



# Procedural justice and process-based models: Understanding how practitioners utilise Community Protection Notices to regulate anti-social behaviour

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## Abstract

Community Protection Notices (CPNs) were created and introduced in England and Wales through the Anti-Social Behaviour, Crime and Policing Act (2014). They are used to prevent and/or require specific actions by an individual or organisation, where existing behaviour has ‘a detrimental effect on the quality of life of those in the locality’. A wide range of criminal justice actors can issue Community Protection Notices, and they require a low/no standard of evidence to do so. Breach of a Community Protection Notice results in a Fixed Penalty Notice of £100 or a possible criminal conviction. Using procedural justice theory as an analytical framework, our research is the first to investigate how Community Protection Notices are constructed, evidenced and monitored by the authorising bodies. The findings highlight divergent local practices, which sometimes lack procedural safeguards and adherence to Home Office statutory guidance. We propose 10 empirically based recommendations for policy and legislative changes to Community Protection Notice issuing practices.

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**Introduction**

Community Protection Notices (CPNs) are one of the legal measures used to address anti-social behaviour (ASB) in England and Wales. Despite a steady uptake in use since their introduction in 2014 (Manifesto Club, 2020), CPNs have been subject to minimal academic or public scrutiny, nor have any data been collected centrally by the Home Office (Heap and Dickinson, 2018). Thus, little is known about how practitioners use this tool on a daily basis. Our previous research with people who had received a CPN highlighted a lack of procedural justice in the issuing process, which subsequently reduced their perceptions of legitimacy and fairness (Black and Heap, 2022; Heap et al., 2022). Focusing on practitioners, this article begins to tackle the gap in research by examining the extent to which procedural justice principles are demonstrated in the issuing practices for CPNs. By highlighting aspects of the issuing process that are weak in procedural justice, we can suggest empirically driven, process-based policy recommendations that will improve fairness, compliance and legitimacy. The research presented here qualitatively addresses two central research questions:

1. How are CPNs issued?
2. Are procedural justice principles demonstrated through practitioners' CPN issuing practices?

The main objectives of our work were to provide an empirical contribution to the literature, assessing the extent to which procedural justice concerns are addressed when practitioners issue CPNs, and to suggest policy recommendations on how procedural justice concerns should be considered in the regulation of ASB in England and Wales. Consequently, this article offers two significant contributions to our understanding: first, by offering one of the few qualitative applications of procedural justice theory to the ASB powers from the Anti-Social Behaviour, Crime and Policing Act (2014) through examining the perspectives of practitioners and how they utilise CPNs; and second, by providing the first empirical understanding of the use of CPNs as a tool for regulating ASB.

**CPNs**

In England and Wales, the legal definition of ASB is 'conduct that has caused, or is likely to cause, harassment, alarm or distress to any person' (Anti-Social Behaviour, Crime and Policing Act 2014, Section 2 (1a)). This preventive-focused definition commonly translates into a wide range of nuisance behaviours such as noisy neighbours, fly-tipping and graffiti. Tools and powers to regulate ASB have been available to practitioners since the Crime and Disorder Act (1998), which included the much-maligned Anti-Social

Behaviour Order (ASBO) (see Brown, 2019). However, the most recent powers from the Anti-Social Behaviour, Crime and Policing Act (2014) have received comparatively little attention, and there is much to learn about how they operate. One such power, the CPN, is the subject of this study.

CPNs are civil preventive notices issued to an individual (aged over 16) or an organisation that impose a set of requirements to undertake or cease specific behaviours. This flexible power allows *any* behaviour to be sanctioned if it meets the threshold defined in Section 43 (1) of the Anti-Social Behaviour, Crime and Policing Act (2014), which is if ‘the conduct of the individual or body is having a detrimental effect, of a persistent and continuing nature, on the quality of life of those in the locality, and the conduct is unreasonable’. CPNs replace previous measures associated with environmental ASB such as Litter Abatement Notices, Litter Clearing Notices, Street Litter Clearing Notices and Defacement Removal Notices, which were only enforceable by the local council. In contrast, CPNs can be utilised to regulate a much broader spectrum of ASB, meaning potentially *anything* that meets the threshold, and the authorising bodies for CPNs have been expanded to include the police and registered social landlords. Unlike previous powers such as ASBOs, CPNs can be issued by designated officers *without having to go to court* and were intended to enable officers to act quickly to deal with ASB as it arises (Home Office, 2021).

