



CLOSURE OF CLASS A DRUG PREMISES

Brighton & Hove

RAPID REACTION PROTOCOL

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1. THE PURPOSE OF THIS DOCUMENT

1.1 Purpose

The purpose of this partnership protocol is to;

- Provide clear and agreed guidance for key partner agency staff when considering the enactment of the Closure of 'Class A Drugs' Premises legislation.
- Identify the key issues and stages in the 'Closure' process.

1.2 Aims and Objectives

The aims and objectives of this partnership protocol are to;

- Achieve consistency in practice across the city, to ensure rapid response from the relevant partner agencies and to set out clear procedures in relation to 'vulnerable' tenants/occupants.
- Enable partnership agencies to act rapidly to prevent deterioration in the quality of life for local residents and communities.

1.3 Partnership Responsibilities

Key partners as highlighted above have between them a range of 'statutory' duties and functions to enable them to effectively tackle the problem of supply and misuse of drugs in residential premises. In addition there are partners who may not be under a statutory duty, but who bring added value to the 'Closure' of premises procedure.

The statutory duties as summarised;

- Prevention of crime & disorder
- Prevention of misuse of drugs
- Prevention of anti-social behaviour
- Homelessness duty
- Protection from nuisance and harassment
- Child protection and 'Child in need' duty
- Protection of vulnerable clients duty
- Protection of environment in a safe and clean city

2. WHAT IS A 'CLASS A' DRUGS PREMISES

2.1 Definition

For the purposes of this Protocol, a 'class A premises or crack house' is defined as

"A premises typically characterised by a combination of the following indicators",

- The supply of crack cocaine, heroin or other 'Class A' drugs
- The consumption of 'Class A drugs' within the premises or within the vicinity of the address concerned.
- The 'frequenting' of the premises by identified sex workers; combined with the use of the premises or its vicinity for paid sex work.
- Premises visited by a substantial number (greater than 10) of people on a daily basis in connection with the intended supply, purchase or consumption of 'Class A' drugs.
- The criminal damage of surrounding property or the structure of an estate.
- An increase in acquisitive and violent crime in the vicinity of the premises, linked to the funding of personal drug consumption.
- Requests for Police to respond to firearm incidents and violent assaults either inside the premises or in its vicinity.
- A series of complaints by local residents, detailing severe or violent anti-social behaviour by the tenant or the tenant's visitors.
- The intimidation of local residents, housing officers and local employers.

The Anti-Social Behaviour Act 2003 refers to 'premises', but this term should not be restricted to residential premises, it can also cover commercial and licensed premises.

2.2 The Legislation – Anti-Social Behaviour Act 2003

With effect from 20th January 2004 a Class A Closure Order can only be implemented by an officer above the rank of Police Superintendent the requirements for implementing the Act are as follows:-

Reasonable grounds for believing

a.) that at any time during the previous 3 months the premises have been used in connection with the unlawful use, production or supply of a class A controlled drug

and

b.) that the use of the premises is associated with the occurrence of disorder or serious nuisance to the public

Police may authorise the issue of a closure notice providing they are satisfied that;

a.) the local authority for the area in which the premises is located have been consulted

and

b.) that reasonable steps have been taken to establish the identity of any person who lives on the premises, or has control of, or responsibility for, or an interest in the premises.

2.3 The drugs covered

This power covers Class A drugs as defined by the Misuse of Drugs Act 1971. For the purposes of this power some examples and how it could be used against them are listed below:

Principal Drugs involved	Classification under the MDA	How the power could be applied
Cocaine Crack Cocaine Heroin Ecstasy	Class A	Against Production, Supply or Use.
Amphetamines	Class B	No power under this Act where only these drugs are involved but MDA powers may be used to act against, production, supply or possession.
Cannabis	Class C	No power where only cannabis is involved – Cannabis is however specifically included in Section 8 of the Misuse of Drugs Act; and other MSD action for production, supply or possession offences may be applied.

It should be noted that whilst simultaneous charges against persons for the production, supply or possession of Class A drugs are desirable, they are not a precondition for the use of this power. It is not a requirement for the Police to demonstrate that a specific individual is producing, supplying or is in possession of drugs. The power requires the Police to have a reasonable suspicion that such activities are occurring from a residential premises. This power is significantly different from the MDA powers as it applies to the premises itself as oppose to a person(s).

2.4 Drug production

The closure power will potentially be available where residential premises are being used for the production of any Class A controlled drug. This will be particularly relevant in using the power against Crack Cocaine, and synthetic drugs such as Ecstasy, both of which are commonly produced in the UK in residential premises. The intention behind the Closure Power is to enable the Police to take rapid action in stopping residential premises being used for the commercial production of Class A drugs.

