

## **Update on the Anti Social Behaviour, Crime and Policing Bill 2013-14**

The new legislation has continued its journey through parliament and has now progressed through all of its stages in both the Houses of Commons and the House of Lords to reach the stage of the consideration of amendments to be agreed by both Houses.

### **1. Changes to the Definition of ASB**

1.1 In the last report brought to SSP the Lords were discussing amendments to the new definition of causing nuisance or annoyance, debating as to whether the threshold would be too low and the definition considered too weak. The Lords did move an amendment to the definition of ASB on the third reading of the Bill that was agreed on 27/01/2014 to insert the following new clause;

“Meaning of “anti-social behaviour”

(1) In this Part “anti-social behaviour” means—

- (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
- (b) conduct capable of causing nuisance or annoyance to a person in relation to that person’s occupation of residential premises, or
- (c) conduct capable of causing housing-related nuisance or annoyance to any person

1.2 It would appear that the Lords have now compromised proposing that the test for ASB near/in residential property should be that of nuisance or annoyance and where the ASB is not housing related the test should be that of harassment, alarm and distress in line with the current definition. The lower threshold allowing early intervention was agreed relating to residential/housing related ASB as it was felt that people cannot simply walk away from it and it potentially has a bigger impact on someone's wellbeing to warrant the lower definition. This new clause would therefore mean two separate tests for applications of the new Injunction.

It was interesting to read in the debate that there is still some feeling that the Bill has weakened the powers against ASB which has been a concern that we have discussed at local level, although we welcome the amendment to the definition by the Lords in addressing our concerns over what would have been a weak definition of ASB to work with there still remains the concerns over the cost implications for prosecuting breaches of the new Injunctions, the strict limits on attaching a power of arrest, the increased monitoring that will be required and the reduced penalties/maximum sentences for breach that could be seen to weaken the powers that we use to tackle ASB.

1.3 The House of Lords have now returned the Bill to the House of Commons with amendments. The amendments were considered by the Commons on 4<sup>th</sup> February 2014 and I will continue to update you on the progress as both Houses must agree on the exact wording of the Bill and the Bill may go back and forth between each House (they call it ‘Ping Pong’) until they reach agreement. It would appear from reading the debate that took place in the Commons on 4<sup>th</sup> February that they will be agreeing to the amendment made to the definition of ASB but there are other amendments within the Bill that the Commons have not reached agreement on so the Bill at present remains in the ‘Ping Pong’ stage between the two Houses.

The next meeting of 'Ping Pong' will take place on 11<sup>th</sup> March 2014 for the House of Lords consideration of the Bill passed back from the Commons.

- 1.4 If agreement is reached on the changes the Lords have made to the Bill the new legislation will be passed with the definition of ASB remaining the same as the current definition of conduct that has caused, or is likely to cause, harassment, alarm or distress to any person. This will then reduce the impact of the operational and procedural changes to be made within the ASB Team and we will not see the increase in cases requiring applications to Court for the new injunctions that we were expecting with a lower/wider definition.

With the definition of ASB remaining the same the procedures for case development and interventions will remain the same with the option of enforcement action with the ASBO's being replaced by the Injunction. We will be keeping the process of looking to prevention and support to address the ASB before looking at any enforcement action.

The current procedure when an individual comes to the attention of the ASB Team is to determine the appropriate level of action/intervention depending on the level of involvement and history of ASB and the nature of the ASB including the level of seriousness and persistence of the behaviour. We have a range of actions and interventions that are considered before enforcement action including an Information letter, Warning letter, Interview letter, Informal visit to the home, behaviour promise, Interview and Acceptable Behaviour Contract (ABC). At the warning letter stage an automatic referral to the Preventions section of the Youth Service is made and when engaging with the family or young person on visits or in interviews we consider and make any necessary referrals for support to help curb the behaviour such as Perpetrator Support, Family Support, Counselling, FIP/Troubled Families, Lifeline for drug and alcohol related ASB, Preventions again if they haven't engaged at the warning letter stage and Social Services where necessary. The CAF 1 is completed by Preventions when we make a referral and if not the ASB Officer will complete it at the interview stage.

