



Briefing on changes to tackling anti-social behaviour

February 2011

In February 2011 the Home Office published its consultation on its approach to tackling anti-social behaviour. The document follows the review last year of the tools and powers that have been introduced since the 1998 Crime and Disorder Act and intends to radically simplify and improve the tools alongside a localised approach that puts more power in the hands of communities.

1. Review of the current arrangements

The review of the current toolkit available for practitioners identified the following failings:

- Too many tools with practitioners sticking with the ones they know;
- Some of the formal tools are bureaucratic, slow and expensive;
- Increase in breaches of Anti-Social Behaviour Orders (ASBOs) suggest they are not deterring a minority of perpetrators;
- Tools that were designed to help perpetrators deal with underlying causes are rarely used.

What the Home Office proposes moves away from having a tool for each different problem to fewer, more flexible tools and more effective sanctions.

2. Formal tools

The table below outlines current tools and the proposed replacements:

| Existing System | Changes |
|--|--|
| Anti-Social Behaviour Orders, Anti-Social Behaviour Injunctions, Individual Support Orders and Intervention Orders | Criminal Behaviour Orders Crime Prevention Injunctions* |
| Crack House, Premises and Brothel Closure Orders, Designated Public Place, Special Interim Management Orders, Gating Orders and Dog Control Orders | Community Protection Orders (level 2) |
| Litter Clearing Notices, Noise Abatement Notices Graffiti/Defacement Removal Notices | Community Protection Orders (Level 1)** |
| Dispersal Orders and Directions to Leave | Police Direction powers |

* available to Registered Providers ** available to wider practitioners

The **Criminal Behaviour Order** will be a civil order available on conviction for any offence in addition to the court's sentence. There is no requirement to demonstrate that all other remedies had been exhausted, just that it was suitable for the individual and their circumstances. It would impose a range of prohibitions and could also require the offender to take action to address the underlying causes of their behaviour, which could include attending anger management classes. The prosecutor applying for it would have to demonstrate that a relevant authority was in a position to satisfy or discharge its positive requirements. Breach of the order would be a criminal offence with a maximum of 5 years in custody.

Registered Providers will be able to apply for a **Crime Prevention Injunction** which also includes prohibitions on behaviour and positive requirements which could, for example, include muzzling dog(s). The order is purely civil and the provider will have to prove on the balance of probabilities the individual was, had or was likely to engage in anti-social behaviour (ASB) to one or more persons not of the same household. Professional witnesses and hearsay evidence will be permitted. It has not yet been decided if the application for the injunction should be heard in the Magistrates Court or the County Court. There are pros and cons for each. Breach needs to be proven beyond reasonable doubt and would not be a criminal offence but treated as contempt of court which incurs fines and a maximum sentence of 6 months

The **Community Protection Order** is a civil tool for dealing with persistent place-related ASB. Level 1 would be a notice issued by a practitioner in cases of environmental ASB affecting victims' or communities' quality of life, for example noise nuisance. Level 2 gives the police or local authority

(LA) the power to tackle significant and/or persistent ASB, for example restrictions on use of space, and could result in a request to a Magistrates Court to close premises, irrespective of tenure. Failure to comply with a notice would be a criminal offence. Penalties could be for example for level 1 a fixed penalty notice, but could also involve seizing of noise making equipment or recovering the cost of clearing litter from a perpetrator.

The Directions power enables police to direct people from an area where they are or are likely to commit ASB and could include optional requirements, for example surrendering items such as alcoholic drinks. If someone refuses to leave the area then a criminal offence is committed.

3. Informal tools

Housing providers, in particular those who provide care and support, have reported success on managing ASB through early intervention using informal tools. The Home Office is keen to highlight approaches that engage the community, for example in setting the terms of Acceptable Behaviour Agreements or Contracts. It is working with the Ministry of Justice to make informal tools such as police cautions and penalty notices more rehabilitative and restorative, for example by allowing suspects to pay to attend appropriate educational courses.

4. Community trigger

Ideally agencies get their response to ASB right the first time. However the broad range of those involved means there can be uncertainty as to who is responsible. The Home Office is planning to introduce, alongside the toolkit, street-level information, regular neighbourhood beat meetings and a new duty on the statutory members of the Community Safety Partnership to take action to deal with persistent ASB which will be triggered by complaints from the public.

