



Home Office

# MORE EFFECTIVE RESPONSES TO ANTI-SOCIAL BEHAVIOUR





# MINISTERIAL FOREWORD

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The everyday crime and disorder that is described as ‘anti-social behaviour’ – from vandalism and graffiti to drug dealing and harassment – has a huge impact on the quality of life of millions of people in this country. It is corrosive, blighting communities and neighbourhoods. Moreover, as recent tragic cases have shown, it is often targeted at those members of our society who are least able to protect themselves.

I know that, across the country, many police forces, councils, social landlords and others are working hard to tackle the problem. But despite more than a decade of targets, government initiatives and seemingly endless legislation, the police receive over 3.5 million reports of anti-social behaviour a year, and many more incidents are reported to councils

or social landlords, or not reported at all. Last autumn’s report by Her Majesty’s Inspectorate of Constabulary found that police forces still tend to prioritise ‘real’ crime over anti-social behaviour. That is not a distinction that makes sense to the victims.

I believe that everyone has the right to feel safe in their home and in their neighbourhood. That is why reducing anti-social behaviour is a priority for the government, and should be a priority for every police force. But it is not a problem the police can tackle alone. Anti-social behaviour should also be a priority for other local agencies with responsibilities for community safety, including councils and social landlords, even as belts are tightened.

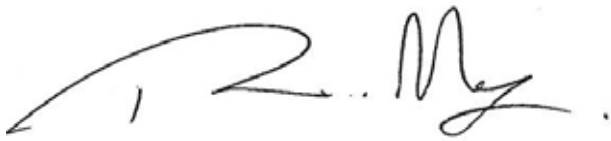
We need a new approach to a problem which is fundamentally local, and which will be different in every area. The answers have to come not from the centre, but from professionals working on the ground and from communities themselves – the people who know the victims and know the perpetrators.

So I want to see a transformation in the way anti-social behaviour is dealt with. 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. I have already stripped away the centrally-imposed initiatives and performance targets. Now I want to empower people to shape the way the police and others deal with the issues that matter most to them, including through the introduction of elected Police and Crime Commissioners, street-by-street crime maps and regular neighbourhood beat meetings.

Ensuring the police and other professionals have the tools they need to deal with anti-social behaviour is a key part of that new approach. They 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. Victims and professionals alike have told us this is not the case at the moment, so in July last year I announced a review of the many new tools and powers introduced since 1998.

This consultation outlines the findings of that review, and puts forward some proposals for radically simplifying and improving the toolkit. But improving the tools will only take us so far, and we need to do more to drive the kind of cultural shift needed. So we are also working with the police and others to support eight local areas to test new ways of handling calls from the public that identify and protect repeat and vulnerable victims. And Helen Newlove is highlighting ways in which some communities are fighting back, actively working with the police and others to make their neighbourhoods safer.

Transforming the approach to anti-social behaviour is a huge challenge, and not one that I underestimate. I don't want to repeat the mistakes of the past by assuming that the centre has all the answers. Nor do I want to overlook the progress that has been made, or the hard work and innovation by many people across the country who are going the extra mile to protect the public. Your views – whether you have experienced anti-social behaviour yourself, know someone who has, or have a professional role in dealing with it – will be crucial in helping us develop new tools that work, and make a real difference to people's lives.

A handwritten signature in black ink, appearing to read 'R. May', with a large, sweeping flourish at the beginning.

HOME SECRETARY

February 2011

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# 1. EXECUTIVE SUMMARY

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‘Anti-social behaviour’ describes a range of everyday nuisance, disorder and crime, from graffiti and noisy neighbours to harassment and street drug dealing. It is sometimes dismissed as trivial, but anti-social behaviour has a huge impact on victims’ quality of life, and it is the public’s number one concern when it comes to local crime issues. Over 3.5 million incidents were reported to police forces in England and Wales last year, and we know that many more were reported to other local agencies such as councils and housing associations, or not reported at all.

Reducing anti-social behaviour is a government priority, and we expect it to be a priority for the police and other agencies as well, particularly where it is criminal or targeted at vulnerable victims. Unchecked, anti-social behaviour can be linked to increased disorder, low-level crime and fear of crime in a neighbourhood – the so-called ‘broken windows’ effect.

The police and their local partners, such as local councils, need a range of tools to deal with anti-social behaviour. Where the behaviour is criminal, it should be dealt with as such. But informal measures can nip problems in the bud before they get that far. And preventative civil orders can stop long-running campaigns of intimidation or harassment that are causing real harm to victims, where prosecution of a single offence could not.

The toolkit practitioners currently use is extensive, and runs from warning letters all the way up to court orders like the Anti-social Behaviour Order (ASBO). Our review has found that:

- there are simply too many tools – with practitioners tending to stick to the ones they are most familiar with;
- some of the formal tools (particularly the ASBO) are bureaucratic, slow and expensive, which puts people off using them;
- the growing number of people who breach their ASBO suggests the potential

consequences are not deterring a persistent minority from continuing their anti-social or criminal behaviour; and

- the tools that were designed to help perpetrators deal with underlying causes of their anti-social behaviour are rarely used.

As a result, we are proposing a radical streamlining of the toolkit. We want to move away from having a tool for every different problem to ensuring that the police and partners have faster, more flexible tools. These, plus more effective sanctions, will help professionals and, where necessary, the courts stop anti-social behaviour earlier, and better protect victims and communities. Specifically, we are proposing to:

- repeal the ASBO and other court orders for anti-social individuals, and replace them with two new tools that bring together restrictions on future behaviour and support to address underlying problems – a **Criminal Behaviour Order** that can be attached to a criminal conviction, and a **Crime Prevention Injunction** that can quickly stop anti-social behaviour before it escalates;
- ensure there are powerful incentives on perpetrators to stop behaving anti-socially – for example, by making breach of the new orders grounds for eviction from social housing;
- bring together many of the existing tools for dealing with place-specific anti-social behaviour, from persistent litter or noisy neighbours, to street drinking and crack houses, into a **Community Protection Order**;
- bring together existing police dispersal powers into a single police power to **direct people away** from an area for anti-social behaviour;
- make the **informal** and **out-of-court tools** for dealing with anti-social behaviour more rehabilitative and restorative; and

- introduce a **Community Trigger** that gives victims and communities the right to require agencies to deal with persistent anti-social behaviour.

We have spoken to a number of practitioners in developing these proposals, but recognise that there is a huge amount of expertise at the local level, and many good ideas on how the tools and powers could be made to work better. We are keen to use this consultation to draw on that expertise, so we can ensure these changes make it easier for the police and others to protect victims and communities.

Simplifying and improving the toolkit is important, but it's only part of the picture. Our proposals are part of a wider package of reforms that includes: making police forces more accountable to local people through the introduction of Police and Crime Commissioners and street-level crime information; identifying and spreading good ideas, as with the trials of a new approach to handling reports of anti-social behaviour that were announced earlier in January; improving the recording of hate crime offences; and empowering people to get more involved in community safety issues.



## 2. INTRODUCTION

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The term ‘anti-social behaviour’ was formalised in the late 1990’s to describe a wide range of the nuisance<sup>1</sup>, disorder and crime that affect people’s daily lives. As examples of what could be considered ‘anti-social’, the British Crime Survey asked respondents about:

- noisy neighbours or loud parties;
- teenagers hanging around on the streets;
- rubbish or litter lying around;
- vandalism, graffiti and other deliberate damage to property or vehicles;
- people using or dealing drugs;
- people being drunk or rowdy in public places; and
- abandoned or burnt out cars.

The then-government’s objective was to focus the police and other agencies on issues that mattered a great deal to local people, but had not always been prioritised or dealt with effectively.