Before a CPN can be issued, the potential recipient must be given a written Community Protection Warning (CPW). This should detail the ASB in question, request the behaviour to cease and outline the consequences for non-compliance. The CPW should also provide a timescale within which the behaviour should be addressed, indicating when a CPN might be issued. The manner in which the CPW is issued and the timescale afforded for compliance are at the discretion of the issuing officer. There is no legal basis to appeal a CPW. Breach of a CPN is a criminal offence punishable by a £100 fixed penalty notice or a fine of up to £2500 on conviction (£20,000 for organisations). Depending on the behaviour in question, sanctions for breach also include paying for remedial work, forfeiture or seizure of items. The prosecuting body can enforce a remedial or forfeiture order, which if breached constitutes contempt of court and can command a custodial sentence of up to 5 years. Once a CPN has been issued, recipients have 21 days to appeal if they contend that the behaviour did not take place, the behaviour was not unreasonable or that any of the requirements imposed are unreasonable. If an appeal is not lodged within the specified time frame, a CPN could stand indefinitely as there is no provision in the Anti-Social Behaviour, Crime and Policing Act (2014) for the notice to be varied or discharged.

## Contextualising the coercive power of CPNs

There are limited data about both the usage and issuing practices associated with CPNs. Statutory guidance for frontline practitioners produced by the Home Office (2021: 4) explains how the powers have been created to be ‘deliberately local’ in nature. Divergent local approaches are reflected in the only available usage data compiled by the Manifesto Club, whose reports from 2016, 2017, 2019 and 2020 show how some local councils have issued CPNs in their thousands, compared to others that have issued none. Their

research demonstrates an upwards trajectory in both the number of local councils utilising the powers and the number of notices issued. For example, in 2014–2015, 107 councils issued a total of 3943 notices, in contrast to 2018–2019 where 202 councils issued 8760 notices (Manifesto Club, 2020). The Manifesto Club data only include the notices issued by local councils, not the police or registered social landlords, but the number of CPNs they have issued alone since 2014 has already surpassed the total number of ASBOs issued between 1999 and 2014 (Home Office, 2016). Based on these data, it is evident that 22% of councils in England and Wales (69 in total) do not issue CPNs. Furthermore, we know from our previous research that the Home Office undertakes no central scrutiny of the powers from the Anti-Social Behaviour, Crime and Policing Act (2014) (Heap and Dickinson, 2018), resultantly CPN usage has remained unchecked.

Previous qualitative research by the authors has provided initial insights into the coercive power of CPNs from the perspective of those who have received them (see Heap et al., 2022). Recipients highlighted core procedural practices that reduced their perceptions of legitimacy and fairness, most predominantly: a lack of communication with practitioners, the inability to have a voice in the process, disproportionality in practitioners' response in relation to the behaviour in question and the inability to easily appeal either the warning or the notice. This 'procedural consensus' among recipients suggests objective forms of police practice that can be assessed to enhance perceptions of procedural justice (Dai et al., 2011). Our study generated three recommendations: that thorough casework should be undertaken to ensure a CPW/CPN is the most appropriate enforcement tool; an effective communication strategy should be employed to ensure a more transparent issuing process that meets the needs of both parties; and that the time-scales allocated to address the ASB in question should be proportionate to the risk of harm. We also highlighted that training practices required further investigation to understand how the notices are conceptualised in practice (Heap et al., 2022). This prior research ultimately highlighted the need to explore the issues raised by recipients through the eyes of practitioners. Until now, there has been no empirical inquiry to investigate how CPNs are utilised by practitioners. Therefore, this study provides significant original insight into the practice of issuing a CPN from the perspective of frontline issuing officers. The research sought to develop an in-depth, qualitative understanding of participants' decision making, formal and informal processes of administration, monitoring and enforcement practices, practitioners' perceived effectiveness of the tools and training practices, which we analyse using procedural justice as our theoretical framework.

## **ASB and procedural justice**

Procedural justice theory is an analytical framework that examines compliance with the law. While there are many individualised reasons for people to comply with the law, research has consistently shown that in general, citizens are more motivated to comply with the law and authorities for ethical and moral reasons rather than through the threat of being caught. As Tyler and Darley (2000: 707) suggest, citizens are more likely to offer voluntary compliance if they believe '(1) that the behaviors prohibited by law are also immoral (morality) and/or (2) that legal authorities are entitled to be obeyed (the legitimacy of legal authorities)'. Enhancing normative (ethical and moral obligation)

rather than instrumental (avoiding punishment) motivations to comply and co-operate through specific policing policies can encourage long-term legitimacy among citizens and promote self-regulation (Jackson et al., 2012). The connection between legitimacy and compliance has been established in a range of empirical studies to date (Crawford et al., 2017; Huq et al., 2011; Murphy et al., 2014; Sunshine and Tyler, 2003), including evidence of the detrimental impact to legitimacy that can result from proactive policing based on a broken windows policy of prevention (Tyler et al., 2015). Importantly for this study, policing ASB through preventive civil powers (Ashworth and Zedner, 2014) such as CPNs, also underpinned by a broken windows thesis (Jacobson et al., 2008), has a similar capacity for widening the scope of people and behaviours subject to sanction. Procedurally just policing strategies may therefore be even more important in these contexts for achieving co-operation and compliance.

