedirectLink=%2F&category=AF-Category-34ae0761-fc35-4751-b4b5-2f73047d94eb

Business and other organisations

If a CPN is being issued to a business or other organisation, it must be issued to the most appropriate person who can reasonably control or affect the behaviour, either in person or posted to them e.g. shop owner of a small shop, store manager of a major supermarket. Care should be taken in ensuring the correct address is used. This may not always be the place where the problem takes place. The CPN is considered issued from the time the notice is posted.

If the owner can't be determined, the issuing officer can post the CPN on the premises, provided reasonable enquiries have been made to identify them e.g. Land Registry check. If in doubt then please contact legal services.

A Written Warning

Before a CPN can be issued, a CPN warning letter must be issued to the person committing the anti-social behaviour. The written warning must make it clear that if the behaviour does not cease that a CPN could be issued. The warning letter must also:

- Outline the behaviour that is considered anti-social
- State the time by which the behaviour (or its impact) is expected to have changed*
- Set out the potential consequences of being issued with a CPN, namely the potential sanctions on breach

**it is down to the issuing officer to decide how long should be given for the matter to be dealt with e.g. for a garden to be cleared, several days or weeks may be deemed reasonable, whereas an individual playing loud music may be expected to cease doing so immediately.*

The issuing officer should inform relevant victims, witnesses and community members that a warning has been issued, and give an explanation of the next steps if the warning is breached, in order to give the community confidence that their concerns are being responded to.

Safe in the city

Brighton & Hove
Community Safety Partnership



Brighton & Hove
City Council

The issuing officer should keep a copy of the warning on file & ensure that other agencies involved in the case are informed that the CPN warning has been issued.

To ensure a consistent approach locally, a template CPN warning letter is provided in **Appendix One** for officers to use.

Issuing a CPN

If the recipient of the Warning Letter has not ceased their behaviour within the timescales set, a CPN can be issued. The aim of the CPN is to stop behaviour and put in place steps to ensure it will not reoccur. It should be adapted to the situation and can include any or all of the following:

- A requirement to **stop doing** specific things
- A requirement **to do** specific things
- A requirement to take reasonable steps to achieve specific results within the set timescales.

The BHCC services taking part in this pilot should consider whether any CPN they issue needs to be signed off/agreed by a Team Leader or Manager within that service.

The issuing officer should keep a copy of the CPN on file & ensure that other agencies involved in the case are informed that the CPN has been issued. Sussex Police should also be informed that the CPN has been issued by e-mailing ASB&HateBrighton@sussex.pnn.police.uk in order that local officers are aware that a CPN is in place.

To ensure a consistent approach locally, a template CPN is provided in **Appendix Two** for officers to use.

Enforcement of a breach of a CPN

Failure to comply with a CPN is a criminal offence under Section 48 of the ASBCPA 2014. The following sanctions are available:

- Fixed Penalty Notice (FPN) of up to £100
- Remedial Action
- Prosecution

If an individual is convicted of a breach of a CPN, they may receive a level 4 fine (up to

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Brighton & Hove
Community Safety Partnership



**Brighton & Hove
City Council**

£2,500 for an individual, up to £20,000 for a business or organisation). The court may also impose:

- a Remedial Order
- a Forfeiture Order
- a Seizure Order

In considering the most appropriate course or type of action to take, BHCC officers should have regard to **BHCC Enforcement policy**, which states that:

Any enforcement activity should be proportionate to the seriousness of the breach, take account of what is appropriate for the particular offender, and that officers should follow a consistent approach.

Enforcement actions and the determination of sanctions and penalties should be carried out in an open, transparent, timely fair, equitable and consistent manner.

When considering enforcement action BHCC officers should have regard to a number of factors including:

1. The victims wishes
2. the seriousness of the alleged offence or situation
3. the previous history of the individual
4. the public interest
5. the “offender” has been subject to any punitive or relevant penalty which remains in place or which has been satisfactorily discharged, which adequately addresses the seriousness of the offending
6. a prosecution is likely to have a very bad effect on the victim’s physical or mental health, always bearing in mind the seriousness of the offence
7. the defendant is elderly or is, at the time of the offence, suffering from significant mental or physical ill-health, unless the offence is serious or there is a real possibility that it may be repeated

Young people

Where a person under the age of 18 breaches a CPN, that young person will be referred to the weekly B&H YOS Diversion Panel who will decide on the most appropriate disposal of the offence. FPNs will not be used for young people.