The Crime and Disorder Act 1998, which defined anti-social behaviour in law as ‘acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household’, signalled a different approach. The legal definition provided a platform for new civil powers to deal with these problems, giving courts the ability to impose restrictions on an individual’s future activities and movements to prevent further anti-social behaviour. This provided an alternative to criminal prosecution in situations where it was difficult to prove that a crime had been committed - for example, where residents were afraid to give evidence against their neighbours.

The civil powers also gave the police and other agencies the means to address the cumulative impact of an individual’s ongoing behaviour, whereas traditional criminal sanctions had tended to focus on punishment for a specific offence. In cases of sustained

harassment, where individual offences may appear relatively minor but the behaviour has a huge impact on the victim’s quality of life, this gave front line professionals a useful new capability.

The response to anti-social behaviour was then driven from the centre, with extra funding, performance targets for local areas, and high-profile initiatives like the ‘Respect’ campaign all part of the government’s effort to prescribe what local areas should do and how they should do it. And over time, increasing numbers of new powers were added to the toolkit as new issues arose, to deal with everything from crack houses to leylandii hedges, and including court-mandated support to help offenders deal with the underlying causes of their behaviour.

There are clearly many examples where these tools have helped practitioners to protect victims and communities, and police forces, councils, social landlords and others are putting more effort into tackling anti-social behaviour. But thirteen years after the introduction of the ASBO, over 3.5 million incidents of anti-social behaviour are still reported to the police every year, and we know that many more are reported to other agencies such as councils or social landlords. In fact, the British Crime Survey suggests that around three-quarters of incidents are not reported at all.

In September last year, Sir Denis O’Connor, Her Majesty’s Chief Inspector of Constabulary, published ‘Stop the Rot’, detailing his review of the way the 43 police forces in England and Wales respond to anti-social behaviour. He reported that there had been significant improvements, and that neighbourhood policing in particular could make a big difference, but that although some Community Safety Partnerships work effectively, standards of service are variable, and the emphasis placed on long term solutions can sometimes prevent timely action from being taken.

1. Nuisance is used in the context of relating to anti-social behaviour and not in relation to statutory nuisances as defined under the Environmental Protection Act 1990.

His findings also highlighted the limitations of a centrally-driven approach. Although all forces list anti-social behaviour as a strategic priority, in reality many officers still prioritise ‘real’ crime (i.e. that which is recorded). Less than half of forces were able to identify local anti-social behaviour issues and hotspots, and allocate resources accordingly. And fewer still had the systems in place to identify repeat and vulnerable victims when they called for assistance. Perhaps as a result, only half of the 5,699 victims surveyed by MORI for the report felt the police and their partners were dealing with local anti-social behaviour effectively.

What the top-down approach overlooks is that this is a problem which is fundamentally local. Anti-social behaviour differs from place to place, and so do the priorities of the people who live there. In one neighbourhood, people will be concerned about off road motorbikes, in another vandalism and graffiti, and street dealing and drug taking in another. There is no one-size-fits-all solution. Instead, the answers must come from the people who are close enough to understand the issues in each area, who know the victims, and know the perpetrators. That is, from the professionals working together on the ground and from communities themselves.

We think ‘anti-social behaviour’ – covering a broad range of crime, disorder and nuisance – remains a useful concept that focuses the police and other local agencies on the issues that matter most to people’s daily lives. But this government is driving a transformation in the way agencies deal with it, stripping away central initiatives, targets and diktats, and empowering the professionals and communities to join forces to beat this problem.

We are moving accountability from national to local level, so that the public, rather than officials in Whitehall, set the priorities for the police and other local agencies. Directly-elected Police and Crime Commissioners will play a key role in holding Chief Constables

to account on behalf of the public so that we don’t go back to a situation where local concerns about anti-social behaviour slip down the list of priorities. We are also giving communities information about the issues in their area, through street-level crime information, and regular neighbourhood beat meetings, so they can judge for themselves how well local agencies are tackling crime and anti-social behaviour.

Helen Newlove, the government’s Champion for Active, Safer Communities is helping the public get more involved in the fight against anti-social behaviour. Over the next few months, she will be working with local areas to develop community activism as a means of tackling anti-social behaviour and will produce a report detailing what more government and local agencies can do to help communities reclaim their streets.

Underlying all of that, we are committed to ensuring that professionals have the tools they need to do the job – tools that work, and are seen to work by those whose lives are blighted by anti-social behaviour. This consultation focuses primarily on our review of the existing toolkit, and our proposals to streamline and improve it.

### 3. REVIEWING THE TOOLKIT

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The existing anti-social behaviour toolkit includes a significant number of tools and powers which police and local partners can use to deal with a variety of behaviours and problems. The toolkit ranges from informal actions such as warning letters and Acceptable Behaviour Agreements which confront the individual with the impact of their behaviour and aim to deal with the problem early, through to out of court disposals such as Penalty Notices, before escalating to formal court orders which can place restrictions on perpetrators behaviour and movements.

Although there are clearly cases where they have been used successfully, victims and practitioners alike have told us that many of the tools are bureaucratic, slow and expensive. And there are also wider questions over their effectiveness given, for example, the growing number of offenders who breach their ASBO. So in July last year, the Home Secretary announced a review, with the aim of streamlining and improving the toolkit, ensuring it offers better protection to victims and communities and a more effective deterrent to the perpetrators.

Over the last six months, we have analysed both the use of specific tools, and also the way that different practitioners use the toolkit as a whole. We have drawn on a range of sources, including Ministry of Justice (MOJ) statistics on ASBOs, voluntary data returns from Community Safety Partnerships and previous reports published by the Home Office and National Audit Office. But data only tells part of the story, so we have also spoken to a range of practitioners to develop a picture of how the tools work in real life.

Our analysis of the tools themselves suggests that:

- Use of the ASBO has fallen by more than half since 2005, when the Home Office stopped pushing local areas to use it. And ASBOs are now more often attached to a criminal conviction than used before an offence has been committed;
- At the same time, the breach rate for ASBOs is rising, from under 40% in 2003 to 56% by the end of 2009 (with 41% being breached more than once). This is despite the fact that more than half of offenders proved to have breached their order receive an immediate custodial sentence. There is also huge variation in breach rates between different areas;
- Use of some other tools and powers, perhaps as alternatives to the ASBO, has increased substantially since 2005. This includes informal measures like Acceptable Behaviour Agreements, as well as more formal ones such as Notices Seeking Possession and Anti-social Behaviour Injunctions (ASBIs) (both linked to social housing);
- Of the 171,000 Penalty Notices for Disorder issued by the police in 2009, over half were for offences linked to anti-social behaviour, such as being drunk and disorderly, causing harassment, alarm or distress, and criminal damage. 53% of the fines were paid within the designated timeframe;
- Take-up of the support designed to help people address the causes of their anti-social behaviour has been very low. For example, only 8% of ASBOs issued to young people since 2004 had a supportive order attached.

