

Regional Equality and Diversity Partnership

# More Effective Responses to Anti- Social Behaviour

Briefing paper and consultation

## More effective responses to anti-social behaviour – consultation

### Introduction

This paper is an overview of the consultation paper from the Home Office: *More effective responses to anti-social behaviour* picking out the key messages. The full document can be found by following this link <http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/asb-consultation-document?view=Binary>

Following the overview is the consultation questions. These can be found from page 10. There are 50 consultation questions, those which have been felt to be particularly pertinent to equality issues are highlighted in bold.

Please answer as many of the questions that you feel able to do so.

Once all of these are collected in REDP will compile all of your answers in a succinct way enabling us to respond to the consultation in a collective way representing the VCS in the East Midlands. Please send your completed responses to [liz.harrison@redp.org.uk](mailto:liz.harrison@redp.org.uk) by **11<sup>th</sup> April 2011**

### An overview

Last summer the home secretary Theresa May suggested that there was a need to review the tools and powers in place for anti-social behaviour. So there was no surprise to see the proposals put forward in the consultation paper from the Home Office: *More effective responses to anti-social behaviour*.

In the introduction to the consultation, Theresa May explains the need for change and that professionals ‘...need tools that work; that can be enforced; that provide faster, more visible justice for victims and communities; that rehabilitate offenders where possible; and that act as a real deterrent’.

The paper appears to fail in removing the ambiguous distinction between anti-social behaviour and crime and one of the main differences is the ever increasing emphasis on civil burden of proof, positive activities and on injunctions and the removal of ASBO's (Anti-Social Behaviour Order)

The objectives are clearly: to have fewer tools that have more flexibility; a quicker and less expensive process; emphasis should be on the prevention of criminal behaviour where possible and rehabilitation of criminal behaviour where it has already been prosecuted; and allowing the 'local community' to take action and ensuring they have the power to do this. The home secretary states "I want to free professionals to do what they know will work in their area, and ensure they are accountable to the communities they serve rather than bureaucrats in Whitehall."

This briefing looks at what is proposed in the consultation, the implications for protective characteristics and the way those working within the protective characteristics may want to respond to during the consultation.

## **Reviewing the toolkit**

Over the last six months time has been spent reviewing the use of anti-social behaviour tools, a range of sources were used:

- Ministry of Justice statistics on ASBOs
- 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.

The analysis suggests that:

- Use of ASBOs has fallen by more than half since 2005
- ASBOs are now more likely to be linked to a criminal conviction
- Breach rate for ASBOs 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

## **Key points**

This is a process of consolidation of both powers and what is perceived to work – fewer powers with wider uses

The consultation includes 50 questions and the process ends on 3 May 2011 with a view to legislation being introduced in the autumn and implemented mid-2012

The proposed Criminal Behaviour Order will mean the more Anti-Social Behaviour will be dealt with as a crime 'Where the behaviour is criminal it should be dealt with as such...'

Individual and place specific Anti-Social Behaviour will be dealt with separately

The definition of Anti-Social Behaviour for injunctions, for which courts will use and the term of orders in particular are still left unresolved

Stand-alone ASBOs are abolished

Injunctions previously only available to housing providers are opened up to the police and local authorities and provision is made for their use with 10-17-year-olds

ASBOs on conviction, known as CRASBOs will be replaced with a Criminal Behaviour Order where individuals have been convicted of criminal Anti-Social Behaviour. A Criminal Behaviour Order can be applied for by the CPS or ordered by the court and can include positive requirements as well as prohibitions

A Crime Prevention Injunction can be applied for when individual behaviour could become criminal, (replacing ASBOs and ASBIs)

A Community Protection Order can be applied for when place-specific Anti-Social Behaviour occurs (replacing, in particular, crack house and premises closure orders)

A single police Direction power will bring together the directions to leave and dispersal orders

Reference is made to the Department for Communities and Local Government (DCLG) proposal for social housing tenants that a housing-related conviction or breach of an Anti-Social Behaviour order will be a mandatory ground for possession

Other sanctions that could be linked to Anti-Social Behaviour include improvement to the system for recovering fines, asset seizure and restrictions on overseas travel

There is an emphasis on the continuing use of 'out-of court' powers such as restorative justice and Acceptable Behaviour Contracts (ABCs), which should become 'more rehabilitative and restorative'

Communities can 'trigger' a Community Safety Partnership to investigate Anti-Social Behaviour in their area and, if the Community Safety Partnership fails to respond, the Police and Crime Commissioner (PCC) can 'call in' the Community Safety Partnership.

