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This consultation asks for 'opinions on government plans to streamline the toolkit used to tackle anti-social behaviour'. We have concentrated on Chapter 4 of the paper.

4.1 Criminal Behaviour Orders

We agree that ASBOs have not been an effective solution to anti-social behaviour but would have liked to see some analysis of why this is, so that alternative proposals could address the deficiencies rather than replace them with other orders. There are three main issues that will influence the effectiveness of ASBOs, ie:

- factors that affect the individual's ability to control/alter their behaviour, such as drug or alcohol dependency;
- inadequate monitoring and detection of breaches;
- breaches have not been dealt with robustly.

The only apparent difference that distinguishes the proposed Criminal Behaviour Order (CBO) from the existing ASBO upon conviction — or 'CRASBO' — is the ability to impose '*positive requirements on an offender to take action to address the underlying causes of their behaviour*', with drug treatment being given as an example. There would therefore appear to be an overlap between a community order (CO) and a CBO. This raises the following issues:

- a. The potential for an offender to be sentenced to both a CO and a CBO.
- b. Whether it could ever be right for a CBO to be imposed in any way automatically upon conviction for any offence which involved causing harassment, alarm or distress. The requirement for the Crown to show that an order was necessary ought to require the prosecutor to provide the same standard of proof as needed for an existing ASBO hearing. The experience of sentencers is that when a CRASBO is applied for this is

done very much as an afterthought and, consequently, orders are rarely granted as the prosecution do not have evidence to show that the order is necessary.

- c. There appears to be no restriction on a CBO being imposed for a low level offence such as minor criminal damage for which a fine or conditional discharge may be deemed the appropriate sentence. This would have the effect of raising the tariff for these offences.
- d. As with ASBOs, breach of the (civil) CBO would be criminal offence with a maximum sentence of 5 years in custody, whilst breach of a CO is dealt with by revoking and re-sentencing or by making the order more onerous. Again, this would have the effect of raising the tariff for many offenders in the magistrates' courts and is likely to have the, presumably undesired, unintended consequence of increasing prison populations.
- e. The imposition of positive requirements has resource implications for the probation service and YOTs — both of which are already over-stretched. The limited availability of programmes due to the lack of financial resources will be of major concern. If the recipient of the order would be expected to pay for some kind of behaviour intervention course (as with DBOs) this will limit the option of positive intervention to those with sufficient means, thereby severely limiting its usefulness.
- f. Some kind of report will be necessary, for both adults and youths, to determine what positive interventions are both available, and appropriate, and we can see no value in limiting this in the case of youths to looking at the person's family circumstances only; there are likely to be a wide range of factors affecting their anti-social behaviour, in particular education (or lack of).

CBOs for the under-18s should only be available in the youth court.

With regard to the term of the order, there may be arguments for making the minimum term less than that of the existing ASBO (2 years). However, we would favour leaving discretion with the court and the order being made for as long as is considered necessary — with the term subject to review as necessary. The court should be left with this discretion. Terms for youths must be shorter than those imposed for adults and we would support the maximum of 6 months which applies to Individual Support Orders (ISOs).

There should be no difference in the sanctions for breach of positive requirements as against negative requirements, as the individual has failed to carry out a court order in either case. The seriousness of the breach will be taken into account when magistrates come to sentence for the breach.

Further similarities exist between the proposed CBO and the existing Drink Banning Order (DBO) and again, information on effectiveness would have been useful and relevant. In the experience of sentencers these orders are very rarely given and similar caution would need to be applied before they were given to 'vulnerable' individuals. In the case of DBOs 'vulnerable individuals' includes those suffering from drug and alcohol dependency, or

mental health problems — ie. the very same group of people likely to be targeted for CBOs. It cannot be appropriate to impose a CBO on an individual who is unlikely to be able to comply with the order.

If CBOs were to be implemented, existing orders such as DBOs and FBOs should be rolled up into the CBOs. However, we do not believe that CBOs would have any significant impact on offending outcomes for the following reasons:

- The lack of any analysis of why the existing orders (CO, ASBO, CRASBO, FBO, DBO, ISO etc.) appear not to be working means that the proposed CBO is much in the same mould and therefore likely to be as ineffective.
- As with CRASBOs and DBOs the circumstances in which they will be appropriate are likely to be very limited.
- Lack of resources for supporting positive interventions will mean they may only be available to those who can afford to pay. This has potential implications for sentencing which must be addressed.

4.2 Criminal Behaviour Injunction

The Criminal Behaviour Injunction (CBI) is based on the existing Antisocial Behaviour Injunction (ASBI) that is available to Housing Action Trusts and others under the Housing Act 1996 (with 1,119 being granted in 2008/09). It is proposed that these are civil orders and that breach in contempt of court that can be dealt with by a fine or imprisonment up to 2 years.