Looking at how front line agencies use the toolkit as a whole, it appears that:

- Professionals dealing with anti-social behaviour tend to use an escalatory approach to the toolkit, first attempting to address a problem with informal tools such as a warning letter or Acceptable Behaviour Agreement, and then moving on to more formal measures. ASBOs are generally felt to be an option of last resort, to be used once other avenues have been exhausted;

- This appears to work for some perpetrators, and the National Audit Office found that 65% stopped behaving anti-socially after a first intervention. But there is a persistent minority whose behaviour is more entrenched and linked to underlying problems, on whom the toolkit appears to have little effect. The escalatory approach risks prolonging the length of time a victim or community has to suffer their behaviour;
- Practitioners see bureaucracy and cost as the greatest barriers to effective use of the toolkit. Formal tools - particularly the ASBO since a court of appeal ruling meant it requires a criminal, rather than civil, burden of proof – are expensive and slow compared to the informal ones.
- The culture of front-line agencies also influences use of the toolkit. For example, the sheer number of tools means practitioners tend to stick to the ones they have used before. And some practitioners, particularly those working with young people and their parents, are reluctant to use formal support such as Parenting Orders or Individual Support Orders, preferring engagement to be on a voluntary basis.
- To move away from an approach that has unnecessarily criminalised people, particularly young people – we want to make the informal tools more effective, so that fewer perpetrators move on to more serious anti-social behaviour. And we want to make it easier for practitioners to support people to deal with the underlying causes of their behaviour, in line with the government’s wider campaign to turn around the lives of families with multiple problems, including through intensive, targeted family interventions. At the same time, we want to ensure that the sanctions attached to the more formal tools provide a proper deterrent to the persistent minority; and
- To give people more power to shape the way agencies use the toolkit to tackle anti-social behaviour in their area, including making perpetrators more accountable to their victims and community.

We have therefore concluded that, in developing proposals to streamline and improve the toolkit, the priorities are:

- To reduce the size of the toolkit, so that instead of trying to prescribe a response to every issue, we give professionals more flexible tools (e.g. that can combine restrictions with support) they can use to get to the root of a range of neighbourhood problems;
- To shorten the process and reduce the cost, associated with the more formal tools, so that agencies can act quickly to protect victims and communities from serious anti-social behaviour;

## 4. REFORMING THE TOOLKIT

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There is evidence that visible anti-social behaviour, even apparently minor problems like litter or graffiti, can be linked to increased disorder, low-level crime and public fear of crime – the so-called ‘broken windows’ effect. As a result, nipping anti-social behaviour in the bud – particularly where it is criminal or targeted at vulnerable victims – can have a significant impact on quality of life in a community.

That’s why the police and their local partners need an effective toolkit including civil orders that can address emerging problems early, stop further harm to victims and communities and change a perpetrator’s behaviour without necessarily criminalising them.

Our review of the current framework suggests that, whilst some elements are effective, there is significant scope to make it work better. Ultimately, our aim is to ensure that the toolkit supports the move towards local accountability, with practitioners able to deal effectively with the issues that matter to local people. At the same time, we want the toolkit to support a more proportionate response – with informal tools that work first time, and formal ones that can help persistent perpetrators change their behaviour, but with meaningful consequences if they don’t.

Our key proposals are to:

### **Replace the ASBO and a range of other court orders targeted at anti-social individuals with two new tools:**

- a **‘Criminal Behaviour Order’** – a civil preventative order that could be attached to a conviction, to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. The order would allow the court to ban an individual from certain activities or places and also to require the offender to undertake positive activities, proposed by the relevant authority, to address the underlying causes of their offending through, for example, drug treatment; and

- a **‘Crime Prevention Injunction’** designed to stop anti-social behaviour before it escalates. The injunction would carry a civil burden of proof, making it quicker and easier to obtain than the ASBO. For adults, breach of the injunction would be punished as contempt of court, through 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 other sanctions for crime and anti-social behaviour.** For example, the Housing Minister has already announced proposals to speed up the eviction of the most anti-social or criminal tenants from social housing by making a housing-related conviction for an indictable offence, or breach of a court order for anti-social behaviour, mandatory grounds for possession. Similarly, we are keen to explore how we can build on existing measures to improve the system to recover fines.

More widely, we are also working with MOJ on proposals set out in the recent Green Paper on sentencing and rehabilitation on how to increase the use of asset seizure as a sanction for criminal offences: for example, to explore whether there are particular types of offender for whom seizing assets might be effective and proportionate, and whether imposing restrictions on overseas travel could be a useful additional sanction which could sometimes be enforced by seizing an offender’s passport.

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

- a two-tier **‘Community Protection Order’**, comprising a Level 1 notice issued by practitioners to stop environmental anti-social behaviour (e.g. graffiti, neighbour noise, accumulations of litter) and a Level 2 power for police and local authorities to restrict the use of places,

or to close properties associated with persistent anti-social behaviour, with criminal sanctions for breach;

- a simplified police power to **direct** people away from an area on grounds of anti-social behaviour.

The following chapters contain more detail on these new tools, but the table below illustrates how they would streamline the existing framework.

Existing system	Proposed changes
ASBO on conviction	<p><b>‘Criminal Behaviour Order’</b> - available on conviction for any criminal offence, and including both prohibitions and support to stop future behaviour likely to lead to further anti-social behaviour or criminal offences.</p> <p><b>‘Crime Prevention Injunction’</b> - a purely civil order with a civil burden of proof, making it much quicker and easier to obtain. The injunction would also have prohibitions and support attached, and a range of civil sanctions for breach.</p>
ASBO	
Interim ASBO	
ASB Injunction	
Individual Support Order (ISO)	
Intervention Order	
Crack House Closure Order	<p><b>Community Protection Order (Level 2)</b> – a local authority/ police power to restrict use of a place or apply to the courts to close a property linked with persistent anti-social behaviour.</p>
Premises Closure Order	
Brothel Closure Order	
Designated Public Place Order	
Special Interim Management Orders	
Gating Order	
Dog Control Order	<p><b>Community Protection Order (Level 1)</b> – a notice issued by a practitioner to stop persistent anti-social behaviour that is affecting quality of life in an area or neighbourhood, with a financial penalty for non-compliance, or other sanctions where relevant e.g. the seizure of noise-making equipment.</p>
Litter Clearing Notice	
Noise Abatement Notice	
Graffiti/Defacement Removal Notice	<p><b>Police ‘Direction’ power</b> – a power to direct any individual causing or likely to cause crime or disorder away from a particular place, and to confiscate related items</p>
Direction to Leave	
Dispersal Order	

We are working with the MOJ to make the **informal and out-of-court tools** for dealing with anti-social behaviour more rehabilitative and restorative. That includes ensuring that community and restorative solutions can be used to address community issues. This will mean that any disincentives for police officers to use restorative justice methods to deal with community incidents which would be best addressed outside the formal CJS are removed - giving victims a more immediate and proportionate response, as well as saving time and money.

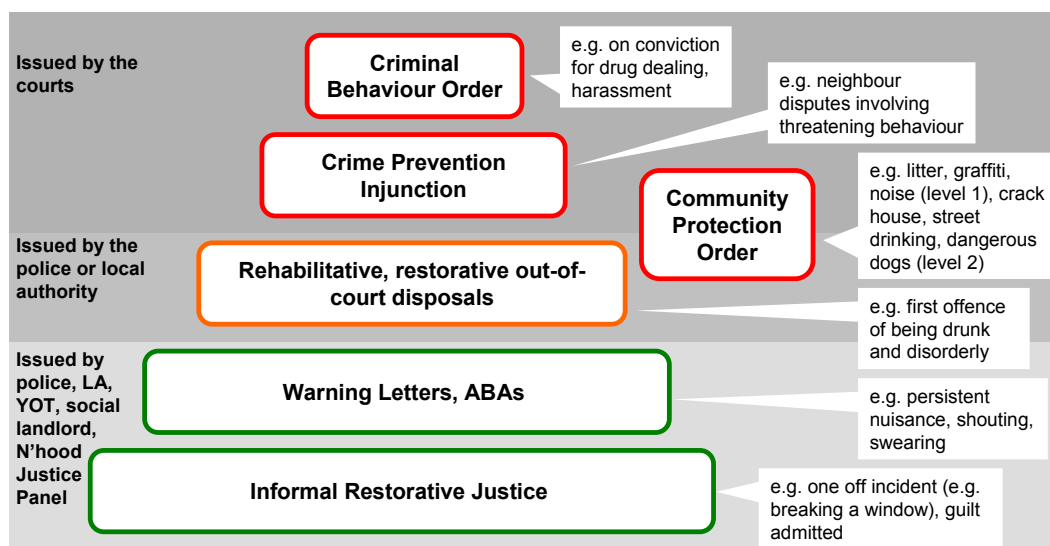
In addition to the moves to make Penalty Notices for Disorder more rehabilitative which were outlined in the recent MOJ Green Paper, we are keen to ensure that out-of-court disposals for young people include swift, restorative sanctions with real consequences for non-compliance, as well as encouraging parents to take more responsibility for their children's behaviour.

