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Community Protection Warnings and the practices of the preventive state.

BLACK, Alexandra <http://orcid.org/0000-0002-5910-0108> and HEAP, Vicky <http://orcid.org/0000-0003-4311-1758>

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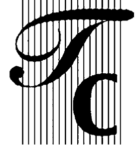

Article

Community Protection Warnings and the practices of the preventive state

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Alex Black
Sheffield Hallam University, UK

Vicky Heap
Sheffield Hallam University, UK

Abstract
This article explores preventive justice through the use of Community Protection Warnings (CPWs), a civil measure used to tackle anti-social behaviour in England and Wales. Through a qualitative study of frontline practitioners' experiences, this article argues that CPWs are a preventive form of punishment, framed through non-punitive intentions and as 'just' a warning, while their use in practice demonstrates coercive and punitive outcomes. Drawing on Beckett and Murakawa's notion of the shadow penal state, in which the reach of the penal system is extended through new entry points outside of the criminal justice system, we argue the use of CPWs implies a penumbra to that shadow, further stretching the state's punitive reach with fewer due process protections.

Keywords
Anti-social behaviour, warnings, preventive justice, penal state, punishment

Introduction

This article examines the ways in which preventive justice is exercised on the frontline through the use of Community Protection Warnings, the precursor to a Community Protection Notice, both of which are a civil power used to manage anti-social behaviour

Corresponding author:
Alex Black, Sheffield Hallam University, Great Clarendon Street, Oxford, OX2 6DP, UK.
Email: a.black@shu.ac.uk

in England and Wales. Drawing on empirical data from semi-structured interviews with police, local council and anti-social behaviour trainers working in England, we aim to broaden our understanding of preventive justice theory by exploring how preventive powers are utilized in practice. This study makes two significant contributions. First, we respond to Zedner's (2017: xxii) suggestion that we need to move beyond analytical and conceptual understandings of preventive justice and towards empirical investigation. This article will do that by being the first to explore practitioners' use of Community Protection Warnings through a preventive justice lens, highlighting the limitations of this framework. Second, we add a theoretical contribution to preventive justice literature, extending the work of Ashworth and Zedner (2014) and drawing on Beckett and Murakawa's (2012) notion of the shadow carceral state, to consider how the design and use of Community Protection Warnings stretch the coercive and punitive reach of the state with fewer due process protections, highlighting a penumbra of coercive practice to this shadow. This allows us to understand, as the number of hybrid civil/criminal preventive powers increase, the scope of their impact on individuals who may receive them and the expansion of state sanction.

The Community Protection Warning is the first step in the process of issuing a Community Protection Notice, a civil notice within the Anti-Social Behaviour, Crime and Policing Act 2014. This act replaced previous regulations, such as the Anti-Social Behaviour Order, and created six new powers to address anti-social behaviour, which was legally defined as conduct that 'caused, or is likely to cause, harassment, alarm or distress to any person' (Anti-Social Behaviour, Crime and Policing Act 2014, section 2 (1a)).[1] The Community Protection Warning, according to Home Office guidance (2023), should outline and request the behaviour(s) that needs to stop or be undertaken, provide a timescale for doing so and detail the potential consequences for failing to comply. Failure to comply can lead to the issuing of a Community Protection Notice, which can be issued to any person over 16, or organization and stipulates a set of requirements to undertake or cease particular behaviours. Breach of a Community Protection Notice is a criminal offence, punishable by a £100 fixed penalty notice, or a fine of up to £2500 on conviction (£20,000 for organizations); thus, they can be considered hybrid civil/criminal orders where the entry level is civil, but the sanction is criminal.

Manifesto Club[2] (2023) data demonstrate that Community Protection Warnings were issued for a range of behaviours including: 'eyesore' gardens, escaping dogs, bonfires, party houses, begging and rough sleeping, excessive animal noise (cockerel crowing/dog barking), waste accumulations and cannabis odour. They also show that much higher numbers of Community Protection Warnings are issued compared with Community Protection Notices and that these numbers are increasing, with 19,414 issued in 2021/2022 compared with 9546 issued in 2014/2015. As these examples demonstrate, Community Protection Warning/Community Protection Notices are designed to be flexible and can sanction *any* behaviours that meet the threshold, which is 'the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and the conduct is unreasonable' (Anti-Social Behaviour, Crime and Policing Act section 43 (1)). This threshold is lower than the legal definition of anti-social behaviour as stated above, expanding the remit for intervention. This definition is also used for other powers introduced within

this Act, including Public Spaces Protection Orders. As Brown (2017: 547) has argued, there is no definition of 'quality of life'. It is inherently subjective in that what is important for one person's quality of life may impinge negatively on another's. The activities of more marginalized groups may be curtailed to 'protect the sensibilities' of the law-abiding majority (Brown, 2017: 548). The standard of proof for issuing a Community Protection Warning/Community Protection Notice is also lower than previous anti-social behaviour powers, moving from the *balance of probabilities* to *reasonable grounds*. Furthermore, they can be issued by any authorizing body without having to go to court, such as frontline police officers, local council officers and others with designated authority. Discussions of 'policing' in this article therefore refer to the broader plural policing family rather than specifically the 'police' (Loader, 2000: 324). It is the lowering threshold, widening remit and range of actors that can administer these powers that this article seeks to consider. It will argue that these types of powers are emblematic of how hybrid civil/criminal orders enhance the reach of the preventive state.

