

Prison Reform Trust consultation submission

More effective responses to anti-social behaviour

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform.

We welcome the opportunity to respond to this consultation.

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3. REVIEWING THE TOOLKIT

The Prison Reform Trust fully supports the government in acknowledging the harm caused by anti-social behaviour and in wishing to find ways to reduce it. We agree that this area of policy needs a new look and new ideas. However we are concerned that using civil law to address these issues can lead to perverse and unhelpful outcomes such as discrimination and ineffective practice. We advocate taking a restorative justice approach to addressing much of the low-level anti-social behaviour that can blight communities. Anti-social behaviour legislation should not be used to tackle serious offending

We will respond to the individual questions posed but also have some general comments. We believe these proposals risk children, young adults and those with mental health problems, learning disabilities or learning difficulties being disadvantaged in disproportionate way. All these groups have vulnerabilities, welfare and/or health needs which may lead to their committing anti-social acts. Both their behaviour and the problems that underlie that behaviour need to be addressed. The anti-social behaviour system as proposed does not incorporate screening for vulnerable children and adults, and thus we feel these groups are potentially disadvantaged and are more likely to receive a punitive, rather than a more effective, remedial response.

CHILDREN

The UN Convention on the Rights of the Child (UNCRC), of which the UK is a signatory, defines a child as being any individual under the age of 18. In view of their age, vulnerability, immaturity, and capacity for change, we do not believe children should be subject to anti-social behaviour legislation. The children who commit anti-social acts, and the communities in which they live, would be better served by identifying and addressing the underlying welfare needs that drive much of this behaviour.

In keeping with the UNCRC, youth justice legislation is distinct from adult criminal justice legislation and is oriented towards reducing reoffending and meeting children's welfare needs,

with most of those who work with children who offend being specially trained to work with this age group. A recent Prison Reform Trust report on children who breach statutory orders¹ suggests that anti-social behaviour practitioners have insufficient training to deal with children and that the nature of ASBOs, particularly the restrictive requirements (such as non-association) and the lack of support attached to them (with only one in four ASBOs issued in 2009 having an Individual Support Order attached), lead to high breach rates - meaning children are in effect being set up to fail. That 68% of all ASBOs issued to children since 2000 have been breached is, we believe, evidence of the inappropriateness of anti-social behaviour measures for this age group.

Building on its recent consultation document *Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders*², the Ministry of Justice is proposing to reform out-of-court disposals for children. We believe a reformed framework of out-of-court disposals, combined with a restorative justice approach to managing minor conflict in the communities in which it occurs, would equip practitioners with the tools they need to respond effectively to low-level anti-social behaviour.

In principle, we believe anti-social behaviour legislation should only apply to adults aged 18 and over, with anti-social behaviour committed by children better dealt with separately outside of the ASB framework. However, in view of the proposals for responding to anti-social behaviour by under-18s put forward in this consultation, our response to individual questions sets out ways in which the proposed anti-social behaviour framework could better deal with children.

YOUNG ADULTS

As a member of the Transition to Adulthood Alliance, we support the Alliance's response to this consultation.

There are no statistics on the age breakdown of adults currently subject to ASBOs but it would seem likely that a high proportion are young adults aged 18-24. There is extensive evidence,

¹ Prison Reform Trust (2011) *Into the Breach – the enforcement of statutory orders in the youth justice system*

² <http://www.justice.gov.uk/docs/breaking-the-cycle.pdf>

both developmental and demographic, that young adulthood is a particular stage in life and that young adults require distinct treatment due to their levels of maturity and the economic, social and structural factors that specifically impact on them. The Prison Reform Trust agrees with T2A that guidance relating to the new orders must contain information for practitioners about young adults and about what works in effectively and successfully engaging with this group. Prohibitive requirements and sanctions should be used as little as possible for young adults, with a focus instead on positive support and engagement.

The Home Office must ensure that appropriate services are available to provide support to young adults as part of the proposed 'positive requirements'.

ANTI-SOCIAL BEHAVIOUR AND MENTAL HEALTH PROBLEMS, LEARNING DIFFICULTIES AND DISABILITIES

The Prison Reform Trust would like the needs of those with learning difficulties, disabilities and mental health problems to be addressed in anti-social behaviour legislation to prevent discrimination against such vulnerable people.

There is a high prevalence of mental health problems, learning disabilities and learning and communication difficulties in the offender population:

- It is commonly acknowledged that between 5 and 10% of adult offenders have a learning disability; 7% have an IQ below 70 and a further 25% have an IQ of less than 80 (Mottram, 2007)
- Between 20 and 30% of adult offenders have a learning disability or difficulty that interferes with their ability to cope within the criminal justice system
- 23% of young offenders have an IQ of less than 70 (Harrington and Bailey, 2005)
- 25% of young offenders have special educational needs (YJB, 2006)
- 60% of young offenders have communication difficulties (Bryan, 2007).