2.5 Drug supply

The closure power will potentially be available where a premises is used for the supply of any Class A controlled drug. Gathering sufficient evidence to prosecute individuals for supply in closed settings such as 'crack houses' can be very difficult to achieve. Therefore this power can be used to close the premises on the basis of reasonable suspicion of supply, confirmed by the presence of drugs and drug paraphernalia amongst other evidence providing, however, that there is disorder or serious nuisance being caused.

These powers are intended to be used in respect of premises that are being used in the production, supply and use of Class A controlled drugs and not against specific individuals. It is not necessary to demonstrate that a specific individual is producing, supplying or is in the possession of drugs. The issuing officer needs to have a reasonable suspicion that such activities are occurring from the premises. An individual found to be on such premises can be arrested under existing law.

2.6 Disorder or Serious Nuisance

Premises cannot be closed simply because drug production, supply or use is taking place. There must also be evidence of disorder or serious nuisance. It does not need to be demonstrated that the disorder or serious nuisance is associated or resultant from the drug use, production or supply, simply that both are present.

Disorder or serious nuisance is not currently defined in law therefore it is up to the courts to define these terms.

2.7 Evidence of Disorder or Serious Nuisance

Behaviour that can constitute disorder or serious nuisance related to the premises are outlined below. The following suggestions should act as guidelines as to the level of nuisance to be considered serious in this context:

- Intimidating and threatening behaviour towards residents
- A significant increase in crime in the immediate area surrounding the accommodation
- The presence or discharge of a firearm in or adjacent to the premises
- Significant problems with prostitution
- Sexual acts being committed in public
- Consistent need to collect and dispose of drugs paraphernalia and other dangerous items
- Violent Offences and Crime being committed on or in the vicinity of the premises
- High number of people entering and leaving the premises over a 24 hour period and the resultant disruption they cause to residents
- Noise - constant/intrusive noise - excessive noise at all hours associated with visitors to the property

Serious nuisance is often demonstrated by accounts from neighbours and/or professional witnesses of the distress caused to the community by the activities at the premises. The accurate recording of events, over time, will also be very important to prove the sustained and intrusive nature of the disorder and serious nuisance.

Evidence of disorder or serious nuisance in statements provided by residents/occupants affected by the behaviour as well as evidence obtained from professional witnesses can be used in proceedings brought by the Police. The partner agencies need to be mindful of needs of witnesses who may suffer acts of recrimination from individuals associated with the behaviour.

2.8 Evidence requirements

The evidence requirements have to meet the threshold as set down by the Anti social Behaviour Act 2003, s1, Part 1.(see section 2.2)

The Police are under a legal duty to consult with the Local Authority before service of a Closure Notice.

Although there is no obligation for the local authority to assist it is the role of Social Landlords to work with the Police to help provide evidence that gives rise to a reasonable suspicion to enable the Police to obtain a Closure Notice.

The police will obtain Class A drugs intelligence including seizures, warrants history and arrests made in and around the premises. While the council or RSL may be in a position to provide information by way of complaints received from residents and occupants, independent witnesses, evidence of housing officers in the form of diary sheets and tenancy file history.

In this context a partnership approach to evidence gathering needs to be clear and unambiguous from the outset and with review timescales put in place with the close involvement of a solicitor.

Likely sources of evidence;

- resident diary sheets
- letters of complaint
- Council Housing tenancy file correspondence (if applicable)
- Registered Social Landlord or Housing Association file correspondence
- Environmental Health information, evidence and attendance at premises
- Police Offender profiles
- Police arrest history at premises
- Specific offender arrest history
- Witness statements
- Record of Police incident history in and around premises address
- Map indicating incidents of anti-social behaviour, offences and complaints linked to the premises address

2.9 Who has the legislative power to serve Closure Notice?

The legislative power is with the Police. Upon an application by the Police to the Magistrates' Court a Closure Order is sought that can then be served on anyone identified as an interested party. However, in Brighton & Hove levels of partnership working are such that although the power to obtain Closure Orders is with the Police, other Partner agencies play a vital role in the process.

A shared problem solving approach is a clear advantage in sharing resources, intelligence and pooling evidence to effectively tackle the problem and prevent it from re-occurring.

2.10 Practical arrangements

Due to the very nature of drug supply, production, consumption and general culture the community is likely to be extremely apprehensive about providing evidence to assist the 'Closure' process.

Having identified potential premises at an early stage, key local officers should agree a strategy to tackle this and to reassure residents and the community that they are tackling the issue proactively. Partners need to be very clear with each other about potential difficulties and should agree to meet regularly and keep channels of communication open to ensure information sharing and the ability to react rapidly.

3. VULNERABLE OCCUPANTS

Key consideration must be given to vulnerable status at early planning stage.