We are also working with the MOJ, which is developing innovative new ways of getting communities more involved in the CJS, particularly through Neighbourhood Justice Panels, which would see community members and practitioners working together to decide how to deal with perpetrators of anti-social behaviour and low level crime. This is already happening in a number of parts of the country, including Sheffield, Chard in Somerset and Salford where community panels are helping

local agencies decide the terms of Acceptable Behaviour Agreements with perpetrators.

We want services to get it right first time, but sometimes they don't. So, aligned to this new and improved set of tools and direct accountability through street-level crime information and regular neighbourhood beat meetings, we are considering the benefits of introducing a **'Community Trigger'** for persistent anti-social behaviour which has not been addressed by community safety partners. This would impose a duty on the statutory partners in a Community Safety Partnership (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. We intend that the new measure would be a timely and non-bureaucratic way for the public to assert their right to a proper response. The new Police and Crime Commissioners would hold agencies to account for their response, using their power to 'call in' a CSP if the action taken was inadequate.

The diagram below illustrates how the key elements of a new toolkit would fit together. This is not an 'escalator' - practitioners need to choose the approach most appropriate for the behaviour in question and do not need to start at the bottom. But it would provide a clearer path of consequences and sanctions for those who consistently fail to change their behaviour.



These proposals would apply in England and, where relevant, in Wales. Whilst most of the issues covered in this consultation are non-devolved, the Welsh Assembly Government does have a role in community safety and we will be working with them on these proposals as they develop further.

#### QUESTIONS:

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?*
2. *Are there other tools and powers for dealing with anti-social behaviour you think should be repealed? If so, why?*
3. *Do you think these proposals will reduce bureaucracy for front line professionals? Will they have other benefits as well?*
4. *Do you think there are risks related to the introduction of any of the new orders?*
5. *Do you think these proposals risk particular groups being disadvantaged in a disproportionate way? If so, how?*
6. *Because community safety is a non-devolved matter in Wales, are there any specific issues there that should be recognised?*

#### 4.1 THE CRIMINAL BEHAVIOUR ORDER

There is currently a range of civil court orders that can be attached to a criminal conviction to prevent an individual committing anti-social behaviour in the future. These court orders are generally popular with practitioners, and are anecdotally easier to impose over stand-alone orders such as the ASBO, as evidence of the individual's anti-social behaviour will have been provided to secure the original conviction. However, the Anti-social Behaviour Order on conviction (the CRASBO) has been criticised as it does not enable the underlying causes of an individual's behaviour to be addressed through any positive requirements.

#### HOW THE ORDER WOULD WORK

We envisage the Criminal Behaviour Order being a civil order available on conviction for any offence, that it could be given to anyone over the age of criminal responsibility and that it would replace the CRASBO. It could be imposed if the court considered:

- 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 as himself/herself; **and**
- That an order was necessary to protect persons in any place in England and Wales from further such acts by him/her

The Criminal Behaviour Order would be additional to the court's sentence for the offence, not a substitute for it. It would be available in all criminal courts, and could be given to anyone over the age of criminal responsibility (10 years old).

The order would allow the court to impose a range of prohibitions on an offender for a set period, or until a future order of the court, to prevent future anti-social behaviour and provide respite to the community. It would also allow the court to impose positive requirements on an offender to take action to address the underlying causes of their behaviour.



## WHO WOULD APPLY FOR THE ORDER?

The prosecutor would be able to apply for the order alongside prosecution for the criminal offence, though they would have to be able to satisfy the court that the recommended positive requirements were available in the local area. We will look at the application process to see if there are opportunities to streamline it in order to minimise bureaucracy. The order must be appropriate for the individual and their circumstances, but there would be no requirement to show that all other remedies had been exhausted, or that an order was the only suitable way of dealing with the problem.

Before making an application for an order for someone under 16, when necessary the relevant authority<sup>2</sup> could prepare a report on the person's family circumstances. This could be used to inform an application for a Parenting Order alongside the order, or to enable the authorities to identify and tackle other needs of the parents or wider family through, for example, voluntary support or Family Intervention Projects.

Alternatively, the court could decide to make an order without an application by the prosecution, though the court would have to be satisfied that any recommended positive requirements are available.

The relevant authority would be free to publicise the terms of the order, unless reporting restrictions were imposed by the court.

## PROHIBITIONS AND POSITIVE REQUIREMENTS

The terms of the order will vary according to the behaviour of the individual, but it could include both prohibitions and positive requirements. In accordance with current case law, these must be reasonable, proportionate, realistic, practical, clear and enforceable<sup>3</sup>. Prohibitions would be preventative rather than punitive.

2. The 'relevant authorities' would be police, local authorities, registered providers of social housing, and Youth Offending Teams (for orders relating to young people under 18)

3. R v Boness [2005] EWCA Crim 2395

The prosecutor would also need to be able to satisfy the court that a relevant authority was in a position to satisfy or discharge any positive requirements.

There are a range of options regarding minimum and maximum terms for the order, including:

- Prescribing neither, to give the courts maximum discretion;
- Prescribing a minimum term, but no maximum term. This would enable orders to be applied for as long as necessary;
- Prescribing no minimum term, but setting a maximum term to guide the courts;
- Having different minimum and/or maximum terms depending on whether the offender is under or over 18, or on whether a custodial sentence was available or was given for the original offence (as currently happens with Football Banning Orders on conviction).

## BREACH

Breach of the order would be a criminal offence, with a range of sanctions available to the court and a maximum sentence of 5 years in custody. This is in line with other orders on conviction such as Restraining Orders, Serious Crime Prevention Orders and Football Banning Orders. We are considering whether different sanctions should apply for any breach of the positive requirements.

## QUESTIONS:

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

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

#### **4.2 THE CRIME PREVENTION INJUNCTION**

Although much of what is currently termed ‘anti-social behaviour’ is crime, it can be very difficult to prove that a particular criminal

offence has been committed – perhaps to due a lack of witnesses, or witnesses’ fear of giving evidence against people who live nearby. The criminal law is also not well-suited to dealing with the cumulative impact of a series of what might appear individually to be relatively trivial incidents focussing instead on punishment for a specific offence. As a result, we believe the police and other local agencies still need the ability to use a civil order (i.e. imposed ‘on the balance of probabilities’, rather than ‘beyond reasonable doubt’) to act quickly to protect victims and communities from ongoing anti-social behaviour.

When the ASBO was introduced in 1998, it was intended to be that civil order but its use has declined since 2005 as many practitioners chose not to use it, among other reasons, because they found the cost and associated casework for applicant authorities too cumbersome. This may explain the shift from ASBOs on application to the less expensive and bureaucratic CRASBO.

