

More Effective Responses to Anti-Social Behaviour The Police Foundation's Response

About the Police Foundation

The Police Foundation is the only independent charity focused entirely on developing people's knowledge and understanding of policing and challenging the police service and the government to improve policing for the benefit of the public. Founded in 1979 by the late Lord Harris of Greenwich, the Police Foundation has been highly successful in influencing policing policy and practice, through research, policy analysis, training and consultancy.

Introduction

The Police Foundation welcomes the opportunity to respond to this consultation. In 2010 the Police Foundation hosted the Independent Commission on Youth Crime and Antisocial Behaviour, which was established to assess the strengths and weaknesses of existing responses to youth crime and anti-social behaviour in England and Wales and devise a blueprint for an effective, just, humane and coherent response to children and young people's anti-social and criminal behaviour.¹ The Commission has submitted a response to this consultation, which we endorse. We would, however, like to raise independently a number of general points as well as addressing some questions that are more closely related to the policing of anti-social behaviour.

General Questions

What do you think of our proposals for reform?

The toolkit for dealing with anti-social behaviour has become a patchwork of cumbersome, ineffective powers used inconsistently by the police, local authorities and other agencies and we welcome efforts to reform and simplify the powers available for tackling anti-social behaviour. However, we feel the proposals have missed an opportunity to take a more strategic, joined-up approach and redirect the focus of anti-social behaviour legislation towards prevention and rehabilitation.

The Police Foundation responded positively to the Ministry of Justice Green paper, 'Breaking the Cycle,' which presented a welcome focus on rehabilitation. We are disappointed that the Home Office Anti-Social Behaviour paper does not appear to be joined up with this area of government policy or the new proposals contained in the Police Reform and Social Responsibility Bill. We are also concerned that recent new proposals to seize the possessions of offenders could illustrate a trend towards punishment, rather than restoration or rehabilitation, which in terms of effectiveness is largely unsupported by the evidence.

¹ For more details on the Independent Commission on Youth Crime and Antisocial Behaviour, see <http://www.youthcrimecommission.org.uk/>

The Police Foundation welcomes the government's stated intention "to avoid criminalising people, particularly young people", but is concerned that some of the measures proposed in this paper may unintentionally have the opposite effect. The criminal law is not a particularly cost-effective mechanism for dealing with the majority of anti-social behaviour - that which constitutes a legal nuisance - and should be reserved only for the most serious behaviour, that which constitutes a crime.

Britain is highly unusual in having separate legislation to deal with anti-social as opposed to criminal behaviour and we have some concerns with a system that can lead to an individual being sent to prison without having committed a criminal offence. We echo the call of the Independent Commission on Youth Crime and Antisocial Behaviour for criminal anti-social behaviour to be dealt with by the criminal courts, and non-criminal behaviour to be dealt with informally, using out-of-court measures such as Acceptable Behaviour Contracts (ABCs). A clearer distinction therefore needs to be drawn between what is criminal and what is anti-social.

It is important to remember that many perpetrators of anti-social behaviour are also victims themselves and their underlying problems need to be addressed. Anti-social behaviour is often a symptom of more serious social problems such as poverty, unemployment, abuse, mental illness or a lack of education and, rather than stigmatising people, help should be given to correct the root problems underlying such behaviour through prevention schemes such as parenting support and early positive intervention. Work by the National Audit Office² has demonstrated that it represents good value for money to invest in preventive measures to reduce anti-social behaviour, which underlines the need to put a greater emphasis on addressing the causes of anti-social behaviour rather than relying too heavily on enforcement measures. Despite the issuing of more than 18,000 ASBOs since 1999, the percentage of people who perceive high levels of anti-social behaviour has only been reduced from 19% in 2001/2 to 14% in 2009/10. We have little confidence the proposed reforms will improve this.

Better use should also be made of alternatives such as Individual Support Orders and ABCs. ABCs are voluntary and are based on a restorative justice ethos. The National Audit Office's study found that just over half (55%) of those people who received an ASBO re-engaged in anti-social behaviour, whereas only a third of those who received an ABC or a warning letter did so.