3.1 Identifying vulnerability

In Brighton & Hove there is fairly frequent incidence of drug suppliers becoming involved with a tenant or occupant and then over time the property or premises becomes associated with drug supply, misuse and other criminal activity. In these circumstances the original tenant/occupant effectively loses control of their home and becomes a victim of circumstance. The perpetrators target vulnerable individuals they can manipulate through supply of drugs, intimidation, threats of violence and actual violence. In a small number of cases there may be children living on such premises. It is essential that the Police or the Local Authority advise Social Services immediately if vulnerable adults or children are identified in the property.

- Vulnerable individuals in this circumstance are as much a victim as the wider community and if they meet certain criteria they should be treated as such.
- Criteria are set out below as a guide, however vulnerability should not be decided on the basis of how many criteria they meet, it should be a multi agency decision based on individual circumstances.

3.2 Vulnerability guidelines

These categories should be used to guide the decision making process and establish vulnerable status.

Look not only at current status but to try to ascertain historical circumstance.

- Child Protection concerns, Duty & Assessment Team (D&AT) involvement
- Abusive relationship
- Domestic Violence
- Learning difficulties
- Physical disability
- Mental health concerns
- High support needs through floating support, Special Needs Housing Officer, key-worker or other
- Tenancy history (priority transfer history)

The above criteria are not an exhaustive list, but they are guidelines to be used as a starting point in making the vulnerability assessment.

- A comprehensive and objective decision at the earliest stage will have a decisive impact on how to proceed with the case.

For example, it may become clear that the occupant has lost control of the premises and is regularly confronted with violence within the home. A priority transfer may be appropriate. Where a tenant is excluded from their secure tenancy they should be referred to the Local Authority Homeless Persons Unit where they will be assessed to establish whether or not there is a statutory duty for re-housing assistance. The Police and Local Authority officers involved in the process will need to immediately refer information to the Homeless Persons Unit to assist them in assessing the individual's status.

Where the Police have issued a closure notice in respect of privately owned/managed accommodation the tenant/occupant concerned should be referred to the Local Authority for appropriate advice and or assistance in respect of services that may be available to them including a referral to the Authority Homeless Persons Unit.

If in doubt, discuss with your line manager for guidance.

If the premises does not to the best of your knowledge involve any vulnerable clients, record and substantiate this decision and proceed. The Authority should consider immediately issuing possession proceedings to recover the property following a closure notice in cases where the tenant is not vulnerable and is involved in the behaviour.

In cases involving a vulnerable tenant they may be assisted to surrender the original tenancy and be re-housed in other alternative accommodation.

4. THE PROTOCOL IN ACTION

4.1 How to get started

The Protocol will be instigated on the basis of a build up of information provided by a wide range of sources. Primarily, those providing the supporting intelligence will be one of the following:

- Sussex Police
- RSL or Council Housing Manager
- Brighton & Hove Environmental Health Manager
- Partnership Community Safety, Anti-social Behaviour Team Caseworker
- Anti Social Behaviour Housing Officer
- Social Work Manager

Following the decision by the lead officers that a Closure order is necessary the case will be referred to the ASB Co-ordinator.

Following the referral the ASB Co-ordinator will do the following:

- Identify the relevant social landlord (with the assistance of the anti social behaviour team caseworkers)
- Contact the appropriate District Police Inspector and Housing Manager to discuss whether the Closure Protocol should be implemented.
- If the Closure Protocol is agreed upon the ASB Co-ordinator and District Inspector will dependent on timescales either add the property to the agenda for the monthly ASB Multi Agency Planning Meeting or call a separate planning meeting. In the case of an emergency situation, as long as there is consultation, the aim for a planning meeting can be set aside, but all agencies should be informed as a matter of some urgency. If felt appropriate it can be taken to the next available planning meeting for information sharing.
- Request an offender profile of any known residents and a profile of the disorder associated with the property from the ASB Co-ordinator for Sussex Police.
- Invite all relevant parties to the meeting and request that they bring the evidence that they have accumulated of disorder and details of the attempted interventions.
- The District Inspector will continue to monitor the situation, if there is insufficient intelligence to implement the Protocol.

4.2 The Planning Meeting Objectives

The Multi Agency ASB Planning Meeting is a monthly inter-agency meeting which will review whether a tenant should be targeted for intervention under the Protocol. The meeting will decide whether the tenant will be considered as 'Vulnerable' or 'Non-Vulnerable' for the purpose of the Protocol. The assessment will be based upon the information available to the partnership agencies. Normally, each agency should be prepared at the meeting to

disclose the information, which would be necessary to take an informed decision. The Planning Meeting decision is not a fixed decision and the Protocol will allow this decision to be changed as the process develops.

The Multi Agency ASB Planning Meeting is chaired by the ASB Co-ordinator however if this meeting is not appropriate because of timescales then a planning meeting can be chaired by either the ASB Co-ordinator or Police District Inspector. The meeting will consist of the lead managers from relevant services, the ASB Team solicitor and the Caseworkers / Officers directly working with the household.