Community Protection Warnings/Notices as coercive preventive justice

Previous research by the authors has argued that Community Protection Notices, which include the initial Community Protection Warning, can be considered a form of preventive justice (Heap et al., 2022). Preventive justice, as described by Ashworth and Zedner (2014: 1), is a conceptual term used to assess the 'principles and values' that should shape and restrain the way in which the state uses preventive legislation, while at the same time protecting citizens from harm. Theorists argue there has been an increase in the use of preventive powers in recent years, namely the 'preventive turn' (Carvalho, 2017), but without a body of work that seeks to challenge or justify the state's use of preventive laws and techniques (Ashworth and Zedner, 2014; Steiker, 1998). This is distinct from the wealth of literature that analyses the state's use of punishment and the conditions under which this is justified. Therefore, authors within this field endeavour to audit and explore the 'rise and restraint of the preventive state' (Zedner and Ashworth, 2019: 429) to understand legislatively and theoretically the implications for issues such as due process, proportionality and accountability (Heap et al., 2022). These authors also guard against the potential risk that, on the one hand, preventive justice theory will be over-applied to powers and techniques that are not intended to be preventive and, on the other, in analysing and generating limitations on prevention legislation, the powers themselves may become legitimized (Zedner, 2017).

One key feature of preventive justice is that it shifts policing and its associated practices from post-crime to pre-crime, in which future action is predicted, pre-empted and subject to intervention (Tulich, 2012; Zedner, 2007), a logic that encourages early interventions (Hendry, 2022). This shifting of the 'temporal perspective' (Zedner, 2007: 262), has important implications for frontline practice and how the work of prevention is done on the ground. In conjunction, this temporal shift moves the policing function further away from official criminal justice settings and draws on a wider remit of agencies to conduct this preventive practice, including private security and community safety officers. Zedner (2007: 262) calls this a 'sectoral shift' that draws on agents outside of the

state to enforce such measures at earlier points. The Anti-Social Behaviour Order, Ashworth and Zedner (2014: 89) argue, was the 'talisman' of civil preventive orders, using civil law to manage those whose behaviour does not contravene criminal law, until breach of the order itself. Similar forms of civil preventive orders have also expanded in use such as the Public Spaces Protection Orders (Archer, 2024; Brown, 2017), Knife Crime Prevention Orders and the Domestic Violence Prevention Orders (Hendry, 2022). Other notable examples within the preventive justice literature focus on legislation to prevent terrorism (see Tulich, 2012), strategies for countering violent extremism such as the *Prevent* strategy in the UK (see Hardy, 2017) and offences such as drink-driving (see O'Malley and Smith, 2021). The powers listed so far are UK-centric but similar powers have been introduced in other international jurisdictions. Australia introduced the Prohibited Behaviour Orders, which were modelled on the Anti-Social Behaviour Order (see Crofts, 2011), as well as police-imposed Barring Notices and Prohibition Orders to target alcohol-related problematic behaviours (see Farmer et al., 2024), and School Community Safety Orders to prevent threatening and abusive behaviour by parents (see Farmer, 2023). Preventive powers are utilized to a lesser extent in other jurisdictions such as Belgium, Germany, Japan, Singapore, the United States and the United Arab Emirates, although their scope focuses on issues such as domestic abuse and stalking (JUSTICE, 2023).

These examples characterize this temporal shift in that they criminalize risk prior to the actual harm having been caused. However, as Stacey (2017: 30) highlights, the precautionary principle is inconsistently applied across different safety issues. In the context of environmental harm, the uncertainty of future outcomes is used as an 'excuse' not to intervene, unlike in the area of security, especially anti-terrorism, where it is part of the reasoning for intervention. In addition, as Horder (2012: 84) argues, it may be beneficial to use criminal law to prohibit behaviour that may lead to harm for the purpose of deterrence and the building of our 'collective commitments', which may be undermined if we wait for the harm to be done before imposing criminal law. As Stacey (2017) argues, the decision to act in situations where the outcome cannot be known or risk assessed is often complex. Yet, the precautionary principle is less problematic if decision-making procedures and processes are transparent and subject to review. However, and as will be seen in this article, this is often where problems arise.