We are particularly concerned that, unlike elsewhere in Europe, anti-social behaviour is often seen as first and foremost the job of the police, and that the proposed introduction of elected Police and Crime Commissioners may increase the demand for the police to provide quick fix solutions. This may not only draw increasingly scarce policing resources away from more serious matters but could also lead to short-term, over-punitive and (hence) ineffective responses. The cuts to the policing budget will require a reassessment of the role and functions of police officers and police community support officers (PCSOs) and what should be done by, or in conjunction with, other agencies. Anti-social behaviour is an example of the

² National Audit Office (2006) *Tackling Anti-Social Behaviour*, London: The Stationery Office.

type of low level crime or legal nuisance that would benefit from greater input from PCSOs and other agencies, who may be better placed to deal with low level incidents of anti-social behaviour, and provide support for perpetrators.

Are there other tools and powers for dealing with anti-social behaviour you think should be repealed? If so, why?

It is difficult to judge what tools or powers might need to be repealed, due to the lack of evidence about the effectiveness of existing orders and powers to tackle anti-social behaviour, which was brought to the attention of government by the National Audit Office five years ago.³ This makes it difficult to assess their value. When new measures are introduced, it is essential that their use is monitored and their effectiveness is evaluated, so that the police and other agencies can assess the most effective responses to incidents of anti-social behaviour.

Do you think there are risks related to the introduction of any of the new orders?

The Police Foundation is concerned that, at a time when police budgets are being significantly reduced, there may not be resources available for the police to contribute fully to the development and appropriate use of these new powers. This will be particularly problematic at a time when the other agencies involved in tackling anti-social behaviour, including local authorities and the voluntary sector, are also making substantial budget cuts. This will result in a lack of support services for individuals who are at risk of committing anti-social behaviour, and will increase the burden that falls on the police in dealing with anti-social behaviour.

Do you think these proposals risk particular groups being disadvantaged in a disproportionate way? If so, how?

There is a risk that these powers will be used inappropriately on people with mental health problems or addictions, given that the actions of these groups can frequently be perceived to be causing 'harassment, alarm or distress'. Managing the behaviour of these groups can often present a significant challenge for the police, but there are frequently no other agencies that are able to respond to their behaviour. In this context it is important that enforcement-based orders are only used on these groups as an absolute last resort, and positive requirements should be carefully designed to provide appropriate support.

The Police Foundation is also concerned that these new powers will be used disproportionately on young people under the age of 18. The Independent Commission on Youth Crime and Antisocial Behaviour has addressed the issues related to young people in more detail in their response to this consultation, but suffice it to say that wherever possible responses to anti-social behaviour by those under the age of 18 should be based on restoration and prevention, with enforcement powers used only as a last resort.

³ National Audit Office (2006) *Tackling Anti-Social Behaviour*, London: The Stationery Office.

Criminal Behaviour Order

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

We note that the new Criminal Behaviour Order (CBO) is to be available on conviction, rather than existing as an order in its own right, and is intended to be given in addition to, rather than instead of, a court sentence where the court considers the defendant has caused or is likely to cause harassment, alarm or distress. Most recipients of a drug dealing related conviction or a harassment related conviction (to use the Home Office's examples) will almost certainly have caused harassment, alarm or distress in the course of the offence (particularly in the given example of harassment where it is already a core element of the offence). We are therefore concerned that an offender will effectively be dealt with twice for the same offence.

The fact that the new CBO is to be applied for by the prosecution, rather than raised independently by the court on consideration of the best interests of the victim, society and the offender, continues to emphasise the focus on criminalisation rather than on rehabilitation. On this latter point we note that there is to be no requirement to show that an order is the only suitable way of dealing with the underlying behaviour.

We believe a far better alternative would be the use of voluntary ABCs, coupled with support to encourage an offender to better understand the consequences of their behaviour on the victim and/or the community, make amends for their behaviour and help them to address the underlying causes.

