

COMMUNITY AND SAFER CITY SCRUTINY COMMITTEE

5 APRIL 2011

CONSULTATION: MORE EFFECTIVE RESPONSES TO ANTI SOCIAL BEHAVIOUR

REPORT OF THE CHIEF EXECUTIVE

STRATEGIC PRIORITIES: SP3 SAFE CITY

CORPORATE PRIORITIES: CIO1: Delivering Customer Focused Services, CIO4: Improving Partnership Working to Deliver 'One City'.

1. Purpose of Report

- 1.1 To provide the Committee with information about the Home Office Consultation: More Effective Responses to Anti Social Behaviour.

2. Background

- 2.1 The Home Office has published a consultation paper called "More Effective Responses to Anti Social Behaviour".

- 2.2 The consultation period is open to the public and to professionals and will close on 3rd May 2011.

- 2.3 Over the last six months the Home Office has been reviewing the use of anti-social behaviour tools, drawing on a range of sources:

- Ministry of Justice statistics on ASBO's
- Voluntary data returns from Community safety partnerships
- Previous reports published by the Home Office and National Audit Office

Time has also been spent speaking to a range of practitioners.

- 2.4 The analysis suggests that:

- Use of ASBO's has fallen by more than half since 2005
- ASBO's are now more likely to be linked to a criminal conviction
- Breach rate for ASBO's is rising
- Use of other tools has increased since 2005
- Of the 171,000 Penalty Notices for Disorder issued by the police in 2009, over half were for anti social behaviour
- 53% of fines were paid within the designated timeframe
- Take up of support designed to help people address the causes of their ASB is very low

2.5 Looking at how frontline agencies use the tools it appears that:

- Professionals tend to use escalatory approach to the toolkit
- This appears to work for some perpetrators – the National Audit Office found that 65% stopped behaving antisocially after a first intervention
- There is a persistent minority for whom ASB is much entrenched and the escalatory approach prolongs the length of time a victim or community has to suffer
- Practitioners see bureaucracy and cost as the greatest barriers to the toolkit
- Culture of front line organisations influences the use of the toolkit

2.6 The Government has therefore concluded that the priorities should be:

- To reduce the size of the toolkit
- To shorten the process and reduce the cost associated with formal tools
- To move away from the approach that has unnecessarily criminalised people, particularly young people
- To make the informal tools more effective
- To make it easier for the practitioners to support people to deal with the underlying causes of their behaviour
- To ensure that sanctions provide a proper deterrent to the persistent minority
- To give people more power to shape the way agencies use the toolkit to tackle anti-social behaviour in their area, including making perpetrators more accountable to their victims and community

3. Key Proposals

3.1 The key proposals are to **replace the ASBO and a range of other court orders targeted at anti social individuals with two new tools:**

1. Criminal Behaviour Order

- Civil preventative order attached to a conviction
- Protect the public from behaviour that causes or is likely to cause harassment, alarm or distress
- The court would have to be satisfied, before making the order that:
 - i. The offender had acted at any time in a manner that caused or was likely to cause harassment, alarm, or distress to one or more persons not of the same household and
 - ii. That an order was necessary to protect persons in any place in England and Wales from further acts by him/her

- This would be in addition to the penalty for the crime and not in place of it
- It could be given to anyone over the age of criminal responsibility (10 years)
- Ban an individual from certain places or activities
- Require the offender to undertake positive activities, proposed by the relevant authority, to address the underlying causes of their offending e.g. drug treatment
- The application would be made by the prosecutor alongside prosecution for the criminal offence
- They would have to satisfy the court that the proposed positive activity was available in the area
- For under 16's a Parenting Order could be applied for alongside
- Publicity of the order would be permitted unless reporting restrictions were placed by the court
- Breach would be a criminal offence with a range of sanctions available to the court and a maximum sentence of 5 years in custody