Prevention as a response to potential threats and harms is not new. The founding principles of the state's policing function assumed a classical liberal philosophy of the rational actor who may be deterred from committing criminal acts (Crawford and Evans, 2017). The purpose of sentencing involves a preventive as well as a punitive intention (Tulich, 2012) and as argued in Schauer's (2013: 11) chapter 'The ubiquity of prevention', 'there is more prevention in the ordinary operation of the criminal law than is often acknowledged'. Many of these forms of prevention are non-coercive (e.g. physical security/target hardening, see Armitage, 2017); however, it is those preventive measures that involve coercion that are the particular focus of preventive justice literature. For Ashworth and Zedner (2014), forms of preventive measures are coercive if they force an individual to act in a specific way through threat or use of sanction and directly affect an individual's autonomy. This is especially of concern when coercion relates to the prevention of unknowable future acts. As Cole (2015) argues, sanctions based on

past acts require proof beyond reasonable doubt, however sanctions to prevent future acts require less certainty and involve greater risk of error. Santions to prevent future acts also decouples the proportionate punishment from the behaviour in question, creating an unequal opportunity for sanction (Crawford, 2009). Community Protection Warnings/ Community Protection Notices can be considered as coercive for these same reasons. The threat of sanction and conditions/prohibitions placed on an individual may be seen to coerce behavioural outcomes for actions that have not been proven beyond reasonable doubt. In addition, criminalization of the prohibitions contained within the warning/ notice only apply to the individuals themselves and are not equitably distributed across the citizenry, creating 'personalised penal codes' for certain people (Gil-Robles, 2005: 34). One key critique of this form of civil power is that it gives the courts 'too great a delegation of rule-making authority' to design these individualized penal codes, bypassing the traditional process of law formation (Ashworth and Zedner, 2014: 86). This delegation is shifted even further in the Community Protection Warning/Community Protection Notice issuing process as both are administered out of court by a wider group of designated officials, further reducing procedural safeguards.

Community Protection Warnings and Notices as punishment

One of the main reasons why there is less academic scrutiny of preventive measures compared with punishment is the assertion that prevention is not in itself considered to be punishment. Though as Tulich (2012: 54) argues, 'prevention and punishment are neither easily distinguishable nor mutually exclusive'. Steiker (1998: 777–778) highlights the scarcity of critical commentary on preventive measures in that anything not deemed to be 'really' punishment, or 'merely' preventive, is seen as not worthy of consideration. This is further compounded by the absence of policing practices within our understanding of penal systems. As Newburn and Jones (2022: 1197) argue 'police institutions draw on powers and practices that both involve punishment and are experienced as punishment', one example they give being out-of-court disposals. We should therefore be 'seeing policing as a penal practice and viewing the police as a penal institution' (Newburn and Jones, 2022: 1197). Minimizing the impact of preventive measures because of their non-punitive intentions may avoid due process considerations of the criminal standard of proof, the right to a defence and the presumption of innocence to name a few, in favour of administrative and regulatory measures (Zedner, 2016). For civil powers, this creates a 'two-step' approach to managing offenders whereby the initial behaviour, or expectations of such behaviour, are prohibited by a civil notice that becomes criminal in nature upon breach, creating a bridge from civil regulation to criminal punishment (Simester and Von Hirsch, 2006: 174). As Hendry (2022: 387) has argued, these forms of preventive civil/criminal hybrid orders merge regulation with punishment and 'fast-tracks the "difficult" regulatory subject' into criminalization. These types of orders prioritize efficiency over safeguards, particularly when they target behaviours that do not constitute criminal offences such as anti-social behaviour, extending the reach of the state (Hendry, 2022).

Compounding this issue is the potential for discriminatory use, particularly given the wider and out-of-court issuing practices. As Hendry (2022: 390) has argued, hybrid civil–

criminal orders are a 'distinct regulatory technique, one deployed disproportionately and speculatively' to manage those groups that are seen to be risky. This approach draws heavily on assumptions about dangerous groups and group identity, rather than individual behaviour. While this potential for discrimination exists within criminal prosecution, it is exacerbated when controlling for future events as 'predicting what an individual might do in the future necessitates judgments based on generalizations about the kind of person he is' (Cole, 2015: 504). In the case of Knife Crime Prevention Orders, this has resulted in the disproportionate issuing of these orders to children from minority ethnic groups (Hendry, 2022). No data are centrally collected on the use of Community Protection Warning/Community Protection Notices and therefore we know little about the demographics of the recipients. However, their potential to discriminate has been raised by Liberty, a human rights organization, who have highlighted their use against those experiencing street homelessness (Liberty, 2022). Law reform and human rights charity JUSTICE (2023: 3) has also noted the disproportionate impact of behavioural orders on marginalized groups. There are also fewer protections in civil court (specifically no Liaison and Diversion Service), which may have greater impact on those with mental ill health, learning disabilities and/or are neurodiverse.

These processes are characteristic of Beckett and Murakawa's (2012: 222) depiction of the shadow carceral state (see also a discussion in Zedner, 2016). These authors highlight that in the USA, the penal system has extended its reach through less visible, 'legally hybrid and institutionally variegated ways' (Beckett and Murakawa, 2012: 222) that extend networks of punishment, even when they are not considered to be technically forms of punishment, such as fines, administrative orders and civil injunctions, particularly by actors that sit outside of the formal criminal justice system. The shadow carceral state creates entry points to engagement with the criminal justice system by shifting the boundaries of the traditional carceral state through civil, criminal and administrative law to create or enlarge 'non-criminal pathways to punishment' (Beckett and Murakawa, 2012: 238). The authors describe hybrid civil/criminal orders as an example of increased criminalization via lowering the burden of proof and fewer due process protections, highlighting 'the increasingly complex contours of carceral state power' (Beckett and Murakawa, 2012: 232). Beckett and Murakawa add to a body of scholarship calling us to rethink what constitutes punishment and our understanding of penal theory (see Hannah-Moffat and Lynch, 2012; Newburn and Jones, 2022; Valverde, 2012; Zedner, 2016) and attest to the micro-level minutia of what is happening within this shadow carceral state.