## **What is going?**

As predicted, almost everything as we knew it is going in name, but not necessarily in use:

ASBOs – stand-alone; on conviction and interim

ASBIs Individual Support Orders

Intervention Orders

Crack House Closure Orders

Premises Closure Orders

Brothel Closure Orders

Designated Public Place Orders

Gating Orders

Dog Control Orders

Litter Clearing Orders

Graffiti Notices

Directions to Leave

Dispersal Orders.

The exceptions, for the moment, appear to be the two most recent powers: Drink Banning Orders and the new gang injunctions.

Apart from distancing the new government from the terminology of the old government, the reasons are based on recent research and consultation with practitioners:

There are too many tools that mirror the type of Anti-Social Behaviour rather than targeting perpetrators and supporting victims and the public

Some of the powers are too bureaucratic and slow ASBOs have lost credibility; used less and breached more

The tools to deal with the underlying behaviours are rarely used.

### **What is coming?**

Again the reasons for the changes are well rehearsed in recent government speeches and announcements:

Anti Social Behaviour is seen to still be a significant concern to individuals and communities

The British Crime Survey indicates up to 75% of Anti-Social Behaviour goes unreported

The response needs to be locally led and accountable to PCCs

Standards of service are variable

Seeking long-term solutions can miss the opportunity for short-term interventions

The response to Anti Social Behaviour is perceived to be ineffective

Treating ASBOs as a last resort leaves victims exposed; ASBIs have bridged the gap for housing providers.

### **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:
    - 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**
    - 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 eg 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 16s 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 Injunction**

- Designed to stop ASB before it escalates
- Will carry a civil burden of proof – on the balance of probabilities
  - Hearsay 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 18s, the penalty for breach would be a menu of sanctions, including curfews, supervision, activity requirements and detention

### **Develop and improve others sanctions for crime and ASB**

The Housing Minister has already announced proposals to speed up eviction of the most antisocial 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.

The Government is keen to explore how they can build on existing measures for recovering of fines.

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.

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

**1** A two-tier **Community Protection Order** comprising:

**Level 1** notice issued by practitioners to stop environmental ASB (eg 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 three months regardless of the tenure
- Breach would be a criminal offence that would be punishable by an on the spot financial penalty for £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

**2** 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

## Consultation

Set out below are the 50 questions from the consultation document with those felt to be particularly pertinent to equality issues highlighted in bold. The page number and chapter highlighted under each question is in relation to the original document and not the briefing above.

Please answer as many of the questions that you feel able to do so. Once all of these are collected in REDP will compile all of your answers in a succinct way enabling us to respond to the consultation in a collective way representing the VCS in the East Midlands

Can all responses please be back by the **11<sup>th</sup> April** and returned to [liz.harrison@lcil.org.uk](mailto:liz.harrison@lcil.org.uk)

## About your Organisation

Please give the name of your organisation

## Reforming the toolkit

*P14. Chapter 4. More efficient responses to anti social behaviour*

1 What do you think of our proposals for reform? In particular, do you think merging existing powers into the new orders proposed is a good idea?

Do you think that the proposed changes will:

- Be more effective at tackling ASB than the current approaches
- Not make a difference to tackling ASB, the problem will be the same
- Be less effective than the current approaches
- Don't know

2 Are there other tools and powers for dealing with antisocial behaviour you think should be repealed? If so, why?

Overall, do you agree / disagree that:

The new proposals will lower bureaucracy making it quicker for the police or local agencies to act to protect victims and communities

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

The new proposals will allow a flexible approach to tackle specific local issues

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

The new proposals will provide measures that are more effective at deterring perpetrators

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

The new proposals include measures that are more effective at rehabilitating persistent offenders

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

The new proposals will allow people in the community to shape the way ASB is dealt with in their area

- Agree
- Disagree
- Neither agree nor disagree
- Don't know

3 Please list any other benefits you see resulting from the new proposals:

**4 Do you think there are risks related to the introduction of any of the new orders?**

- Yes
- No
- Don't know

Please explain your answers

**5 Do you think these proposals risk particular groups being disadvantaged in a disproportionate way? If so, how?**

Which, if any, of the following factors might lead people to be affected differently?

