

Exclusion Notice Scheme

July 2018

BACKGROUND

1. An exclusion notice scheme [ENS] invests authority in a third party agency to withdraw the tacit permission of named individuals to enter private properties that, under normal circumstances, are open to the public e.g. shops, bars, nightclubs etc.
2. Members of the scheme must give the third party agency, in this case Brighton & Hove business crime reduction partnership [BCRP], formal authorisation to act on their behalf and exclude individuals from their premises either by signing an exclusion scheme agreement or checking the appropriate box on the 'must read' documentation downloaded from the secure intranet.
3. If a venue or an area suffers from persistent known offenders, such schemes are a powerful tool to remedy problems of anti-social behaviour, theft and general crime and disorder. They are civil schemes and have no legal authority but breach of an exclusion notice [caused by the individual entering or attempting to enter premises from which he/she has been excluded] can cause alarm, distress and harassment which can contribute towards evidence for a Criminal Behaviour Order [CBO].
4. Because exclusion notice schemes withdraw an element of liberty from an individual they will be used judiciously and must be:
 - fair and applied to everyone equally
 - robustly evidenced
 - proportionate & time limited
 - open to appeal [with a formal procedure]
 - business led
5. Although statutory bodies can provide evidence and information, the police and/or local authority are not involved in decisions to exclude individuals to avoid exclusion notice schemes becoming a 'public function'.
6. The default position of any scheme should be **not** to exclude an individual unless there is good reason to do so.

PROCEDURE

7. The decision to exclude an individual is based upon the receipt of incident reports from members or the police. A points based system is used allocating a number of points depending on the seriousness of the crime. For example minor shoplifting is one point but GBH would be 5. The threshold for exclusion is 5 points either collected in a single incident or a range of incidents over a 12 month period. The allocation of points is based on criminal sentencing guidelines. The threshold and the allocation of points are reviewed every six months and any changes are evidenced and recorded in formal minutes.

THE EVIDENCE BASE FOR EXCLUSION

8. Exclusion notice schemes are open to abuse by BCRP members who may seek to punish individuals without good reason; vendettas against enemies, ex-partners etc. They are also open to

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discrimination on grounds of sex, race, disability, religion or sexual orientation all of which are illegal. Consequently great care is taken to ensure that the evidence base is robust and beyond challenge. We operate a traffic lights system to assess evidence [see diagram on page 5]. Section 35 Notices or a crime number issued by the police represent a good standard of evidence [green light]. Reports from members should be verified by further investigation e.g. a follow up conversation with the reporting member, CCTV footage, supporting witnesses etc [amber light].

9. Particular care should be taken with reports from members about individuals that have never appeared on the incident database before and are unknown to the police especially if a number of reports are received in close proximity [red light].
10. With the popularity of the DISC app reports are increasingly submitted online and the offender may not have been formally warned of the consequences of his/her actions. To comply with GDPR, as soon as any data on an individual is received and processed the individual is sent the Offenders Privacy Notice letting them know what data is held and what the BCRP intends to do with it. This takes the form of a 'warning letter' pointing out the consequences of further offending. Work by Gloucester University in 2017 demonstrated that 84% of individuals receiving a warning letter do not reoffend so it is a powerful tool that is used wherever possible. However, if no address can be identified for offenders it may prove impossible to send the privacy notice or a warning letter. Article 14 of GDPR allows for this.
11. Once agreed by the Board of Management, the exclusion is communicated to the individual either by being served in person or by post. The letter does not have to be sent recorded delivery [indeed such letters are often declined by offenders as a matter of course!]. The exclusion notice will include:
 - the Offenders Privacy Statement to conform to GDPR requirements [this is included again even if it has already been received by the offender with a previous warning letter].
 - the date and nature of the incidents that have triggered the exclusion
 - the start and end date of the exclusion term
 - a list of venues from which the offender is excluded
 - the appeal procedure
12. The offender photo, date of birth and details of the exclusion term will be added to the offender database and the secure intranet so that the individual can be identified and denied entry to BCRP member premises.