The practice of punishment initiated by a warning

While much of the preventive justice literature focuses on the legal practices and frameworks of prevention, our interests here lie in how those powers are utilized on the frontline, developing an understanding of the 'practices of preventive measures' (Zedner, 2017: xxii). One important reason for focusing on lower-level preventive measures such as Community Protection Warnings is that warnings are used in far greater quantities than the measures most often subject to attention (Crawford et al., 2017). Warnings are significant for another reason. Warnings appear to offer some choice for the recipient, an opportunity not to be sanctioned or a form of procedural protection (see

Halborg v Hinckley and Bosworth BC [2021] 11 WLUK 544). However, in a Community Protection Warning context, the threat of escalation to a full Community Protection Notice offers a 'comply or else' logic (Crawford, 2009: 816). Simultaneously, and as this article will go on to argue, Community Protection Warnings have been shown in practice to subjectively coerce behavioural change (Black and Heap, 2022). However, being at the lower end of the regulatory scale may encourage greater use by issuing officers and require fewer justifications or limitations when administering them, as they move even further away from official criminal justice settings. There may therefore be a disjoint between the perceptions of use by practitioners and the perceived impact by the recipients. Crawford et al. (2017) highlight this issue when exploring anti-social behaviour interventions with young people, by way of Bottoms: 'Those who seek to induce compliance in others very often think they know what it will be like to be on the receiving end of the measures that they administer. But … people in power frequently misjudge their audiences' (Bottoms in Crawford et al., 2017: 19).

The purpose of this article is to expand our understanding of preventive justice theory by considering how preventive powers are utilized on the frontline. This article will argue that the flexible design of the formal Community Protection Warning allows for greater use at lower behavioural thresholds, increasing the scope of behaviours under sanction, and further stretching the punitive reach of the state. The use of the Community Protection Warning beyond its policy intent will highlight a further extension of punitive prevention, adding a *penumbra of coercion* to the shadow penal state. It will also highlight the enforcement practices that contribute to the pains imposed by preventive measures and that blur the boundary between prevention and punishment.

Methodology

The aim of the study was to critically assess the processes through which Community Protection Notices and their preceding Community Protection Warnings were constructed, evidenced and monitored to regulate anti-social behaviour. A non-probability purposive cluster sample was used to generate four case study areas in England from which our research participants were drawn. These were derived from data published by Freedom of Information requests initiated by the Manifesto Club (2019), who collated Community Protection Warning and Community Protection Notice usage figures from local authorities in England and Wales. Owing to a lack of central data collection by the Home Office, this is the *only* usage data that exist and still only provides a partial picture due to a lack of police and social landlord[3] usage information. The locations issuing the most Community Protection Notices were approached to participate and where areas did not engage or declined to take part, we contacted the next highest issuer until we completed our sample. We conducted 36 telephone interviews consisting of 14 council officers, 15 police officers and one officer from a private company. In response to findings from our previous research (Heap et al., 2022) and due to the relative infancy of Community Protection Warning/Community Protection Notice powers, we also included a sub-sample of six anti-social behaviour training professionals who were from a range of backgrounds: two council officers, one police officer and three independent consultants.

The semi-structured interviews explored thresholds of anti-social behaviour, local issuing practices and the perceived effectiveness of Community Protection Warnings/ Community Protection Notices.[4] All interviews were audio recorded, transcribed and analysed thematically using Braun and Clarke's (2006) framework. This enabled the generation of themes through the identification of repeated patterns across the data. The authors' institution granted ethical approval, with all participants anonymized and presented here by their case study area, role and participant number.

Findings

Just a warning?

Steiker (1998) argued that preventive powers are seen as 'merely' preventive and therefore generate less critical assessment. This same logic results in fewer limitations placed on their use (Ashworth and Zedner, 2014). This notion was echoed across the participants in this study, who routinely described the warnings in one phrase: 'just a warning'. The fact that they were 'just' warnings created a perception that they could be used freely. This is captured in the following participant's quote:

> it will be mostly on my discretion because a CPNW[5] is a tool that I can easily use if I want because it's *just a warning* so I can use very naturally whenever I just believe that something is happening.
>
> (Area B, Police Officer 6, emphasis added)

As the above quote demonstrates, warnings can be issued easily and at an officer's discretion because it is perceived as 'just a warning'. In addition, the perception of it as 'just', also impacts on the procedures for issuing one, including having a prepared carbonated pad of warnings ready to go before starting a shift:

> it's more of a proactive approach because it's great to issue CPWs, it is *just a warning* form, so to issue them when they're out and about on patrol I think is a lot more—and to have a carbonated pad of them I think is a really effective way of working, because they are *just a warning* and we're able to issue them.
>
> (Private Company 1, emphases added)

It can be seen in the above quote that a policing tactic of having a prepared carbonated pad of Community Protection Warnings that can be taken on patrol is recommended for ease of issue. This suggests a level of anticipation of use of these warnings when practitioners are out on patrol.

