



Anti-Social Behaviour

Premises Closure Protocol

November 2009

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1. Introduction:

Section 118 of the Criminal Justice and Immigration Act 2008, (CJIA) introduced new powers for the courts to temporarily close premises associated with significant and persistent disorder or persistent serious nuisance. Schedule 20 of the CJIA inserts a new section 1A into the Anti-Social Behaviour Act 2003, that makes provision about the issue of Closure Notices and the making of Closure Orders in respect of premises associated with persistent disorder or nuisance.

- 1.1 Premises closure orders commenced on 1st December 2008. The order is designed to tackle serious and persistent forms of anti-social behaviour. This includes excessive noise and rowdy behaviour related to frequent drunken parties or high numbers of people entering and leaving a property at all times of the day or night. It can also be used where anti-social residents are intimidating and threatening their neighbours and criminal families are running illegal business from their properties. It is an order of last resort to be used only when all other options have been tried and failed to work. Significantly, it is tenure neutral so it can be used to closure homes that are privately owned.
- 1.2 The action to close a property should not be taken by one agency in isolation. Police and Local Authorities are required to consult each other before any decision is taken. It is important that support interventions are used with enforcement measures, and that the problem is tackled holistically rather than simply shifting the burden elsewhere.
- 1.3 This guidance is designed to help those who are responsible for the exercise of these powers to,
 - Use the powers effectively and efficiently;
 - See the use of the powers in the broader context of tackling anti social behaviour and;
 - Understand the implications of the powers as they relate to affected persons and the communities in which they occur.
- 1.4 These powers, although very powerful tools in dealing with persistent disorder, should only be used as a last resort, where other interventions have been used or considered and rejected for good reason, and where implications, for example, for children or vulnerable adults in the premises, have been carefully considered.
- 1.5 Agencies are under duties to safeguard and protect the welfare of children under the Children Act 2004. Consideration of the rights of the individuals subject to a Closure Order and the rights of the community, including the victim(s) and potential victims, should be carried out and recorded.

2. The Closure Notice

- 2.1 The purpose of the Closure Notice is to prevent significant and persistent disorder or persistent serious nuisance of certain groups within communities, and to act as a neighbourhood management tool. This tool is **not** to be used as a fast track to eviction or as a first port of call for difficult scenarios.
- 2.2 The Closure Notice alerts those using the property, resident(s), the owner and any others with an interest who can be identified, of the intention to apply to the court for a Closure Order. This sends a clear message to the local community that action is being taken against the premises, and it informs those who live in, or frequent the premises that their activities will no longer be tolerated. It gives notice that closure of the premises is being sought and provides details of what this entails.
- 2.3 A Closure Notice should not be used as a threat. Once a notice is issued, an Order must be sought **within 48 hours** whether behaviour improves or not. This should not come as a surprise to anyone with an interest in the property, as persons in these premises should have been previously warned of impending action in an attempt to reform their behaviour.
- 2.4 There is a requirement in the Act for the Police or Local Authority to take reasonable steps to identify those with an interest in, control of, or responsibility for the premises and those who live on the premises, before the Closure Notice can be authorised. Where possible, consultation with relevant agencies should have involved discussions and the exchange of information relating to the identification of these persons.
- 2.5 The Police or Local Authority are required under the Act to take **reasonable steps** to ensure that all such persons are identified, prior to the Notice being issued. It may be the case that all such persons 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 such person who is identifiable at the property or who appears to have an interest, or to be affected by potential closure, who can be easily identified by immediate enquiries to the tenant or those resident, or neighbours, or through Local Authority records. The Notice is required to be fixed at a prominent place on the premises, at each place of access and on any outbuildings.
- 2.6 It should be remembered that a Closure Notice in itself, may achieve the intended outcome of stopping the persistent disorder and nuisance. **However, the Police or Local Authority are obliged to pursue a Closure Order after the Notice is served.** For this reason, Closure Notices should be considered as part of strategic and tactical action against anti social behaviour at a senior level.
- 2.7 The Closure Notice creates offences for any persons who do not habitually reside in, or own, the property, to enter or remain in the premises. 'Habitually resident', in this context should be taken to mean anyone for whom the premises are their main or only residence. The intention is to encourage all those for whom the premises are not their main or only residence to leave at this point, and to provide relief during the Notice period.
- 2.8 The Closure Notice takes into consideration that residents will need to find alternative accommodation if the court decides to grant a Closure Order. Local housing authorities will therefore need to ensure that advice and information about

alternative accommodation options are made available to anyone in the premises likely to face homelessness, as a result of closure.