The relevant officer will contact

Emily.Mallinson@brighton-hove.gov.uk and provide details of the young person, the behaviour that led to the CPN being issued and the details of the breach. The officer will be expected to attend the panel.

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Brighton & Hove
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Brighton & Hove
City Council

Fixed Penalty Notices

On breach of a CPN, a FPN of £75 (in line with other similar FPNs) if decided to be the most appropriate course of action, will be issued by an officer delegated by the local authority. All officers issuing a FPN face to face should carry identification bearing their photograph, and this identification must also be produced on request. FPNs can also be issued by post.

The issuing officer needs to bring to the attention of the perpetrator that they are in breach of a CPN. The officer should take the details of the perpetrator and record them on the FPN ticket. The officer needs to be satisfied that the name, address and date of birth given is genuine and would be suitable for the service of a summons if the FPN is not paid.

If the details of the perpetrator are not believed to be genuine consideration needs to be given as to whether or not to call police. Police can arrest the perpetrator under Section 25 of the Police and Criminal Evidence Act 1984 if the name and address of the perpetrator cannot be established. Police will expect that reasonable efforts have been made to establish the details of the perpetrator and that the issuing of a FPN is the most reasonable approach to take to resolve the issue.

The FPN ticket requires the officer to record the time, day and date of the breach, the full details of the breach and the officer's details. The FPN ticket can then be issued and the perpetrator informed that failure to pay the fixed penalty within 28 days may result in a criminal prosecution.

The copy of the ticket should be retained.

To ensure a consistent approach locally, a template FPN ticket is provided in **Appendix Three** for officers to use

Work is currently underway with programme management and payments to finalise the FPN process.

Remedial Action

If an individual or body fails to comply with a CPN, BHCC can take remedial action to address the issue. Work undertaken on land "open to the air" can be taken without the owners or occupiers permission.

Before taking remedial action guidance and advice should be sought from BHCC legal services.

BHCC should establish what works are required to put the situation right e.g. removing rubbish from a front garden, and specify to the perpetrator what works it intends to carry out and the estimated cost.

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Brighton & Hove
Community Safety Partnership



**Brighton & Hove
City Council**

On completion the details of the work completed and final amount payable must be provided to the perpetrator. The charge must be reasonable i.e. not more than is necessary to restore the land to the standard specified in the notice.

The cost of any remedial works carried out by issuing agencies in relation to a CPN cannot be set against the value of a property so there is a risk the issuing authority will carry the debt for works if they are not paid by the perpetrator.

Prosecution of Breaches of a CPN

Prosecutions for breaches of CPNs will be undertaken by BHCC legal services and not the CPS.

It is sensible for the issuing agency to assume that a CPN will be breached or a FPN will not be paid, therefore good record keeping such as documenting warning letters and notices, partner consultations, evidence etc is essential. By taking this approach an agency can ensure that for every CPN that is issued, there is enough evidence to support a successful prosecution in the magistrates' court if breached.

A breach may be witnessed by a BHCC officer, another professional or a member of the public.

In order to prove a breach BHCC must be able to show:

1. Date and location of the breach
2. The nature of the behaviour complained about
3. How the individual or body failed to comply with a CPN
4. That all warnings were properly given.

The following information should be routinely recorded to evidence breach of a CPN:

- Details of the person who witnessed the breach
- The weather and light conditions at the time
- A description of the breach that has occurred
- The location at which the breach occurred
- The date & time that the breach occurred
- The name, address and age of the perpetrator
- How the perpetrator is known to the person witnessing and/or reporting the breach

Safe in the city

Brighton & Hove
Community Safety Partnership



**Brighton & Hove
City Council**

- Anything said by the perpetrator
- The view of the person that witnessed the breach (did they have a clear view of what happened?)

This information should be written up in statement form for possible use in court.