In addition, while several practitioners in our study would issue in person, others would send the warning by post:

> 'the CPW isn't a notice as such, it is *merely a warning letter* so we would just post that out First Class' (Area C, Council Officer 11, emphasis added).

While the guidance does not prohibit postal issuing, procedurally it is not considered best practice (Home Office, 2023). Our previous research with Community Protection Warning/Community Protection Notice recipients (Black and Heap, 2022) has shown that receiving the Community Protection Warning through the post with an inability to voice any issues caused significant stress. There is no formal mechanism to appeal a Community Protection Warning, though in practice this may happen informally. However, this is again seen as less necessary given the status of 'just' being a warning:

> They can but there's no legal challenge to a CPW because it is *merely just a letter*. We reassess it if they disagree with it but ultimately we don't send it if we don't believe it's warranted in the first place. (Area C, Council Officer 11, emphasis added)

It can be seen in the data above that practitioners frame the Community Protection Warning as 'just' a warning and therefore there appears less consideration of the necessary restraint placed on its use, irrespective of the restrictive nature of the tool.

However, there were also clear attempts to officially reframe the Community Protection Warning so the warning would have a more serious impact on the individual when it was received. Therefore, while it is treated as '*just*' a warning for purposes of issue, it is reframed when communicated to the recipient. A participant from this local authority discussed creating official templates, drawing on the iconography of policing power (Loader, 1997) to have greater symbolic meaning to the recipient:

> What [location name] has done is created a template document that can be amended, but the way it's laid out, it's official looking as it has the constabulary logo, the county council logo on and the partnership logo and it looks really formal and so I think that benefits a lot as well because when people see it, it looks like a warning notice and not just a standard letter. (Area D, Council Officer 15)

What we see here then is the creation of an amalgamated and enhanced 'warning notice' that invokes the coercive impact of the Community Protection Notice without having to use it, by having its precursor (the Community Protection Warning) look similar enough in written form to have the same desired effect. There is an obvious tension here between the idea of the warning as 'just', which validates its extended use and lower restraints, and the shoring up of the impact and effect it may have on the recipient. This is reiterated by another practitioner who promotes the merits of the design of the tool to frame it as a Community Protection Notice:

> So I advise them to make the warning look like a notice. It has to be clearly written out as a warning. And to treat the warning as if it was a notice, so you have schedule of evidence within it, so you have the basic evidence written into it. (Trainer 5)

In addition, this policing representative was aware of the symbolic power of their uniform to add to the impact of the warning and generate a compliant response:

> End of the day I'm a police officer in uniform giving you a bit of paper that says warning on it so I think a lot of it that we use—we haven't really progressed and, you're right, they were introduced to speed things up but I think they actually act as more of a deterrent as well. (Area B, Police Officer 4)

The flexible design of the tool allows its use in a greater number of ways, while simultaneously minimizing the preventive restraints needed because it is 'just' a warning. In practice, however, the Community Protection Warnings may be specifically designed to generate the same impact as a Community Protection Notice. That is not to say, of course, that individual officers do not apply restraint in the ways in which they distribute the warnings. It does, however, demonstrate that in being perceived as 'just a warning', the tool itself creates the ability for extended use, which moves it well beyond that idea.

Enabling prevention

The Community Protection Warnings were perceived to be easy to issue due to their 'just a warning' status. This perception and the flexible design of the Community Protection Warning/Community Protection Notice were seen as beneficial for prevention. First, the lower behavioural threshold for issuing means that they can be used *early* and at a 'very, very low level' (Area B, Police Officer 4) of anti-social conduct. The early intervention requirement built on the logic of pre-emption to prevent future escalation:

> 'They're brilliant. A very, very good tool for low-level interventions to start with and nip things in the bud before they get too much' (Area A, Police Officer 2).

This notion of 'nipping things in the bud' is typical of anti-social behaviour powers (Lewis et al., 2017). In this vein, Community Protection Warnings could be likened to ABCs (Acceptable Behaviour Contracts), which are voluntary contracts issued predominantly to young people alongside a parental signatory as an early intervention strategy to prevent future anti-social behaviour and engage with support services (Home Office, 2003). However, the voluntary nature of ABCs with no penalty upon breach restricts their coercive capacity, with transgressions used as part of a bundle of evidence to support further enforcement options (Brown, 2012). In contrast, the low evidential threshold required for a Community Protection Warning means that it is easier to issue to individuals (over the age of 16) allowing for an even earlier timeline for intervention, which constitutes part of a formal enforcement pathway:

> Yeah, I think the positive is we seem to be taking action and early opportunity. The level of evidence that we need to give the CPW is quite low so practically speaking they're great because you can just go and get an early intervention. (Area D, Police Officer 12)

This participant's quote is reflective of the preventive temporal shift identified by Zedner (2007). The lower threshold at which a behaviour would be subject to an intervention widens the temporal scope of the power, allowing for earlier use, which is perceived to be effective at resolving the issue and popularizing their use.