The planning meeting should:

- Consider whether the closure is appropriate given the nature of the problem identified
- Consider whether there are alternative or more appropriate tools and powers which could be used to alleviate the problem
- Consider whether all alternative tools, powers and support services have been attempted or considered.
- Agree long term strategies for the resolution of the problem
- Look at how the proposed closure will effect vulnerable people
- Agree a strategy for protecting vulnerable people and preventing them from homelessness
- Obtain intelligence on property ownership / management where the property is not social housing.
- If it is appropriate and safe to do so then ensure that the allocated caseworker informs those who may be subject to the closure order that it is being considered and the possible consequences for them.
- Provide advanced notification to homeless services or social services of the proposed action as it may place additional demands on their service.
- Agree the notification of relevant local authority department directors and local councillors who lead on relevant issues i.e. anti social behaviour, housing, children and young people.

If the decision of the meeting is that a closure order will not be applied for and the Police agree to this then the meeting will agree further actions for example:

- Where there is not enough evidence to proceed with a closure order an agreement will be made about how much evidence is required and who will monitor the situation in the future.
- Where the meeting decides that a closure order is not appropriate other interventions will be agreed within the meeting.

It should be noted that the Police only need to consult. There is no obligation on them to accept the views of the local authority when a closure order is not felt to be the appropriate action after consultation.

4.3 Consultation:

Section 11a 2-3 of the Anti Social Behaviour Act requires consultation between a police representative of superintendent level or above and one of the following local authority staff

- Anti Social Behaviour Co-ordinator
- Head of Community Safety
- Assistant Director of Public Safety
- Director of Environment or Adult Social Care & Housing
- Assistant Director of Housing
- Assistant Director of Housing Management

This consultation has to be documented on the certificate of consultation for closure of premises and should be undertaken prior to contact being made with the court. The signed certificate of consultation should be supplied to the solicitor handling the case.

5. THE LEGAL & COURT PROCESSES

5.1 The purpose of the Closure Notice

The Closure Notice alerts those using the property, those resident, the owner and any others with an interest who can be identified, of the intention to apply to the court for a Closure Order. It sends a clear message to the community that action is being taken against the premises, and informs drug dealers that their activities will no longer be tolerated. It gives notice that impending closure of the premises is being sought and details of what this entails. In many cases persons in these premises involved in drug related offending will have been previously warned of impending action, in an attempt to reform their behaviour, or may have been the subject of other law enforcement activity before any notice is served. It is however still essential that when the Closure Notice is served persons in or associated with the premises understand its meaning and that even at this point they have a chance to reform the behaviour associated with the premises. The notice is intended to encourage those who are not habitually resident to leave, or they may be arrested.

5.2 The effect of the Notice

It should be remembered that the Closure Notice in itself may on its own achieve the intended outcome of stopping the premises being used for the production, supply or use of Class A drugs and related disorder or serious nuisance. For this reason Closure Notices should be considered as part of strategic and tactical action against drug supply overseen at a senior level. For the initial 48-hour period before the Court considers the application it may provide immediate relief to the community. Attention should be paid to the timing of the notice to ensure that the community needs are balance against the needs for a fair trial. Serving a notice on a Saturday with a return date on Monday leaves no time for legal advice to be sought. Wherever possible there should be at least one clear day – to allow legal advice to be obtained.

It also creates offences, backed with the power of arrest, for any persons who do not habitually reside in the property, who enter or remain in the premises. The intention is to encourage all those not properly resident to leave at this point and relief to be obtained during the notice period. However it allows for the tenant to stay whilst they arrange alternative accommodation.

Some persons occupying the property may need alternative accommodation and may seek housing advice. These enquiries need to be directed to the Housing Advice Centre at Bartholomew House, Brighton

5.3 The contents of the Notice

The Closure Notice must contain the following information:

- A Closure Order is being sought
- Only the owner or persons who are habitually resident at the premises may now enter the building, but no one else
- The date, time and place at which the Closure Order will be considered
- An explanation of what will happen should a Closure Order be granted- in particular that there will be no further entry to the premises and it will be will be totally sealed. If the premises are residential then the occupier will be forced to find alternate accommodation.
- An explanation that any person who does enter the premises who is not the owner or persons or habitually resident there commits an offence and can be arrested.
- Information on relevant advice providers who will be able to assist in relation to housing and legal matters and information on help with drug treatment options and leaving sex work.

Once an agreement has been reached to serve a Closure Notice the solicitor should approach court staff to fix a hearing date. The date, time and place of the hearing will then be placed on the face of the Closure Notice, which will be served no more than 48 hours prior to the hearing date.

5.4 Serving the notice

The police are not required to ensure that all persons, who may have an interest in the premises and who may suffer financial loss as a result of the closure, are notified prior to the Notice being issued. The Act requires 'reasonable steps' to have been taken to identify such people. It may be the case that these people are difficult to trace and the delay required to identify them would remove the benefits of the Power. However the Closure Notice must be served on any person who is identifiable at the property or who appears to have an interest or to be affected by potential closure.

