

Closure orders were intended to give police swift powers to deal with crack houses. But the law is starting to fall far wide of its targets, warns **Christopher Cuddihee**



# Unfair crackdown?

In 2001 the government announced it intended to provide police with a swift summary power known as a 'closure order', which would allow them to shut down crack houses that were an all too common blight on communities.

As a solicitor practising in South London, I have frequently represented tenants and families in these proceedings. I am concerned that while this legislation was originally intended to target a narrow but growing problem for communities, the use by police of this legislation is becoming more common, that the proper legal safeguards for those defending the proceedings are not always recognised, and that closure orders are expanding into areas never previously conceived.

Part 1 of the Anti Social Behaviour Act 2003 formally introduced closure orders. The act allows a police super-

intendent to issue a 'closure notice' where they have reasonable grounds to suspect an address is the source of 'serious nuisance or disorder' and associated with the use, production or supply of class A drugs. The notice has the effect of prohibiting all but the lawful occupiers from entering the premises. Anyone contravening the closure notice commits a criminal offence for which they can be sent to prison for up to six months.

A closure notice must be brought before a magistrates court within 48 hours and the court invited to make a 'closure order'. The legal test for the court to apply is essentially the same as for the superintendent – but with the additional requirement that the court find the closure order is 'necessary'. The legislation has been interpreted as requiring the proceedings to be

concluded within 14 days – to provide police with a speedy remedy to this serious problem.

The critical effect of a closure order is that in making such an order, a court seals up the premises for a maximum of three months. Once again, any individual who enters or attempts to enter the premises in that time commits a criminal offence punishable by a sentence of imprisonment of up to six months.

So who are the individuals affected by closure order proceedings? The answer is, anyone who is a lawful occupier of the premises in question. I have represented a 77-year-old bed-ridden lady whom police and social services planned to move to a home, because her son's behaviour had led to closure order proceedings. I have represented a mother of four children whose partner appeared to be dealing drugs while she was at

work and they were at school – and even though she had forced him to leave the premises, the police proceeded on the basis nothing else would appropriately deal with the problem.

Another client was a mentally ill man who was drug dependant and friendly with local prostitutes. I also represented a female drug addict who allowed her premises to be used for the consumption of drugs by local users. As you might expect, a wide variety of individuals are affected by these types of proceedings and not simply the narrow group of dealers and peripatetic users at whom these types of proceedings were originally aimed.

A particular problem for those defending closure order applications is the speed of the proceedings. The legislation has been interpreted to require the proceedings to be con-





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cluded within 14 days. That apparently strict time limit is supposed to provide a party seeking to defend the proceedings – who may be a tenant, landlord, owner or lawful occupier – with a fair opportunity to do so. In my experience, there is no other legal proceeding that is required to be completed within such a short period of time.

The courts have intervened to extend that time limit. In *Commissioner of Police for the Metropolis v Hooper* [2005] All ER it was held that in ‘exceptional circumstances’ – which in Miss Hooper’s case included her being medically unfit to attend court – that time limit could be extended. Also, in *The Queen on the Application of Brian Turner v Highbury Corner Magistrates Court* [2005] it was held that ‘exceptional circumstances’ did not just mean circumstances that were ‘rare’, and where it was in the interests

of justice to do so, the 14-day time limit could be extended – opening the way for adjournments, for example in order for the police to disclose relevant evidence, an opportunity for a party to interview witnesses or to seek to adjourn proceedings because witnesses could not attend at short notice.

One of the difficulties for parties seeking to defend these proceedings, is obtaining expert legal advice. These are civil proceedings most naturally falling within the category of housing law. However the Legal Services Commission has designated them criminal proceedings for the purposes of public funding, so legal aid is only available to parties through solicitors with a Criminal Defence Service contract with the Legal Services Commission – and of course those solicitors usually have little concept of civil law. This can make life

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difficult for those seeking to defend this type of proceeding, who should have early access to legal advice with expertise in this area.

Another area of concern is that on account of these being civil proceedings the prosecution are able to use hearsay evidence, and usually this comes in an anonymous form. Hearsay evidence, at its simplest, is a statement from an individual repeating what they were told by another. In criminal proceedings hearsay evidence is used very rarely because the veracity of the original statement cannot be tested. The individual repeating the statement (the hearsay witness) is not likely to be able to offer any confirmation as to the truth of the statement, because he or she may not have witnessed the event being described.

Where the prosecution seeks to

protect the identity of the original maker of the statement, then things can become very tricky for the defence. For example, how does a tenant prove that there has not been a steady stream of visitors to their home during the course of the day, apparently buying drugs and causing serious nuisance or disorder to other residents, in response to an allegation from an anonymous witness who gives evidence by hearsay?

Fortunately the administrative court to a large extent levelled the playing field for the defence in closure orders – and indeed in other ASBO-type legal proceedings – in *The Queen on the Application of Carol Cleary v Highbury Corner Magistrates Court* [2007] 1 All ER 270 Lord Justice May stated that magistrates courts should treat anonymous hearsay evidence with great care as there was the risk of serious injustice. He also reminded the magistrates courts that they should give appropriate weight to anonymous hearsay evidence, and suggested that where courts have reliable live evidence from witnesses for the defence which contradicts anonymous hearsay evidence from the prosecution, the defence case was more likely to succeed.

I have noted with interest the successful use of closure orders against nightclubs – two in the Old Street area were closed by order of the magistrates court for six weeks over the last Christmas and New Year holidays, which must have cost the club owners an awful lot of money.

The use of closure orders looks set to expand. As the ‘respect action plan’ launched by the government on 10 January 2007 states at Chapter 7: ‘Severe nuisance and anti social behaviour centred on a property is not always related to the use of class A drugs but current powers limit the closure powers to these circumstances. We will be consulting on a new power to allow the closure of any residential or licensed premises for a set period regardless of tenure which is causing significant, persistent and serious nuisance to local communities.’ This suggests that access to expert legal advice and representation will become all the more important in the future.

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*For more information on responding to a closure order, see the ‘resources’ section of the KFx website at [www.ixion.demon.co.uk](http://www.ixion.demon.co.uk)*