3. Issuing a Closure Notice

3.1 The decision to use these powers must be taken by a senior Police Officer of Superintendent rank or above (Authorising Officer), or in the case of a Local Authority, the Chief Executive or Director of Housing. When assessing the requirement for a Closure Notice they must have reasonable grounds for believing that:

- At any time during the relevant period (the preceding 3 months) a person has engaged in anti social behaviour on the premises; and
- The use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public.

3.2 To authorise service of the Closure Notice, the authorising officer or the Local Authority must be satisfied of the following:

- The Police area commander or in the case of a Local Authority, the Chief Executive or Director of Housing in which the premises are situated have been consulted.
- Reasonable steps have been taken to establish the identity of any person who lives on, has control of, or has responsibility for, or an interest in the premises.

3.3 This legislation deals with problematic premises and not individuals, thus in making this decision the 'authorising officer' or Local Authority, should take into account:

- Whether the proposed actions will have the intended impact on the problem at hand;
- The suitability of the powers with all their implications;
- The evidence about the level of disorder, nuisance and anti social behaviour associated with the premises;
- How this action is to be followed up, ensuring that the premises do not become re-occupied for similar purposes, and how the closure can be followed up as part of the anti social behaviour strategy for the area;
- The views of the relevant local authority or police;
- Any other powers – such as Anti Social Behaviour Orders, that may be more suitable or achieve the same result, without the need for the implications that the Closure Power contains; and
- The availability of other powers, and supportive interventions, that can be used alongside the closure power to support the overall aim of reduction of nuisance.

3.4 The 'authorising officer' or Local Authority, should only authorise a Closure Notice, once all other avenues have been pursued, and have failed to stop the disorder created within the premises. The, following powers should be considered by them,

Acceptable Behaviour Contracts, Injunctions, Parenting Contracts, Enforcement of Tenancy and Anti Social Behaviour Orders.

- 3.5 A Closure Notice should be authorised in writing. But where written consent is not immediately possible, oral authorisation is sufficient as long as it is confirmed shortly afterwards in writing and, in any case, before the court hearing.
- 3.6 The full range of support and enforcement measures should be considered. It is essential that robust contingency planning is put in place – to ensure that homelessness can be prevented for anyone who is vulnerable or has dependant children, that would lose their home as a result of the Closure Order. Their safety should not be compromised, and measures should be put in place in advance, to safeguard these groups and promote their welfare should the closure go ahead.
- 3.7 It is imperative that the ‘authorising officer’ or Local Authority approving a Closure Notice, consult with each other. This is to ensure that housing benefits continue to be paid so that residents (who retain their rental obligations throughout the closure period) can continue to pay their rent. Local housing authorities have a legal duty to ensure that advice and information about homelessness and prevention of homelessness, are available free of charge to everyone in their district. If someone applies to them for housing assistance and the authority has reason to believe that the person may be homeless, or likely to be homeless within 28 days, the authority must make enquiries to satisfy themselves whether any duty is owed to that person, under the homeless legislation. Where the authority is satisfied that the person is eligible for assistance is unintentionally homeless, and falls within a priority need group, the authority must ensure that suitable accommodation is available for them.
- 3.8 In cases where a person’s homelessness is the result of a Closure Order following nuisance behaviour and he or she, has refused offers of support and rehabilitation, the local authority may decide that the applicant has become homeless intentionally (because the homelessness was the consequence of the person’s deliberate behaviour).
- 3.9 Where people are eligible for assistance and fall within a priority need group, but are intentionally homeless, the authority must ensure that they are provided with advice and assistance to help them obtain accommodation – the authority must also ensure that applicants have lodgings available for long enough to give them a reasonable opportunity to obtain accommodation. Authorities are referred to the ‘Homelessness code of Guidance for Local Authorities’ available at www.communities.gov.uk.
- 3.10 While no specific type of premises are exempt from these powers, the appropriateness of their use in some circumstances should be considered. The ‘authorising officer’ should be mindful of the implications and whether other methods of control may be more appropriate. These circumstances may include hospitals, schools and children’s homes.
- 3.11 Where the premises are registered children’s homes or where the inhabitants of the property are vulnerable persons, practitioners should remind providers of care, about their duty to run the premises in accordance with the relevant regulations, and national minimum standards. For example, providers of care for children’s homes have a duty to run it in accordance with the relevant regulations, and minimum standards, which include dealing with behaviour management policy.