Questions around the legitimacy of the law itself have expanded debates within the procedural justice literature. Legitimacy is most often considered in relation to the authority who enacts judgements and the manner in which they do so. However, as Tyler and Darley (2000:13) have argued, 'people are less willing to follow legal rules when those legal rules are not supported by their moral values'. Murphy et al. (2009) support this by asserting that legitimacy should be considered in relation to the law that underpins authorised judgements and the ways in which this affects compliance. Donoghue (2007: 418) has suggested that '. . . a flexible, ambiguous, and ultimately subjective definition of anti-social behaviour necessarily invites inconsistency in application and administration'. Consequently, the complexity of an ASB context may necessitate greater procedural consistency across policing authorities in order to encourage voluntary compliance.

### *Process-based models*

Most procedural justice literature is centred on people's perceptions of fairness and legitimacy in the interactions they have with authorities, and how and in what ways these perceptions influence whether or not people comply with the rules. The implication of these studies is that institutions can encourage voluntary compliance through maintaining perceptions of legitimacy, which ultimately reinforces citizens' self-regulation (Tyler, 2006). The maintenance of legitimacy comes from the perception of these practices as procedurally fair. This approach to compliance and self-regulation is what Tyler refers to as 'a process-based model of regulation' (Tyler, 2006: 308). A process-based model suggests there are strategies that authorities can engage in that will facilitate the acceptance of authorities' legitimacy, namely, 'treating community residents in ways that lead them to feel that the police and courts exercise authority in fair ways' (Tyler 2003: 286). Process-based models in procedural justice theory offers policing bodies an opportunity to adapt their tactics to build in legitimacy, for example, as Jackson et al. (2012: 1063) have argued, 'An interesting feature of the procedural justice approach is that it suggests police legitimacy can be enhanced via the everyday practice of policing'. By focusing on police practices through a lens of procedural justice, we can begin to understand why and how the police may treat individuals in ways that may be subjectively or even objectively considered unequal and unfair (Bradford et al., 2014). People's judgements about their

treatment at the hands of authorities are inherently subjective and influenced by their previous experiences, attitudes and beliefs, which may or may not overlap with objective judgements of policing practice (Dai et al., 2011). There has been established, however, through prior research, a procedural consensus, or socially shared judgement, of what is considered fair or unfair; these being the quality of officers' decision making and the quality of treatment (Dai et al., 2011). These can be treated as objective measures that allow us to move from subjective judgements to assessment of actual practice (Dai et al., 2011).

There has therefore been an extension of procedural justice studies that have begun to correlate specific policing actions with citizens' perceptions, to understand the practices and processes that may or may not influence them. McCluskey (2003) explored legitimacy through the connection between police treatment and compliance behaviour. Their aim was to 'aid police managers in identifying strategies and tactics that will increase compliance'. Through observation of police-citizen encounters where officers are seeking 'self-control', that is, the desistance of specific behaviours, they found that just treatment in the form of information seeking, impartial decisions and respectful treatment all predicted greater compliance. In contrast, coercive practices, such as mentioning the possibility of arrest, did not improve compliance. They suggest that to have effective control of a situation, officers need 'language skills and tactical scripts' that offer the citizen a sense that the police are engaged in legitimate practice (p. 173). Dai et al. (2011) measured the effects of process-based policing through observation of procedural justice factors on compliance behaviour in police-citizen encounters. Their results highlighted two forms of procedural practice that promoted compliance: police demeanour (hostility, anger, disrespect, etc.) and giving the citizen voice. Resultantly, the authors suggest focusing on objective elements of police practice that policing bodies can have an influence on. This would shift the procedural justice focus away slightly from the subjective perceptions of citizens which are not solely a response to police practice.

The outcome of this work, which seeks to focus on police action and building on a process-based model of procedural justice, has suggested the potential for a process-based model of policing, wherein officers can become 'procedurally sensitive' and can in some ways control for the effects of procedural fairness, taking in to account that there are other factors they cannot control for, such as demographics, prior judgements, crime rates and so on (Sunshine and Tyler, 2003: 536). This method of policing may have significant advantages for policing-public relations. As Dai et al. (2011: 167) argue,

If officers understand and appreciate the dynamics of their encounters with citizens, especially the different effects of procedural justice and coercion, then they can enjoy a better relationship with the public and receive more voluntary cooperation and less risk of physical harm and litigation.

This is especially pertinent to a CPN context and the perceptions of procedural justice that we have previously evidenced in our work with recipients.

