

CRACK HOUSE CLOSURE ORDERS – A SUMMARY

Part 1 of the *Anti Social Behaviour Act 2003* came into force on the 20th January 2004, and despite a relatively slow uptake nationally, the courts are now dealing with increasing applications by the police for the closure of properties caught by the legislation. The most up to date figures from the Home Office indicate that 158 such orders were granted between January and September 2004¹. However, at the time of writing a further 40 closure orders formed part of a co-ordinated campaign between 30 police forces to interdict the supply of cocaine in *Operation Crackdown*.

Background

Although the term ‘Crack House’ has been applied to the subject of closure orders the Act actually refers to ‘Class A Drug Premises’ and the powers of the act are aimed at closing premises where Class A drugs are used, produced or supplied. The purpose of the Act is to disrupt the drugs infrastructure in urban areas and in doing so to prevent the nuisance associated with addresses where Class A drugs are present². The powers within the act are aimed at property rather than its occupants although the impact of an order on an occupant renders such a distinction academic. The Act is extremely powerful, and is generally agreed to be a draconian response to a perceived social ill. Upon the granting of the order the occupants of a property lose any right to remain there and the properties are often sealed up within the day.

The Act is heavily weighted towards co-operation between the police and local housing authorities, social services and drugs support agencies. Nevertheless the power to close properties lies solely at the discretion of the Police, with the consent of the Courts.

The Powers of the Act

The Act allows a police officer of the rank of Superintendent or above to apply for the closure of an address, initially for a period of 3 months. The officer need have no more than a **reasonable suspicion** that Class A drugs are present at the address, and that the address is associated with serious nuisance or disorder. Under s.1(8) it is not necessary that any occupant of the premises has been convicted for drugs use, production or supply. Initially the police will serve a closure notice on the occupiers of the property. The notice must then be effectively converted to a closure order by the magistrates within 48 hours of service.

¹ Source, Home office press Release 042/2005 - 1 Mar 2005

² For a full discussion of the relevant provisions see the Home Office Guidance Note at www.drugs.gov.uk/ReportsandPublications/Communities/1074606449/NotesofGuidanceFINAL.doc

The Closure Notice

The first step in the obtaining of an order by the police is the drafting and service of a closure notice, under section 1(1) of the Act.

Closure notice

(1) This section applies to premises if a police officer not below the rank of superintendent (the authorising officer) has reasonable grounds for believing:

- (a) that at any time during the relevant period 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 members of the public.

What is evident from this section is that there need be no causal link between the presence of Class A drugs and the nuisance – however given the generally chaotic nature of the lives lived by occupiers of Class A premises a degree of nuisance is invariably a concomitant of their lifestyle. The relevant period is the period of three months prior to the drafting of the closure notice (s.1(10)). Section 1(2) of the act then provides:

(2) The authorising officer may authorise the issue of a closure notice in respect of premises to which this section applies if he is satisfied:

- (a) that the local authority for the area in which the premises are situated has been consulted;
- (b) that reasonable steps have been taken to establish the identity of any person who lives on the premises or who has control of or responsibility for or an interest in the premises.

(3) An authorisation under subsection (2) may be given orally or in writing, but if it is given orally the authorising officer must confirm it in writing as soon as it is practicable.

Thereafter the authorising officer must ensure that the notice is served on the occupants of the premises and that a court hearing at the Magistrates Court can be arranged to be effective within 48 hours of the service of the notice. The notice itself must contain the following information (s.1(4)).

- (a) give notice that an application will be made under section 2 for the closure of the premises;
- (b) state that access to the premises by any person other than a person who habitually resides in the premises or the owner of the premises is prohibited;
- (c) specify the date and time when and the place at which the application will be heard;
- (d) explain the effects of an order made in pursuance of section 2;
- (e) state that failure to comply with the notice amounts to an offence;
- (f) give information about relevant advice providers.

The Closure Notice must be served by a Constable and the means of service of laid down in s.1(6) of the Act. The effect of the notice is that it prevents anyone other than the occupiers of the premises from going into the property until the application for an

order has been determined. In addition to the occupiers of the property, any other persons likely to be affected by the notice must be served with a copy (s.1(7)).