- Approximately 70% of prisoners have a psychosis, a neurosis, a personality disorder or a substance misuse problem.

While the above data relate to the offending population, it is not unreasonable to anticipate similar prevalence rates amongst individuals displaying anti-social and low-level criminal behaviour. Therefore, it would be reasonable to predicate 'more effective responses to anti-social behaviour' on the need to ensure:

- That procedures which respond to anti-social behaviour are made accessible to individuals with such impairments and difficulties;
- The availability of 'prohibitive' and 'positive' requirements that meet the particular needs of individuals with such impairments and difficulties (as a rule of thumb, availability of appropriate requirements should be based on research findings until robust local data is available), and;
- That additional support, based on the assessment of need, is provided to individuals to help ensure effective participation in proceedings and compliance with any subsequent requirements.

Overall we are concerned as to how prosecutors will know which 'positive requirement' is most appropriate for the individual perpetrator. What screening/assessment will be undertaken and by whom, for example, to establish the existence of any impairments such as a learning disability or communication difficulty, and to understand family circumstances etc? What pre-existing information will be gathered and what information-sharing protocols will be put in place in order that information is gathered in a timely fashion?

We are also concerned about representation for vulnerable adults in the police station, and would point out that all vulnerable adults being charged in the police station must have timely access to an appropriate adult. We would like to draw the consultation's attention to the Prison

Reform Trust publication entitled *No One Knows: Police responses to suspects with learning disabilities and learning difficulties: a review of policy and practice*³ for further information.

The presence of learning disabilities and/or communication difficulties is likely to have a direct impact on an individual's understanding of the requirements placed on them, whether 'positive' or 'prohibitive': for example, what is expected of them, and subsequent compliance. Further, the extent and nature of the impairment will have a direct bearing on the level of support required by the individual, which must be provided if they are to have an equal chance of successfully completing any requirements in line with their non-disabled peers.

We are also concerned about parity of provision across local areas: according to the proposal, provision may or may not be available in a local area to assist individuals in changing their behaviour. In addition to the Community Trigger, there should be a 'trigger' whereby the individual given an order can 'demand swift action' to appropriate 'positive requirements' and appropriate support to help them to reform and to stop further anti-social and offending behaviour: for example, timely access to alcohol treatment programmes; independent living support for vulnerable adults.

SANCTION FOR BREACH

The Prison Reform Trust appreciates that if anti-social behaviour orders are to work, there need to be some sanctions for non-compliance. However we do not support the use of imprisonment or detention as a sanction for breach. Where offending is in question, the criminal process and criminal sanctions should be used.

3

<http://www.prisonreformtrust.org.uk/Portals/0/Documents/No%20One%20Knows%20police%20responses%20to%20suspects%20with%20learning%20disabilities%20and%20difficulties.pdf>

4.1 THE CRIMINAL BEHAVIOUR ORDER

Q 1: What do you think of the proposal to create a Criminal Behaviour Order?

Q 2: Thinking of existing civil orders on conviction, are there any ways that you think the application process for a Criminal Behaviour Order could be streamlined?

We question the need to create a Criminal Behaviour Order. Where an offender has been convicted we believe the court has sufficient powers in sentencing and that additional prohibitions should not be necessary. If an individual reoffends while subject to a community sentence, they can be charged and be subject to the criminal justice process.

Q3: What are your views on the proposal to include a report on the person's family?

If such orders are judged to be appropriate for those under the age of 18, children should be treated separately to adults, as dictated by the UNCRC. If a Criminal Behaviour Order is issued to a child under the age of 18 (not only those aged 16 and under), it is appropriate that a report on the child's family circumstances should be prepared. Children made subject to anti-social behaviour orders should have access to the same assessment and support services as children in the youth justice system. To that end, we believe the assessment tool used by youth justice practitioners, ASSET, should also be used to assess children subject to anti-social behaviour legislation. As is the case in the youth justice system, practitioners responsible for undertaking assessments and producing pre-sentence reports should receive specialist training, both in terms of completing the assessment and writing the subsequent report for the court. Reports to the court should take into account family circumstance, health, safeguarding, education and any other factors relevant to compliance to enable the court to sentence appropriately and to ensure that children are not being set up to fail.

If family reports are to be introduced, it will be important to take into account primary care responsibilities and their impact on compliance. For those people, the majority young mothers

of small children, to comply successfully with orders, provision will need to be made for appropriate childcare.

Q5: 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?

If children under the age of 18 are to be included in the anti-social behaviour framework, a maximum term of one year should be set, to counter the existing disproportionately in anti-social behaviour order length when compared to other statutory orders available to the court, and this should be subject to regular review with the option of revocation mid-way through for good behaviour. No minimum term should be set in legislation. The overall emphasis should be on proportionality and fairness. In view of their greater immaturity and frequently challenging home circumstances, a maximum term of one year should also apply to young adults. The maximum term for adults should be two years, again with no minimum term set out in legislation.