Age

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

Disability

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

## Gender

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

## Gender Identity

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

## Race

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

## Religion or belief

- Greater positive impact
- No greater impact

Greater negative impact

Don't know

#### Sexual Orientation

Greater positive impact

No greater impact

Greater negative impact

Don't know

Other (please specify) \_\_\_\_\_ -

Greater positive impact

No greater impact

Greater negative impact

Don't know

Please explain your responses

6 Because community safety is a non-devolved matter in Wales, are there any specific issues there that should be recognised?

## **Criminal Behaviour Orders**

*P15. Chapter 4.1. More efficient responses to anti social behaviour*

1 What do you think of the proposal to create a Criminal Behaviour Order?

- Be more effective at tackling ASB than the current approaches
- Not make a difference to tackling ASB, the problem will be the same
- Be less effective than the current approaches
- Don't know

Please explain your answer

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?**

- Agree
- Disagree

- Neither agree nor disagree
- Don't know

Please explain your answers

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-18s or for over-18s? If so, what should they be, and should they be different for over- or under-18s?

For over 18s

- The minimum term should be prescribed but not the maximum term, allowing the order to be applied for as long as necessary
- The maximum term should be prescribed to guide the courts but not the minimum term
- Neither minimum nor maximum terms should be prescribed, allowing the courts to decide
- Both minimum and maximum terms should be prescribed
- Other (please specify)

**For under 18s**

- The minimum term should be prescribed but not the maximum term, allowing the order to be applied for as long as necessary

- The maximum term should be prescribed to guide the courts but not the minimum term
- Neither minimum nor maximum terms should be prescribed, allowing the courts to decide
- Both minimum and maximum terms should be prescribed
- Other (please specify)

If you answered that the orders should have minimum and/or maximum terms, please provide further information on how long you think they should be, and whether they should be different for over or under 18s

6 Should the legislation include examples of possible positive requirements, to guide applicant authorities and the courts?

- Yes
- No
- Don't know

Please explain your answer to question

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?

- Maximum penalties for breach should be the same for prohibitive and positive elements
- Maximum penalties for breach should be custody for prohibitive elements and a fine for positive elements
- Other (please specify)

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 Injunctions**

*P19. Chapter 4.2. More efficient responses to anti social behaviour*

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?

- Be more effective at tackling ASB than the current approaches
- Not make a difference to tackling ASB, the problem will be the same

- Be less effective than the current approaches
- Don't know

Please explain your answers

2 In your view, which of the proposed tests do you think the court should use when deciding whether to award a Crime Prevention Injunction?

- that the individual's behaviour caused 'harassment, alarm or distress to one or more persons not of the same household'
- that the individual's behaviour caused or was likely to cause 'nuisance or annoyance to a person not of the same household'
- don't know
- Other (please specify)

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

- in the County Court
- in the Magistrates' Court
- Don't know

Please explain your answer to question

**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?**

- Yes, it should be heard in the Youth Court
- No, it should be the same as for over 18's
- Don't know
- Injunctions should be heard in the County Court
- Other (please specify)

**5) Please indicate whether you think there should be maximum and/or minimum terms for Crime Prevention Injunction (for under 18s and for over 18s). Please tick one option for each age group:**

For over 18s

- The minimum term should be prescribed but not the maximum term, allowing the order to be applied for as long as necessary
- The maximum term should be prescribed to guide the courts but not the minimum term

- Neither minimum nor maximum terms should be prescribed, allowing the courts to decide
- Both minimum and maximum terms should be prescribed
- Other (please specify)

For under 18s

- The minimum term should be prescribed but not the maximum term, allowing the order to be applied for as long as necessary
- The maximum term should be prescribed to guide the courts but not the minimum term
- Neither minimum nor maximum terms should be prescribed, allowing the courts to decide
- Both minimum and maximum terms should be prescribed
- Other (please specify)

If you answered that the orders should have minimum and/or maximum terms, please provide further information on how long you think they should be, and whether they should be different for over or under 18s

6) Should the legislation include examples of positive requirements, to guide applicant authorities and the courts?

