

New ASB Powers

1. On February 7th the Government released the 31 page consultation paper 'More effective responses to anti social behaviour' which runs until 3rd May 2011. This follows the Ministry of Justice green paper 'Breaking the Cycle' and an announcement on January 11th about the proposed introduction of a new additional mandatory ground for possession for anti social behaviour and an extension of probationary tenancies to cover all social landlords.
2. In January the Housing Minister announced a review of probationary tenancies and the proposal to introduce a new mandatory possession ground which would be available to all social landlords. At the time of writing this report a date for the introduction of these new measures is not known. This measure is complemented by £300,000 of renewed funding for a new central team within the Chartered Institute of Housing to help tenants and landlords tackle anti social behaviour.
3. Further reform is contained in the Ministry of Justice (MoJ) green paper 'Breaking the Cycle' which suggests changes to Penalty Notices for Disorder to make them more rehabilitative and the move to more out-of-court disposals for young people to include swift restorative sanctions as well as encouraging parents to take more responsibility.
4. This report covers the new proposals and provides a draft response to the questions posed in the consultation document.

The new ASB proposals announced in February include:

- a) Repealing the ASBO and other court orders and replacing them with new tools.
 - b) Inclusion of 'incentives' within the orders.
 - c) Combining current sanctions
 - d) Streamlining dispersal powers
 - e) Including restorative and rehabilitation elements to the new orders
 - f) Introducing a community trigger that requires agencies to deal with residents concerns about ASB.
 - g) Increase the use of asset seizure (proposals included in the MoJ Green Paper)
5. The Home Office press release began:
"Councils, Police and other local agencies will be forced to support victims of persistent anti social behaviour as part of plans to give them better tools and powers". James Brokenshire.

The proposed orders are:

a) **Criminal Behaviour Order**

An order on conviction for any criminal offence that will include prohibitions and support. Breach of this order will carry a maximum prison term of up to five years imprisonment.

This is a replacement for the CRASBO with the inclusion of a requirement for individuals to undertake positive activities to address their anti social behaviour and the underlying causes of their offending for example drug treatment. It is not clear whether we will retain DRR (Drug Rehabilitation Requirement)/ARRs(Alcohol Rehabilitation Requirement) nor ASROs (Alcohol Substance Misuse Requirement), the voluntary ATR's (Alcohol Treatment Requirement) and compulsory ASAR (Alcohol Specified Activity Requirement).

b) **Crime Prevention Injunction**

Civil order with the civil burden of proof, which could have prohibitions and support attached. Adult breach could result in prison or a fine, under 18's breach could result in a sanction from a menu such as curfew/supervision/detention.

Similar to an ASBO but only available for the age range 10+, sought in the civil court with the civil burden of proof with amended breach terms. Intended to combine an Anti Social Behaviour Injunction, Intervention Order and Individual Support Order.

c) **Community Protection Order (Level 1)**

For local authorities this is a notice issued to stop persistent ASB, with a financial penalty attached for non compliance or other sanctions such as seizure of noise making equipment.

New form of notice issued by 'a practitioner' to stop environmental ASB for example graffiti, neighbour noise, accumulations of litter. Combination of Litter Clearing Notices, Graffiti/defacement Removal Notices, and could be used as an alternative to Noise Abatement Notices but also providing a financial penalty for non compliance and other sanctions the example used is the seizure of noise making equipment.

d) **Community Protection Order (Level 2)**

Police and local authority power to restrict use of places or apply to the courts to close a property linked with persistent ASB

Combination of Dog Control Order, Gating Order, Premise Closure Order, Crack House Closure and Brothel Closure Order.

e) **Police 'Direction' power**

The power to direct, any individual causing or likely to cause crime or disorder away from a particular place and to confiscate related items such as alcohol.

This is a combination of a section 27 notice and an alcohol confiscation.

f) **Community Trigger**

Imposes a duty on statutory partners in a CSP to take action in cases where victims or communities have raised the same issue over and over again and where local agencies have failed to respond.

Similar process to the Councillor Call for Action however the Police and Crime Commissioner will hold agencies to account.

6. The questions we are being asked in the consultation follow with a draft response for partners to consider:

Reforming the toolkit

Q1. What do you think of the proposals for reform? In particular do you think merging existing powers into the new orders proposed is a good idea?

A We welcome the inclusion of restorative and rehabilitative measures and the recognition of the important role played by Registered Social Landlords in the new proposals. We are concerned that combining a number of measures will reduce our ability to choose an appropriate sanction and/or support measure for individuals who present with a range of different circumstances. It is not clear from the document whether we will retain the current very useful DRR/ARRs, ASROs, ATR's and ASARs.

Q2 Are there other tools and powers for dealing with anti social behaviour that you think should be repealed? If so why?

A As a partnership we made a decision not to use Curfew Orders as they apply indiscriminately to all young people not just those causing a problem in an area. We would support their repeal. We also have not used Drink Banning Orders and would be comfortable seeing these repealed.

Q3 Do you think these proposals will reduce bureaucracy for front line professional? Will they have other benefits as well?

