

When can premises be closed by the Council or the Police?

Kuljit Bhogal surveys the powers available to close commercial premises that are the source of anti-social behaviour.

The powers available to local authorities and the Police to close premises involved in drugs activity or anti-social behaviour have been well publicised. It's worth knowing that these powers are not limited to closing units of social housing. Both local authorities and the Police can apply to close commercial premises (including licensed premises) as well as owner-occupied residential premises.

The Anti-Social Behaviour, Crime and Policing Act 2014 consolidated and amended powers which had been available to close licenced premises (under s161 and 165(2)(b)-(d) of the Licensing Act 2003), noisy premises (s.40 of the Anti-Social Behaviour Act 2003 'ASBA 2003'), premises associated with persistent disorder or nuisance (s.11B of the ASBA 2003) and drugs closures (s.2 ASBA 2003).

The effect of a closure order is to close the premises to everyone except authorised persons (as defined in s.85 of the Act). Exceptions can be included to allow access to certain categories of person or at certain times/in certain circumstances.

A closure order can have effect for up to three months and can be extended for a further three months. The maximum period of closure is six months and can have huge consequences for the occupiers.

In order to seek a closure order a two stage process must be followed. The first stage involves the service of a Closure Notice. The second stage involves an application to the Magistrates' Court for a Closure Order. The process is designed to provide immediate respite to communities affected by the problem premises. The court is only able to adjourn the application for a maximum of 14 days. During this time the court has the power to extend the closure notice (s.81(3)). As a result the opportunity to seek an adjournment in order to obtain legal advice and/or make representations is limited.

In order to serve a closure notice the local authority or the Police must be satisfied:

- (i) that the use of the premises has resulted, or (if the notice is not issued) is likely soon to result in nuisance to members of the public
- (ii) that there has been or, (if the notice is not issued) is likely to be, disorder near those premises associated with the use of the premises, and
- (iii) that the notice is necessary to prevent nuisance or disorder from continuing, recurring or occurring.

A Closure Notice usually lasts up to 24 hours but can be extended to a maximum of 48 hours if certain conditions are satisfied. The Closure Notice has the effect of closing the premises to everyone except the owner and anyone who is habitually resident. These two categories of person cannot be excluded until a Closure Order is made by the Magistrates Court. This is a powerful tool, if a Closure Order is made an even the owner or resident can also be excluded.

The Magistrates Court can make a closure order if it is satisfied:

- i. that a person has engaged, or (if the order is not made) is likely to engage, in disorderly, offensive or criminal behaviour on the premises, or
- ii. that the use of the premises has resulted, or (if the order is not made) is likely to result, in serious nuisance to members of the public, or
- iii. that there has been or, (if the order is not made) is likely to be, disorder near those premises associated with the use of those premises, and
- iv. that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

The Court also has the power to make a temporary closure order to deal with prohibiting access in respect of a specific event or a specific date (section 81(2)).

Issues such as noisy premises, drugs use, noise or anti-social behaviour on or close to premises are all capable of falling within the statutory test.

Business owners should note that closure powers are no longer the 'last resort' as some of the old closure powers once were. Local authorities and the Police are required to make reasonable efforts to inform an occupant, any person who has control or responsibility for the premises, or who has an interest in them, that a Closure Notice is going to be issued. The short timescales involved once a closure notice has been served means that advice should be sought immediately in order to establish whether there is any scope for a Closure Notice or a Closure Order to be avoided.

Kuljit is joint Head of the Cornerstone Housing Team and a specialist in housing, community care and Court of Protection. She is the author of 'Cornerstone on Anti-Social Behaviour: The New Law'.

Kuljit Bhogal
Cornerstone Barristers