Procedurally just practices are of particular necessity to ASB interventions, and especially CPNs, due to the widening scope of issuance, the variance in practitioners utilising the same tools, the subjectivity of ASB contexts and the potential for disproportionately

coercive sanctions (Heap et al., 2022). However, from the limited research that has considered ASB interventions from a procedural justice perspective, we know that ‘practices frequently fail to conform to the characteristics of procedural justice in ways that might enhance capacities and capabilities within communities, families and individuals for self-regulation’ (Crawford et al., 2017: 24). Previous work by the authors suggests that CPNs, with their lower behavioural threshold, target behaviours with greater moral ambiguity and therefore have greater potential to coerce compliance behaviour, damaging legitimacy in the process (Black and Heap, 2022). It is therefore important for ASB policy to embrace the principles of procedural justice because ‘securing compliance with the law by deploying normative strategies such as those derived from procedural justice theory is less costly, less intrusive and more effective than instrumental or coercive ones based on deterrence’ (Hough, 2021: 7).

Subsequently, this study provides an opportunity to explore how CPNs are issued in practice, as well as the chance to analyse the way they are issued through a procedural justice lens. We used a qualitative approach to obtain rich, detailed accounts about the procedures undertaken during the issuing process to help us discern the extent to which procedural justice principles were evident. Hence the aim of the study was to consider the implications of our findings to develop a process-based model of practice for this relatively new and comparably under-researched civil power.

## Methodology

Thirty-six semi-structured interviews were conducted; 30 with practitioners from four case study areas and 6 with ASB training professionals. A case study approach was adopted to explore whether different issuing practices were apparent at a local level, a possibility highlighted by our previous CPN research (Heap et al., 2022). A non-probability purposive cluster technique was used to locate the sample from which our research participants were drawn. This was derived from the most recently available data on CPN usage produced by the Manifesto Club (2019), which used Freedom of Information requests to obtain annual CPW and CPN usage from local councils. This is the *only* CPN data available for England and Wales. Thus, there are no data about police or registered social landlord issued CPWs or CPNs. Using the Manifesto Club data, the locations that issued the most CPNs were approached to participate. Where areas were unresponsive or declined to take part, we pursued the next highest issuer on the list until we achieved our sample.

Once the case study areas were identified, our intention was to interview five council officers, five police officers and five staff from registered social landlords in three different locales. However, it quickly became apparent that registered social landlords had not been delegated the powers in any of the selected areas, due to a preference by local councils to retain control of their issuance in a housing context. This was a finding in itself and reflects a two-tier provision of ASB enforcement where social housing providers do not have the same tools as their frontline counterparts. However, it necessitated our attention to shift towards council officers and police officers, and we increased the number of case study areas from three to four. Of the 30 practitioners, we interviewed 14 council officers, 15 police officers and 1 officer from a private company. As CPWs and

CPNs are relatively new powers, and drawing on findings from our previous research, we also interviewed six ASB professionals who provide training to frontline officers. This sub-sample had a range of backgrounds, with two council officers, one police officer and three independent consultants.

All interviews were conducted by telephone, a methodology adopted prior to the onset of the coronavirus pandemic. There were several benefits to this approach: it offered flexibility to frontline practitioners who are not always able to meet in a certain place at a designated time due to the nature of their work; it enabled a wide geographic range of case study areas to be sampled in a cost-effective manner; the utility of telephone interviews is supported by a range of scholars (Lechuga, 2012; Novick, 2008); and because of our expertise in using this data collection method (see Heap, 2021a, 2021b; Heap et al., 2022).

Utilising telephone interviews allowed the research to continue during the coronavirus pandemic, although the impact of the measures enacted by the UK government to manage virus transmission affected our data collection. Eighteen interviews were conducted prior to the first UK national lockdown on 23 March 2020, with 18 completed after this date. Participant recruitment post-lockdown was challenging due to the nature of our participants' work and the additional pressures coronavirus placed on frontline services. Taking an ethical stance to avoid placing unnecessary strain on key workers, data collection was paused at various points and resulted in fewer participants being recruited than expected. The coronavirus pandemic also impacted the nature of our participants' CPN work. For example, police recorded incidents of ASB increased by 48% in the year ending March 2021, compared to the previous year (Office for National Statistics, 2021). In addition, registered social landlords reported a 30% rise in reports of ASB (Housemark, 2020). The result was a greater number of calls for service, but our data suggest CPN issuing practices remained consistent.

The interviews were audio recorded, transcribed and analysed thematically using Braun and Clarke's (2006) framework, where their six-phase process was followed. This included data familiarisation, generating initial codes, searching for themes, reviewing themes, defining and naming themes, and writing up. This technique was suitable for a study of this nature because it allowed for repeated patterns to be identified across the data set. Ethical approval was granted by the authors' institution, with the participants anonymised and presented in this article by case study area, role and number.

## **Findings**

### *The issuing process*

Practitioners discussed varying approaches to the CPN process, including differences in the procedures for issuing notices, the type/s of communication with recipients and associated timescales for action. These sorts of variations are significant from the perspective of recipients, as demonstrated by our previous research, because the procedural manner and delivery style of the process is just as important as the mechanism itself in shaping recipients' co-operation and compliance with the notice (Heap et al., 2022).