Another key factor in the design of the Community Protection Warning and Community Protection Notice process that practitioners saw as beneficial to their use is the procedural *ease* in which they can be issued. Participants highlighted the ability for frontline officers to begin the process and issue Community Protection Warnings in the course of their duty and the flexibility that this affords:

> So yes, they are a quick way to resolve issues, and we can get a complaint on one day and serve the warning, CPNW, the same day. So they are quick, without needing to go and get any authority or anything like that. We don't have to speak to a manager or anything. It's literally the officer's discretion about it. (Area B, Council Officer 5)

One core issue in preventive justice theory is that out-of-court processes bypass the usual procedural safeguards afforded by the criminal justice system to those accused of offences (Hendry, 2022; Simester and Von Hirsch, 2006). Some of the practitioners we spoke to did have restrictions here in terms of quality assurance oversight of full Community Protection Notices before they were issued, for example by going through their legal department. Others operated a tiered system in which Community Protection Notices required a higher standard of evidence than the Community Protection Warnings for court purposes. This meant that Community Protection Warnings were easier to issue than Community Protection Notices, and for many of the authorities in this study, the Community Protection Warning alone was seen to have enough of a preventive impact to resolve the issue without having to progress to a full Community Protection Notice, legitimizing it as a starting point for intervention. One local council employee estimated that a Community Protection Warning achieves 'an 80%, an 85% success rate with people complying' (Area C, Council Officer 12). A police officer in another area estimated that '90% when you issue the warning letter, it has that effect to stop somebody going out and doing the same ASB [anti-social behaviour] they've been doing previously' (Area B, Police Officer 6a). As one participant stated, 'the objective of issuing a CPW is that it shouldn't be necessary to issue a CPN' (Area D, Council Officer 14). It could be said, therefore, that the warning and threat of escalation coerce compliant behaviour by imposing pressure on the individual at the Community Protection Warning stage. Yet as we have argued above, while the use of Community Protection Warnings often prevents individuals being issued the more coercive Community Protection Notice, this coercive distinction is blurred as the warning is designed to have the impact of a Community Protection Notice. This, coupled with the lowering threshold and wider range of recipients, could increase compliance:

> If you give somebody a CPW and they look at what the consequences may be then if you get somebody that's more low-level stuff then I think that can have an effect on them and say, oh, heck, we don't want that to happen so they mend their ways that way. So, yeah, I think they're a handy little tool to use if they're used properly. (Area D, Police Officer 10)

This is particularly the case if that individual is less familiar with official sanction:

> A lot of the time they're law-abiding citizens and as soon as they get something official like that from the police saying you won't do this anymore, a lot of them will comply with it because they know they don't want to wind up in court and they know that they're going to get themselves in trouble. (Area A, Police Officer 2)

Hendry (2022) argued that hybrid civil/criminal orders can fast-track those seen as most difficult to regulate into criminalization. What we see here however, is a widening pool of individuals who may not be considered difficult subjects more generally, but are nonetheless subject to regulation and the threat of criminalization due to the widening scope of Community Protection Warnings and subsequent issuing of a Community Protection Notice on breach.

Preventive warnings as punishment

In addition to the coercive impact of the warning, there is also the use of the Community Protection Warning to restrain or force specific behavioural requirements. One of the main objections to civil preventive orders, such as the previous Anti-Social Behaviour Order, was that it allowed the courts to, in effect, create personalized criminal laws by stipulating the prohibitions that, when breached, resulted in a criminal offence (Ashworth and Zedner, 2014). As a practitioner states below, Community Protection Warnings allow frontline officers to establish the 'rules' for specific individuals:

> People know when they're not doing right. That's the truth around ASB. People know when they're out of order and if you set some rules around it then they know you could end up getting a notice which actually will be formal and end up with either a fine or arrest or taken to court. (Trainer 5)

The Community Protection Warning is therefore not just a manner of censuring past behaviour but is utilized to communicate to an individual how they should behave in their future conduct. Home Office guidance (2023) details how the full Community Protection Notice should outline the specific behaviours an individual is required to undertake or stop doing. However, in practice we have seen these requirements *included in the Community Protection Warning* and can restrict or require particular behaviours on the individual (Black and Heap, 2022). This practice therefore moves beyond not only what is required in the guidance, but also what may be proportionate for a Community Protection Warning:

> 'So for example on the CPW we will mention things like dealing with the actual issue there and then but also putting preventative measures to stop it happening in the future as well' (Area C, Council Officer 10).

Using the Community Protection Warning to set out specific prohibitions for an individual shifts the 'rule-making authority' (Ashworth and Zedner, 2014: 86) even further and gives this power to a wider range of out-of-court actors without scrutiny or procedural safeguards in place. There is then greater scope for authorities to create personalized penal codes (Gil-Robles, 2005):

> Early intervention I use them for. Definitely early intervention because we're just wanting them to—look, these are the rules, we all have to live by rules and regulations, I do so there's no difference between you or me so please, look at the rules, put them on your fridge, look at them every day and remember how to conduct yourself because otherwise we're going to be breathing down your neck, you're on our radar. (Area C, Police Officer 8)