It is not clear how these proposed measures will reduce bureaucracy as the current ASBOs are civil orders and it is relatively easy to compile a case for presentation to court. Problems do occur when the court cannot process the order because legal representation has not been sought, or the order is being defended however this has been addressed by the introduction of an Interim Order. To date we have only had one interim order that did not progress to a full order in due course.

We cannot see any other benefits of the new proposals. The court process particularly around possession cases generates it's own bureaucracy and this has already been highlighted as an issue that needs to be addressed by the Minister for Housing.

Q4 Do you think that there are risks related to the introduction of any of the new orders?

An ASBO/CRASBO is a very effective tool that should not be repealed but we do not see any particular risks in changing the name other than by combining a range of options may reduce effectiveness and ability to tailor an order to suit needs.

Q5 Do you think these proposals risk particular groups being disadvantaged in a disproportionate way? If so how?

A None that we can see.

Q6 Because community safety is a non-devolved matter in Wales are there any specific issues there that should be addressed?

A No comment.

The Criminal Behaviour Order

Q1 What do you think of the proposal to create a Criminal Behaviour Order?

A Like a CRASBO this could be a useful tool.

Q2 Thinking of existing civil orders on conviction, are there ways that you think the application process for a CBO could be streamlined?

A Current process for CRASBOs works well for application. If the Court give an order themselves or amend an order they often forget to tell us so we are unable to effectively monitor breach. We are not convinced that it is appropriate for the court to add sanctions in this way without an application agreed by the Police/LA.

Q3 What are your views on the proposal to include a report on the families circumstances when applying for an order for someone under 16?

We would do this for all under 16s as we ask for a Parenting Order alongside all ASBO applications. We see this as best practice.

Q4 Are there any civil orders currently available on conviction you think should be incorporated in the CBO? For example the Drink Banning Order?

A We have not found Drink Banning Orders useful. We believe that it is better to have a menu of orders to choose from rather than combining them into one order which runs the risk of diluting our ability to provide bespoke sanctions.

Q5 Should there be minimum and maximum terms for CBOs, either for under 18s or for over 18S? If so what should they be, and should they be different for under 18s?

A The current sanctions for ASBO/CRASBOs work well and should be retained.

Q6 Should the legislation include examples of positive requirements, to guide applicant authorities and the Courts?

A We don't believe that this will be helpful as provision will be different across the country therefore the examples provided may not be available or necessary in some areas and could prove misleading.

Q7 Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?

A See the answer to question 4

Q8 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?

A Yes

Q9 In comparison to current orders on conviction, what impact do you think the addition of positive requirements to a CBO will have on the breach rate?

A Limited.

Q10 In comparison to current orders on conviction, what do you think the impact would be on the CBO on i) costs and ii) offending outcomes?

A Impact on costs would be minimal CRASBOs are not expensive to apply for. Offending outcomes are difficult to define however this change is likely to have limited difference and could be achieved by amending the CRASBO to include restorative/rehabilitative requirements made up from orders already available.

Q11. In comparison to current orders on conviction, how many hours, on average, of police and practitioners time do you think it would take to prepare and apply for a CBO?

A Likely to be the same. CRASBOs are quick and easy to apply for.

The crime prevention injunction

Q1 What do you think of our proposals to replace the ASBO on application and a range of Court orders for dealing with anti-social individuals with the Crime Prevention Injunction?

A These orders tend to be heard together anyway it is unlikely to have much impact.

Q2 Which test should the Court apply when deciding whether to impose a CPI – that the individual's behaviour caused 'harassment, alarm or distress' or the lower threshold of 'nuisance or annoyance'?

A Nuisance, annoyance or distress.

Q3 Do you think the CPI should be heard in the County Court or the Magistrates Court?

A Magistrates Court however we have had ASBOs heard in the County Court accompanying a possession hearing.

Q4 If you think the injunction should be heard in the Magistrates' Court, do you think the CPI for those under 18s should be heard in the Youth Court?

A Yes

Q5 Should the CPI carry a minimum and/or maximum term? If so, how long should these be, and should they differ for over or under 18's?

- A Maximum term of 5 years is appropriate. Given that they accompany a criminal conviction the sanction should have the same range for all age groups.
- Q6 Should there be a list of possible positive requirements in the primary legislation to provide guidance to Judges?
- A No. The requirements should be based on a PSR which should cover appropriate provision requirements.
- Q7 Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated into the order?
- A In the past we have effectively used a Fire Service activity called LIFE for young fire setters and YCAP was particularly effective in enabling us to offer alternative activities for young people. With the reduction in SSC and the loss of YCAP this is no longer available so it would be pointless incorporating such activities into an order.
- Q8 What are your views on the proposed breach sanctions for over 18s and for under 18s for the CPI?
- A See the answer to Q5.
- Q9 In comparison to current tools, what to you think the impact would be of the CPI on i) costs and ii) offending outcomes?
- A Unlikely to be any different.
- Q10 What impact do you think the inclusion of positive requirements would have on the CPI breach rate?
- A Limited but would still welcome their inclusion for the benefit they may provide for the perpetrator in the long term.
- Q11 Thinking of other civil injunctions available, how many hours, on average, of police and practitioners time do you think it would take to prepare and apply for a CPI?
- A Similar to current process for CRASBO's if the burden of evidence was reduced.