Procedurally, we advocate that CPWs and CPNs should be issued in person (Heap et al., 2022), and we found evidence to support this. In two areas, local council officers explained how the first step in their process was to always speak to the potential recipient prior to issuing any formal notices, even CPWs. This was referred to as an ‘educational approach’; the communication established with recipients also helped to identify any needs or safeguarding concerns based on the vulnerabilities displayed during the face-to-face visit. Officers used this opportunity to explain the complaints received and explore alternative interventions before escalating to the CPW/CPN (e.g. mediation or Acceptable Behaviour Contracts),<sup>1</sup> as detailed by a council officer:

So, we have an anti-social behaviour escalation procedure, and we use CPWs and CPNs less frequently than warning letters. I think our most used and most effective tool is warning letters and home visits and then we’d use CPWs and CPNs and acceptable behaviour contracts . . . (Area D, Council Officer 14)

When in-person contact could not be made, or when it was not safe to engage with the recipient face to face, the recipient would be issued the notice by post but contacted by telephone. For businesses, the notices were issued in person to the local manager, with a copy posted to their head office. In contrast, council officers in the remaining two areas stated that informal visits were down to the discretion of individual officers. Where there was no established local procedure, the justification for in-person visits was based upon collecting the evidence required to proceed with a written warning. If the recipient was unavailable, a CPW would be sent in the post regardless of the ability to establish contact.

Across all areas, police officers utilised CPWs and CPNs in a much less structured way that fostered an inconsistent application of the powers and highlighted tensions between the authorities, as explained by a council officer:

I think from the police side it’s still very much a grey piece of legislation to them. So they kind of struggle and it makes it difficult if we’re using it one way and they’re using it another, but it’s in the same borough and on the same residents for the same things. (Area B, Council Officer 6)

However, there was evidence in some areas of collaborative working between local council and police officers, particularly in the way CPW and CPN notices and related incidents were recorded on shared databases, including the Police National Computer, to facilitate the monitoring and enforcement of the notices issued. Nevertheless, in areas where there was no shared database, it was acknowledged by practitioners that this exacerbated the disparities around issuing, monitoring and enforcement, with some instances of multiple orders being issued to the same individual.

The variations observed relating to issuing CPWs and CPNs in person, as well as joined-up local practices, are problematic because they undermine the legitimacy of the notice by removing the opportunity for a recipient to voice their concerns before practitioners decide to pursue legal remedies. Resultantly, this taints the accuracy of evidence, voluntariness, proportionality, fairness and neutrality of the process (Crawford et al., 2017). Allowing the recipient a voice is a form of procedural policing practice that has

been seen to increase compliance (Dai et al., 2011). A lack of voice can decrease perceptions of fairness (Tyler and Blader, 2003). Procedurally just practice is also of greater importance when the legitimacy of the law itself is questioned. This is often the case in an ASB context where definitions of deviance are stretched along differing moral grounds (Millie, 2009). Ensuring voice in the process may therefore mitigate resistance and encourage normative compliance. This is especially pertinent for the issuing of CPWs, which are problematic because there is no legal basis for appeal.

Across all areas, there were variations in the written notices themselves. Despite common agreement that non-compliance with a CPW and further reported incidents of ASB should result in enforcement, all areas and the authorising bodies within those areas employed different standardised timescales for the recipient to address the ASB in question. The most common timescale was 14 days, but it ranged from immediately (police only), to 7, 14 or 28 days. Similarly, the duration of CPWs and CPNs also differed across all areas and between the authorising bodies. These ranged from 6 months, to 1 year, with some issuing CPWs *indefinitely*. Both the time frame allocated to address the behaviour and the length of the notice should be proportionate to the behaviour in question. Hence, there should be variance here, but solely in relation to the case rather than standard timescales. However, there was some evidence of procedural safeguards being implemented. Two council officers explained how sign-off was required or could be sought from a senior officer. Furthermore, the police in one area could not issue a notice without sign-off from the local council. This practice was also reflected in research by Dima and Heap (2021), who found that 71% of local councils employ a system of oversight for CPNs, ranging from sign-off from a senior officer or legal team, to peer-review processes.

Nevertheless, our findings highlight the danger of employing arbitrary standardised timescales for CPWs and CPNs, which can result in the notice being disproportionate to the harm being caused and inconsiderate of the resources required to address the problem (Heap et al., 2022). Consequently, it results in some people being fast-tracked from CPW to CPN within a short space of time such as one evening, which a police officer described relating to a party. Requiring compliance within a standard time frame undermines the fairness of the CPN procedures, which was a key issue raised by recipients (Heap et al., 2022).

In sum, we identified pockets of meticulous practice which engaged recipients and had procedural safeguards in place to prevent disproportionate issuing. However, this was contrasted by lax procedures that did not follow Home Office statutory guidance (2021) around timescales and lacked regard for due process and proportionality.