Typically the sorts of behaviour complained of include constant coming and going at the address; verbal and physical intimidation of local residents by visitors, general disorderly conduct in and around the address; and the consumption and sale of drugs by visitors and residents both in public and on the premises.

The Closure Order

Section 2 of the Act deals with the powers of the Magistrates to grant the closure order. The hearing of the application is deemed to be a civil matter³, although the standard of evidence remains a moot point. In many hearings it has been accepted that the principles established in the case of *R (on the application of) McCann and others v Crown Court at Manchester* [2003] 1 AC 787 should be applied to the standard of evidence. Thus, although the hearing is a civil one, the standard of evidence is the enhanced civil standard. Some courts have taken the view that as the *McCann* case predated this legislation, their Lordships could not have had closure orders in mind when they made their ruling and that consequently the lower civil standard is applicable.⁴ Experience locally indicates that few district judges or Crown Court appeal judges subscribe to this interpretation.

Hearsay Evidence

It is an inescapable aspect of this type of legislation that many local residents do not wish to give formal complaints to the police. Nevertheless, a closure order will only be granted where a nuisance is complained of and the Police and local housing authority are often equipped with numerous anonymous complaints in letters and pro-formas.

A problem arises with the admissibility of hearsay evidence. Clearly the 48 hour time-frame for the closure order makes compliance with the 21 day period under *The Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999*, impossible. However, the evidence can still be admitted under s.2(4) of the Civil Evidence Act 1995 without a notice. Under this provision the Court will be mindful of the weight to be attributed to such evidence. The fact remains however that once such material is read it becomes highly persuasive.

³ per Mitting J in *Commissioner of the Metropolitan Police –v– Hooper* [2005] EWCH 340 (Admin)

⁴ *Closing a crack house*. J.P. 2005, 169(3), 33-34

In hearing the application for an order the Magistrates must consider three points laid down in section 2:

Closure order

- (1) If a closure notice has been issued under section 1 a constable must apply under this section to a magistrates' court for the making of a closure order.
- (2) The application must be heard by the magistrates' court not later than 48 hours after the notice was served in pursuance of section 1(6)(a).
- (3) The magistrates' court may make a closure order if and only if it is satisfied that each of the following paragraphs applies:
 - (a) the premises in respect of which the closure notice was issued have been used in connection with the unlawful use, production or supply of a Class A controlled drug;
 - (b) the use of the premises is associated with the occurrence of disorder or serious nuisance to members of the public;
 - (c) the making of the order is necessary to prevent the occurrence of such disorder or serious nuisance for the period specified in the order.
- (4) A closure order is an order that the premises in respect of which the order is made are closed to all persons for such period (not exceeding three months) as the court decides.

Again it is apparent that in considering points 2(3) a-b that there need be no causal link between the serious nuisance and the Class A presence on the property.

Under s.2(6) the Magistrates may adjourn the hearing of the application for a maximum period of 14 days in order to allow:

- (a) the occupier of the premises,
- (b) the person who has control of or responsibility for the premises, or
- (c) any other person with an interest in the premises,
to show why a closure order should not be made.

During this time the Court **may** order that the terms of the closure notice be retained (s.2(7)). Clearly there is discretion here to lift the restrictions of the notice, but the lifting of the restriction would be a rare event in the light of the evidence already gathered by the police.

In ordering an adjournment the Magistrates must not go beyond the statutory 14 days, notwithstanding their powers under s.54 of the MCA 1980. To do so has been deemed as frustrating the purpose of the 2003 Act, where speed is of the essence⁵.

⁵ per Mitting J in *Commissioner of the Metropolitan Police –v- Hooper* [2005] EWCH 340 (Admin)

Enforcement of the Order

Section 3 of the act deals with the enforcement of the order and provides for any appointed person to enter and secure the premises. In practice this means that the Council housing department (or in the case of private property, a police appointed contractor) will board and shutter the property.