What are your views on the proposal to include a report on the person's family circumstances when applying for someone under 16?

Understanding the home life of a young offender may assist the court to identify and treat the underlying causes of anti-social behaviour, and to this end we support proposals to include a report on family circumstances. However, we are mindful that such initiatives may put further strain on an already under-resourced and overstretched social services sector.

Crime Prevention Injunction

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?

We are pleased to see that breach of a Crime Prevention Injunction (CPI) would not constitute a conviction. Breach, however, is to carry a possible custodial sentence of up to 5 years in the County Court or 6 months in the Magistrates Court (in line with sentences for Contempt of Court). This remains therefore a serious offence with the possibility of a high fine or imprisonment. The test for the CPI, like that of the ASBO, is whether the individual has behaved in a manner "that caused or was likely to cause harassment, alarm or distress." We are concerned that under the proposed system, the test continues to be a highly subjective one and defers to the victim's perception of his/her experience. This has led in the past to

ASBOs being inappropriately granted in cases where, for example, a perpetrator's mental illness has distressed people.⁴

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 Police Foundation believes that of the two proposed thresholds, the test should be whether an individual's behaviour caused 'harassment, alarm or distress' rather than the lower threshold of 'nuisance or annoyance'. The latter would open up the scope of the CPI too widely, and could lead to it being used inappropriately. This would put unsustainable pressure on the resources available to the agencies that would be expected to enforce the CPI, including the police.

Positive Requirements Questions

In this section we have dealt with the proposed positive requirements in the Criminal Behaviour Order and the Crime Prevention Injunction, as our comments are relevant to both.

When considering both prohibitive and positive requirements, it is important to remember that over half of ASBOs were breached due to reasons such as: the imposition of overly restrictive conditions, the individual's failure to understand the details of the order, deliberate decisions to flout the conditions or a disregard for the consequences of breach. In the case of children, the breach figure is higher. A recent report by the Prison Reform Trust⁵ found that nearly three quarters of 10-14 year olds given an ASBO end up breaching it, for reasons such as confusion over the requirements or lack of support at home. Many of the young people who breach requirements come from chaotic and troubled home lives, making it difficult to comply with instructions to attend appointments and observe curfews. As a result, 13% of the custodial population under the age of 18 were imprisoned primarily for breach of a statutory order.

Although we support measures that may assist an offender to resolve underlying problems such as drug dependency or anger management, we are concerned that positive requirements may be difficult for offenders to comply with. We propose that, while prohibitive elements should take into account the victim, society and the offender, positive requirements should be focuses on rehabilitation. The focus should be that of assisting the offender and his/her best interests should be taken into account. As such, legislation should not include specific examples, but should make the aim of the positive requirement clear.

Courts should also consider the ease to which the positive requirement can be accessed, enforced and supervised. With the public sector facing budgetary cuts, there may be few or no appropriate services in the locality of the offender. In addressing this, the Home Office should

⁴Psychminded (2009) *ASBO to schizophrenia man is "inappropriate"*, August 28 – available at <http://www.psychminded.co.uk/news/news2009/Aug09/asbo-schizophrenia-inappropriate002.htm>

⁵ Hart, D. (2011) *Into the Breach: The enforcement of statutory orders in the criminal justice system*, London: Prison Reform Trust.

build on the guidance that is provided for the use of Drinking Banning Orders (DBOs).⁶ DBOs are available to the police, and local authorities, as a tool to help tackle alcohol-related disorder. In addition to receiving prohibitions, recipients of a DBO can, if they consent, be given a positive requirement. However, the guidance states that the court making an order has to ensure that there is a suitable course available and that the recipient understands what will be involved and gives their consent.

This model could form the basis for the development of positive requirements for these new orders. However, the emphasis should be on supporting recipients to access mainstream services that are available free of charge, rather than specialist courses. In our view it would be counterproductive to ask recipients to pay for access to any support, as this would make it less likely that they would comply and therefore address the causes of their anti-social behaviour.