The Community Protection Order

- Q1 What do you think of the proposal to bring existing tools for dealing with persistent place-related anti-social behaviour together into a single CPO?

- A Unlikely to make much of a difference. We have used a PCO with good effect and recovered costs from the landlord. Again, having a menu of tools such as we currently have enables us to take the most appropriate action for the particular problem, we fear we will lose effectiveness and will dilute powers by combining orders in this way.
- A2 Are there problems with the existing tools you think should be addressed in the CPO?
- A No
- Q3 Are there existing tools you think should be included, such as a Special Interim Management Order?
- A See answer to Q1
- Q4 Who should be given the power to use a Level 1 CPO?
- A All Community Safety Accredited officers, Environmental Health Officers and other enforcement officers working in the local authority and PCSOs. This could be achieved by according the power to all Local Authorities who would then use their formal schemes of delegation to distribute the power to appropriate officers in accordance with the localism principle.
- Q5 In comparison to current tools, what do you think the impact of the CPO would be on i) cost and ii) offending?
- A Similar if not the same as the impact of the current sanctions if used correctly.
- Q6 In your area, is there any duplication of current orders issued to deal with the problems tackled by either level of the CPO? If so could you indicate the extent of the duplication?
- A All council enforcement sanctions are recorded on a shared data base which in turn is checked against the police system by staff in the multi agency ASB team. Monthly multi agency operational meetings Joint Action Groups are held and this avoids duplication.
- Q7 What impact do you think the introduction of the proposed CPO would have on the number of orders issued?
- A None
- Q8 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?

A Likely to be the same.

Q9 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 CPO?

A Likely to be the same, the more serious incidents that would previously have required a PCO will require the same level of evidence and preparation that would be necessary to convince the court to deprive someone of their home.

The Direction Power

Q1 What do you think of the proposal to combine these existing police powers for dealing with anti social behaviour into a single Direction Power?

A Streamlining these various orders into one power will be helpful.

Q2 Do you think the power should be available to PCSOs as well as Police Officers?

A Yes and to Community Safety Accredited local authority enforcement officers.

Q3 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?

A All section 27 notices and AS 13 forms issued by Police and Council officers are assessed and recorded by the multi agency ASB team. Any that have been inappropriately given out are returned to the sergeant or supervisor. This power should be part of the evidence gathering process and should have robust guidelines incorporated to ensure that it is used proportionately and does not discriminate against a particular group.

Q4 What do you think would be the most appropriate sanction for breach of the new Direction power?

A Arrest then FPN.

Q5 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 from?

A Little impact: the proposals would act in the same way that section 27 notices do now, so depends on the area where they are given out and the ability to enforce non return.

Q6 What do you think the impact would be of removing the need for a pre-designated area on the volume of directions issued?

A Little impact in our area we tend to use section 27s more than we use Dispersal Orders.

Q7 Do you expect there to be a change in the use of the Direction power (compared to the use of the existing tools)? If so, what do you estimate the change would be and what proportion of the Direction powers used would be aimed at those under 18?

A Will be used in the same way that we currently use section 27s and AS13s.

Informal tools and out of court disposals

Q1 How do you think more restorative and rehabilitative informal tools and out of court disposals could help to reduce anti social behaviour?

A The provision of YCAP funding enabled us to provide diversionary activity in areas of need and has had a considerable impact on the significant crime reductions we have enjoyed. Without additional resources such as those provided by YCAP and in the light of government cuts to the public sector this cannot be sustained.

Q2 What are the barriers to communities getting involved in the way agencies use informal out of court disposals in their area?

A Lack of knowledge of the restorative justice panels running in our area and in some cases an unwillingness to participate.

Q3 Are there any other changes to the informal and out of court disposals that you think could help in tackling anti social behaviour?

A In our area we use community payback and the YOS to repair damage caused by ASB. We have had young people cleaning off their own graffiti and we make sure it is done on a Friday or Saturday evening impinging on their leisure time and ensuring that their peers see that it's no badge of honour.

The Community Trigger

Q1 What do you think of the proposal to introduce a duty on Community Safety Partnerships to deal with complaints of ASB?

A Would have little impact in our area we already have the Councillor Call for Action embedded which ensures that should any request for help not be dealt with it would be brought before the partnership – in practice this has not been necessary, as all customer requests are dealt with.

Q2 Do you think the criteria for the Community Trigger are the right ones? Are there other criteria you think should be added?

A The proposed criteria would not be onerous for our partnership and is less stringent than the current Councillor Call for Action.

Q3 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?

A So long as reporting mechanisms are available in different forms for example web, phone, in person then this should not disadvantage particular groups more.

7. Members are asked to consider the draft responses to the questions posed and submit any further comments to the Community Safety Manager no later than 1st April 2011. Please send comments to marilyn.davies@stockton.gov.uk

Community Safety Manager
11th March 2011