2. Crime Prevention Order

- Designed to stop ASB before it escalates
- Will carry a civil burden of proof – on the balance of probabilities
- Hearsy evidence and the use of professional witnesses would be admissible in court
- Police, local authorities and registered providers of social housing could apply for the injunction
- The power of arrest could be attached to the prohibitions where there is a risk of harm to the victim or community
- Breach must be proved 'beyond reasonable doubt'
- Breach would not be a criminal offence and would not result in a criminal record
- For adults, breach of the injunction would be punished as contempt of court with either a fine or custody
- For under 18's the penalty for breach would be a menu of sanctions including curfews, supervision, activity requirements and detention

4.0 Develop and improve other sanctions for crime and ASB

- 4.1 The Housing Minister has already announced proposals to speed up eviction of the most anti social or criminal tenants from social housing by making a housing-related conviction for an indictable offence, or breach of a court order for ASB mandatory for possession.
- 4.2 The Government is keen to explore how well they can build on existing measures for recovering of fines.
- 4.3 The Home Office is working with the Ministry of Justice (MOJ) on proposals set out in the Sentencing Green Paper on how to increase the use of asset seizure as a sanction for criminal offences and imposing restrictions on travel

overseas.

4.4 Consolidate the tools to deal with place-specific anti social behaviour into:

A two tier Community Protection Order comprising:

- **Level 1** notice issued by practitioners to stop environmental ASB (e.g. graffiti, neighbour noise, accumulations of litter)

- Would require the recipient to desist from their behaviour or 'make good'
- Range of professionals including council and housing association staff would be able to issue an order
- Failure to comply would be a criminal offence
- Would be generally be punishable by a Fixed Penalty Notice (FPN) or if the case was held in court it would be a fine

- **Level 2** power for police and local authorities to restrict the use of places or close properties associated with persistent ASB with criminal sanctions for breach
- Would be given by police and local authority and would not have to be heard in court if it did not close the premises
- Application would be made by Magistrates Court by police or local authority if the area was to be closed
- Would close a premises for up to 3 months regardless of tenure
- Breach would be a criminal offence that would be punishable by an on the spot financial penalty of £50 or arrest and prosecution
- Where the closure was ordered by the court, breach would be punishable by a fine or up to 6 months in prison.

4.5 Simplified police power to direct people away from an area on grounds of anti social behaviour with a **Direction Power**:

- A PC or PCSO will be able to require a person aged 10 or over to leave a specific area and not return for up to 48 hours. The test for the issuing officer will be:
 - That the individual has committed crime, disorder or ASB or is likely to cause or contribute to an occurrence or continuance of crime, disorder or ASB in that area and
 - That giving the direction was necessary to remove or reduce the likelihood of that individual committing crime, disorder or ASB in that area
- The power can also include optional secondary requirements such as requiring the individual to surrender items (such as alcoholic drinks) contributing to their ASB
- The area the individual was required to leave would be defined by the officer issuing the direction. This could mean giving the perpetrator a map with the designated area clearly marked as some police forces do already

- The power will also include the ability to return home unaccompanied young people under the age of 16 subject to appropriate safeguards
- Breach occurs when the request is not complied with – The Home Office is consulting about what sanctions should be

4.6 The proposed changes are summarised below:

Existing System	Proposed Changes
ASBO on Conviction	'Criminal Behaviour Order' – available on conviction for any criminal offence, and including both prohibitions and support to stop future behaviour likely to lead to further anti-social behaviour or criminal offences
ASBO	
Interim ASBO	
ASB Injunction	
Individual Support Order (ISO)	'Crime Prevention Injunction' – a purely civil order with a civil burden of proof, making it much quicker and easier to obtain. The injunction would also have prohibitions and support attached, and a range of civil sanctions for breach.
Intervention Order	
Crack House Closure Order	
Premises Closure Order	
Brothel Closure Order	
Designated Public Place Order	
Special Interim Management Orders	
Gating Orders	
Dog Control Order	
Litter Clearing Notice	
Noise Abatement Notice	
Graffiti/Defacement Removal Notice	Community Protection Order (level 1) – a notice issued by a practitioner stop persistent anti-social behaviour that is affecting quality of life in an area or neighbourhood, with a financial penalty for non-compliance, or other sanctions where relevant e.g. the seizure of noise making equipment.
Direction to Leave	
Dispersal Order	Police 'Direction' power – a power to direct any individual causing or likely to cause crime or disorder away from a particular place, and to confiscate related items