As can be seen above, the 'rules' given to an individual for behaving are not only intended to guide conduct, but to communicate wrongdoing and act as a reminder of the threat of sanction for non-compliance, reflecting Zedner's (2016) definition of punishment as embodying censure and sanction. Community Protection Warnings can be used as a form of punishment as they contain instructions to prevent future conduct. These instructions may include not going to certain places or engaging in specific practices. They therefore censure the individual and clearly communicate their wrongdoing, while also placing restraints that are likely to be burdensome on the individual, as the following quote demonstrates:

> So from my point of view it's sensible because, you know, we warn people, we advise people, we write down the fact that we've warned and advised people but if we then have a process like CPW/CPN, for me it solidifies those warnings and that advice and it makes it really, really clear to the public what they can and can't do. (Area A, Police Officer 1)

These requirements may also feel punishing, even if not intended to do so by the authorizing officer, if they force an individual to engage with services that are emotionally and physically challenging, as seen below:

> Interviewer: Right, so do you agree with the warnings being as helpful, as good as stopping the ASB? Are they often enough to solve the problem?
>
> Council Officer: Yeah, definitely. Like I said, they usually …. and then we also put in things you must do, so it might be that we say you must engage with the drug and alcohol services. (Area D, Council Officer 15)

What we can see here, is the stretch of the Community Protection Warning with regards to the outcomes that can be expected and that are officially required, particularly with the threat of escalation for noncompliance. Restraints on the individual should be the minimum necessary to avoid the harm that may be done otherwise (Ashworth and Zedner, 2014). It is questionable as to whether the requirements suggested above are proportionate to the behaviours that give rise to a Community Protection Warning, and how they can be enforced through this process.

As has previously been argued, the two-step civil/criminal hybrid process can create a bridge between civil and criminal punishment and 'fast-tracks' the individual into criminalization (Hendry, 2022; Simester and Von Hirsch, 2006). The expansionist use of the Community Protection Warning would suggest that more individuals may be then subject to a Community Protection Notice. The lack of official data collected on the use of these powers makes this difficult to determine, though the available data from the Manifesto

club (2023) have shown an increase across the issuing of Community Protection Warnings and Community Protection Notices. In addition, some of the participants in this study explained the process they used for moving to a Community Protection Notice on breach of a Community Protection Warning:

> 'If someone breaks CPNW and you have in-house evidence to go to the CPN, I'm going to go for a CPN' (Area B, Police Officer 6).

One participant detailed their knowledge of a Community Protection Warning being issued for a noise complaint and the following Community Protection Notice being served on the same day (Trainer 3). This could suggest an escalation process. However, there were also participants who were less likely to progress as quickly through the escalation process, demonstrating variance in use:

> I have to say … we don't go straight in there, so the threshold would be that we've tried these other things, we've tried other agencies, we've spoke to maybe parents or to teachers and to social services and stuff like that, got other people involved. (Area D, Police Officer 10)

This highlights the discretion among practitioners regarding the two-step process. For some individuals, there is more to be done in addition to the Community Protection Warning that can manage the behaviours in question. For others, breach is enough to progress through the process to a full Community Protection Notice. This is reflective of the discretionary nature of frontline practice and the risks of out-of-court issuing. It also highlights a variance in preventive punishment in that not only are some areas using the Community Protection Warning in greater numbers, but they are also enforcing them to a greater extent.

Discussion and conclusion

This is the first analysis to consider how practitioners, including the police and council officers, use Community Protection Warnings to prevent ongoing and escalating forms of antisocial behaviour. Preventive powers have increased in use in recent years leading a range of scholars to chart the expansion of state power through identifying the temporal and sectoral shifts that move preventive power to a broader range of actors who can intervene earlier and earlier (Hendry, 2022; Tulich, 2012; Zedner, 2007). The coercive element of these powers has been discussed in previous literature, which argues that the language of prevention over punishment allows for fewer safeguards and limitations on their use. This is irrespective of the emerging evidence that these forms of prevention are experienced as punishing by those who receive them (Black and Heap, 2022). This empirical consideration of the 'practices of preventive measures' (Zedner, 2017: xxii) allows us to expand our understanding of how preventive civil hybrid powers such as the Community Protection Notice operates and identifies the 'pedestrian minutiae of what is really happening around us' (Beckett and Murakawa, 2012: 238).

The evidence presented here has demonstrated how the Community Protection Warning and Community Protection Notice process has been designed in such a flexible

and broad way that practitioners are able to use them at an earlier stage and more easily than previous powers, on an expanded range of behaviours, and thus individuals. The lower thresholds for both behaviour and standards of proof are demonstrative of this temporal shift common with preventive powers, allowing individuals to be drawn into the expanded reach of the state at an earlier time. In addition, the sectoral shift and out-of-court approach makes it easier for a wider range of frontline practitioners to distribute Community Protection Warnings according to their own discretion. That is not to say that authorities do not have quality assurance oversight of this process, but it does allow for these to be developed locally according to local need. This work, alongside prior research (Dima and Heap, 2021), has shown variance in these quality assurance processes, offering different experiences for recipients and practitioners. The flexibility of these powers and the lowering threshold make them more eligible to be issued to a wider pool of recipients, people who may not routinely come into contact with policing bodies. The participants in this study felt that this tool has the greatest effect on those who are generally ‘law abiding’, drawing on the symbolic impact of receiving a warning to ensure compliance behaviour.