The motivation for the CBI seems to be to overcome the difficulties (and cost) of proving that a criminal offence has been committed and in particular to be used where there is a lack of witnesses. The civil standard of proof would be applicable. We would be concerned if the lower test (that used by existing ASBIs) rather than the 1998 Crime and Disorder Act definition were used, as this could make use of the injunction open to abuse — '*conduct likely to cause nuisance or annoyance*' could cover almost any situation.

These injunctions should be dealt with in magistrates' courts and not in any other way. This would ensure that the proceedings are open and transparent; and, where necessary, provide better facilities and security for victims. Although magistrates predominantly dealing with matters which require the level of proof to be beyond reasonable doubt' — they also deal with other cases which use the 'balance of probabilities' requirement. Accordingly, although some further training may be required, this modest cost should be balanced against the security and convenience provided for the community as a whole.

If the CBI were to be available for youths, then this must be a matter for the youth court. Youth court magistrates are experienced and trained to deal with youths. Again, a full report on a youth would be needed, not just their family circumstances, in order to decide if it would be appropriate to grant the order.

There is a real risk that the prohibitions would just push the behaviour into different areas. The same reservations apply with regard to the positive behaviour support as for the CBO, particularly with regard to resources.

The term of the injunction should be different for youths, with a maximum term set. We do not agree that breach by a youth should, under any circumstances, be dealt with by a detention order. These are civil injunctions and should the breach be so serious that detention were considered suitable we would expect there to be sufficient evidence for a criminal prosecution.

4.3 Community Protection Order

- It seems to make sense to streamline what appears to be a confusing plethora of existing orders.
- Breach of a CPO would be a criminal offence, which seems inconsistent with breach of a CPI being a civil matter. The use of PNDs to punish level 1 breaches should be avoided as 50% are not paid and they are not effective in solving the problem.
- The general concerns about non-payment of FPNs and fine enforcement would apply.

4.5 Informal tools and out-of-court disposals

We have very strong concerns about any extension of the use of cautions and conditional cautions. Many people, especially young people, do not understand the consequences of accepting a caution and many do not receive legal advice before they do so.

The consultation document refers to the need to increase the use of out of court (or non-judicial) disposals to deal with low level crime as, it is said, prosecutions would 'not be in the public interest'. The whole thrust of the document is to improve measures to tackle problems of incidents and crimes of a low level — so it is difficult to understand why an increase to the use of non-judicial disposals should be beneficial.

In our view the use of non judicial disposals is being promoted solely for economic reasons. This is inappropriate as they are not designed to help communities tackle anti-social behaviour — the courts are the proper place for such matters to be heard.

Responses to specific questions

Questions, section 4.1

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

Criminal Behaviour Order appears to have advantages over the ASBO in that specific prohibitions and positive actions can be imposed. However, we have concerns as set out in the first part of this response.

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?*

It is essential that evidence be properly gathered and the process should not be so streamlined that justice is jeopardised.

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?*

Before making an application for a Criminal Behaviour Order for someone under 16, the relevant authority (Youth Offending Team, YOT) must prepare a report on the person's family circumstances. This will always be necessary.

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)*

Banning orders should continue to be available in addition to this as they may be needed as stand-alone orders. But under this order, restrictions could be imposed on drinking, going to specific pubs, going to football matches etc.

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?*

For adults, there should be no minimum or maximum terms for the Criminal Behaviour Order, giving the courts maximum discretion. However, for youths under 18, the order should not be allowed to continue beyond the age of 21, reflecting the immaturity of the young person.

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

Examples might be useful — but it should be made clear that requirements of any sort must be measurable.

7. *Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?*

In the case of young offenders, education and training should be included.

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?*

The courts should have discretion over the available sanctions for any breach, within prescribed limits.

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?*

The impact depends upon the intelligent use of the Criminal Behaviour Order. It must not be too prescriptive, but should be tailored to the offender, the offence, and the requirements of the local community.

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?*

It has the potential to be less expensive and more effective, if used flexibly and intelligently.

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?*

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Questions, section 4.2

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?*

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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'?*

The lower threshold of 'nuisance or annoyance' — but with reservations, see above.

3. *Do you think the Crime Prevention Injunction should be heard in the County Court or the Magistrates Court?*

In the case of adults, the Crime Prevention Injunction should be heard in the magistrates' court. County Courts would not appear to be constituted to deal with these orders either in the volume that is likely to occur or as expeditiously as is necessary. The Magistrates Courts have all of the systems and support services to deal with any likely outcomes, as well as the spare capacity to accommodate the extra workload.