4.7 The Home Office is working with MOJ to:

- Make the informal and out of court tools for dealing with ASB more rehabilitative and restorative
- Develop innovative ways of engaging communities in the Criminal Justice System particularly through Neighbourhood Justice Panels

4.8 The Home office is also considering the benefits of introducing a Community Trigger for persistent ASB that has not been addressed by community safety partners. The Police and Crime Commissioners would hold agencies to

account for their response using their power to 'call in' in a CSP if the action taken is inadequate. The criteria for this trigger is envisaged to be:

- Five individuals from five different households in the same neighbourhood making a complaint about the same issue and no action has been taken or
- The behaviour in question has been reported to the authorities by an individual a minimum of three times and no action has been taken and
- The CSP could reject the complaint if they deemed it to be malicious

5.0 Wider Reform

- 5.1 Police and Crime Commissioners will be introduced in 2012 and will play a key role in the reforms set out in this consultation.
- 5.2 ACPO is proposing to introduce, from 1st April 2011 a simpler system for police forces to record incidents of ASB. This will see 14 categories reduced to three:
- Environmental
 - Nuisance
 - Personal
- 5.3 The Home Office is committed to look for cost effective ways of introducing a single '101' number for non emergency calls and more details will be announced in due course.

6.0 Next Steps

- 6.1 The Safer Sunderland Partnership is currently consulting with a range of partners to ensure comprehensive feedback can be provided to the Home Office on the consultation questions provided.
- 6.2 Initial feedback from partners suggests they welcome the reduction of the toolkit from 18 powers to 5. Any implications for the partnership will be identified once all partners have submitted responses to the consultation.
- 6.3 A full response will be submitted to the Home Office by 3rd May 2011. A report to the Safer Sunderland Partnership on 15th April will outline the partnership's full response to the consultation and also identify any potential implications for the board to consider.

7.0 Recommendation

- 7.1 The committee is requested to note the report.
Where appropriate additional comments raised by members of this committee can be fed into the consultation process.

8.0. Background Papers

More Effective Responses to Anti Social Behaviour

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Reforming the Toolkit

1. What do you think of our proposals for reform? In particular, do you think merging existing powers into the new order proposed is a good idea?
2. Are there other tools and powers for dealing with anti-social behaviour you think should be repealed? If so, why?
3. Do you think these proposals will reduce bureaucracy for the front line professionals? Will they have other benefits as well?
4. Do you think there are risks related to the introduction of any of the new orders?
5. Do you think these proposals risk particular groups being disadvantaged in a disproportionate way? If so, how?
6. Because Community Safety is a non devolved matter in Wales, are there any specific issues there that should be recognised?

Criminal Behaviour Order

1. What do you think of the proposal to create a Criminal Behaviour Order?
2. Thinking of existing civil orders on conviction, are there ways that you think the application process for a Criminal Behaviour Order could be streamlined?
3. What are your views on the proposal to include a report on the person's family circumstances when applying for an order for someone under 16?
4. Are there other civil orders currently available on conviction you think should be incorporated in the Criminal Behaviour Order? (For example the Drinking Banning Order)
5. Should there be minimum and maximum terms for Criminal Behaviour Orders, either for under 18's or for over 18's? If so, what should they be, and should they be different for over or under 18's?
6. Should the legislation include examples of possible positive requirements, to guide applicant authorities and the courts?
7. Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?
8. Do you think the sanctions for breach of the prohibitive elements of the order should be different to those for breach of the positive elements?

9. In comparison to current orders on conviction, what impact do you think the addition of positive requirements to a Criminal Behaviour Order will have on the breach rate?

10. In comparison to current orders on conviction, what do you think the impact would be of the Criminal Behaviour Order on i) costs and ii) offending outcomes?

11. In comparison to current orders on conviction, how many hours, on average, of police and practitioner time do you think it would take to prepare and apply for a Criminal Behaviour Order?