- Yes

- No
- Don't know

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-18s and for under-18s for the Crime Prevention Injunction?

- Yes
- No
- Don't know

Please explain your answer to question

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?

- Yes
- No
- Don't know

Please explain your answer to question

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?

### **Community Protection Order**

*P21. Chapter 4.3. More efficient responses to anti social behaviour*

1 Do think that the Community Protection Order will:

- Be more effective at tackling ASB than the current approaches
- Not make a difference to tackling ASB, the problem will be the same
- Be less effective than the current approaches
- Don't know

Please explain your answer to question

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?**

- Police officers
- PCSOs
- Community Safety Accredited Officers
- Designated officers of the Local Authority
- Environmental Health Officers
- Don't know
- Other (please specify)

Please explain your answer

**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 of 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

*P23. Chapter 4.4. More efficient responses to anti social behaviour*

1 Do think that the Directions Power will:

- Be more effective at tackling ASB than the current approaches
- Not make a difference to tackling ASB, the problem will be the same
- Be less effective than the current approaches
- Don't know

Please explain your answer to question

2 Do you think the power should be available to PCSOs as well as police officers?

- Yes
- No
- Don't know

Please explain your answer to question

**3 Some people might be concerned that the Directions Power could be unfairly used against certain groups. Which, if any, of the following factors might lead people to be unfairly affected?**

- Age
- Disability
- Gender

- Gender Identity
- Race
- Religion or belief
- Sexual Orientation
- Other (please specify)

Please explain your answer

**Please tell us of any measures you think could be put in place to prevent the groups you indicated above from being unfairly affected by the Directions Power**

4 What do you think would be the most appropriate sanction for breach of the new Direction power?

- To make it a civil offence
- To make it a criminal offence
- Don't know

Other (please specify)

5 Thinking of existing powers to leave a locality, how much police and local authority time do you think would be saved by removing the requirement of having a designated area from which to move individuals or groups from?

6 What do you think the impact would be of removing the need for a pre-designated area on the volume of Directions issued?

7 Do you expect there to be a change in the use of the Direction power (compared to the use of existing tools)? If so, what do you estimate the change would be and what proportion of the Direction powers used will be aimed at those under 18?

### **Out-of-court disposals**

*P24. Chapter 4.5. More efficient responses to anti social behaviour*

1 Do you think more restorative and rehabilitative informal tools and out-of-court disposals could help reduce anti-social behaviour?

Yes

- No
- Don't know

Please explain your answer to question

**2 Do you think there are currently barriers to communities getting involved in the way agencies use informal and out of court disposals in their area?**

- Yes
- No
- Don't know

Please explain your answer to question

3 Are there any other changes to the informal and out of- court disposals that you think could help in tackling anti-social behaviour?

**The Community Trigger**

*P26. Chapter 4.6. More efficient responses to anti social behaviour*

**1 How do you think the Community Trigger might affect how ASB is dealt with in your area? Might it:**

- Improve how ASB is dealt with

- Make no difference to how ASB is dealt with
- Make the situation of how ASB is dealt with worse
- Don't know

Please explain your answer to question

**2 Do you agree / disagree that the criteria outlined above are the right ones for the Community Trigger:**

- Agree
- Disagree
- Don't know

Please explain your answer to question

3 In your view, could the Community Trigger have a greater impact, either positive or negative, on certain groups? Please indicate if any of the following factors might lead this to happen:

Age

- Greater positive impact
- No greater impact

Greater negative impact

Don't know

Disability

Greater positive impact

No greater impact

Greater negative impact

Don't know

Gender

Greater positive impact

No greater impact

Greater negative impact

Don't know

Gender Identity

Greater positive impact

No greater impact

Greater negative impact

Don't know

Race

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

Religion or belief

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

Sexual Orientation

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

Other (please specify)

- Greater positive impact
- No greater impact
- Greater negative impact
- Don't know

**4) Please tell us of any measures you think could be put in place to prevent the groups you indicated above from being negatively affected by the Community Trigger:**

**Please add anything else you would like to comment on below:**