Identifying these persons need not delay the service of the Notice, for instance on the electoral register or council tax record held by the local authority in the area in which the premises are situated should identify the owner or occupier. If this simply identifies a letting agent, serving notice on them is acceptable.

Service of the Closure Notice can be effected by the affixing of the Notice to the premises, but effort should also be made to give a copy of the Notice to any interested persons. Posting a notice is not desirable, due to the speed and effects of the Notice. However if the owner or letting agent identified is not local posting the Notice may be considered sufficient as the only practicable means.

It may be that the police may apply for a warrant to search the property and seek to bring charges against persons involved in the manufacture, supply or possession of drugs, at the same time as serving the Closure Notice. This may be entirely appropriate. However it is not a requirement. The Closure Notice may be served by a police officer of any rank.

It will be for the police and the relevant local authority to decide the level of joint working on the service of the Closure Notice. In some areas, where it is considered safe to do so, it may be appropriate for the police to be accompanied by the relevant local authority or RSL officer.

5.5 Dealing with those in the premises

Once served, those at a premises affected by the Closure Notice may well choose to leave voluntarily. Those who habitually reside there should be advised to seek alternative accommodation. If they have failed to do so themselves, they should be referred to the Closure Notice or the advice providers referred to in the Closure Notice, regarding help with accommodation, drug problems, leaving the sex trade, and obtaining legal assistance. It may still be possible for those resident to change the way the premises are used. However it is an arrestable offence for a person who does not normally live at the premises or is not the owner to continue to reside at or enter the property during the Closure Notice period. If convicted the individual is liable to imprisonment or a £5000 fine.

The extent to which this power of arrest is used is the decision of the officer in charge based on an assessment of the likelihood of continued disorder or serious nuisance. The application of this power is useful if by it, drug users, where their gathering together has caused nuisance, are removed from the house. If arrest serves this purpose it should be used. Use of the power may be appropriate as a tool in acting against persons identified through service of notice where intelligence suggests they have engagement in supply or other criminal matters.

It is also an arrestable offence to obstruct the police officer serving the Closure Notice.

5.6 The Magistrates Hearing

The key issue that will need to be demonstrated is that disorder or serious nuisance and the use, production or supply of drugs are both present; so care should be undertaken to ensure that convincing evidence of this is presented to the court. Where possible this should also have been served on the occupants of the property at the time of the notice.

Prior to the hearing the police and partner agencies should ensure that the evidence to be presented is in good order and support for community witnesses at the court is in place to enable them to give evidence.

At the court hearing the evidence should be presented by the police and, if requested by the Police and it is appropriate, the local authority or housing provider, to establish the grounds for believing that the house is associated with disorder or serious nuisance related to Class A drugs. As indicated, this need be no more than reasonable suspicion. It is not required that there are charges relating to drugs offences; however witness testimonies that drugs are being sold in the house, or that the house is frequented actively by drug users are appropriate.

The court will be asked to decide whether the making of a closure order is necessary to prevent further disorder or serious nuisance. The court may therefore wish to consider whether alternative methods would be more appropriate. For this reason it is important that evidence of the other actions that have been considered or attempted are provided to the court.

The court is not required to have forensic proof that the drugs being sold, used or produced are Class A drugs; simply that there is reasonable suspicion that they are. A forensic test that would be required for determining criminal responsibility for such drugs under the MDA may take longer than 48 hours to complete. Given that this criminal level of proof is not required it is undesirable that the court adjourns proceedings until forensic tests are completed. Simpler tests are available which will give an indication of the drug involved. Whilst such tests are not considered sufficient proof of the drug involved for the purposes of conviction under the MDA, they have been considered suitable by courts for the purposes of assessing bail under that legislation. Accordingly, whilst such tests are not required by the court in handling these cases, Police may feel that they add some weight in preparing evidence for the court, and so could be considered.

The court is not asked to decide whether making a Closure Order is in the public good. Therefore the relative merits of applying the power to certain types of premises rather than others is not to be decided by the court. The court is simply asked to decide whether the use of the power in the specific circumstances involved is necessary to prevent the occurrence of the behaviour (Clause 2, subsection 3). No property is exempt unless it has been made exempt by order of the Secretary of State.

5.7 Potential arguments in defence of closure

The owner of the premises or any person(s) who has an interest or is affected, may contest the making of an Order. The court can defer the making of the Order by adjournment for 14 days to allow those persons to prepare their case.

It is not the intention that all cases should be routinely adjourned. This would defeat the object of the power, which is speed. The court must decide whether an adjournment is needed. Anyone seeking an adjournment must demonstrate reasonable grounds why it is needed.