Any individual that has been put on an ABC is monitored at the Joint Action Group Meetings (JAG) and if the contract is breached agreement will be made on whether to refer the case to the Problem Solving Group Meeting (PSG) for a decision to be made on taking further enforcement action with an application for ASBO/CRASBO.

If the support, prevention, previous warnings, and ABC have failed to curb the ASB and/or the behaviour is sufficiently serious in nature the case is referred to the PSG to consider an ASBO as a last resort which will be replaced by the new Injunction in the procedure.

## **2. Community Trigger**

2.1 As well as the changes to the current powers the Bill has introduced some new measures within the tools and powers used to tackle ASB, one of which is the Community Trigger. This is a mechanism for victims of persistent ASB to request that relevant agencies undertake a case review. The review requires that the relevant agencies share information on the case, discuss what action has been taken and then collectively decide whether any further action could be taken. Agencies including the Council, Police, Health providers and registered providers of Social Housing will have a duty to undertake a case review when a victim makes an application for such a review and their case meets a locally defined threshold. The victim using the community trigger can be an individual, business or community group and the application can be made by a person acting on behalf of the victim such as a carer, family member, MP or local Councillor. It is possible that this may be seen as a complaints procedure but the Trigger process is more of an attempt to fix the problem for the victim as opposed to a complaints process that is designed to identify the fault in a particular response.

2.2 The threshold for the community trigger to be activated is to be defined by the local agencies taking in to consideration the nature of the ASB experienced by victims in their area and working practices of the agencies involved. The legislation does not spell out exactly how local areas should implement the trigger, the only specification is that the threshold can be no higher than three qualifying complaints of ASB in a six month period. It does suggest that the procedures may include provision in deciding whether the threshold is met by reference to the persistence of the ASB, the harm caused/potential for harm to be caused and the adequacy of the response to the behaviour. The idea of a Community Trigger was piloted in several areas. Trials started on 1 June 2012 in Manchester; Brighton and Hove; West Lindsey; and Boston Lancashire. A further trial started in the London Borough of Richmond upon Thames on 17 August 2012. A report on these trials was published on 9 May 2013 and highlights the lessons identified by the pilot areas to help assist agencies which are setting up their Community Trigger procedures. The report can be accessed via the following link; [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/207468/community-trigger-trials-report-v4.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/207468/community-trigger-trials-report-v4.pdf)

The areas were free to operate the trigger in different ways using different thresholds. Two used the threshold set in the consultation document (five complaints from five households, or three from on individual); one used a threshold of three incidents over 12 months. Brighton's was much lower: a single report, with no action on it after one week.

The legislation makes reference to 'qualifying' complaints as it sets out what will be a qualifying complaint for using the Community Trigger which is;

- The ASB was reported within one month (or, if a different period is specified in the review procedures, that period) of the alleged behaviour taking place.
- The application to use the Community Trigger is made within six months (or, if a different period is specified in the review procedures, that period) of the report of ASB.

For the purpose of the Community Trigger ASB is defined as behaviour causing harassment, alarm or distress to a member, or members, of the public.

2.3 The relevant bodies must make arrangements about the carrying out of reviews including setting the threshold and make sure that the procedures are published. The procedure

must include provision about the making of applications, specify a point of contact for making applications and ensure that applications received are passed to all relevant bodies/agencies. When setting up the procedure agencies should consider if the Community Trigger can be built into existing processes such as any regular multi-agency meetings that may be the best placed forums to undertake the review or alternatively it may be considered more appropriate to have a separate forum created to discuss the case reviews. The review should be transparent so some areas are using a similar process that they already use for domestic homicide reviews and using a neighbouring area to conduct the review for them and it should also be acknowledged that the individuals carrying out the review will need knowledge of ASB and the legislation that we work to. The local PCC must be consulted on the Community Trigger procedure when it is set up and must be consulted whenever the procedure is reviewed. Arrangements may be made for the PCC to be directly involved with the Trigger by, for example, auditing case reviews, providing a route for victims to query the decision on whether the threshold was met/the way a review was carried out or monitoring the use of the Community Trigger. The relevant bodies/agencies that carry out the review must inform the applicant of the outcome and any recommendations that have been made as a result.