Photographs should also be considered as supporting evidence particularly for ASB such as graffiti, fly-tipping, litter, dog fouling etc. It is advised to make a hard copy of any photographs. The photographs will be subject to data protection act requirements so should be kept in a secure and safe environment but only for as long as is needed. This is also required for evidential continuity.

The officer must be prepared to attend court and give evidence under oath or affirmation. It will not normally be necessary for the officer to attend the first hearing as if the offence is admitted the matter will be disposed of on the day. If the offence is denied it will be set down for trial at a later date.

Police

Where there is a breach of a CPN issued by the Local Authority that is witnessed by a member of Sussex Police (and that resource is aware of the CPN restrictions), the following procedure will be followed as best practice:

1. The Police Officer / PCSO will warn the person or the body that they have breached their CPN and that their details will be passed on to the issuing authority. This will be recorded appropriately (pocket note book, body worn video, witnesses etc).
2. The Police Officer / PCSO will contact the authorising body outlining the incident that constitutes a breach and supply relevant material (as per (1)).
3. Issuing authority requests Police assistance at court (so that shifts can be changed to accommodate).
4. The Police Officer / PCSO will give evidence if required to do so by the court, detailing the events by means of a section 9 (criminal justice act) Police statement. Statements will only be provided for court cases.

Where an independent witness has reported a breach of CPN to Sussex Police (should this data be captured by police systems / personnel) the witness details will be passed onto BHCC (in consultation with that witness first) for further investigation and additional evidence gathering.

Remedial, forfeiture and seizure

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Brighton & Hove
Community Safety Partnership



**Brighton & Hove
City Council**

On conviction for failing to comply with a CPN, BHCC may ask the court to impose a remedial order and/or forfeiture order where:

- The matter is so serious a court order is warranted
- Works to be carried out need consent and this is not forthcoming
- The issuing authority may believe that forfeiture or seizure of items is required, as a result of the behaviour e.g. (sound making equipment)

Remedial Orders

A remedial order may require the defendant:

- To carry out specified work
- To allow work to be carried out by, or on behalf, of BHCC

Forfeiture Orders

The court may also order forfeiture of any item that was used to cause the anti-social behaviour e.g. spray paint, sound making equipment, a poorly socialised dog where the court feels the individual is not able to manage the animal appropriately. Forfeited items can be destroyed or disposed of appropriately, or in the case of dogs re-housed.

Seizure

The court may issue a warrant authorising seizure of items used to cause the anti-social behaviour. In such circumstances BHCC EHL department have guidance regarding seizing property and should be contacted for advice.

Appeals Process

Any person issued with a CPN can appeal it. Appeals will be heard in a Magistrates Court and the CPN should provide details of the process and how to appeal. An appeal can be made on the following grounds:

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

Safe in the city

Brighton & Hove
Community Safety Partnership



**Brighton & Hove
City Council**

- The individual cannot reasonably be expected to control or affect the behaviour
- The requirements are considered unreasonable
- There is a material defect or error with the CPN
- The CPN was issued to the wrong person

Any appeal must be made within 21 days of the issue of a CPN.

Any requirements to do a specific activity to achieve a specific result must be put on hold until the outcome of the appeal. Requirements to stop people doing specific things will continue to have effect.

Publicity and communication

The use of Community Protection Notices process will be actively promoted, both within BHCC and to the public.

Monitoring and Review

The use of Community Protection Notices during this pilot will be monitored and reviewed on a bi-monthly basis at the B&H CPN officers working group. The meeting will discuss:

- Any CPNs served
- Any CPNs breached
- Any process or procedural issues
- Any learning from the pilot
- Any potential other uses for CPNs
- Taking the use of CPNs forward post pilot period

APPENDIX 1

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Community Safety Partnership



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City Council**

COMMUNITY PROTECTION NOTICE WARNING

Section 43 Anti-social Behaviour Crime and Policing Act 2014

To: [Insert name]
Of: [Insert address]

This letter is formal notification that Brighton and Hove City Council is satisfied that, under the provisions of the Section 43 Anti-social Behaviour Crime and Policing Act 2014:

Your persistent and/or continuing conduct is having a detrimental effect on the quality of life of those living in the locality and that your conduct is unreasonable

And is therefore issuing you with a Community Protection Notice warning letter.