Crime Prevention Injunction

1. What do you think of our proposals to replace the ASBO on application and a range of other court orders for dealing with anti-social individuals with the Crime Prevention Injunction?

2. Which test should the court apply when deciding whether to impose a Crime Prevention Injunction – that the individual's behaviour caused 'harassment, alarm or distress' or the lower threshold of nuisance or annoyance?

3. Do you think the Crime Prevention Injunction should be heard in the County Court or the Magistrates Court?

4. If you think that the injunction should be heard in the Magistrates' Court, do you think the Crime Prevention Injunction for those under the age of 18 should be heard in the Youth Court?

5. Should the Crime Prevention Injunction carry a minimum and/or maximum term. If so, how long should these be, and should they be different for over or under 18's?

6. Should there be a list of possible positive requirements in the primary legislation to provide guidance to judges?

7. Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?

8. What are your views on the proposed breach sanctions for over 18's and for under 18's for the Crime Prevention Injunction?

9. In comparison to current tools, what do you think the impact would be of the Crime Prevention Injunction on i) costs and ii) offending outcomes?

10. What impact do you think the inclusion of positive requirements would have on the Crime Prevention Injunction breach rate?

11. Thinking of other civil injunctions available, how many hours, on average, of police and practitioner time do you think it would take to prepare and apply for a Crime Prevention Injunction?

7. Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?
8. What are your views on the proposed breach sanctions for over 18's and for under 18's for the Crime Prevention Injunction?
9. In comparison to current tools, what do you think the impact would be of the Crime Prevention Injunction on i) costs and ii) offending outcomes?
10. What impact do you think the inclusion of positive requirements would have on the Crime Prevention Injunction breach rate?
11. Thinking of other civil injunctions available, how many hours, on average, of police and practitioner time do you think it would take to prepare and apply for a Crime Prevention Injunction?

The Community Protection Order

1. What do you think of the proposal to bring existing tools for dealing with persistent place related anti-social behaviour together into a single Community Protection Order?
2. Are there problems with the existing tools you think should be addressed in the Community Protection Order?
3. Are there other existing tools you think should be included, such as a Special Interim Management Order?
4. Who should be given the power to use a Level 1 Community Protection Order?
5. In comparison to current tools, what do you think the impact of the Community Protection Order would be on i) costs and ii) offending outcomes?
6. In your area, is there any duplication of current orders issued to deal with the problems tackled by either level of the Community Protection Order? If so, could you indicate the extent of duplication?
7. What impact do you think the introduction of the proposed Community Protection Order would have on the number of orders issued?
8. Thinking current orders to tackle environmental disorder, how many hours do you think it would take to prepare and issue a Level 1 Community Protection Order? Is this more or less than the time taken to issue current notices aimed at tackling the same problems?
9. Thinking of the place related orders that it would replace, how many hours do you think it will take on average to prepare issue and implement a Level 2 Community Protection Order?

The Direction Power

1. What do you think of the proposal to combine these existing police powers for dealing with anti-social behaviour into a single Directions power?
2. Do you think the power should be available to PCSOs as well as police officers?
3. What safeguards could be put in place to ensure that this power is used proportionately and does not discriminate against certain groups, particularly young people?
4. What do you think would be the most appropriate sanction for breach of the new Direction power?
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6. What safeguards could be put in place to ensure that this power is used proportionately and does not discriminate against certain groups, particularly young people?
7. What do you think would be the most appropriate sanction for breach of the new Direction power?

Informal Tools and out of Court Disposals

1. How do you think more restorative and rehabilitative informal tools and out of court disposals could help reduce anti-social behaviour?
2. What are the barriers to communities getting involved in the way agencies use informal and out of court disposals in their area?
2. Are there any other changes to the formal and out of court disposals that you think could help in tackling anti-social behaviour?

The Community Trigger

1. What do you think of the proposal to introduce a duty on Community Safety Partnerships to deal with complaints of persistent anti-social behaviour?
2. Do you think the criteria for the Community Trigger are the right ones? Are there other criteria you think should be added?
3. Do you think this proposal risks particular groups being disadvantaged in a disproportionate way? If so, what measures could be put in place to prevent this?