- 3.12 There are a variety of other anti social behaviour powers, such as Acceptable Behaviour Contracts, injunctions, Parenting Contracts, enforcement of tenancy and ASBO's, that may be more suitable for dealing with situations of this type. The Authorising Officer or Local Authority is required to demonstrate that he or she has considered all of these options before authorising the issue of a Closure Notice.

4. Serving and enforcing a Closure Notice

- 4.1 The Act sets out a requirement to take reasonable steps to identify all such persons who may have an interest in, control or responsibility for the premises, or who live in the premises, before the Closure Notice can be authorised. However, there is no requirement to ensure that all such individuals are notified, merely to notify those that have been identified after taking reasonable steps. If a letting agent only, is identified as being in control, or responsible for the premises, then serving the notice on them is acceptable. Sending a notice by post 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.
- 4.2 Prior to serving a Closure Notice, a series of interventions should be tried to give households plenty of warning that a closure is imminent. This will give the residents an opportunity to reform their behaviour, therefore removing the possible need for closure.
- 4.3 Once a Closure Notice is served, an application must be heard by Magistrates, within 48 hours. Contacting the courts prior to serving the notice will ensure that this requirement is met, without causing undue difficulty.
- 4.4 The Closure Notice must contain the following information:
- Notice that the application will be made under Section 11B of the Anti Social Behaviour Act 2003 (Closure Order).
 - The location/address of the premises to which it relates.
 - State that any person who does enter the premises, who is not the owner or habitually resident there, commits an offence.
 - Specify the date, time and place at which an application for a Closure Order will be considered (must be in place when issuing the Closure Notice).
 - Provide an explanation of what will happen should a Closure Order be granted – in particular that there be no further entry to the premises, and it will be totally sealed. If the premises are residential then the residents will be forced to find alternative accommodation.
 - Provide information on relevant advice providers, who will be able to assist in relation to housing and legal matters. Relevant advice providers would include the local Housing Advice Centre, or point of contact for applications for homelessness assistance, the Citizens Advice Bureau and the local Law Centre, and

- Include such matters about the application as may be prescribed in rules of court.
- 4.5 The notice must, where reasonably identified, be served on all those with an interest in the property, including:
- Residents (those who may not be tenants but who live there nonetheless).
 - The tenant and their dependants at the property.
 - The owner or their representative; and
 - Persons affected through access to their property.
- 4.6 The Closure Notice, must be served by a **constable** if it was authorised by the authorising officer, or an **employee** of the Local Authority if it was authorised by the Authority.
- 4.7 When serving the notice the constable or employee does not need to enter the property, and can serve it effectively by fixing a copy of the notice to at least one prominent place on the premises; to a normal means of access to the premises; or to any outbuildings that appear to the server of the notice to be used with, or as part of, the premises. Or it may be handed to at least one person who appears to the server of the notice to have control of, or responsibility for, the premises, to persons previously identified, and to any other person appearing to the server of the notice, to have an interest in the premises. **A power of entry is attached to it.** 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 Housing Association Officer.
- 4.8 Once the notice has been served, those at the premises affected by it may choose to leave voluntarily. Those who habitually reside there should be advised to seek alternative accommodation. If they have failed to do so, they should be referred to the notice, or the advice providers referred to in the notice, regarding help with accommodation. Practitioners should make it clear that it will be an offence for persons who do not normally live at the premises, or who are not the owners, to continue to reside within the premises.
- 4.9 In all cases relating to the closure of premises, it is essential that early contact is made with Social Services, as well as the relevant homelessness, education and housing officials in the Local Authority, in order to establish the potential effects of that closure and, where closure proceeds, to mitigate those effects.
- 4.10 Section 11D creates offences of remaining in or entering a property subject to a Closure Notice or Order, without reasonable excuse, or of obstructing a constable or authorised person carrying out certain functions under these provisions. The maximum penalty is a fine of £5000, imprisonment for 51 weeks, or both.

5. Obtaining a Closure Order

- 5.1 Once, a notice has been issued, an application for a, Closure Order must be made to the Magistrate's Court by the Police or Local Authority within 48 hours. The maximum length of a Closure Order is three months, with the possibility of an extension, but to total no more than six months. The length of the Order should

reflect the nature of disorder and the desire to bring the property back into management as quickly as possible.

