

## **Putting Victims First – More effective responses to anti-social behaviour – Government White Paper on ASB Powers**

### **1. BACKGROUND**

- 1.1. The government published the *Putting Victims First* White Paper in May 2012. The paper sets out how the Government intend to implement changes aimed at improving the response to anti-social behaviour. The White Paper aims to:
- Improve the understanding of the needs of victims, including those at high risk
  - Provide frontline professionals with more freedom to do what they know works
  - Empower communities to get involved in tackling anti-social behaviour, including giving victims and communities the power to ensure action is taken to deal with persistent anti-social behaviour via the 'community trigger'
  - Make it easier to demonstrate in court the harm victims are suffering
  - Provide professionals with quicker, formal powers, intended to be more effective
  - Provide a faster eviction process for the most anti-social tenants
  - Tackle underlying issues that drive antisocial behaviour, such as drink and drugs, mental health issues, troubled family backgrounds and irresponsible dog ownership.
- 1.2. This report provides an overview of the White Paper highlighting the key changes and a number of issues that the partnership may wish to consider.

### **2. OVERVIEW**

- 2.1. The definition of Anti-social behaviour (ASB) is:

*Behaviour which caused or is likely to cause harassment, alarm or distress to one or more persons not of the same household as the perpetrator(s). (Crime and Disorder Act 1998)*

- 2.1 The Government has emphasised in the past the need to increase the focus on the needs of victims of anti-social behaviour, and many of the measures within the White Paper aim to deliver on this commitment. The measures aim to address the perceived need for a quicker response, including where the solution involves the use of 'formal' measures as well as providing mechanisms to force a response to issues raised by victims. There is a particular focus on vulnerable victims.
- 2.2 The proposals within the White Paper continue the Government's localism theme with an emphasis on a locally tailored response to ASB. This includes increasing the freedom for professionals to use their judgement in co-ordinating a response to ASB, ensuring that the response is overseen by the Police and Crime Commissioner.
- 2.3 The proposals include:
- Repealing the Anti-Social Behaviour Order and other court orders, replacing them with two new tools that bring together restrictions on future behaviour and support to address underlying problems
  - Ensuring there are powerful incentives on perpetrators to stop behaving anti-socially
  - Bringing together many of the existing tools for dealing with place-specific ASB
  - Bringing together existing Police dispersal powers for ASB into a single Police power
  - Making the informal and out-of-court tools for dealing with ASB more rehabilitative and restorative

- Introducing a Community Trigger that gives victims and communities the right to require agencies to deal with persistent ASB.

### **3. VICTIM FOCUSED RESPONSE TO ASB**

- 3.1. The ASB call handling pilots that were trialled in 8 Police force areas are outlined within the White Paper. The pilots considered the identification of vulnerable victims and brought local partners together to manage high-risk cases. It could be argued that this approach is already in existence within Stockton through the established repeat callers process and the on-going monitoring through the Joint Action Groups (JAGs). Alongside the 8 pilots a simplification of the recording of Police ASB incidents was introduced nationally placing a greater emphasis on assessing the impact of the behaviour on the victim. As a result of this all incidents are risk assessed and all Police forces will be encouraged to use the findings from the call handling pilots to develop their response to vulnerable and repeat victims.
- 3.2 More effective management of cases has also been identified within the White Paper as a means of ensuring that agencies work better together to tackle ASB. The government is keen for a multi-agency approach similar to that of the MARAC process, to be used in relation to high risk ASB cases. Stockton has already adopted a multi-agency approach to problem solving complex ASB cases in the past and a risk assessment is completed for each caller/victim to determine the level of risk and help identify what additional support is required.
- 3.3 The White Paper highlights the use of informal interventions such as Acceptable Behaviour Contracts (ABCs) as a means to set boundaries for acceptable behaviour. The ASB team currently use ABCs in an attempt to modify and improve behaviour prior to exploring other enforcement options.

### **4. EMPOWERING COMMUNITIES AND PROTECTING VICTIMS**

- 4.1. The White Paper highlights the introduction of a 'community trigger' which provides victims and communities the right to demand action from agencies where they have repeatedly ignored complaints about ASB.
- 4.1. The community trigger places a duty on councils, Police and health services to deal jointly with complaints from the public where no action has previously been taken. The White Paper does however, highlight that vexatious or malicious complaints could be rejected.
- 4.2. The White Paper does not detail how local areas are to implement the trigger. The Government is currently working with a number of areas to test the trigger including Manchester, West Lindsey and Brighton and Hove. An example of how Manchester City Council, Greater Manchester Police and partners will apply the trigger is included on page 19 of the White Paper. It could be argued that within Stockton the existing repeat callers process already acts as a 'community trigger' with three or more calls highlighted through the JAGs and subsequent action taken.
- 4.3. It is clearly stated that local areas will be able to decide how the 'community trigger' will be implemented, although there is still a requirement to publish thresholds, criteria and processes as well as the reporting mechanisms.
- 4.4. The Government is also proposing more widespread use of Community Harm Statements to present evidence on harm on communities to court in a consistent way. Through harm statements it is hoped that the community will have a stronger voice ensuring that the damage caused by ASB is properly demonstrated in court when landlords take legal action. The Chartered Institute of Housing was funded to look into the development of a template in partnership with Police, Social Landlords

and solicitors. Further information and guidance on this can be found at [www.cih.org](http://www.cih.org)