Our aim with the Crime Prevention Injunction is to create a purely civil court order (i.e. with sanctions under the civil, rather than criminal, law) that agencies can secure quickly to stop an individual’s anti-social behaviour and protect victims and communities. It could include both prohibitions on behaviour and positive requirements to address underlying issues, and would replace a range of current tools including the ASBO on application, the Anti-social behaviour Injunction, Intervention Orders, and Individual Support Orders.

#### **HOW THE INJUNCTION WOULD WORK**

To secure a Crime Prevention Injunction, the applicant authority would have to prove to the court ‘on the balance of probabilities’ that an individual was engaging, had engaged or was likely to engage in anti-social behaviour to one or more persons not of the same household. Hearsay evidence would be permitted, as would the use of professional witnesses. The injunction would include prohibitions on the individual’s future behaviour and could also

include positive requirements to ensure the individual addressed underlying problems.

One of the issues we are keen to seek views on is the test used by the court in considering whether to impose the injunction. One option would be to use the legal definition set out in the 1998 Crime and Disorder Act – that the individual’s behaviour had caused or was likely to cause, harassment, alarm or distress to one or more persons not of the same household. Another would be to use the lower threshold currently in place for Anti-social Behaviour Injunctions (ASBIs) related to social housing of ‘conduct causing or likely to cause nuisance or annoyance to a person not of the same household as himself’. The latter would allow agencies to take a more preventative approach, intervening faster and earlier to stop anti-social behaviour escalating.

There is a question as to whether the Crime Prevention Injunction should be heard in the Magistrates’ Court or in the County Court. There are strong arguments for the injunction for over 18s being considered in the Magistrates’ Court, but also arguments for it being heard in the County Court, as housing-related injunctions are at the moment:

- Magistrates’ Courts have more capacity, and tend to offer better security and better protection for witnesses. Magistrates are the key point of local justice within the local community and have experience of dealing with ASB cases, as they tend to hear ASBO applications. However, magistrates are less familiar with the civil law, and the civil burden of proof. Magistrates also have lower sentencing powers for contempt of court than judges in the County Court and are less used to dealing with contempt proceedings;
- County Courts are more familiar with civil injunctions and the civil burden of proof. They also have higher sentencing powers than Magistrates’ Courts. But County Courts have less capacity, and also tend to have fewer security provisions, such as docks and secure cells.

We would envisage the Crime Prevention Injunction being available to deal with anti-social behaviour by perpetrators aged 10 to 17, and again, there are options around where this injunction should be heard. In particular the question is whether it should be heard in the same court as the adult injunction (either Magistrates’ or County); or if the adult injunction is heard in the Magistrates’ Court, whether the injunction for under 18s should be heard in the Youth Court.

- The Youth Court is best placed to deal with cases for under 18s, but currently has jurisdiction in criminal cases only. We are therefore keen to hear views on whether the jurisdiction of the Youth Court could be extended to consider the Crime Prevention Injunction, and subsequent breaches.
- There is some precedent for hearing youth cases in the County Court, as gang injunctions for under 18s are due to be piloted there, but that requires special arrangements such as the perpetrator being accompanied by a ‘litigation friend’ as well as their solicitor. County Courts also have very limited options for sentencing under 18s.

#### WHO WOULD APPLY FOR THE INJUNCTION?

Police forces, local authorities and registered providers of social housing would be able to apply for the injunction, consulting the relevant Youth Offending Team (YOT) before any application related to an individual under the age of 18.

Before making an application for an injunction for someone under the age of 16, the relevant authority could prepare a report on the person’s family circumstances. This could be used to inform an application for a Parenting Order alongside the injunction, or to enable the authorities to identify and address other needs of the parents or wider family through voluntary support, or measures such as Family Intervention Projects.

## PROHIBITIONS AND POSITIVE REQUIREMENTS

The terms of the injunction would vary according to the behaviour of the individual, but it could include both prohibitions and positive requirements. In accordance with current case law, these must be reasonable, proportionate, realistic, practical, clear and enforceable. Prohibitions would be preventative rather than punitive and positive requirements, including any formal support, proposed by the applicant authority. For example, if a perpetrator regularly causes anti-social behaviour in a certain area, he could be prohibited from returning to it and required to undertake an anger management course, or if a dog owner was persistently demonstrating a lack of control of an aggressive dog he could be prohibited from walking the dog in certain areas and/or required to always keep his dog on a lead and/or muzzled in public including in his garden or in places of common access.

As with the current housing-related Anti-social Behaviour Injunctions (ASBIs), the power of arrest could be attached to the prohibitions where there was a risk of harm to the victim or the community (e.g. the perpetrator had a history of violence). We would not envisage the power of arrest being attached to positive requirements.

As with the Criminal Behaviour Order, there is a range of options regarding minimum and maximum terms for the injunction, including:

- Prescribing neither, to give the courts maximum discretion;
- Prescribing a minimum term, but no maximum term. This would enable orders to be applied for as long as necessary;
- Prescribing no minimum term, but setting a maximum term to guide the courts;
- Having different minimum and/or maximum terms depending on whether the offender is under or over 18.

## BREACH

Breach of the Crime Prevention Injunction would need to be proved 'beyond reasonable doubt' but would not be a criminal offence and would not result in a criminal record. This mirrors the current sanction for breach of ASBIs.

Breach of an injunction would usually be treated as contempt of court. If the CPI is heard in the County Court, we would propose breach for over 18s being treated as contempt of court, in the same way that breach of an ASBI is at present. However, if the Crime Prevention Injunction is heard in the Magistrates' Court, we would propose specific sanctions for breach, including fines and a maximum sentence of 6 months. These would be civil sanctions, with no criminal conviction resulting from breach.

For under 18s, breach could not be dealt with through contempt of court, as there are no powers to detain anyone under 18 for contempt and fines are difficult to enforce<sup>4</sup>. So alternative sanctions would be required in order for the injunction to be enforced in either court (County Court or Youth Court). We propose adopting some of the sanctions regime developed for gang injunctions for under 18s<sup>5</sup>, namely that the court can impose a supervision order, imposing on the perpetrator one or more of the following requirements:

- a supervision requirement;
- an activity requirement;
- a curfew requirement;
- a detention requirement

In cases where a serious breach has occurred, or where there have been a number of breaches of the same order, we propose that the court should be able to impose a detention order on a young person. Again, these would be civil sanctions, with no criminal conviction resulting from breach.

<sup>4</sup> LB Harrow –v- G (High Court, 2004)

<sup>5</sup> Crime and Security Act 2010

## QUESTIONS:

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?*
2. *Which test should the court apply when deciding whether to impose a Crime Prevention Injunction – that the individual’s behaviour caused ‘harassment, alarm or distress’ or the lower threshold of ‘nuisance or annoyance’?*
3. *Do you think the Crime Prevention Injunction should be heard in the County Court or the Magistrates Court?*
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?*
5. *Should the Crime Prevention Injunction carry a minimum and/or maximum term. If so, how long should these be, and should they be different for over or under 18s?*
6. *Should there be a list of possible positive requirements in the primary legislation to provide guidance to judges?*
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?*
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?*
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?*

### 4.3 THE COMMUNITY PROTECTION ORDER

There is currently an array of tools available to deal with place-related anti-social behaviour, including:

- powers to deal with environmental anti-social behaviour such as noise, graffiti and litter;
- powers to tackle anti-social behaviour in public places (e.g. by imposing restrictions on consumption of alcohol or the right of people to allow their dog to roam freely in a given area); and
- powers to close premises which are a magnet for crime and disorder, such as crack houses.

The number of tools reflects a reactive, incremental approach, with additional measures added in successive pieces of legislation since 1998 as new issues have arisen. As a result, the toolkit is unwieldy and many of the powers are very similar, creating significant overlaps. The Premises Closure Order, for example, is almost identical to the Crack House Closure Order and the Brothel Closure Order.