To issue a Closure Order the court must be satisfied that:

- A person has engaged in anti-social behaviour on the premises in respect of which the Closure Notice was issued;
- The use of the premises is associated with significant and persistent disorder or persistent serious nuisance to members of the public; and
- An order is necessary to prevent further such disorder or nuisance for the period specified in the order.

5.2 The court is asked to decide whether the Closure Order is necessary to prevent the occurrence of significant and persistent disorder, or persistent serious nuisance. The court may, therefore, wish to consider whether alternative methods would be more appropriate, and what other action might have been attempted. This is why the history of action and considered action against the premises and its occupants is important. It is not a requirement for the court to have evidence that these other methods have been tried first and exhausted, nor need they have been tried, but the court may feel that other powers will be more likely to achieve control, and will prevent serious nuisance or disorder more effectively.

5.3 The court may also, in determining whether to make a Closure Order, have regard to:

- The ability of any person who habitually resides in the premises to find alternative accommodation; and
- Any vulnerability of that person.

5.4 Prior to the hearing, the Police should ensure that the evidence to be presented is in good order. Support for community witnesses at the court may be necessary to enable them to give evidence. At the hearing the evidence should be presented by the Police or Local Authority employee and supported, if appropriate, by evidence from the victims and witnesses, to establish the grounds for believing that the premises are associated with disorder or serious nuisance.

5.5 The owner or occupier of the premises, a person who has control or responsibility for the premises and any other person who has an interest in the premises may contest the application to make an order. The court will wish to hear why the order should not be made. Possible reasons include the following:

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

5.6 The court operates on a civil rather than a criminal standard of proof (i.e. balance of probabilities). The court may decide to make an order while the owner or landlord attempts to address the problem. If they believe that they can subsequently demonstrate, sooner than the specified order period, that the problem has been

successfully addressed, an application can be made to the court for the order to be discharged.

- 5.7 Therefore the court nominally has three options: refusal of the application, adjournment or closure. In practice, the ability to vary the length of the Order gives the court the flexibility to deal with different circumstances. For example, a shorter Order may be appropriate where there is a need to bring immediate relief, while the landlord and the Police deal with the problem, thus avoiding an extended and costly closure.
- 5.8 The court can defer the hearing of the application for the Order by adjournment for **not more than 14 days**, to allow those persons to prepare their case. The court may order that a Closure Notice continues in effect until the end of the period of adjournment. It should be made clear by the court at the time of any adjournment, **whether the Notice continues to take effect or not**.
- 5.9 Police and Local Authorities should normally serve identified interested parties with all the information they need for the hearing at the same time as they serve the Closure Notice (if this is operationally possible). This will allow such parties to have had sight of the documents for sufficient time for the hearing to be completed ideally at the first hearing, and otherwise within 16 days of the serving of the Closure Notice.
- 5.10 Measures to protect live and hearsay witnesses should be in place before a Closure Notice is served, if considered appropriate by the investigating officer.
- 5.11 Consideration should be given to putting forward other types of evidence in support of the application, in addition to or instead of anonymous hearsay – for example CCTV, surveillance footage, observation point log books and any other records.

6. Managing a Closure Order

- 6.1 The Closure Order gives a power to close a property completely or partially and to prevent access by any persons – even those with rights of abode or ownership. A Closure Order comes into force immediately after the court makes the order. As soon as a Closure Order is made, a constable or any other person authorised by the Chief Police Officer for the area in which the premises is situated, or a person authorised by the Local Authority, may enter the property and secure it against entry by any other person, **using reasonable force if necessary**. This means that the premises 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 authorised persons may also enter the premises at any time to carry out essential maintenance or repairs. Only the Police may act in respect of police applications, and the Local Authority in respect of their applications.
- 6.2 Breach of the Closure Order is an offence, a person if found guilty is liable to imprisonment for a period not exceeding 51 weeks, a £5000 fine or both.

- 6.3 The issuing of the Closure Order does not remove or alter rights of ownership for owner-occupiers or tenancy rights for those who rent from a private or social landlord. In accordance with those rights, a tenant will retain the right to return to the property following expiry of the Closure Order. They will also retain their obligations under the tenancy during the closure period (i.e. rent will continue to accrue during the closure period).
- 6.4 The process of entering to enforce the Closure Order should be treated with extreme caution. While in many cases the occupants will have already left, in others they may be resistant to leaving. Therefore the operation should be undertaken following a risk assessment, and authorised persons such as local authority workers, maintenance staff, workers from utility companies or housing officers should not be present until any safety issues have been addressed and the property cleared.
- 6.5 Where a vulnerable person has been preyed upon and has been unable to exercise control over their property, a Closure Order should form part of a planned resettlement move.