### *Practitioners' perspectives*

Our previous study highlighted the experiences of CPW/CPN recipients; thus, practitioners' perceptions of the powers are useful to explore here, especially given the divergent issuing processes. The overwhelming consensus from both police and council officers in all areas was that CPWs and CPNs are a useful tool because they are easy to use and quick to implement. Some of the words used to describe them were 'a good piece of kit', 'great' and 'brilliant'. Practitioner positivity about CPWs and CPNs, particularly in relation to the speediness of use, reflects the Home Office's desire to streamline previous

ASB powers (Home Office, 2012). Practitioners particularly liked how the CPW was flexible and came with ‘teeth’ as a Council Officer explains:

Yeah, so it does give you teeth whereas before you didn’t have those teeth. Again, there’s some useful bits within it that actually have covered those holes whereas before you couldn’t do anything. (Area A, Council Officer 2)

The flexibility of the power afforded practitioners the opportunity to sanction behaviours they considered beyond the reach of other legislation. For example, ‘weird and wonderful things’ such as an individual walking naked through woods and the distribution of unsuitable business cards outside of a school. Practitioners expressed how the option to progress from a CPW to a CPN upon breach gave the notices ‘teeth’ due to the threat of further sanction. This tiered approach was considered to facilitate compliance and prevent the need for a CPN in the majority of cases. Consequently, CPWs were considered favourably by both council and police practitioners:

I’d love to be able to give you the evidence base for this, but all I can really talk about is anecdote and experiences. But most people that get CPWs, they do listen to us and they do change their behaviour. (Area A, Police Officer 1)

Practitioners clearly believed CPWs were effective at securing compliance. However, our previous work uncovered how CPW/CPN recipients felt *compelled* to comply, which reflects an instrumental rather than normative compliance (Black and Heap, 2022). The nature of this type of compliance undermines legitimacy and damages trust in the authorising bodies reaching fair outcomes. Overall, practitioners like CPWs and CPNs. They are perceived to be a quick and effective addition to their enforcement toolkit. However, understanding the nuances of these procedural encounters may allow for a better citizen–police relationship with regard to legitimacy and compliance (Dai et al., 2011).

### *Trainers’ perspectives*

Practitioners’ enthusiasm for the powers was tempered by trainers’ concerns. There was widespread criticism from trainers that CPWs and CPNs are being misused, applied incorrectly and not used within the spirit of the legislation. This was considered to manifest in CPWs and CPNs being used disproportionately and more coercively than intended, being used in cases more suited to a Civil Injunction<sup>2</sup> or Closure Order,<sup>3</sup> frontline staff not following the legislation/guidance, and insufficient action being taken on behalf of victims for breach/multiple breaches. These suggestions reflect our concerns from interviewing practitioners during this research. The disconnect between trainers and frontline staff is exemplified by an account of how the notices should and should not be used. To illustrate, one trainer gave an example of poor practice relating to the misinterpretation of the ‘persistent’ criterion of the legislation, where a CPW and CPN were both issued in one evening for a party creating noise nuisance. Conversely and coincidentally, a similar example was provided by a practitioner as an illustration of where CPWs and CPNs were used effectively. This highlights the incongruence between trainers’ and frontline officers’ interpretations of the notices.

Trainers felt very strongly about instances of poor practice and felt it ultimately undermined the powers, for example:

But to be honest, it's just disgusting. I think it's just really bad practice and, you know, again it's quite interesting. I kind of hear a lot of stuff that's going around the country and you kind of think 'I don't understand people's rationale around problem solving', it's about problem solving, it's about fixing the problem. (Trainer 2)

As more people are using the CPN inappropriately and celebrating it and promoting it as good practice and . . . when people see the use of CPNs being celebrated, it's cheap, it's quick, brilliant, it's stopping the problem. It's harder and harder to challenge and to successfully challenge that. (Trainer 1)

To complicate matters, one trainer explained some unconventional interpretations of the powers of their own. For instance, how anyone, not just officers with CPN issuing powers, can write a CPW. Plus, how evidence relating to a CPW should be based on the balance of probabilities, whereas evidence relating to a CPN must be able to be proven beyond reasonable doubt. Neither of these approaches are detailed in the Home Office statutory guidance (2021), nor are they necessarily beyond the scope of the legislation itself. Similar operational practices that differed from formal ASB policy documents were also found by Crawford et al. (2017). Our findings demonstrate how statutory Home Office ASB guidance (from 2021 and previous iterations) is not prescriptive enough to ensure consistent practice. This, coupled with such little scrutiny of the powers and a dearth of procedural safeguards, makes it predictable that divergent approaches exist. The consequence of inconsistent issuing practices is a weakening of procedural justice in relation to the neutrality principle (Tyler, 2007). As Tyler (2004: 94) has evidenced, the decisions made by authorities need to be seen to be operating on a 'level playing field', with outcomes consistently distributed. The neutral application of legal rules demonstrates a lack of bias or personal influence on the part of the decision maker. Transparency over the application of the rules assists in the appearance of neutrality, evidencing consistency 'across people and over cases' (Tyler, 2007). It is therefore imperative that the rules, or in this case, statutory guidance, provides greater clarity to allow for consistency, particularly around the evidentiary threshold, the application of persistence and the precedence of other statutory legislation.