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?*

In the case of youths under 18, the Crime Prevention Injunction should without doubt be heard in the youth court. Consequently, the jurisdiction of the youth court should be extended to consider the Crime Prevention Injunction and subsequent breaches. Magistrates sitting in the youth court are fully trained and proficient in dealing with young people. This is a fundamental requirement of youth magistrates and distinguishes them from judges, who rarely deal with young people. Youth magistrates could absorb any additional training with ease.

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?*

For adults, there should be no minimum or maximum terms for the Crime Prevention Injunction, giving the courts maximum discretion. However, for youths under 18, the injunction should not be allowed to continue beyond the age of 21, reflecting the immaturity of the young person. A review should take place after a period of time where an order is made for a youth.

6. *Should there be a list of possible positive requirements in the primary legislation to provide guidance to judges?*

A list of possible positive requirements would be useful guidance for judges and magistrates, but it should certainly not be prescriptive. The list would also ensure consistency of minimal provision across the country.

7. *Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?*

There are many possible positive requirements, including anger management plans, parenting classes, educational requirements etc.

8. *What are your views on the proposed breach sanctions for over 18s and for under 18s for the Crime Prevention Injunction?*

They seem very sensible, although prospective employers requesting a CRB (Criminal Records Bureau) check may be confused to discover that a potential employee who has been in custody has not had a criminal conviction!

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?*

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10. *What impact do you think the inclusion of positive requirements would have on the Crime Prevention Injunction breach rate?*

The addition of positive requirements should assist in monitoring progress and therefore be a benefit in reducing breach rates.

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*

Questions, section 4.3

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?*

Bringing existing tools for place related anti-social behaviour together in to a single order is a simpler and therefore easier to understand format.

2. *Are there problems with the existing tools you think should be addressed in the Community Protection Order?*

Care needs to be exercised when dealing with breaches by means of an FPN, to ensure that the notice is enforceable and collectable, given the current poor rate of collection for FPNs.

3. *Are there other existing tools you think should be included, such as a Special Interim Management Order?*

There should be sufficient tools available to allow the expeditious dealing of localised low level nuisance behaviour.

4. *Who should be given the power to use a Level 1 Community Protection Order?*

These powers could be given to Civilian Enforcement Officers.

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?*

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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?*

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7. *What impact do you think the introduction of the proposed Community Protection Order would have on the number of orders issued?*

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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?*

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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?*

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Questions, section 4.4

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?*

The proposal is sensible, because it is simpler.

2. *Do you think the power should be available to PCSOs as well as police officers?*

The power should only be available to PCSOs who have been suitably trained, and under the supervision of a police officer.

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?*

Officers should be trained in local geography and customs and practices to ensure that responses are proportionate and fair. Some type of timely appeal mechanism is required, such as appeal to a more senior police officer (superintendent). The place, nature and provision for appeals are generally not well addressed.

4. *What do you think would be the most appropriate sanction for breach of the new Direction power?*

Possible sanctions would include a fine or a curfew.

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?*

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6. *What do you think the impact would be of removing the need for a pre-designated area on the volume of Directions issued?*

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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?*

The Direction power would probably be used more frequently than the existing tools. We estimate that 50% of Direction powers would be aimed at those under 18.

Questions, section 4.5

1. *How do you think more restorative and rehabilitative informal tools and out-of-court disposals could help reduce antisocial behaviour?*

We understand that research has demonstrated that restorative justice is more effective than retributive justice in reducing reoffending. However, we need to be convinced that out-of-court disposals are used appropriately, particularly for offences of violence, and that their application is consistent, transparent and accountable across the country.

2. *What are the barriers to communities getting involved in the way agencies use informal and out-of-court disposals in their area?*

Communities (including magistrates) will remain sceptical about restorative justice. A change in attitude will require education, in one form or another, both for magistrates and for the general public. Consequently, there may be initial apathy. There may also be a fear of retribution.

3. *Are there any other changes to the informal and out-of-court disposals that you think could help in tackling anti-social behaviour?*

Formal or informal review would be beneficial, to ascertain whether the process has been effective.

Questions 4.6

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?*

We support the proposal

2. *Do you think the criteria for the Community Trigger are the right ones? Are there other criteria you think should be added?*

Regarding the Community Trigger, we are concerned about the requirement that “no action has been taken”. Who will decide? Action may have been taken but it may have been inadequate or inappropriate or insufficient.

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?*

The complainant may well be particularly vulnerable, perhaps by virtue of age or mental ability or race or whatever. A voluntary ‘McKenzie friend’ may be a very useful assistant.