## 5. PROVIDING THE TOOLS FOR PROFESSIONALS

- 5.1. The current 19 tools available for dealing with ASB on a formal basis are to be reduced to 6 powers. The Government believes that this will ensure professionals will be able to take action quickly which will significantly reduce the long term impact of ASB.
- 5.2 In order to ensure that proposals are effective and to enable professionals to feed in their views the Government will be publishing a draft bill to enable full pre-legislative scrutiny of the proposed powers. The 6 new powers outlined in the White Paper are:
- 5.3 **Crime Prevention Injunction:** This will be a civil order which can be obtained quickly in the County Courts for adults and in the Juvenile Court for 10-17 year olds. The injunction would be obtained on the civil burden of proof (the balance of probabilities) for instances where a person has engaged in conduct which is capable of causing nuisance or annoyance. Interim orders can also be obtained without notice in the absence of the defendant.
- 5.4 There is no minimum or maximum length of the injunction, which can only have the power of arrest attached to it if the individual has used or threatened violence or if there was a risk of significant harm to the victim. For an adult, breach of the injunction would be punishable along the same lines as contempt of court, punishment could include up to two years in prison. A breach would not be considered as a criminal offence. For a child aged 10-17 a breach may result in a curfew, activity or supervision requirement. In cases where there are multiple breaches that cause serious harm this could result in custody for up to three months.
- 5.5 The range of agencies that can use the injunction will be expanded which will also increase the range of circumstances in which an injunction can be used. An injunction will include both prohibitions on behaviour and positive requirements to change behaviour in the longer term. A further key difference is that any breach of an ASBO is an arrestable offence.
- 5.6 Although the Crime Prevention Injunction bears some similarities to the current Anti-Social Behaviour Order a key difference is in relation to how a breach is dealt with. Currently breach of an ASBO is classed as a criminal offence whereas this will not be the case for an injunction. This will have a significant impact on the management of individuals on an order.
- 5.7 **Criminal Behaviour Order:** The Criminal Behaviour Order will be a new civil order which will run alongside a criminal conviction. This order could be requested by the Police or council and would be available where it would assist in the prevention of harassment, alarm or distress being caused to members of the public.
- 5.8 The minimum length of the order will be for a year for under-18's and a maximum term of three years. The minimum length of an order for adults will be two years with no maximum term imposed.
- 5.9 There will be criminal sanctions for a breach of this order which will carry a maximum sentence of five years in prison. The Police will have the flexibility to determine the seriousness of any first breach and how it should be dealt with which could include informal measures and an out of court disposal.

- 5.10 As with a Crime Prevention Injunction there would be the ability to include both prohibitions on behaviour as well as positive requirements to change behaviour in the long term.
- 5.11 As with the Crime Prevention Injunction in relation to the ASBO there are clear similarities between a Criminal Behaviour Order and the current Criminal Anti-Social Behaviour Order.
- 5.12 **Directions Power:** The Police will be given a new flexible Directions Power which will bring together a range of dispersal powers. This will replace the current Section 30 ASB Act Dispersal Powers and Section 27 Violent Crime Reduction Act-Direction to Leave Powers.
- 5.13 The Directions Power will allow a Police Officer or a Police Community Support Officer (PCSO) to require a person who has committed or is likely to commit ASB to leave an area and not return within 48 hours.
- 5.14 With this power there will be no need to designate an area in advance and it could be used on public land or in common areas of private land with the landowners consent. Failure to comply with the direction would be a criminal offence with a maximum penalty of a £2,500 fine and/or three months in prison. Failure to hand over an item would also be considered a criminal offence with a fine of £1,000 and/or one month in prison.
- 5.15 In order to ensure accountability, data on the use of the power would need to be published and the Police and Crime Commissioner will be expected to hold forces to account for its use.
- 5.16 **Community Protection Notice:** This will deal with environmental ASB. Through the notice, Councils, the Police and social housing providers will be able to issue notices to an individual or a responsible person within a business or organisation to deal with a problem affecting the community.
- 5.17 A Community Protection Notice is intended to deal with a range of issues such as graffiti, littering and dog fouling. The notice would have to relate to persistent behaviour rather than single incidents and it could also be used by the Police or Council to tackle neighbourhood noise issues.
- 5.18 Breach of a notice would be classed as a criminal offence punishable with a fine of up to £2,500 for individuals and £20,000 for businesses. If there was a requirement under the notice to 'make good' but this was not done, Councils would be able to complete the works and charge the individual responsible.
- 5.19 **Community Protection Order (public space):** Through this order Councils will have the power to deal with place-based ASB. This order will replace Dog Control Orders, Gating Orders and Designated Public Place Orders.
- 5.20 The order would be issued by the Council following consultation with local residents, the Police and the PCC to deal with existing problems or to prevent future ones. Breach of the order would be a criminal offence with a maximum fine of £1,000.
- 5.21 **Community Protection Order (closure):** This will replace Licensing Closure Notices, Council Temporary Closure Notices for noise nuisance, Crack House Closure Orders and ASB Premises Closure Orders.

