

DRAFT ANTI-SOCIAL BEHAVIOUR BILL

1. BACKGROUND

Members of the Safer Stockton Partnership will recall that a report was discussed at the meeting on the 14th August 2012 which provided the key points of the Government's White Paper 'Putting Victims First' which was published in May 2012. The original White Paper outlined the Government's aims:

1. Improve the understanding of the needs of victims, including those at high risk
2. Provide frontline professionals with more freedom to do what they know works
3. 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'
4. Make it easier to demonstrate in court the harm victims are suffering
5. Provide professionals with quicker, formal powers, intended to be more effective
6. Provide a faster eviction process for the most anti-social tenants
7. Tackle underlying issues that drive antisocial behaviour, such as drink and drugs, mental health issues, troubled family backgrounds and irresponsible dog ownership.

Following on from the White Paper the Government has published a draft bill on the future of anti-social behaviour (ASB) which will apply in both England and Wales. The bill looks to take forward measures to:

1. Focus the response to ASB on the needs of victims
2. Empower communities to get involved in tackling ASB
3. Ensure professionals can protect the public through quicker and more effective powers and proposals to speed up the eviction of the most anti-social tenants
5. Focus on long term solutions

The draft bill consists of 98 clauses and of these there are two new measures aimed at ensuring the response to ASB focuses on the needs of the victims

1. The 'community trigger' which gives victims and communities the right to require agencies to deal with persistent ASB that has previously been ignored. A trigger can be activated by a member of the public, community or business if repeated complaints about ASB have been ignored.
2. The 'community remedy' which will provide victims of low-level crime and ASB with a say in the punishment of offenders out of court. This is aimed at ensuring that victims get justice quickly, and the offender has to face 'immediate and meaningful' consequences for their actions.

This report provides a brief summary of the bill including further information regarding the 'community remedy' which is currently being consulted on until March 7 2013.

2. KEY ELEMENTS OF THE DRAFT BILL

Crime Prevention Injunctions to prevent nuisance and annoyance (replaces current ASBO)

An Injunction can be granted in the Youth courts, county courts or the High Court and can be applied against anyone aged 10 or over where they have engaged or threaten to engage in anti-social behaviour.

A range of services including Councils, housing providers and the police can apply for the injunction, if necessary without having to give notice, although in these circumstances the Court will only be able to grant an interim injunction. Interim injunctions cannot include requirements on the perpetrator to take part in particular activities. Where the perpetrator is under 18, the youth offending team (YOT) has to be consulted before an application is made.

The injunction can both prohibit activity on the part of the respondent and require positive activity, provided this does not conflict with religious beliefs or prevent someone working or going to school or college or conflict with any other court orders.

The injunction can only exclude someone from where they live if they are in social housing, and either the council or housing provider have applied for the injunction, nature of the ASB includes the use or threat of violence or there is a significant risk of harm to others. As well as excluding the tenant from specified premises they can also be excluded from an area, and a power of arrest can be attached to the injunction. The injunctions can be time limited or indefinite.

A power of arrest can be attached to any prohibition or requirement in the injunction if the court thinks the ASB the respondent has engaged in or threatened to engage in will result in violence, or there is a significant risk of harm to others from the respondent. Where the power of arrest has been exercised, the court can either remand the person in custody (for up to three days if it is with a police officer) or bail them. With a child between 10 and 17, breach of the injunction can result in being subject to supervision, a curfew, electronic monitoring, having to undertake an activity or being detained.

Transitional arrangements mean that existing orders to deal with ASB continue in force after the bill comes into effect, but cannot be varied or extended, and after five years will come to an end.

Criminal Behaviour Orders (replaces current CRASBO)

The Criminal Behaviour Order will be a new civil order which can be granted where an offender has been convicted or received a conditional discharge. 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. As with a Crime Prevention Order the YOT would need to be consulted prior to an application being made against someone under 18.

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. Provisions can be made within the order for it to end following the satisfactory completion of an approved course, provided there are spaces available on the course and the offender agrees to the requirement. Courses will be approved by county,

metropolitan and unitary councils and fees can be charged. This is not available to district councils.

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. Where someone is convicted of breaching an order the court cannot grant a conditional discharge.

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.

Dispersal powers

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.

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. In making a direction, where possible, the officer must put it in writing; specify the area it applies to, and by when the person must have left and by which route. The direction can be varied but it cannot be extended beyond the 48 hours from when it was originally given.