Entry may be permitted for essential maintenance during the currency of any order. There is no real packing up period for the occupants of the property and in many cases they will be locked out within a day of the order. The unintended consequences of such orders are that often all of the occupier's possessions are locked up in the property, and often occupiers will depart with only clothes and light belongings.

Offences under the Act

Section 4 of the act provides:

Closure of premises: offences

(1) A person commits an offence if he remains on or enters premises in contravention of a closure notice.

(2) A person commits an offence if:

- (a) he obstructs a constable or an authorised person acting under section 1(6) or 3(2),
- (b) he remains on premises in respect of which a closure order has been made, or
- (c) he enters the premises.

(3) A person guilty of an offence under this section is liable on summary conviction:

- (a) to imprisonment for a period not exceeding six months, or
- (b) to a fine not exceeding level 5 on the standard scale, or to both such imprisonment and fine.

(4) But a person does not commit an offence under subsection (1) or subsection (2)(b) or (c) if he has a reasonable excuse for entering or being on the premises (as the case may be).

(5) A constable in uniform may arrest a person he reasonably suspects of committing or having committed an offence under this section.

A reasonable excuse under 4(4) would appear to be entering the premises to check maintenance or to recover possessions. In the light of s.4(5) such entry would generally have to involve consultation with the police – generally the Community Beat Manager. It is notable that the penalties for breach of the order are nowhere near as severe as those for the breach of an ASBO, and this is a point that is also raised in submissions on the standard of evidence.

Extension and Discharge of the Order

Section 5 of the Act allows:

for the Police to make an application for an extension to the order where a Superintendent or higher ranking officer:

- (a) who has reasonable grounds for believing that it is necessary to extend the period for which the closure order has effect for the purpose of preventing the occurrence of disorder or serious nuisance to members of the public, and
- (b) who is satisfied that the local authority has been consulted about the intention to make the complaint.

Generally such applications are supported by further evidence from local residents about improvements in the neighbourhood since the order was made. Again this evidence invariably takes the form of admissible hearsay collected by means of questionnaire and reported anonymously via the OIC or the local housing officer.

The extension can be for a further period of three months, rendering the maximum permissible period of the order 6 months. Many solicitors find that where an extension is granted, their clients are unable to resist civil re-possession proceedings by local authorities or housing associations.

Under s. 5(6) an occupier, or other interested party, may by complaint to the Magistrates apply for discharge of an order. However the Court will only make such a discharge order where it is satisfied that the original grounds for the enforcement of the notice no longer exist.

Appealing an Order

Appeal against the decision of a Magistrates Court (s.6) in respect of any order under s.2 or 5 of the Act is heard at the Crown Court, as a re-hearing, with a judge and two lay members of the bench. The right to appeal lies with the police and the local authority as well as any other interested party.

Further Provisions

Section 7 of the Act allows for access to property by the owner or other occupiers of land in which an order is in force.

Section 8 of the Act provides for the provision of costs in favour of the applicant where an order is granted. It is highly unlikely that any application for costs will be successful where the occupant is a drug addict/user on benefits.

Section 9 outlines the exemption of the police for any act or omission arising from their actions in applying for an order or imposing a closure notice. The exemption is circumscribed by the requirements of the police to act in good faith and to proceed at all times in observance of s.6(1) of the HRA 1998.

Section 10 permits the recovery of compensation for financial loss arising from a closure notice or order.

Conclusion

This Act is an extremely powerful tool for the regulation of problem addresses associated with Class A drugs. The neighbourhoods where these orders are sought are often amongst the most deprived areas of inner cities and the Government has clearly seen fit to advance a highly utilitarian approach to improving such areas by focusing on those responsible for a perceived nuisance.

The issue remains that those responsible for such nuisance are themselves often amongst the most vulnerable by virtue of extreme poverty and drug addiction. The fact that they then lose their rights to protected housing as a result of these orders is deemed acceptable in the face of the perceived greater good occasioned by the closure of their homes. This is an issue which remains unresolved and has caused some antipathy towards the legislation from those responsible for representing them.

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