

A PRACTICAL GUIDE TO THE CLOSURE ORDER

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INTRODUCTION

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INTRODUCTION

ISSUES AND CHALLENGES

- Who leads on this in each area?
- Ensuring that the Closure Order achieves its aim and has a positive impact within the local neighbourhood
- Avoiding delays and missed opportunities
- Monitoring, responding & understanding breaches
- Communicating key (often sensitive) issues & updating victims
- Supporting victims who remain in the property via a “Partial Closure Order”
- The effective use of Closure Orders in Cuckooing cases
- What’s the “After Plan” when the Closure Order has expired?
- Navigating Closure Orders without delegated authority

INTRODUCTION

CAVEATS

- Only going to talk about:
 - Applications by local authorities
 - Regarding residential property
- All references to legislation are to the Anti-social Behaviour, Crime and Policing Act 2014

INTRODUCTION

WHAT WE'LL COVER

1. Closure Powers
2. Evidence
3. 'Partial' Closure Orders
4. Possession Proceedings
5. After the Closure Order is Made

INTRODUCTION

BRIEF HISTORY

Anti-social Behaviour Act 2003

- 'Crack House closure orders'
- Only on application of the police
- Reasonable suspicion that Class A drugs are present at the address and serious nuisance/disorder

Anti-social Behaviour, Crime and Policing Act 2014

- Current form
- No requirement re. presence of Class A drugs
- Local authorities and police may apply

Crime and Policing Bill 2025

- 2026 onwards - housing associations have power to apply regarding their own stock

1. CLOSURE POWERS

CLOSURE POWERS

TYPES OF CLOSURE POWERS

2 types of closure power:

1. Closure Notice (issued by local authority)
2. Closure Orders (court order)

CLOSURE NOTICES

GENERAL POINTS

- Issued by the local authority (not by court)
- Max length 48 hours
 - Has to be signed by the chief executive (or somebody authorised by them) if longer than 24h
- Must be followed by application for Closure Order to court (s80(1))
 - Application must be heard within 48 hours of service of the Closure Notice
- CANNOT exclude anybody ordinarily resident at the premises (or the owner)
- Must take reasonable steps to inform the above before issuing (s76(6)).

CLOSURE NOTICES

CONSULTATION REQUIREMENTS

- Authority must consult before issuing Closure notice.
- With 'any body or individual the authority thinks appropriate'.
- Not required to consult with affected parties - obligation to inform is different
- Cf. Statutory guidance page 74
- In practice:
 - Police
 - Social Services
 - Homelessness team
 - Safer Neighbourhoods/ASB team
 - Landlord (esp. if PRP)
 - Other support services
 - NHS

CLOSURE NOTICES

LEGAL TEST

- Authority is satisfied (s76(1)):
 - Either (associated with use of the premises):
 - Nuisance to public
 - Disorder
 - Necessary to prevent continuing, occurring or reoccurring
- N.b. Can be issued in anticipation of nuisance/disorder

CLOSURE ORDERS

GENERAL POINTS

- An order closing premises for up to 3 months
 - Can exclude those ordinarily resident on the premises.
- Can be extended for a further 3 months
- Apply to the Magistrates' Court
- Gives rise to a mandatory ground for possession
- Defects in Closure Notice don't affect Magistrates' jurisdiction (cf. Qin para 54)

CLOSURE ORDERS

LEGAL TEST

- Test (s80(1)) - Court is satisfied:
 - “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”
 - “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”
 - “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 “that the order is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring”

2. EVIDENCE

EVIDENCE

GENERAL POINTS

- Civil standard of proof applies
 - 'Balance of probabilities'
- Hearsay evidence allowed
 - But cf. Cleary v Highbury Mags and ors. [2006] EWHC 1869 (Admin) - claimants should state clearly why witnesses won't give named statements.