### *Training provision*

The practitioner interviews also explored training provision, which provided a mixed picture. Generally, local council officers received bespoke training about CPNs either in-house or from an external provider. Although in most cases, formal training had only taken place as a 'one-off' when the powers were first introduced. In contrast, police officers reported having very little formal training. There were also instances where both council and police officers received no training at all. These officers said they undertook 'self-learning', learned on the job or were told how to use the powers by a colleague. The disparity in the amount of training received could be an explanation for the divergent practices seen in both this research and our previous study. A lack of training was

apparent during the interviews when practitioners spoke about how they implemented the powers. For example, one council officer suggested that

what we got told as part of our training, the persistent and continuing nature doesn't apply that much when it comes to CPW. Having a detrimental effect basically to local amenity would be the test for the CPW and is unreasonable basically. (Area C, Council Officer 11)

This is also another example of a 'rule' being applied, which is not contained in the Home Office statutory guidance (2021). Another imaginative interpretation of the powers was explained by an officer who used CPWs to enforce a Public Spaces Protection Order<sup>4</sup> (PSPO). This is not standard practice and creates a double layer of enforcement measures against an individual, which appears unnecessary if a PSPO is already in place.

Further knowledge deficits were apparent when issuing practices were discussed with frontline officers. To illustrate, one police officer did not know and could not find any information about when CPWs expire. They said,

I Googled this and I've looked on all the websites, I can't see an expiry date so to my knowledge they last forever. Whether that's right or wrong I still don't know because I can't find it anywhere. (Area C, Police Officer 8)

Practitioners also talked about the difficulty and inconsistencies surrounding the wording of notices, exemplified by a council officer who had engaged with local policing colleagues:

I would say that the negative part about them is, I have seen some wonderful and weird ones that have been served, which I think because you are down to an individual's discretion . . . they can be worded quite strangely . . . and some of them, 'you must not shout or swear from your upstairs bedroom window'. So it's okay for them to shout from the downstairs one?! You know, I have actually seen one like that. (Area D, Council Officer 15)

All these examples highlight a lack of training, unsatisfactory statutory guidance that enables loose interpretations, and excessive discretion afforded to frontline officers. Together, these issues combine to highlight how a lack of scrutiny and procedural safeguards allows these types of practices to occur.

## Discussion

This article details the first qualitative research into the practice of issuing CPNs, which explores how the powers are being utilised to regulate ASB on the frontline. We have highlighted the inconsistencies presented and challenges faced by practitioners, but there was a *lot of good practice* happening across the four areas that has helped us to develop suggestions for moving forwards. Several areas, but especially the local council officers in those areas, had robust CPW/CPN procedures in place. It is not the purpose of this research to lambast officers who are doing a difficult job, especially during a global pandemic. Our findings critically analyse how CPWs and CPNs are being utilised within a procedural justice analytical framework for the purpose of future policy development.

The wealth of research evidence that demonstrates how procedural justice positively impacts on legitimacy and compliance (see Crawford et al., 2017; Huq et al., 2011; Jackson et al., 2012; Murphy et al., 2008, 2014; Tyler and Darley, 2000) has facilitated our analysis of the aspects of the CPW/CPN issuing process. Subsequently, we have identified areas of practice that could be improved. Our focus is to develop more consistent frontline practice that fosters procedural justice, to enhance compliance and legitimacy. To achieve this, we offer 10 empirically grounded recommendations.

### *Recommendations for policy, practice and legislation*

1. The Home Office statutory guidance (2021) should be immediately revised to be more prescriptive about how CPWs and CPNs should be issued and include recommendations 2–7 below.<sup>5</sup> Furthermore, it should provide more detail about the types of behaviours suited to CPWs/CPNs (generally environmental issues) as well as behaviours where they are not appropriate. For example, neighbour disputes where both parties are issued notices, behaviours associated with street homelessness and notices issued to parents for the behaviour of a child who is under 16. This should help to address the knowledge gap where training is not available.
2. A problem-solving case management approach should be adopted prior to the issuing of CPWs. For example, an informal chat, a pre-CPW warning letter, Acceptable Behaviour Contract and independent/neutral mediation should be considered. CPWs/CPNs should not be issued as a one-off ‘quick fix’ above long-term solutions.
3. Consideration should be given to whether a CPW/CPN is the right tool for the case. For example, if the behaviour in question exceeds the legal threshold of causing a detrimental effect to the quality of life of the community, is of a persistent or continuing nature and is unreasonable, then a more appropriate power should be used. For example, if the behaviour is causing more serious harassment, alarm or distress, then a Civil Injunction should be pursued.
4. CPWs and CPNs must be issued in person to improve fairness and add voice to the process. In exceptional circumstances where it is not safe to issue face to face, the notice should be posted alongside a telephone conversation with the recipient. However, if officer safety is such a concern, consideration must be given as to whether a CPW is the correct enforcement response. Businesses should be issued with a notice in person (e.g. local manager) with a copy of the notice sent to their head office (if applicable).
5. Issuing officers should be provided with template notices to ensure the legal requirements (e.g. information about appeal) are included. Aside from this, each CPW/CPN should be bespoke to each case and tailored to the individual. For example, based on the recipient’s ability to read, speak English and their mental capacity. Timescales to comply should reflect the future risk of harm to the community, any resources required to complete remedial works and should not contain generic requirements that prevent ‘any’ harassment, alarm, distress, nuisance or annoyance.