We want to streamline the toolkit so it is more user-friendly for practitioners, more intelligible to the public and easier to enforce. We also want to shift the emphasis from having a specific tool to deal with every type of behaviour, to ensuring professionals can respond effectively to a range of problems that matter to local people. The proposed Community Protection Order therefore aims to bring together many of the existing powers outlined above into one place, a single civil tool for dealing with persistent place-related anti-social behaviour.

#### HOW WOULD THE ORDER WORK?

We propose that the Community Protection Order should have two levels of severity, allowing practitioners to cover the full range of place-related anti-social behaviour, from environmental anti-social behaviour to more significant and/or persistent disorder.

**Level 1** would be a notice issued by a practitioner in cases of environmental anti-social behaviour that was affecting victims' or community quality of life. It would require the recipient to desist from their behaviour and/or 'make good' (i.e. by clearing up litter) and would replace existing measures such as Litter Clearing Notices<sup>6</sup>, Graffiti/Defacement Removal Notices and could be used as an alternative to Noise Abatement Notices<sup>7</sup> where the noise was caused by an individual and believed to be deliberately anti-social.

**Level 2** would be a local authority or police power to tackle significant and/or persistent anti-social behaviour in a particular place. This could involve imposing restrictions on the use of that space, for example having to keep dogs on a lead<sup>8</sup>, if sufficient evidence of anti-social behaviour was provided to a local authority officer of a particular rank<sup>9</sup>. In cases of more serious or persistent disorder, evidence could be provided by the police or the local authority to the Magistrates' Court to request an order to close a premises for an initial period of up to three months, regardless of tenure. The Level 2 order would replace the Dog Control Order (DCO), the Gating Order, the Designated Public Place Order, the Premises Closure Order, the Crack House Closure Order and the Brothel Closure Order.

#### WHO CAN EXERCISE THESE POWERS?

We would envisage a range of professionals being able to issue a Level 1 Community Protection Order, including council and housing association staff, as is currently the case with the tools it would replace.

The Level 2 order would be given by the police or the local authority. If the order imposed

6. It is proposed that use of the Community Protection Order would replace Litter Clearing Notices. This would not affect other litter enforcement powers in the Environmental Protection Act 1990 or Clean Neighbourhoods and Environment Act 2005.

7. It is not proposed to amend the statutory nuisance regime contained within the Environmental Protection Act 1990, and therefore the powers and duties which apply to local authorities under that Act will remain unchanged.

8. As is currently possible through Dog Control Orders, introduced in the Clean Neighbourhoods and Environment Act 2005

9. For example, an officer of the rank of superintendent or above, or the appropriate person at the local authority (as specified in regulations)

restrictions on use of a space (but did not close it altogether), then it could be agreed by the local authority and would not have to be heard in court (as is currently the case with e.g. Dog Control Orders). If the order was intended to close a premises, this would need to be approved by the Magistrates' Court (as is currently the case with e.g. Premises Closure Orders).

### BREACH

Failure to comply with a Level 1 order would be a criminal offence, as is currently the case with most of the tools it would replace. It would generally be punishable by a Fixed Penalty Notice (FPN) or, if the offence was heard in court, a fine. However, where specific sanctions have been developed to deal with specific types of behaviour (for example, the seizure of noise-making equipment, or the ability of a local authority to clear litter and then recover the cost from the perpetrator), we would look to preserve these.

Breach of a Level 2 order would be a criminal offence, as is currently the case with most of the tools it would replace, with the sanction dependent on whether restrictions had been imposed, or whether the premises had been closed. If restrictions imposed by the local authority were not complied with, breach would be punishable by an on the spot financial penalty for £50 or arrest and prosecution for a Level 2 fine with a maximum of £500<sup>10</sup>. Where closure of a premises was ordered by the Magistrates' Court, breach of this would be punishable by a fine or up to 6 months in prison, as is currently the case for e.g. Premises Closure Orders and Crack House Closure Orders.

### QUESTIONS:

1. *What do you think of the proposal to bring existing tools for dealing with persistent place-related anti-social behaviour together into a single Community Protection Order?*

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?*
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?*

10. As is currently the case for Designated Public Place Orders

#### 4.4 THE DIRECTION POWER

Over the last ten years, the police have been given a number of powers to require people to leave an area if they are causing, or likely to cause anti-social behaviour:

- The Anti-Social Behaviour Act 2003 gave the police in England and Wales new powers to disperse groups of two or more people from areas where there is persistent ASB;
- The 2003 Act also introduced the power to take home any young person under 16 who is out on the streets in a dispersal zone between 9pm and 6am and not accompanied by an adult;
- The Violent Crime Reduction Act 2006 gave a uniformed constable the power to direct an individual aged 16 or over to leave an area – and not return for up to 48 hours - if they believe their presence is likely to contribute to alcohol-related crime and disorder.
- Designated Public Places Orders give the police the power to confiscate alcohol in designated areas

A person asked to leave an area under one of these powers has not committed an offence, but refusal to comply is a criminal offence.

We propose to combine the most effective elements of these various powers into a single, simpler police power to direct people away from an area where they are committing, or are likely to commit anti-social behaviour.

At the same time, we are keen to strike the right balance between the ability of a community to enjoy its public spaces, and the civil liberties of individuals and groups. As a result, whilst we think that refusing to comply with the new power should be a criminal offence, as breach of the various existing powers is, we are consulting on the most appropriate sanction. The new power would also be dependant on actual behaviour, rather than an individual's presence in a particular area (part of the test

used for use of the powers under Section 27 of the Violent Crime Reduction Act 2006 and the Anti-social Behaviour Act 2003). But we are keen to hear views on whether there should be additional safeguards to ensure that it is used proportionately, does not discriminate against particular sections of society and does not infringe on, for example, the right to protest.

#### HOW THE POWER WOULD WORK

The Direction power would enable a constable or PCSO to require a person aged 10 or over to leave a specific area, and not return for up to 48 hours. The tests for the issuing officer would be:

- that the individual has committed crime, disorder or anti-social behaviour or is likely to cause or contribute to the occurrence or continuance of crime, disorder or anti-social behaviour in that area; and
- that giving the direction was necessary to remove or reduce the likelihood of that individual committing crime, disorder or anti-social behaviour in that area.

The power could also include **optional** secondary requirements, such as requiring the individual to surrender items (such as alcoholic drinks) contributing to their anti-social behaviour.

The area the individual was required to leave would be defined by the officer issuing the direction. In some cases (e.g. regarding well-known ASB hotspots), this could mean giving the perpetrator a map with the designated area clearly marked, as some police forces do already.

The power could also include the ability to return home unaccompanied young people under the age of 16, subject to appropriate safeguards.

#### WHO COULD USE THE DIRECTION POWER

This would be available to police officers and PCSOs only.



## BREACH

Under the existing legislation, it is only when someone refuses to leave the area following an instruction from a police officer or a PCSO, that a criminal offence is committed. We are proposing to retain this provision under the new power. However, whilst the police must have the authority to enforce this power, to ensure that people can enjoy their public spaces, we are keen to avoid criminalising people, particularly young people, unless absolutely necessary. We therefore want to hear your views on the most appropriate sanction for breach of the new Direction power.

## QUESTIONS:

1. *What do you think of the proposal to combine these existing police powers for dealing with anti-social behaviour into a single Directions power?*
2. *Do you think the power should be available to PCSOs as well as police officers?*
3. *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?*
4. *What do you think would be the most appropriate sanction for breach of the new Direction power?*
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?*

## 4.5 INFORMAL TOOLS AND OUT-OF-COURT DISPOSALS

Informal and out-of-court disposals are an important part of professionals' toolkit for dealing with anti-social behaviour, offering a proportionate response to first-time or low-level incidents. One of our objectives in reforming the approach to anti-social behaviour is to make this kind of early intervention more effective, so that fewer people – young people in particular – go onto more serious offending.