7. Issues during Closure

- 7.1 It is important that, following the closure, the empty premises do not cause greater problems than before the Closure Order was made, such as crime and vandalism, or through being taken over illegally. Therefore when sealing the property the task should be done carefully, in order to ensure that the building will not be taken over or become the target for further anti-social behaviour.
- 7.2 Any application for an extension of a Closure Order may be made at any time prior to the date on which the original order would have expired. **It should be stressed that no property should remain empty longer than is necessary. The Closure Order must not exceed a six month period.**
- 7.3 The Police or Local Authority may wish to have the Order discharged before the period expires. This is completely desirable where the problem has been satisfactorily addressed. In relation to discharge, the court must decide that the Closure Order is no longer necessary to prevent the occurrence of **persistent and serious disorder or serious nuisance**. Where for example, the tenant voluntarily surrenders the tenancy immediately, the property can be brought back into management almost straight away and the Closure Order can be discharged more quickly.
- 7.4 The Police or Local Authority may apply to the Magistrates Court for costs against the owner for any expenses incurred by the Police or Local Authority in enforcing the Closure Order. (cost of clearing, boarding up or maintaining the premises) however, this would be inappropriate if the landlord had fully co-operated with the Police or Local Authority. Any such claim for costs must be made to the courts **within three months** of expiry of the Closure Order.

8. Human Rights

- 8.1 Nothing in this protocol allows for a breach of Human Rights. The test of whether the proposed action is reasonable and proportional must be taken at each occasion.

Consideration must also be given to any diverse or particular community issues that may be outside of the scope and knowledge of the initiating officer/individual.

9. Key Points

- Identification of potential premises, those that are associated with significant and persistent disorder or persistent serious nuisance to a community within the preceding 3 months – Police Officer, PCSO, Housing Officer, Warden.
- Inform Anti-Social Behaviour Unit who will begin to collate evidence. (Consider ASBO's or other interventions if appropriate)
- Take reasonable steps to identify "interested parties". (residents, those who may not be tenants but who live there nonetheless) (tenants and their dependants at the property) (the owner or their representative) (persons affected through access to their property).
- Consult with Police/Local Authority.
- Inform relevant parties. (Housing, Social Services etc)
- Liaise with the local community – ongoing process.
- Bring to attention of Civil Litigation Officer / NBC Legal for legal process to commence.
- Liaise with Police Press Office and Local Authority Media Department.
- Collate evidence and prepare Closure Notices.
- Notice can be authorised by a Superintendent or above or, in the case of the Local Authority, the Chief Executive or Director of Housing.
- Once the Notice is served the evidence to support a Closure Order must be placed before a court within 48 hours.
- If Closure Order is granted property is secured for 3 months. If Notice is revoked consider appeal process through Crown Court.
- Regular visits to ensure compliance with the Order.
- Inform NBC Housing of Order.

Appendix A

Definition of Terms – Disorder/Serious Nuisance

- Intimidating and threatening behaviour towards residents
- A significant increase in crime in the immediate area surrounding the premises
- The presence of discharge of a firearm in or adjacent to the premises
- Significant problems with prostitution or sexual acts being committed in the vicinity of the premises
- Serious disorder associated with alcohol abuse, for example in and around drinking dens
 - Violent Offences and Crime being committed on or in the vicinity of the premises
 - High numbers of people entering and leaving the premises at all times of the day or night and the resultant disruption they cause to residents
 - Noise – constant/intrusive noise – excessive noise at all hours associated with visitors to the property

The Definition of Premises

The Act defines 'premises' as including a) any land or other place (whether enclosed or not); and b) any outbuildings which are or are used as part of the premises. Any of the following are therefore included:

- Houses
- Flats
- Apartments
- Sheds
- Common areas adjacent to houses or flats
- Garages
- Factories
- Shops
- Pubs
- Clubs
- Public buildings
- Community centres or halls
- Car parks

At the time of commencement of the legislation, there were no properties exempted from the Act.