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?

We believe there should be no direct sanctions as result of a breach of a positive requirement. The Home Office should replicate the system that is used for the positive requirement attached to DBOs. Successful completion of an approved course that is attached to a DBO can reduce the length of a DBO by up to half. Approved courses are undertaken on a voluntary basis and, as the guidance on the use of DBOs states, “there is no additional penalty if an offender does not agree to attend a course or consents to the inclusion of the course in the DBO but then fails to attend a course”⁷. This model should be replicated for the positive requirements for these new orders, which would provide a positive incentive to complete the requirement, helping agencies to encourage people to do so, and would result in no further sanction if the individual does not do so.

Community Protection Order Questions:

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?

We support the proposals to combine the range of current orders set out in the consultation paper into the Community Protection Order.

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

The Police Foundation would support this power being made available to police officers, PCSOs, and council and housing association staff.

⁶ Home Office (2010) *Guidance on Drinking Banning Orders on application and conviction*– available at <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-drinking-banning-order?view=Binary>

⁷ Home Office (2010) *Guidance on Drinking Banning Orders on application and conviction*– available at <http://www.homeoffice.gov.uk/publications/alcohol-drugs/alcohol/guidance-drinking-banning-order?view=Binary>

Direction Power Questions

What do you think of the proposal to combine these existing police powers for dealing with anti-social behaviour into a single Directions power?

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?

Like the Government, we accept that a balance needs to be found between the community enjoyment of public spaces, and the civil liberties of individuals and groups. We believe this balance would be struck by a Direction power to ask those who *have* committed crime, disorder or anti-social behaviour to leave an area. However, we do not support the power to require those *likely* to commit crime, disorder or anti-social behaviour to leave an area. Under this, like a Dispersal Order, the proposed Direction power arises from a fear of what young people might do, rather than whether criminal or anti-social acts have been committed and will therefore catch both those causing harassment and distress and those innocent of any wrongdoing.

There are many reasons for young people to be in a public place in the evening, not least of these is their right to enjoy and socialise in community space as much as anyone. The current Dispersal Order can alienate and stigmatise young people and encourage the feeling that they are doing something wrong or that every young person is a potential criminal⁸ and enforcement of such powers may simply displace the problem to a neighbouring area, undermine trust in the police and ultimately hinder neighbourhood policing. Further, there are occasions when the presence of a child on the streets at night can signal more sinister reasons, such as sexual exploitation or domestic violence. If victims are not identified and instead are simply moved on via a Direction, there is less opportunity to provide support or protection from abuse. Similarly, officers should be aware of community tensions where there are rival gangs and take care not to direct young people inadvertently into an unsafe area.

As well as young people, another group which might be adversely affected by the proposed power to remove those *likely* to commit offences is protesters. Most protesters, even in the course of peaceful protest, may find themselves involved in public disorder. We believe that the new Direction power should only be used against protesters where there is good evidence to support a view that their behaviour deviates from legitimate peaceful protest and is likely to, or is resulting in crime, disorder or anti-social behaviour.

A study for the Joseph Rowntree Foundation on Dispersal Orders found that they provide short-term respite and can strengthen local responses to anti-social behaviour by opening a 'window of opportunity' for longer-term measures to be introduced. However, it also found that the imposition of Dispersal Orders can, if implemented in isolation of other measures, fail to resolve anti-social behaviour in the long-term. Importantly, it also found that the police tend to use them as a last resort, favouring instead 'dialogue and negotiation' to disperse crowds.⁹ This is the correct approach, and in developing the new Direction Power the Home Office

⁸ 15-year old girl interviewed in Crawford, A. and Lister, S. (2007) *The use and impact of dispersal orders*, Bristol: The Policy Press.

⁹ Crawford, A. and Lister, S. (2007) *The use and impact of dispersal orders*, Bristol: The Policy Press.

should ensure that it is clear that it should be used alongside measures to address the causes of anti-social behaviour and even then, reflecting international norms and standards, only as a last resort.