6. All CPWs and CPNs should be signed-off by a senior officer as a quality assurance measure. The purpose of this process should be to check that the breadth of the notice is strictly relevant to the behaviour in question and to ensure the notice is proportionate given the needs of the individual involved. In addition, an equalities assessment should be conducted at this stage.
7. To help practitioners discern the most appropriate enforcement measure, all issuing officers should have access to a local database that records all CPWs/CPNs and ideally all ASB incidents. This will prevent double/triple issuing and provide a strong evidence base should further enforcement measures be required.

Some changes to frontline practice would not be possible, or would not happen, without amending the Anti-Social Behaviour, Crime and Policing Act (2014); thus, we suggest the final three recommendations are enacted as soon as possible:

1. To enhance fairness, voice and due process, there must be legal provision in place to appeal a CPW. Our research shows the obiter comments from Hickinbottom LJ in the judgement in *Stannard v CPS* [2019] EWHC 84 (Admin) at 53,<sup>6</sup> urging a local adjudication process to be put in place for CPWs is not being responded to in practice, and thus a legislative change is required.
2. To streamline frontline practice and to be more responsive to victims of ASB in social housing, registered providers of social housing should be given powers to issue CPWs and CPNs without the necessity for them to be delegated by the local council. The lack of such delegation evident has created a two-tier system of enforcement.
3. It should be made a statutory requirement for all authorising bodies to report data to the Home Office about CPW/CPN usage on an annual basis for auditing/evaluation purposes. This should include the numbers of CPWs/CPNs issued, breach rates and copies of the notices. This task would not be onerous if these data were collated on a central local database, as suggested in recommendation 7.

## Conclusion

Our study has found that ASB practitioners utilise CPWs and CPNs in divergent ways, with some practices shown to compromise procedural safeguards and to disregard statutory Home Office guidance. In response, our research provides the foundation for 10 evidence-based recommendations for policy and legislative change that build procedural justice into a process-based model of ASB to improve legitimacy and compliance. Given the increasing number of local councils, issuing more notices than ever before (Manifesto Club, 2020), urgent intervention by the Home Office is necessary to improve the quality and consistency of frontline ASB work. If the statutory guidance remains unchanged, there is a real risk that CPWs and CPNs could encounter a crisis of legitimacy similar to ASBOs, which were undermined by the way they evolved in practice, high breach rates and their lack of cultural credibility (Brown, 2019). The result, where ASBOs were ‘scrapped’ and new powers created, must be avoided at all costs given the lengthy period of time taken for legislative change to occur. The added challenge faced by policy

makers in this context is to communicate any policy and legislative developments in a manner that demonstrates the powers will still have 'teeth' but are to be made more procedurally just and distributively fair, since CPWs and CPNs are already viewed favourably by practitioners.

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### **Notes**

1. An Acceptable Behaviour Contract (ABC) is an informal written agreement between an individual and local agency to prevent future anti-social behaviour (ASB) (Home Office, 2021).
2. A Civil Injunction is the new incarnation of the Anti-Social Behaviour Order (ASBO); it is a civil order issued by a court to require and/or prevent individuals from engaging in specific behaviours that cause or threaten to cause harassment, alarm or distress (or in a housing context, nuisance or annoyance) (Home Office, 2021).
3. A Closure Order enables the police or council to apply to the Magistrates' court to close premises for up to 6 months where there is disorderly, offensive or criminal behaviour taking place (Home Office, 2021).
4. A Public Spaces Protection Order (PSPO) is a spatial measure used to prevent individuals and groups committing ASB in a public place, see Heap and Dickinson (2018) for a critical policy discussion.
5. The Home Office statutory guidance was updated and re-published in June 2022, during the period this article was undergoing peer review. Heap and Black were consulted on the updated guidance, resulting in some recommendations related to this research being included (to an extent). There remains scope to further develop and improve the guidance.
6. This case comprised an appeal of a Community Protection Notice at the High Court, on the basis of it being invalid. See Parpworth (2019) for a detailed discussion.



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