### INFORMAL TOOLS

Informal tools such as warning letters and Acceptable Behaviour Agreements (ABAs) are often used to deal with low-level anti-social behaviour, with one intervention frequently enough to stop the behaviour recurring. ABAs can be used by any agency with perpetrators of all ages and backgrounds and their flexibility enables them to be tailored to the individual circumstances. At the moment, they tend to consist of an agreement between the perpetrator and a practitioner, but some local areas are exploring ways of engaging the community and making them more restorative.

For example, Salford City Council have used an innovative approach to engaging the community in setting the terms of an ABA, piloting panels chaired by trained local volunteers who have agreed ABAs with local young people. We are keen to highlight this kind of innovation, and also to remove the barriers to greater community involvement in shaping the way local agencies deal with anti-social behaviour.

### RESTORATIVE JUSTICE

We are working with the Ministry of Justice (MOJ) to make the informal and out-of-court tools for dealing with anti-social behaviour

more rehabilitative and restorative. That includes ensuring that community and restorative solutions can be used to address community issues. This will ensure that any disincentives for police officers to use restorative justice methods to deal with community incidents which would be best addressed outside the formal criminal justice system are removed - giving victims a more immediate and proportionate response, as well as saving time and money.

### OUT-OF-COURT DISPOSALS

Out-of-court disposals, such as cautions, conditional cautions and penalty notices for disorder (PNDs), are intended for dealing with low-level, often first-time offending, where prosecution would not be in the public interest.

The MOJ is examining the use of out-of-court-disposals and has published a Green Paper (*Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*) containing a number of proposals for consultation which are relevant to the ASB review<sup>11</sup>.

In relation to adult out-of-court disposals, the Green Paper proposes amending the PND scheme to allow suspects to pay to attend appropriate educational courses as an alternative simply to paying a financial penalty. This will help individuals to understand the harm caused by their conduct and reduce the likelihood of further offending. It also seeks views on simplifying the out-of-court disposals framework by bringing police powers to use simple and conditional cautions in line with their powers to charge suspects.

In relation to under 18s, the consultation proposes ending the current system of automatic escalation of out-of-court disposals for young people and returning discretion to front-line professionals as there are concerns that this has had the effect of escalating young people into court and custody more quickly than would otherwise be the case.

11. The Green Paper can be found at: <http://www.justice.gov.uk/consultations/breaking-cycle-071210.htm>

We are working with the MOJ to ensure that out-of-court disposals for young people include swift, restorative sanctions with real consequences for non-compliance, as well as encouraging parents to take more responsibility for their children's behaviour.

The Green Paper consultation is open until 4 March 2011, and details of how to respond can be found on the MOJ website.

### QUESTIONS:

1. *How do you think more restorative and rehabilitative informal tools and out-of-court disposals could help reduce anti-social behaviour?*
2. *What are the barriers to communities getting involved in the way agencies use informal and out-of-court disposals in their area?*
3. *Are there any other changes to the informal and out-of-court disposals that you think could help in tackling anti-social behaviour?*

### 4.6 THE COMMUNITY TRIGGER

The broad definition of anti-social behaviour, and the range of agencies involved in tackling it, can lead to uncertainty as to whose responsibility it is at local level to deal with a particular problem. As a result, victims can find themselves being passed from agency to agency, or reporting the same problem again and again. This has been exacerbated by a tendency of some agencies to give insufficient attention to the impact of an incident on the victim or the community.

We want local agencies to get it right first time but where they don't, we propose to give people more power to shape the way the police and other agencies respond to the issues that matter in their area, particularly those who have experienced sustained, targeted anti-social behaviour. We therefore propose to introduce, alongside the simplified toolkit, street-level crime information and regular neighbourhood beat meetings, a new duty

on the statutory members of a Community Safety Partnership (CSP)<sup>12</sup> – which includes the police and local authority – to take action to deal with persistent anti-social behaviour suffered by victims or communities. The duty would be triggered by members of the public making a complaint that meets certain criteria.

Once the duty had been triggered, one or more of the partners within the CSP would be required to take steps to resolve the problem, and reply to the complainants explaining what it proposed to do. That reply would be copied to the elected Police and Crime Commissioner, who would have the power to call in the CSP where he or she did not think the proposed response was adequate.

#### HOW THE TRIGGER WOULD WORK

There are several examples of trigger mechanisms which are already in place, and have thresholds to ensure genuine use. For example, the Anti-social Behaviour Act 2003 allowed an individual to demand action by their local authority to deal with a neighbour's leylandii hedge unless:

- the complainant has not taken all reasonable steps to resolve the matters complained of without proceeding by way of such a complaint to the authority; or
- the complaint is frivolous or vexatious.

Local authorities are also required to provide sufficient land within a borough or parish to satisfy local demand for allotments if six registered voters write to the council.

With the proposed trigger for persistent anti-social behaviour, we would envisage the criteria being:

- That five individuals, from five different households in the same neighbourhood, had complained about the same issue, and no action had been taken; **or**
- That the behaviour in question had

been reported to the authorities by an individual a minimum of three times (for example, at neighbourhood beat meetings), and no action had been taken; **and**

- a CSP could reject the complaint if they deemed it to be malicious (e.g. targeted at a particular individual or family on any discriminatory grounds<sup>13</sup>).

Complaints that met these criteria would trigger a collective duty on the statutory partners in a CSP to take action to address the problem. The CSP would have to write to the complainants within a set period (e.g. 14 days), setting out what it planned to do to deal with the behaviour in question, including the use of any tools and powers, as well as any assistance required from the complainants or the wider community (e.g. gathering evidence, or reporting further incidents).

The CSP would copy its response to the Police and Crime Commissioner (PCC). In the event that the PCC judged the response inadequate, the PCC could then exercise his or her power to “call in” the CSP or potentially award a grant to deal with the problem.

#### LOCAL FLEXIBILITY

We propose that this be a strategic duty, with CSPs having the flexibility to decide how they apply it in practice. Other than setting out some key principles and good practice about ways to enable local people to make a complaint, we would envisage minimal central prescription over how areas operate the trigger, how they should publicise it or how they respond to complaints.

#### OTHER COMPLAINTS MECHANISMS

Police and local authorities, as well as registered providers of social housing, have complaints mechanisms for those who are dissatisfied with their services, for example through the Independent Police Complaints Commission and Local Government and Housing Ombudsman. However, the proposed

12. This would exclude prosecutors and HM Courts Service.

13. Discriminatory grounds as outlined in the Equality Act 2010

Community Trigger would enable victims and communities to demand swift action to resolve a local problem where no action had been taken. The focus would therefore be on stopping behaviour in the future, rather than working out what had gone wrong in the past.

#### QUESTIONS:

1. *What do you think of the proposal to introduce a duty on Community Safety Partnerships to deal with complaints of persistent anti-social behaviour?*
2. *Do you think the criteria for the Community Trigger are the right ones? Are there other criteria you think should be added?*
3. *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?*

## 5. WIDER REFORM

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Our ultimate aim is to ensure that where a community or victim is suffering anti-social behaviour or a concerted campaign of hate crime – particularly the sort of targeted, persistent harassment seen in a number of high-profile cases – the police and other local agencies take the problem seriously, take the necessary steps to stop it permanently, and protect vulnerable victims. Improving the toolkit on its own will not be enough to achieve that objective, and the proposals set out here are part of a wider package of reforms. In particular, the new tools and powers should be seen alongside our plans to increase local accountability so that the police and their partners focus on what matters most to victims and the wider public, and to empower communities to get more involved in the fight against anti-social behaviour in their neighbourhood.