The conduct to which this warning applies is:

[insert details of conduct]

THIS WARNING HEREBY REQUIRES YOU TO STOP

[insert conduct that must stop]

THIS WARNING HEREBY REQUIRES YOU TO (delete if not applicable)

[Insert requirements and timescales e.g immediately / within 7 days of the service of warning]

If you fail to comply with the above requirements then Brighton and Hove City Council will consider serving you with a Community Protection Notice.

Community Protection Notices can include the requirement to stop specific behaviours and do specific things or take reasonable steps to avoid further conduct that has a detrimental effect on the quality of life of those living in the locality and is unreasonable

Breach of a Community Protection Notice is a criminal offence which can result in a fixed penalty notice of up to £100 or a fine of up to level 4 (currently £2500) for individuals, or £20000 for businesses

Name:
Job title:
Address contact details:

Signed:

Dated:

Being a duly authorised officer under Section 53 Anti-social Behaviour Crime and Policing Act 2014

APPENDIX 2

COMMUNITY PROTECTION NOTICE

Section 43 Anti-social Behaviour Crime and Policing Act 2014

To: [Insert name]
Of: [Insert address]

TAKE NOTICE THAT under the provisions of the Section 43 Anti-social Behaviour Crime and Policing Act 2014 Brighton and Hove City Council is satisfied that:

Your persistent and/or continuing conduct is having a detrimental effect on the quality of life of those living in the locality and that your conduct is unreasonable

And is therefore issuing you with a Community Protection Notice.

The conduct to which this Notice applies is:

[insert details of conduct]

You were previously given a written warning on [insert date] that a Community Protection Notice would be served upon you unless your unreasonable behavior ceased.

THIS NOTICE HEREBY REQUIRES YOU TO STOP

[insert conduct that must stop]

THIS NOTICE HEREBY REQUIRES YOU TO (delete if not applicable)

[Insert requirements and timescales e.g immediately / within 7 days of the service of notice]

[Insert if appropriate: Under Section 47 of the Anti-social Behaviour, Crime and Policing Act 2014 if you fail to comply with this Notice, the Council may execute the necessary work required under this notice and recover from you the expenses reasonably incurred in doing so]

Name:
Job title:
Address contact details:

Signed:

Dated:

Being a duly authorised officer under Section 53 Anti-social Behaviour Crime and Policing Act 2014

Appeals against this Notice

An appeal against the requirements of this Notice may, by virtue of section 46 of the Anti-social Behaviour, Crime and Policing Act 2014 Act, be brought by way of complaint to the Magistrates Court within 21 days of the service of this Notice on any of the following grounds:

1. That the conduct specified in the Community Protection Notice—
 - (a) did not take place
 - (b) has not had a detrimental effect on the quality of life of those in the locality
 - (c) was not persistent or continuing
 - (d) is not unreasonable
 - (e) is conduct that the person receiving this notice cannot reasonably be expected to control or affect.
2. That any of the requirements in the notice are unreasonable.
3. That there is a material defect or error in the notice.
4. That the notice was issued to the wrong person.

NB: Where an appeal is made, any requirement included in the notice is suspended until the outcome of the appeal. However, requirements stopping the individual or body from doing specified things continue to have effect

All communications regarding appeals should be addressed to:
Clerk to the Justices, Brighton and Hove Magistrates Court, Brighton, East Sussex.

Notes

A person who fails, without reasonable excuse, to comply with any requirement of this notice will be guilty of a criminal offence.

A person who commits an offence under this section is liable, upon summary conviction, to

A fixed penalty notice of up to £100

OR

A fine of up to level 4 (currently £2500) for individuals, or £20000 for businesses

On conviction the court may make whatever order it thinks appropriate for ensuring that the notice is complied with which may include the requirement to carry out specified work or allow such specified work to be carried out by or on behalf of the Council.

The Court may also order the seizure and/or forfeiture and destruction of any item that was used in the commission of the offence

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Community Safety Partnership



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