2.4 Following the implementation of the Community Trigger the legislation requires that the relevant bodies publish information/data at least annually covering the number of applications received for the Community Trigger, the number of times the threshold was not met, the number of case reviews carried out and the number of case reviews that resulted in recommendations being made. Although these are the only details that are required to be published agencies may publish additional details if the information is useful to communities and victims.

2.5 The attached Appendix sets out a proposed threshold and procedure for activating the Community Trigger process for Stockton. Members of the Partnership are asked to endorse the contents while considering the following points;

- What is the locally defined threshold going to be?
- Who is going to be the point of contact for making applications and who will decide if the threshold has been met – to be agreed if SBC Legal will?
- Who will undertake the review – to be agreed if it will be a neighbouring Local Authority, existing multi-agency group or newly created forum/group? Who will sit and represent the relevant agencies on the review?
- What will the procedure/process be for the review including who will lead the review, who in the relevant agencies will receive the requests to share the information and the timescales for responses.
- Who will be responsible for appeals? The community trigger procedure must include a process for someone to appeal if they are dissatisfied with the way in which a community trigger case review has been carried out, or with the decision on whether the threshold was met. This role could be undertaken by the chair of the Community Safety Partnership, the Police and Crime Commissioner, or another senior individual within the partner agencies.
- Will we publish any additional details/information on the Community Triggers with the required information and how often will we publish? Will reports be required for SSP and the PCC quarterly?

## Appendix 1

### Community Trigger Process for Stockton

#### Threshold and process to activate the Community Trigger

The trigger will be activated when a person party to the complaint makes an application for such a review, has a qualifying complaint and **one** of the following applies;

An individual has reported **three** or more **separate** incidents of anti-social behaviour regarding the **same** problem in the past six months to Stockton Borough Council, Cleveland Police and/or a Registered Social Landlord and no action has been taken.

OR

**Five** individuals from **five** different households in the same neighbourhood have reported **separately** the **same** problem with anti-social behaviour in the last six months to Stockton Borough Council, Cleveland Police and/or a Registered Social Landlord and no action has been taken.

A complaint of ASB is a qualifying complaint for using the Community Trigger if –

- The ASB was reported within one month (or, if a different period is specified in the review procedures, that period) of the alleged behaviour/incident taking place.
- The application to use the Community Trigger is made within six months (or, if a different period is specified in the review procedures, that period) of the report of ASB.

The application to activate the Community Trigger can be made by a victim of anti-social behaviour who is party to the complaint or another person acting on behalf and with the permission of the victim, for example a carer, family member, MP or local Councillor.  
The victim can be an individual, a business or community group.

For the purpose of the Community Trigger ASB is defined as behaviour causing harassment, alarm or distress to a member, or members, of the public.

It is important to note that the trigger is not activated where a complainant is unhappy with the action taken - that would be a matter for the internal complaints procedure of the organisation taking the complaint.

If a problem is ongoing but action is being taken again the trigger is not activated - the complainant would be referred back to the agency dealing with the investigation.

For the trigger to meet the definition that no action has been taken one of the following would need to apply;

1. No acknowledgement of the reports has been given
2. Service delivery has not taken into account the vulnerability of the complainants
3. Service delivery has not been appropriate or effective due to a lack of information sharing between partners

Stockton Council's Legal Section would serve as the contact point for requests to activate the trigger as someone who has not been involved in the case, with contact details included in all of the agreed publicity of the Trigger procedure and on the correspondence of any agencies in dealing with ASB.

The process would run as follows;

- The application to activate the Community Trigger is received by the contact point.
- Decision made on whether the threshold to activate the trigger has been met and contact is made with the victim within five working days to explain whether the threshold has been met and explain the process and next steps.
- If the trigger is deemed to have been met the procedure to review will be activated. Information related to the case is shared using existing information sharing protocols and the review will determine what action has previously been taken by the agencies concerned then collectively decide whether any further action could be taken in an agreed action plan.
- The lead Officer/Agency for the review would respond to the complainant with the outcome and details of any agreed action plan within 28 days of the agreement to proceed with the review, giving details of how to appeal if dissatisfied.
- Appeals would be taken to the agreed agency/group to conduct the appeal procedure.
- Quarterly reports would be made to the SSP and PCC on the details and information on the Community Trigger that will be published.