As Hendry (2022) argued, hybrid orders allow difficult subjects to be fast-tracked into further criminalization, avoiding more of the safeguards associated with criminal prosecution. However, the subjects associated with Community Protection Warnings may not be considered generally ‘difficult’ but may still be fast-tracked into criminalization upon breach of the Community Protection Warning and subsequent Community Protection Notice. Resultantly this power generates an extended network of punishment that sits primarily outside of traditional criminal justice settings. In this sense, it is akin to Beckett and Murakawa’s (2012) shadow carceral state, shifting the boundaries of the criminal justice system to allow for greater state reach through civil hybrid methods that are administered by state and non-state actors. This shadow includes new pathways into the criminal justice system through powers that have fewer safeguards and limitations. As Ashworth and Zedner (2014) have argued, limitations are important for preventive powers, especially if they contain an element of punishment. Practitioners in this study appeared to differentiate between the evidence required for Community Protection Warnings compared with Community Protection Notices and greater safeguards and oversight were often in place for notices. Warnings, however, were treated slightly differently. A Community Protection Warning in general has a temporal inflection, acting as a harbinger of future possibility and in the Community Protection Notice context specifically, a warning is considered a form of procedural protection, notifying you of what is to come. However, in practice, the warning effectively denotes that punishment has already begun. In this way, to call it a ‘warning’ is a misnomer.

The warnings in this study were considered ‘just’ warnings; ‘just’ in a sense of *merely* or *no more than*. This understanding allows them to be issued with greater ease than the notices and with lower thresholds around evidence and distribution (i.e. being sent out in the post or using carbonated pads). This was supported by the High Court judgment that ruled Community Protection Warnings are the procedural protection for the Community Protection Notice and therefore do not require prior notification (*Halborg v Hinckley and Bosworth BC* [2021] 11 WLUK 544). However, it is clear

from this study that the warnings are *more than* a warning. The Community Protection Warning can be considered a form of punishment in that it contains a coercive element, placing pressure on the individual to conform (Ashworth and Zedner, 2014). Going beyond the Home Office guidance, Community Protection Warnings often also contained rules, requirements, prohibitions and the iconography of state power, which practitioners expected to generate a compliant outcome. Community Protection Warnings are distributed on a greater scale than the notices themselves and have more than doubled in use over the last four years (Manifesto Club, 2023). The warnings therefore take on a role of their own, changing in scope and approach to manage the anti-social behaviour in question. If the Community Protection Notice can be considered a part of the shadow penal state, then the Community Protection Warning implies a *penumbra* to that shadow—the unknown and likely expansive preventive penumbra of the state's penal shadow, taking on the function of the notice but further downstream and with fewer protections.

Community Protection Warnings within the Community Protection Notice process are not the only type of warnings that are administered by policing bodies; for example, police warnings and conditional cautions. From a preventive justice perspective, warnings raise important questions around what practitioners expect from these powers, how much risk is to be averted through a warning and how proportionate it is to the behaviours in question (Ashworth and Zedner, 2014). Given where they sit at the bottom of the regulatory scale, it is as likely that other warnings would be subject to local and individual variation, just as the Community Protection Warning is. If a Community Protection Warning/Community Protection Notice continues to be an anti-social behaviour policy response, a more proportionate Community Protection Warning could begin with a conversation and be issued in person. They should also not go beyond the requirements of a warning as set out in the statutory guidance. Further recommendations for policy, practice and legislation are offered elsewhere (Heap et al., 2024). Future research should consider the implications of the sectoral shift for Community Protection Warnings, exploring their use by people in the housing sector and private community safety organizations. The same applies for understanding the practices across the sector of using warnings more generally. It is important to explore the impact of all the differing actors and how this may be creating uneven distribution and minimizing procedural safeguards. Greater focus on warnings more generally is necessary to consider how far and to what scale state reach extends in this lesser-known penumbra of penal regulation and criminalization.

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ORCID iD

Alex Black https://orcid.org/0000-0002-5910-0108

Notes

1. The full definition also includes housing-specific criteria, which are as follows: (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or (c) conduct capable of causing housing-related nuisance or annoyance to any person.
2. Manifesto Club is a civil liberties organisation that campaigns against the hyper-regulation of everyday life. They have a particular focus on policies and practices that control access to, and behaviours within, public spaces.
3. Social landlords are registered providers of social housing, which is defined as low-cost rentals and low-cost home ownership (Regulator of Social Housing, 2024). Social housing may also be known as public housing.
4. Participants often used the acronyms CPW (Community Protection Warning) and CPN (Community Protection Notice) throughout the interviews.
5. Some practitioners use the abbreviation CPNW 'Community Protection Notice Warning', rather than CPW 'Community Protection Warning' that we adopt.

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Author biographies

Alex Black is a Senior Lecturer in Criminology at Sheffield Hallam University. Her research interests are in policing, victims and vulnerability, and urbanization and public space.

Vicky Heap is an Associate Professor in Criminology and Fellow of the Sheffield Institute for Policy Studies at Sheffield Hallam University. Her research interests lie in the areas of anti-social behaviour policy, victimology and mixed methods research methodology.