APPEAL PROCEDURE

13. If the evidence base is robust [see point 8 above] valid reasons for appeal against an exclusion notice are very limited. Usually offenders cite simply that the exclusion is "not fair". A valid reason might be mistaken identity or if there are other exceptional mitigating circumstances [especially applicable to minors]. Nevertheless an appeal process upon the issue of an exclusion notice will be offered to offenders.
14. The starting point for an appeal is a written request from the excluded individual giving the reasons why the exclusion should be removed or waived. Occasionally an offender will instruct a solicitor to challenge the exclusion. Upon receipt of a solicitor's letter, usually asking for details of the offences resulting in an exclusion notice being issued or a Subject Access Request under the Data Protection Act 2018, the partnership will request proof that the solicitor has been appointed by the offender.

Divulging information to a third party without such proof will compromise the integrity of the data held on the individual and contravene the Act.

15. To encourage a change of behaviour in the offender the BCRP Executive may consider applying other circumstances under which the exclusion notice can be waived. An offender can appeal prior to the 12 month expiry of the notice if he/she has been free of incidents for six months after the commencement date of the exclusion. If their offences involved drunken behaviour they must agree to attend an alcohol diversion course prior to appeal and, if their offences involve violence or threatening behaviour, they may be asked to attend an anger management course. Appeals supported by a social worker or an anti-social behaviour caseworker are more likely to be successful.
16. But if a notice is waived it will be with the condition that a single future incident of anti-social behaviour within the original exclusion term will result in an automatic 12 month exclusion without the right to appeal.
17. The offender must appear in person before the Executive Committee to present his/her appeal accompanied by his/her social worker or caseworker if appropriate.
18. If the offender has court cases pending, their appeal cannot be heard until the outcome of the case.

Exclusion Notice Points System

Threshold for a warning letter	1 point
Threshold for raising an offender	3 points
Threshold for Exclusion	5 points

Aggressive behaviour or verbal abuse	1
Anti-social behaviour	
Attempted theft	
Begging	
Breach of a BCRP Exclusion Notice	
Breach of Section 35	
Criminal Damage under £5,000	
Fraud under £200	
Drunk & disorderly	
Ejected from a venue	
Theft from premises under £200	
Possession of Drugs	
Possession of stolen goods	
Indecent Exposure	

Racist or homophobic abuse	2
Common Assault	
Criminal Damage over £5,000	
Fraud over £200	
Going Equipped	
Threat to cause harm & threatening behaviour	
Theft from Person	
Theft from Premises over £200	

ABH	3
Burglary otd	
Possession of drugs with intent to supply	
Possession of an offensive weapon	
Robbery	
Sexual Assault	

GBH	5
Aggravated burglary otd	
Rape	

Procedure for issuing exclusion notices

DEFAULT POSITION
DO NOT EXCLUDE

Receipt of evidence

Police reports
PROCEED



Incident reports only from members – seek corroboration
CAUTION



Incident reports on individuals who are completely unknown - seek corroboration
CAUTION



Incident reports MUST BE in writing or submitted online via DISC with an identifiable source. Verbal or hearsay evidence is NOT ACCEPTABLE

E.g. CCTV images, Bodycam footage, witnesses, phone conversation with the reporting member/police etc

Seek additional evidence.

Additional evidence provided

NO additional evidence

Offender added to database [DISC] but not shared with members

Report not processed

Warning letter issued and Offenders Privacy Statement

Points based threshold reached for sharing with members [3 points]

Points based exclusion threshold reached [5 points]

Board of Management Decision

Issue Exclusion Notice
include details of appeal procedure and Privacy Statement

Police or PCSO to serve the Notice or it can be posted.

The Police or local council cannot play any part in the decision to exclude an individual.

Appeal made in writing

By the individual

By solicitor

Request proof of appointment

Usually a letter of instruction from the offender to the solicitor.

Prosecutions pending?

YES

NO

Appeal denied

Apply appeal criteria

Inform result