### FOCUSSING THE POLICE AND PARTNERS ON WHAT MATTERS TO THE PUBLIC

From 2012, elected Police and Crime Commissioners will drive the response to neighbourhood crime and anti-social behaviour, which we expect to remain a high priority for the voting public.

In the interim, a range of other measures will also encourage the police and other agencies to take anti-social behaviour seriously, and improve their response to victims and the public:

- As we announced in January, eight police forces, with support from the Home Office, the Association of Chief Police Officers (ACPO) and others, have volunteered to trial a new approach to **handling calls** from the public about anti-social behaviour, and protecting repeat and vulnerable victims. This new approach is not a ‘one-size fits all’ solution from the centre – volunteers will decide for themselves how to implement five key principles developed on the basis of front line experience, and we will assess what works best later in the year.

This typifies the new role for government – supporting rather than directing, and trusting professionals to do their job;

- ACPO is proposing to introduce, from 1st April this year, a much simpler system for police forces to record incidents of anti-social behaviour. This will see fourteen categories for anti-social behaviour replaced with three – ‘environmental’, ‘nuisance’ and ‘personal’. This will help call handlers identify the appropriate response, based on the risk of harm to the victim, rather than the nature of the incident itself;
- We have committed to looking for a cost-effective way of introducing **the ‘101’ number as a national non-emergency number** which will give the public a single route for reporting non-emergency incidents to the police. We want to develop this in such a way that would enable local partners to join up with the police in the future. We expect to announce further information on this in due course; and
- As part of our commitment to greater transparency, we plan to publish police data on anti-social behaviour incidents quarterly, alongside official crime statistics.

### ENABLING COMMUNITIES TO GET INVOLVED

Because anti-social behaviour is a fundamentally local problem, the long-term solutions will come in part from empowered individuals, parents and communities who are prepared to stand up and challenge it. This is not something we can or should expect the public to do by themselves. But they have an important role to play, and too often, the old top-down approach overlooked or marginalised that role. So we are making it easier for people to get involved, and to make a difference:

- the **introduction of street-level crime maps** from the end of January will allow members of the public to see local hotspots for anti-social behaviour, and hold their local police directly to account at regular beat meetings. The maps will show incidents reported to the police at first, but the next phase of work will explore adding data from other local partners, such as councils and social landlords.
- **Helen Newlove** has also started her work as the government's champion for safer, active communities. She is visiting organisations including community centres, residents associations, youth groups, local authorities, police forces and housing associations, to listen to their views and discuss the role they have to play in building stronger communities. She is also working with neighbourhoods who are taking a community activism approach to tackling local problems and seeing first hand what works and what is challenging. She will be producing a series of recommendations later this year, based on her experience.
- **Volunteer street patrols** have begun in many areas across the country, where communities, working with the police, patrol their local streets providing a visible presence, deterring low level disorder, and acting as an additional set of eyes and ears and helping people to feel safe. We are supportive of this and are working with ACPO to support forces who want to adopt street patrols in their force area.
- The Government also supports the **Community Safety Accreditation Scheme (CSAS)** which recognises the role of those already involved in community safety - such as neighbourhood wardens, park rangers and security guards - providing them with training and, if appropriate, limited powers focused on tackling anti-social behaviour. CSAS is

another important tool in the fight against anti-social behaviour as it improves partnership working between the police and the workers who are accredited through shared intelligence and briefings, and closer working, including joint operations. Accredited persons assist the police by being extra sets of eyes and ears in their communities and by tackling minor acts of anti-social behaviour that would otherwise take up police time.

### **TACKLING ANTI-SOCIAL BEHAVIOUR IN THE INTERIM**

Whilst this consultation has focused on our ideas for improving the toolkit, we recognise that implementing these proposals will take time. We also recognise that many practitioners across the country are making the best of the current system, working hard to protect victims and communities from anti-social behaviour. The message to professionals and the courts is clear – all current legislation remains in force for the time being, and where it offers the most effective means of dealing with anti-social behaviour, it should continue to be used until further notice.

At the same time, as we strip away the old central targets and top-down initiatives, we are keen to find and support new ways for practitioners to talk to each other and share their experiences.

## 6. ABOUT THIS CONSULTATION

<b>Topic of this consultation</b>	More effective responses to anti-social behaviour.
<b>Scope of this consultation</b>	To seek views of key partners (e.g. the police, local authorities, registered providers of social housing) and members of the public on proposals to reform the policy framework for dealing with ASB.
<b>Geographical scope</b>	England and, where relevant, Wales
<b>Impact assessment</b>	We are using the consultation to gather further evidence from practitioners and the public to inform the cost/benefit analysis in our final stage impact assessment. If you have evidence of the costs or benefits of the current toolkit which we can use to inform work on the impact assessment please send this to us by email or post.

### BASIC INFORMATION

<b>To</b>	This consultation is open to the public.
<b>Duration</b>	Until 3 May 2011
<b>Enquiries</b>	Home Office Antisocial Behaviour Unit 4th Floor, Fry Building 2 Marsham Street London SW1P 4DF Email: ASB-consultation@homeoffice.gsi.gov.uk
<b>How to respond</b>	You can respond online at: <a href="http://www.homeoffice.gov.uk/ASB-consultation">www.homeoffice.gov.uk/ASB-consultation</a>
<b>Additional ways to become involved</b>	This will be an online consultation exercise. Please contact the Home Office (as above) if you require information in any other format, such as Braille, large font or audio.
<b>After the consultation</b>	A summary of responses will be published before or alongside any future action.

## BACKGROUND

<b>Getting to this stage</b>	Officials from across government, led by the Home Office have reviewed the tools and powers for dealing with anti-social behaviour.
<b>Previous engagement</b>	Key partners and some expert practitioners have been consulted informally during the development of these proposals.

## RESPONSES: CONFIDENTIALITY & DISCLAIMER

The information you send us may be passed to colleagues within the Home Office, the government or related agencies.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 [FOIA], the Data Protection Act 1998 [DPA] and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.'

## CONSULTATION CRITERIA

Where possible the Consultation follows the Code of Practice on Consultation – the criteria for which are set out below:

Criterion 1 – When to consult – Formal consultation should take place at a stage when there is scope to influence the policy outcome.

Criterion 2 – Duration of consultation exercises – Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.

Criterion 3 – Clarity of scope and impact – Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

Criterion 4 – Accessibility of consultation exercises – Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

Criterion 5 – The burden of consultation – Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

Criterion 6 – Responsiveness of consultation exercises – Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

Criterion 7 – Capacity to consult – Officials running consultations should seek guidance in how to run an effective consultation



exercise and share what they have learned from the experience.

The full Code of Practice on Consultation is available at: <http://www.bis.gov.uk/policies/better-regulation/consultation-guidance>

### **CONSULTATION CO-ORDINATOR**

If you have a complaint or comment about the Home Office's approach to consultation, you should contact the Home Office Consultation Co-ordinator, Adam McArdle. Please DO NOT send your response to this consultation to Adam McArdle. The Co-ordinator works to promote best practice standards set by the Code of Practice, advises policy teams on how to conduct consultations and investigates complaints made against the Home Office. He does not process your response to this consultation.

The Co-ordinator can be emailed at: [Adam.McArdle2@homeoffice.gsi.gov.uk](mailto:Adam.McArdle2@homeoffice.gsi.gov.uk) or alternatively write to him at:

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