- 5.22 The order will allow Councils or the Police to issue an order temporarily closing any property, including licensed premises, business and private residencies for up to 48 hours if there is a public nuisance or there is the imminent threat of disorder.
- 5.23 The Council and Police would have to apply to the Magistrates Courts for the court to both consider the order and decide whether it needs to be extended. Continued closure of premises would require additional evidence which suggested that a person had engaged in disorder, anti-social or criminal behaviour on the premises and that the property is associated with disorder or serious nuisance. A property subject to an extended order could be closed for up to three months, and up to six months in total.
- 5.24 Breach of an order carries a maximum fine of £5,000 and £20,000 for individuals and businesses respectively and/or up to three months in prison.

## **6. CONCLUSION**

- 6.1. While the proposals continue to support the Government's approach of empowering communities to tackle local issues and a move from 19 formal measures to 6 is welcomed there are a number of challenges.
- 6.2. There is a risk that the Crime Prevention Injunction will be merely seen as a 'watered down' ASBO. The argument from many was that the ASBO was ineffective and more often than not it was breached. However, a breach of an ASBO is a criminal offence and as such an individual can be arrested. The power of arrest within a Crime Prevention Injunction can only be applied if the individual has used or threatened violence, or if there is risk of significant harm to a victim. In addition to this any subsequent breach is classed as contempt of court and is not a criminal offence. It is difficult to see how a Crime Prevention Injunction is going to have more of an impact than an ASBO and lead to a reduction in the number of breaches.
- 6.3. The proposals state that the new orders will speed up the process enabling injunctions and orders to be put in place within a matter of hours. Experience has shown that the waiting times within courts can significantly delay proceedings and it is not clear what impact these proposals will have on this. There is a risk of damaging public confidence further if expectations are not managed.
- 6.4. The use of the Crime Prevention Injunction will also have implications for social landlords as there is the potential of an injunction to leave landlords with little powers to deal with breaches of tenancy.
- 6.5. The proposed Criminal Behaviour Order is similar to the existing CRASBO. However, the White Paper states that the new order can be applied for, on conviction of any criminal offence without the need for consultation with other agencies involved with the individual (except for under 18's). This could potentially have an impact on multi-agency working.
- 6.6. The commitment from the Government to utilise positive requirements within the orders to encourage a change in behaviour is a progressive step. This may provide practitioners with more opportunities to address negative behaviour and also provide the individual with a positive goal to aim towards. This may reduce the risk of an individual breaching an order or reverting back to past anti-social behaviours.

- 6.7. The Directions Power proposal providing the Police to act immediately to prevent the escalation of localised ASB is positive. However, it is proposed that this can be implemented without consultation and without designating an area in advance, which may cause concern. While the PCC will have the responsibility to ensure that this power is used correctly, this will only occur after the event. If the power has been used controversially within a community this may cause long term problems and have implications for other partners.
- 6.8. From the proposals it is not clear how the 'Community Trigger' will be implemented. Local areas have been advised to put in place their own arrangements which could lead to inconsistencies across regions. The risk of malicious complaints while highlighted as a possible issue will still take up time and resources to investigate. It can be argued that the current system in operation in Stockton is sufficient and is effective.
- 6.9. At this stage there is no indication of when the draft pre-legislative bill is likely to be produced, however, it is clear that the Safer Stockton Partnership will want to provide some additional comments on the proposed 6 new powers as well as highlight a number of concerns, particularly in relation to the 'watering down' of powers to deal with ASB.
- 6.10. It is recommended that :
- The Safer Stockton Partnership notes the contents of this report, particularly the concerns in relation to 'watering down' the powers available to tackle ASB.
  - Agrees to receive a further report once the draft pre-legislative bill has been circulated.