5. Young People

A significant number of sanctions for ASB are currently utilised on young people under the age of 18. The Home Office is suggesting that for the Criminal Behaviour Order and Crime Prevention Injunction that before making an application for someone under 16 the relevant authority could prepare a report on the person's family circumstances which could be used to inform an application for a parenting order or referral to voluntary support or a Family Intervention Project. In the case of the Injunction where the alleged perpetrator is under 18, the applicant would have to consult the Youth Offending Team. The proposed sanctions for those under 18 are expected to mirror those set out in the regime developed for gang injunctions in the Crime and Security Act 2010, for example requirements relating to supervision, activity, curfew and detention. The Home Office is keen that out of court remedies for young people include swift, restorative sanctions with real consequences for non-compliance.

6. Other related measures

Grant Shapps, the Housing Minister, has announced proposals to make a housing-related conviction for an indictable offence or breach of a court order for ASB a mandatory ground for possession. This will mean that an individual could be evicted on one single conviction. The Home Office is also working with the Ministry of Justice on its proposals set out in the Green Paper Breaking the Cycle: Effective Punishment Rehabilitation and Sentencing of Offenders. These include for example increasing the use of asset seizure as a sanction for criminal offences and restricting overseas travel by seizing passports. The Green Paper contains a number of proposals which are relevant to the review of measures to tackle ASB. From 2012 elected Policy and Crime Commissioners will drive the response to neighbourhood crime and ASB; a new approach to handling calls on ASB is being trialled in 8 police forces; there is a proposal to introduce a much simpler system of recording incidents; and the Government are looking at a cost-effective way of introducing the non-emergency '101' number nationally.

7. Implications for housing and support providers

Simplifying the formal responses to ASB will be welcomed by the sector which often struggles with the expense, staff resources and length of time it takes to secure an effective remedy for ASB, whether perpetrated by residents or unwelcome visitors. Registered Providers are not able to apply for the Criminal Behaviour Order that has replaced ASBOs, but anecdotally care and support providers have reported that the cost and complexity of obtaining these orders meant that the Anti-Social Behaviour Injunction was more commonly used and the Crime Prevention injunction proposed to replace this appears to provide a remedy. The issue for providers may be persuading the Police and Crime Prosecution Service (CPS) to instigate criminal proceedings in the event of extreme antisocial behaviour and to apply for a Criminal Behaviour Order. The cost of this will be borne by the Police and CPS not the provider. Providers will have to update their antisocial behaviour policies, procedures and practices to incorporate the new proposals if they become law.

The involvement of the community in the early intervention models may be a mixed blessing. This could ensure that the terms of Acceptable Behaviour Agreements reflect and give additional weight to the needs of those affected. However providers commonly report that higher standards of behaviour are often demanded of residents in supported housing than others in the community. There are a number of tensions within the proposals. The requirements on individuals to do things to redress their behaviour, for example attending anger management classes, will only work if there are the appropriate services available to support the positive requirements. In the current climate of cuts to voluntary sector organisations and preventative services it is difficult to see that people will get the support they need to address their behaviour and so may simply move more quickly into the criminal justice system. The lack of requirement to demonstrate an escalation of action seems also at odds with recent court decisions on proportionality, particularly in relation to possession action, for example *Manchester City Council v Pinnock*¹. The precedent from this case may also mean that the Housing Minister's proposal for a mandatory ground for possession is meaningless as the Courts are able to consider the proportionality of the action which would appear to give them discretion to dismiss or postpone any order. It would be a real disadvantage to the sector if a change in the law resulted in lengthy court proceedings attempting to establish the interface between human rights and responsibilities.

8. Sitra

Sitra is a national membership organisation committed to raising standards in the housing, care and support sector. We are a charity with over 25 years' experience of offering a range of affordable policy, training, consultancy, information, conference and capacity building services. We have some 650 member organisations, from both providers and commissioners and from the statutory, voluntary and private sectors.

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¹ http://www.supremecourt.gov.uk/decided-cases/docs/UKSC_2009_0180_PressSummary.pdf