The court will wish to hear why the order should not be made. The Act does not specify what reasons there should be for not making the order. This will be for the court to decide in each case. Possible reasons include:

- The landlord, owner or tenant has just been appraised of the situation, and can demonstrate that effective action is being taken to deal with it; or -
- There is evidence that disputes the evidence presented by the police, or evidence that cannot be presented at this time but which will be presented subsequently, thus presenting a case for adjournment

The court operates on a civil rather than a criminal standard of proof (i.e. balance of probabilities). It is not required to have demonstrated the same burden of proof required under the Misuse of Drugs Act to enable conviction of persons for relevant drugs offences.

The court can of course decide that notwithstanding the owner or landlords contention that they will address the problem, that a closure order should still be made whilst they attempt to do so. If they can then subsequently demonstrate sooner than the specified order period that the problem has been successfully addressed then the order can be revoked.

Hence whilst the court has nominally three options, denial of the application, adjournment or closure. In practice the ability to vary the length of the order gives the court flexibility to deal with different circumstances where a shorter order may be appropriate, bring immediate relief whilst the landlord and police deal with the problem, but not leading to extended and costly closure.

The maximum length of an order is 3 months with possibility of further extension to not more than 6. The length of the order should reflect the circumstances above and the desire to bring the property back into management as quickly as possible.

5.8 Extensions:

The powers to extend a closure order for a further 3 months are expected to be used only on rare occasions. There are many disadvantages to leaving properties empty for extended periods and only when there are real concerns that the property will return to its former use should an extension be made.

If an extension is considered necessary then the lead officer needs to refer this matter to the ASB Multi Agency Planning Meeting so that the process of consultation can take place again. The procedure for the authorisation of the extension is the same as with the application and the tests are the same as for the original closure.

The application for an extension may be made at any time prior to the date on which the original order would have expired. This is done by way of complaint by the Police, which fixes a date for hearing.

5.9 Appeals:

The act entitles any persons on whom a Closure Notice was served, as well as any person who has an interest in the premises but on whom the closure notice was not served, to appeal against the making or extension of a closure order.

An appeal may also be made by the Police or Local Authority against the refusal to grant or extend an order.

An appeal against the order or decision not to grant it must be brought to the Crown Court within 21 days, starting on the day on which the order or decision was made.

5.10 Discharge of a Closure Order:

It is important that the property remains empty for as short a time as possible therefore if the nuisance has been addressed satisfactorily before the end date of the closure order, for example where a tenant has surrendered their tenancy, an application should be made to the court to discharge the order. The court will wish to be reassured that the same pattern of behaviour will not reoccur and where a vulnerable person is due to return to the property the court may want to see that an adequate level of support is in place.

Those with a legal right to occupy (or those connected with) the premises or the owner may seek the discharge of the order themselves however the court should give careful consideration to the likelihood of the original problems returning. If the court is satisfied that the owner or landlord is capable and willing to get the problem under control then the order should be discharged.

6. POST HEARING TASKS

6.1 The effect of the Closure Order

The closure order gives a power to close a property completely and remove access by any persons, even those with rights of abode or ownership, except where they are allowed to enter the property under the supervision or direction or permission of the police or the court. The order allows for a property to be sealed, closed, and removed from public use for the period of the order. The Closure Order comes into force immediately the court makes the order.

Breach of the Closure Order is an offence and persons can be arrested if they break it.

6.2 Enforcing a Closure Order

As soon as a Closure Order is granted by the courts it should be enforced. This means the premises in question can be cleared of all persons present including residents and those with an interest in the property who may have remained after the service of the Closure Notice.

The police can use reasonable force to enter and seal a property. This is to allow removal of defences that are often built into such premises and to seal the premises with the required temporary building work or shutters.

The process of entering the property to enforce the Order should be treated with extreme caution. Whilst in many cases the occupants will already have left, in others they may be resistant to leaving. They may also be armed. Therefore the operation should be undertaken following a risk assessment, but reflecting the strong linkage between Class A drugs, guns and violence. On occasion, firearms support may be required. If this is the case, and bearing in mind that obtaining evidence for charges related to supply could be possible, the serving of the Order could require a substantial operational support. Authorised persons such as local authority workers, maintenance staff, utility persons or Housing Officers should not be present until any safety issues have been addressed and the property cleared.

Large quantities of drugs or money may be securely hidden in the premises and that sometimes dealers may return to gather these possessions or to recommence their business. Both a thorough search should be undertaken and subsequently, strong means of property sealing applied.

6.3 Dealing with those still occupying the premises

Those found contravening the Closure Order can be arrested as officers on the scene feel is appropriate on the basis of the evidence available. Those inside or residing are likely to fall into these groups:

- The tenant/owner, who may be the dealer, but is more likely to be a vulnerable person, who may have social care and housing needs, related to drug misuse, mental health, age or some other vulnerability
- Dependents of the dealer/tenant, including children, all of whom will have housing need, and some of whom may need to be taken into care
- Drug users who happen to be there, some of whom may have nowhere to go, and have profound drug needs
- Sex workers, who could have problems of vulnerability, dependency and lack of shelter
- Other criminal associates of those involved in the production, supply or use of Class A drugs

These are only examples of persons likely to be found. The only people who are able to enter the premises following the Closure Order are police officers or persons authorised by the chief police officer or those persons granted access by the court.