Appendix B

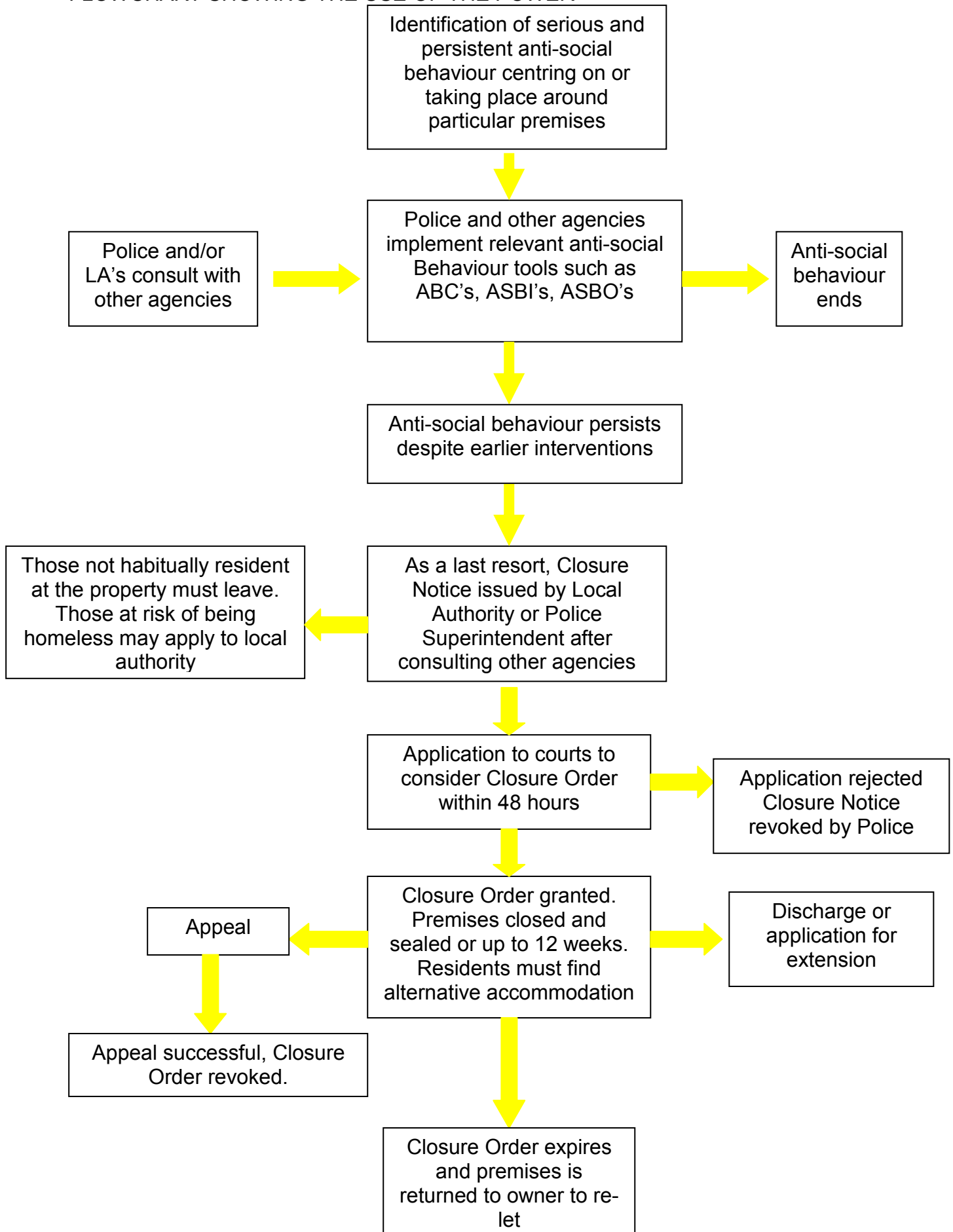
Dealing with those in the Premises

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.

Appendix C

FLOWCHART SHOWING THE USE OF THE POWER



Appendix D



Section 1A Anti Social Behaviour Act 2003

CERTIFICATE OF CONSULTATION

Premises Closure Orders

I, _____ of Northampton Borough Council
certify that I, being authorised to consult on behalf of the above agency, have been
consulted in relation to an application for a Premises Closure Order in respect of
the below named:

Name:	
Date of Birth:	
Address:	

Signed: _____ Date: _____

Local Authority Signatory

Signed: _____ Date: _____

Chief Superintendent, Northampton
Northamptonshire Police