EVIDENCE

WHAT TO INCLUDE

- Housing management statement
- Complainant statement (if available)
- Police statement

3. 'PARTIAL' CLOSURE ORDERS

‘PARTIAL’ CLOSURE ORDERS

SCOPE OF CLOSURE ORDERS

- A Closure Order may continue to allow access (s80(7)):
 - To certain people
 - Either named or belonging to a specified class (e.g. carers)
 - At certain times
 - In certain circumstances

‘PARTIAL’ CLOSURE ORDERS

ADVANTAGES

- Useful in exploitation cases - “Don’t punish the victim”
- No rehousing issues
- Avoids possession proceedings
- Help sustain tenancy
- Easier to persuade court to grant
- Helps demonstrate proportionality in possession proceedings if necessary

‘PARTIAL’ CLOSURE ORDERS

DISADVANTAGES

- Need to be managed
 - Neighbours reporting?
 - Police willing/able to respond?
- Expect the Closure Order to be taken down
- ASB may continue in the meantime

'PARTIAL' CLOSURE ORDERS

CONCLUSION

- Manage expectations
 - Neighbours
 - Landlord
- Expect problems
- Be ready to apply to vary to full Closure Order

4. POSSESSION PROCEEDINGS

POSSESSION PROCEEDINGS

MANDATORY GROUND FOR POSSESSION

- Making of a closure order gives rise to mandatory ground for possession
 - Gr 7A Schedule 2 Housing Act 1988 (for assured tenancies)
 - S84A) Housing Act 1985 (for secure tenancies)
- Condition 4:
 - The property “is or has been subject to a closure order” and
 - Access has been prohibited for a continuous period of more than 48 hours (either under the closure order or closure notice).
- Note that Condition 4 is made out even if a ‘partial’ Closure Order is made

POSSESSION PROCEEDINGS

SERVICE OF NOTICE SEEKING POSSESSION

- NSP must be served within:
 - 3 months of the Closure Order being made; or
 - 3 months of determination of any appeal (or abandonment or withdrawal)
- Therefore, an NSP served with a Closure Notice will be premature and the NSP will not be valid
- Note that extending the Closure Order does not extend the period for serving an NSP under Ground 7A
- NSP has a notice period of 4 weeks (for weekly tenancies)
 - Regardless of other grounds relied upon

POSSESSION PROCEEDINGS

RIGHT TO REVIEW

- Statutory right of review for secure tenants
 - See Absolute Ground for Possession for Anti-social Behaviour (Review Procedure) (England) Regulations 2014
 - Must be requested within 7 days
- No statutory right of review for assured tenants
 - But good practice to offer to avoid proportionality/public law challenge
- Pre-Action Protocol for Possession Claims by Social Landlords is engaged
 - Invite tenant to make landlord aware of any vulnerabilities or other matters when notice is served

5. AFTER THE ORDER IS MADE

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BREACH OF CLOSURE ORDER/NOTICE

- Breach of a Closure Notice or Closure Order is a criminal offence
 - Closure Notice - fine or custodial sentence up to 3 months
 - Closure Order - fine or custodial sentence up to 51 weeks
- Defence of 'reasonable excuse'
- Note that breach is prosecuted by the police/CPS, not authority

5. AFTER THE ORDER IS MADE

REHOUSING

- Closure Notice must contain information where to get housing advice
- Emergency accommodation?
 - Reason to believe person may be in priority need? If so, will be offered emergency temporary accommodation (s188 Housing Act 1996).
 - 'Priority Need' most often due to vulnerability or having children
- Main housing duty?
 - Is the person intentionally homeless?
 - 'Deliberate act or omission'
 - 'Reasonable to continue to occupy'

5. AFTER THE ORDER IS MADE

BACK-TO-BACK CLOSURE ORDERS

- Closure Orders:
 - Initially for 3 months
 - Can be extended once for further 3 months
- Can the court make a second order?
 - No binding case law
 - But there are non-binding judgments where it has been held that the court does have jurisdiction.
 - Credit to Peter Marcus of Trinity Chambers



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