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

PCSOs, in their role in community policing, regularly encounter anti-social behaviour on the streets. However, we would be concerned about granting these officers the use of such a broad power without adequate guidance. Police powers that require the discretion of an individual officer need to be supported by a clear framework and proper training. The Police Foundation would like to see an increased focus on police skills such as conflict resolution and mediation for both PCSOs and police officers in order that powers such as Direction are used appropriately and as a last resort.

In line with our comments above, with the correct training we would support the grant of Direction powers to PCSOs for use where an offence has in fact occurred, rather than where it is *likely* to occur.

Informal Tools and Out-of-court Disposal Questions:

How do you think more restorative and rehabilitative informal tools and out-of-court disposals could help reduce anti-social behaviour?

The use of restorative approaches and informal tools can play a significant role in the policing of anti-social behaviour, allowing the police to respond effectively without relying on unwieldy and disproportionate formal powers and tools. The use of restorative approaches can put the victim, or victims, at the heart of the process, can help to repair the harm caused by anti-social behaviour to victims and communities, can help to enable offenders to accept responsibility for their actions, and can reduce future involvement in anti-social behaviour. By involving communities actively in addressing anti-social behaviour, it can also play a role in building strong and active communities, helping them to address their own problems more effectively.

Restorative techniques can be used on the street as a quick but effective response to incidents of anti-social behaviour. Community conferencing can also be used to tackle persistent anti-social behaviour where there is a demonstrable community impact, including as part of effective neighbourhood policing. While these conferences can be more time-consuming to set up, they can have a significant long-term impact. Restorative justice is already used by the police in many areas, with 33 police forces out of the 38 that responded to a 2009 ACPO survey reporting that they used restorative justice practices and more than 18,000 police officers and PCSOs having received training in restorative justice interventions.¹⁰

There is already widespread evidence on the benefits of restorative justice – with one major review concluding that the evidence on restorative justice is “far more extensive, and positive,

¹⁰ Shewan, G. (2010) *The Business Case for Restorative Justice and Policing* – available at http://www.restorativejustice.org.uk/resource/the_business_case_for_restorative_justice_and_policing/

than it has been for many other policies that have been rolled out nationally”.¹¹ An analysis of the business case for restorative justice by ACC Garry Shewan, the ACPO Lead on Restorative and Community Justice, has found that restorative justice can reduce bureaucracy, achieve efficiency savings and help deliver on performance targets,¹² while Rt Hon Nick Herbert MP, the policing minister, has also recognised the potential of restorative justice to be used more widely in policing, including in dealing with anti-social behaviour.¹³ An evaluation of the pilot of the Youth Restorative Disposal, which enabled specially-trained police officers and police community support officers to use restorative justice techniques to deal with low level offending by young people, also found that its use resulted in cost savings and high levels of victim satisfaction.

The Independent Commission on Youth Crime and Antisocial Behaviour, which was set up and hosted by the Police Foundation, was also strongly in favour of more widespread use of restorative justice. It undertook a comprehensive review of existing powers to address anti-social behaviour and its final report, which was published in 2010, argued that “anti-social behaviour that involves individuals behaving in a thoughtless, reckless or deliberately offensive way towards their neighbours should lend itself well to the processes of mediation and reparation that characterise restorative justice” and recommended that restorative justice should play a central role in responding to anti-social behaviour committed by young people. As stated above, this could include making Anti-social Behaviour Contracts the outcome of a fully restorative procedure and the use of the Youth Restorative Disposal (or other restorative justice-based disposals) for incidents where a criminal offence has been committed.¹⁴

To achieve the most effective and impactful use of restorative justice approaches in the policing of anti-social behaviour, however, there will need to be high-quality guidance and training available for the police to ensure that restorative justice is only used where appropriate and that it is delivered to a high standard with clear and consistent processes. Training and guidance is particularly important as the use of restorative approaches relies heavily on police discretion and judgement. Police forces, and HM Inspectorate of Constabulary, must also ensure that informal and restorative responses to anti-social behaviour contribute positively to the relevant performance assessments. For example, Cheshire Police Authority has developed a ‘positive outcomes’ measure, which combines sanction detections and restorative disposals, as their performance measure.¹⁵ Evidence will also need to be collated to demonstrate the performance impact that results from the use of restorative justice, in order to develop the case for its further use.