The direction cannot prevent a person from having access to their home or their place of employment and it cannot prevent them from accessing court appointments or a place where they would go to receive medical treatment, education or training. The power can also not be used against lawful picketers. Where an individual is under 16 the officer can escort the person home or take them to a place of safety. The power is not applicable to children under 10. A direction can also include making an individual or individuals to surrender items that could be used to cause harassment alarm or distress.

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.

Community protection

Community Protection Notices

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.

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.

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.

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.

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.

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.

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.

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.

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.

Recovery of possession of dwelling-houses: anti-social behaviour grounds

Currently the Court has discretion as to whether to evict a tenant under the Housing Acts 1985 and 1988 when landlords seek possession of secure and assured tenancies because the tenant has been involved in anti-social behaviour. The bill seeks to amend these acts to enable landlords to seek to evict tenants involved in ASB or criminal activity on the basis that if involvement in activity of this nature can be proven the courts will have to order the eviction of the tenant. Grounds for possession include a tenant or a person residing or visiting the house:

1. Being convicted of a serious offence in or near the house
2. The serious offence being committed elsewhere against a person with a right to reside in or occupy housing in the locality of the house or against the landlord of the house
3. Being found by a court to have breached certain conditions of a criminal behaviour order
4. Being convicted of an offence under certain sections of the Environment Protection Act 1990.

The tenant will be able to raise the issue of proportionality as a defence to the proceedings

Local involvement through the ‘community remedy’

As part of the draft ASB Bill the Government is consulting on proposals for a Community Remedy. The consultation aims to gather knowledge, expertise and opinions of policing and criminal justice stakeholders, and members of the public to ensure that the final policy takes account of the potential impact of the changes on all affected parties. An online consultation form can be accessed on the Home Office website. A copy of the online questionnaire detailed at appendix 1. The consultation started on the 13 December 2012 and will run until 7 March 2013.

The proposed legislation will enable police and crime commissioners to provide victims of low-level crime (such as low-level criminal damage and low-level thefts) and antisocial behaviour a say in the punishment of the offender.

The Government is keen to ensure that victims and the public agree that the punishments used are meaningful and propose to do this through the introduction of the Community Remedy approach. The aim of the Community Remedy is to make the process for dealing with low-level crime and antisocial behaviour out of court transparent to victims and the public, with fair and meaningful punishments. Through the Community Remedy it is believed that victims will get justice quickly, and the offender has to face immediate consequences for their actions.

Stage 1 – The PCC consults with the public in their police force area about what punishments should be used under the Community Remedy



Stage 2 - The PCC uses the results of the consultation to develop a list of sanctions that could be applied to low-level crime and anti-social behaviour to be settled out of Court. This is the Community Remedy menu



Stage 3 – The PCC agrees the menu with the Chief Constable, Police Officers in the force area then work from the Community Remedy menu



Stage 4 – In the event of a relevant offence being committed, the police officer would invite the victim to choose an appropriate sanction from the Community Remedy menu



Stage 5 – The sanction is offered to the offender who can either accept or potentially face more formal action through the Criminal Justice System for the offence they have committed

CONCLUSION

Following the release of the White Paper last year it is clear that the Government has listened to the views of practitioners in relation to Crime Prevention Injunctions. Previously there had been a concern that there was not a significant enough sanction in place should an individual breach the order. This has since been rectified and a power of arrest has now been attached to a Crime Prevention Injunction.

The bill also places a greater emphasis on partner organisations working together to tackle anti-social behaviour which is a positive move forward and further reinforces the existing partnership approach that has been in place within the Safer Stockton Partnership for a number of years.

As highlighted in the previous report to the partnership, the current repeat victim's process which exists within Stockton operates effectively and could be considered as the local 'community trigger'. The consistency of similar approaches in neighbouring areas is not clear and this may present some challenges in the future.

There is still a concern in relation to the Directions Power proposal which provides the Police with the ability to act immediately to prevent the escalation of localised ASB. While this can be viewed as a positive the fact that this can be implemented without consultation and without designating an area in advance 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.

It is clear that there is a commitment to move towards a more victim focussed approach to ASB as well as look at solving issues at a local level involving partners and key organisations. The emphasis appears to be on quick and decisive action involving the victim and local community at all stages. Restorative practices will have a role in this and there is the potential to achieve some meaningful outcomes when dealing with low level offences. However, there is a risk of building up expectations both in terms of the speed at which issues can be resolved as well as the nature of the sanctions available to punish offenders.

A full copy of the bill and the Community Remedy consultation document can be accessed on the Home Office website or by typing in this link:

<http://www.homeoffice.gov.uk/publications/about-us/consultations/community-remedy-consultation/?view=Standard&pubID=1143402>