6.4 Immediate COMPULSORY notification to partners

Once the Closure Order has been served as described above, telephone or e-mail notification should be made to key partners by the lead officer (i.e. ASB Caseworker, ASB Housing Officer, Police Officer) to the following;

- **Children, Families & Schools-Duty & Assessment Team where children are directly affected by the Closure Order.**
- **Homelessness Team and Housing Advice Centre.**
- **Local Council Housing Office.**
- **Emergency boarding up service to make the property secure**
- **Anti-social Behaviour Co-ordinator**

When notifying the above key partners, you **MUST** provide the following details:

- **Address of premises**
- **Date of Closure Order served at property**
- **Name(s) of persons resident (legally or otherwise) and who will be displaced through Closure Notice enforcement.**
- **Highlighting any Child Protection Issues**
- **Potential intelligence in relation to displacement to other addresses.**

6.5 Securing the property

Once the Closure Order has been served and the property has no occupants within, it is necessary and appropriate that the premises are made secure as a matter of urgency.

Plans should be made to secure the property prior to the hearing so that they can be executed immediately to prevent any occupants regaining entry to the premises.

An emergency boarding or property securing company arrangement should be made. One of the best methods available in the city is Orbis Property Management who can supply and install metal screens to all windows and doors on the premises. The cost associated with this service is for initial fitting, followed by hire charge dependant on length of time in use and finally a further charge once screens are removed.

If the property is Council or RSL it is entirely reasonable that the cost should be borne by them as the landlord or owner of the premises.

If the property is privately owned or rented then it is entirely appropriate for the owner or landlord of the property to make comprehensive arrangements in partnership with the Police and key partner officers. However if the owner is unwilling to engage in this process then the Police or Local Authority will arrange for the property to be sealed. The Police or Local Authority may then apply to the magistrates court for costs against the owner for any expenses incurred in enforcing the closure order, we should notify all landlords of this position.

7. APPENDICES

Appendix A. Other potential powers / remedies / procedures

Powers to control landlords who tolerate drug use and dealing

It is possible that any landlord or owner with responsibility for the property may be complicit in the dealing occurring. It may be that the landlord has been warned already by the police that the premises have been used for this purpose and has not taken action to redress the offending behaviour.

There are other powers, the threat or actual use of which can be used to encourage a landlord or owner to act in these circumstances - Section 8b of the Misuse of Drugs Act 1971, which makes it a criminal offence to knowingly allow the use of cannabis or opium on premises or Section 8d knowingly allowing the supply of any controlled drug on a premises. If the cessation of the behaviour can be achieved by threat of action using this power rather than closure, then this is an alternative course of action that could be used. This could also be used additionally to the closure powers to act against landlords or owners of this type.

Powers to charge those selling or producing drugs for offences under various drugs legislation.

The Powers contained in this Act are not designed to replace the power available to act against individuals for drug manufacture, supply or possession offences. However they are designed to add to those powers to close places where such behaviour occurs. Where possible, it is still desirable to proceed against individuals using criminal charges of drugs offences. However it is recognised that there are circumstances where the evidence is not available to use these powers and yet the nuisance and harm associated with drugs continues. Therefore it is not a requirement on the senior officer to bring charges under the criminal law for production, supply or possession before the Powers of Closure are applied for. It is simply sufficient for them to have reasonable suspicion that the premises are being used for these purposes and that there is evidence of disorder or serious nuisance being involved. Ideally charges will be brought against specific individuals operating from the premises which are involved; but it is not a requirement.

The Police should consider whether there are more appropriate powers contained in the Misuse of Drugs Act first and whether the use of the powers in this Act would compromise the use of the alternative powers. Both may have an impact on the closure of the property.

Circumstances of simple use of drugs

As covered above, under definition of use, this power is intended to allow for closure related to the simple use of drugs only where there is disorder or serious nuisance associated with that use. The Misuse of Drugs Act is the primary legal machinery for control and regulation of simple possession of drugs. This power is concerned to address various forms of Anti-Social behaviour associated with such use. Therefore use of this power should be predicated firstly by the scale of nuisance involved rather than use on its own. It is not the intention of this power to allow for further criminalisation of personal drug use, but to create powers appropriate to disorder or serious nuisance that occur in connection with the use of drugs

Other powers to control nuisance

It is similarly not a requirement to apply other powers to control behaviour before using the Powers of Closure, such as ASBOs. Such powers may be suitable and may be adequate to control certain types of anti social behaviour but it is not a requirement for such other methods to have been used previously. Where there is disorder or serious nuisance on its own, not associated with drugs, or minor nuisance, perhaps associated with the simple use of drugs, then other means of controlling the behaviour may be more appropriate. However, where disorder or serious nuisance is clearly and demonstrably involved alongside Class A drug misuse it may be appropriate to use this Power to provide immediate relief to the community. It is a requirement that there is disorder or serious nuisance present before proceeding to use these powers. There is a three month set time limit on when such behaviour must be shown to have occurred within to enable a Closure Notice to be served.