¹¹ p.4: Sherman, L.W. and Strang, H. (2007) *Restorative Justice: The evidence*, London: The Smith Institute. Available at http://www.esmeefairbairn.org.uk/docs/RJ_full_report.pdf

¹² Shewan, G. (2010) *The Business Case for Restorative Justice and Policing* – available at http://www.restorativejustice.org.uk/resource/the_business_case_for_restorative_justice_and_policing/

¹³ Herbert, N. (2011) ‘Restorative Justice, Policing and the Big Society’ -

<http://www.homeoffice.gov.uk/media-centre/speeches/Herbert-Restorative-Justice>

¹⁴ Independent Commission on Youth Crime and Antisocial Behaviour (2010) *Time for a Fresh Start*, London: The Police Foundation. Available at

http://www.youthcrimecommission.org.uk/attachments/076_FreshStart.pdf

¹⁵ p.27: Home Office (2010) *Safe and Confident Neighbourhood Strategy: Next steps in neighbourhood policing* – available at <http://www.acpo.police.uk/documents/partnerships/2010/201003LPPSCN01.pdf>

Community Trigger Questions

What do you think of the proposal to introduce a duty on Community Safety Partnerships to deal with complaints of persistent anti-social behaviour?

The Police Foundation supports the development of mechanisms to enable the public to ensure that the relevant agencies are responding in a timely way to their concerns about anti-social behaviour. However, the public can be a demanding customer and the police are already expected to solve a wide variety of problems. This was dramatically illustrated by the Greater Manchester Police's Twitter experiment, in which every police officer was required to tweet every emergency call they dealt with over a 24-hour period. In total they dealt with over 3200 incidents that included cows blocking a road, a burst water main, a person smoking on an incoming flight, a man who had fallen asleep in a theatre, a tent being erected on church grounds and builders turning up two months late. The police were viewed not so much as an agency of last resort but more as an agency of first resort.

In this context it is important that the Community Trigger does not result in demands being placed on the police's resources that cannot be met, particularly at a time when budgets are being reduced and public expectations need, if anything, to be managed downwards. It is therefore essential that all the agencies represented in Community Safety Partnerships, and other agencies where relevant, take an equal and active role in addressing issues raised through the Community Trigger and that a lead agency is nominated to take responsibility for ensuring that action is taken so that the police are not routinely seen as the default service in dealing with anti-social behaviour. Where action is taken, it is also important that it is focused on restoration and prevention, with enforcement powers used only as a last resort.

In addition, the Home Office should re-examine the proposed criteria for the Community Trigger. Given limited resources and differences between geographical areas, a single national threshold (of five individuals reporting the same issue or three reports about an issue from the same individual) may not be the most appropriate approach. In order to allow for local variations and differing levels of need, the Police and Crime Commissioner in each area should set the thresholds for each Community Safety Partnership. This would ensure that a balance is maintained between responsiveness and the effective use of resources.

In terms of implementation, the proposed system relies on accurate data collection that enables complaints about the same issue to be grouped together, in order to ensure that it is possible to assess whether the requisite number of complaints had been made to meet the criteria for the Community Trigger. This could make the process administratively complex and bureaucratic for the police and other agencies, particularly given that complaints may be filed with a number of different bodies, which would require robust collaboration and data sharing. The Home Office should therefore work with police forces and other relevant agencies to ensure that this can be managed effectively.

For further information about this response, please contact Abie Longstaff, Legal and Policy Analyst at the Police Foundation, at abie.longstaff@police-foundation.org.uk or on 020 7582 3744 or at Park Place, 10-12 Lawn Lane, London, SW8 1UD.