Powers to exclude persons from an area

Section 222 of the Local Government Act 1972 grants the power to a Local Authority to bring an order excluding persons from an area entirely. This injunction has been used successfully against suspected operators of 'crack houses'. An ASBO has a similar function but this power may be more flexible and easier to obtain. The court is likely to require a similar set of evidence as would be required for a Closure Order. Both sets of orders can be applied together to give closure of the property and exclusion of the perpetrators, and could be added to with prosecution for supply or intent to supply under the Misuse of Drugs Act. Action in this manner would be seen as part of a concerted effort to control the supply and use of Class A drugs in a community.

Where the premises are owned by a Registered Social Landlord, or by a local authority, Part 2 of the Anti-social Behaviour Act amends s.153 of the 1996 Housing Act to also allow for a power of exclusion to be attached to injunctions.

Appendix B. Certain sensitive types of premises on which it may not be suitable to issue a Closure Notice.

The senior authorising officer must take into account the potential harm that may result in the closure of some types of properties and consider the overall social good in doing so. Whilst no specific types of premises are exempt from these powers, the appropriateness of their use in some circumstances should be considered. Ultimately it is for the court to decide whether the closure of any specific premises on a specific occasion is justified, but the authorising officer should also be mindful of the implications and whether other methods of control may be more appropriate.

These circumstances may include:

- Properties where closure cannot be effected without removing access to large numbers of persons who would be made homeless, have no right of re-housing, or would otherwise be caused harm through closure. Examples might include hostels with many residents (although not smaller units), bed and breakfast hotels and long term supported accommodation such as sheltered schemes.
- Hospitals
- Schools
- Children's homes
- Drug treatment services

The court is not asked to decide whether it is in the public good whether such premises are closed; simply whether the criteria for closure are met and the making of the order will prevent the occurrence. Hence the officer making the decision must be mindful of the implications of closure when they seek to apply the power to premises where many persons, many vulnerable, will be displaced, and which provide valuable services to many others. This risk must be balanced against the risk arising from allowing the behaviour to continue, and the other powers that may be available. It is likely however that in the vast majority of cases such behaviour will not occur in places of this type.

The consultation requirement is crucial here. Whilst the opposition of the Local Authority is not a bar to closure, it should be crucial in the process of making a decision. The Secretary of State also has the ability to exempt by Statutory Instrument certain types of premises from the scope of the power. Any such exemption will prevent the issue of a Closure Notice or Order against any such defined premises.

Appendix C

Senior Officer Checklist

Closure Notice Approval Check List for Senior Officer

- Is there disorder or serious nuisance from the premises?
- Is there suspicion of production use or supply of Class A drugs?
- Has evidence of this been appropriately collated?
- Is this within the previous 3 months of the authorisation of the Closure Notice (today)?
- Has the Local Authority been consulted?
- Has this involved an exchange of information and have their views been taken into account where desirable?
- Have those who live, control, own or have responsibility or an interest in the premises been identified?
- Have Notices been prepared to be served upon them?
- Have other options been considered or tried where possible?
- Has a Magistrates Court Hearing been secured within 48 hours of the intended date and time of service?
- Does the Closure Notice contain the information required by the Act?
- Notice of the application for a Closure Order
 - Give notice of the application for a closure order
 - State the date, time and place where this will be heard
 - Inform all persons that access to the premises by those other than the habitual resident or owner is prohibited.
 - Explain that access by any other person is considered an offence
 - Detail the effects of the closure order if issued by the court
 - Provide information on how to contact advice providers such as housing or legal advisors.
- Have partner agencies been notified as appropriate?
- Has a risk assessment been made against the premises?
- Has appropriate back up therefore been provided and other policing tactics to be used alongside this action been considered?
- Has the nature of the premises and possible vulnerable persons or children been considered?
- Have appropriate services been advised of the potential demand upon services by these groups and drug users?
- Has the social good of closure been considered?
- Have arrangements been made for the secure sealing of the premises and the isolation of utilities?
- Has the Secretary of State granted any exemptions to types of premises?
- If so does the premises fall within that exemption?
- Have appropriate structures been put in place to ensure witnesses can be contacted for the case and will be kept informed of developments?
- Is there a plan to follow up the closure with renewed efforts to combat drugs and crime in the area?

Appendix D. Procedure for pursuing a Class A premises Closure Order