Q6: Should the legislation include examples of possible positive requirements, to guide applicant authorities and the courts?

We would support the inclusion of examples of positive requirements in legislation, though it may be more appropriate for this to be issued as guidance to applicant authorities and the courts. In addition, guidance should be provided to sentencers so that they are able to specify appropriate requirements that also meet the requirements of proportionality and that ensure the individual subject to the order is not being set up to fail.

Q7: Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?

We would echo the Criminal Justice Alliance's (CJA) response to this question:

It is essential that the support provided to those on CBOs meets their needs by addressing the causes of their behaviour. Suitable options for positive requirements may include drug or alcohol treatment, family and relationship support, support with housing problems, and with education, training and employment. Moreover, since ASB is often a result of complex, overlapping issues, positive requirements will need to be tailored to reflect this, and local services will need to work flexibly and together to provide the support needed. However, it will be essential that proportionality is maintained, and that individuals subject to CBOs, many of whom may have chaotic lifestyles, are not overloaded with requirements and so set up to fail.

Q8: 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 do think that the sanctions for breach of the prohibitive elements of the order should be greater and more powerful than those for breach of the positive elements. As the CJA states:

At present, sanctions for the breach of an ASBO are imposed primarily according to the harassment, alarm or distress involved in the breach of the order; that a court order has been breached is a secondary consideration.⁴ We believe that this is the right approach, and would recommend that it continues following the implementation of CBOs. Breaching the positive requirements of an order is unlikely to involve causing harassment, alarm or distress, and as such, it would be appropriate that the sanctions

⁴ Sentencing Guidelines Council (2008) *Breach of an Antisocial Behaviour Order: Definitive guideline*, London: Sentencing Guidelines Council.

are different both in nature and degree. Since the aim of any positive requirements of a CBO should be to engage an individual with the support they need to address the causes of their ASB, we would recommend that any sanctions imposed for breach should focus on encouraging engagement, rather than punishing non-compliance.

Q9: 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 more requirements are attached to an order, the more likely they are to be breached. The requirements of each order must be proportionate to the anti-social acts committed and appropriate to the individual. If help is to be offered to an individual it would be better if this was voluntary than framed as a positive requirement of an order which can be breached.

4.2 THE CRIME PREVENTION INJUNCTION

Q1: 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 concerned by any order for which there is no criminal standard of proof but for which there are punitive sanctions. If police are concerned by anti-social behaviour which is harming communities and needs to be dealt with quickly, they must use their resources to gather evidence with a criminal standard of proof. If witnesses are afraid of giving evidence, they should be offered protection by the police and the ability to give evidence in court using screens etc.

Q2: Which test should the court apply when deciding whether to impose a Crime Prevention Injunction – that the individual’s behaviour caused ‘harassment, alarm of distress’ or the lower threshold of ‘nuisance or annoyance’?

If a Crime Prevention Injunction is introduced, the test should be causing ‘harassment, alarm or distress’ rather than ‘nuisance or annoyance’. The latter is subjective and is likely to disproportionately discriminate against vulnerable people.

Q3: Do you think the Crime Prevention Injunction should be heard in the County Court or the Magistrates’ Court?

The Injunction should be heard in the Magistrates’ Court not the County Court. In view of the fact that the sanctions for breach are similar to those available in criminal cases, and given the vulnerability of many of the adults concerned, cases must be heard by those with relevant training and experience – magistrates.

Q4: 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?

All hearings involving under-18 year olds should take place in the Youth Court, given the need for the judges and magistrates involved to have specialist training. This would ensure compliance with the UN Convention on the Rights of the Child.

Q5: 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?

The Crime Prevention Injunction should carry a maximum, but no minimum term. If the injunction is to be made available for use with children aged 10-17 years, the maximum term available should be 12 months. In keeping with our response to an earlier question on Criminal Behaviour Orders, we believe the maximum term for young adults aged between 18-24 years should also be 12 months. As with Criminal Behavior Orders, Crime Prevention Injunctions should be subject to regular review, and if an individual has made progress in changing his or her behaviour, there should be an option for the order to be terminated early.

Q6: Should there be a list of possible positive requirement in primary legislation to provide guidance to judges?

We support the CJA's proposal that:

Examples of positive requirements should be made available, although it may be more appropriate for this to be issued as guidance rather than being set out in legislation.

There should also be guidance for sentencers to help them impose appropriate requirements proportionately; steps need to be taken to ensure that sentencers are fully

aware of what options are available to them locally; and steps also need to be taken to ensure that a range of support options are actually available in local areas, so that sentencers are able to impose appropriate positive requirements.

Q7: Are there examples of positive requirements (other than formal support provided by the local authority) which could be incorporated in the order?

We support the CJA's proposal that:

A range of options will need to be available, and the positive requirements available as part of a CPI will need to take into account that ASB is, very often, the result of complex, overlapping issues, rather than discrete, separate problems. There will need to be effective joint working between local services to ensure that appropriate support is available. As with CBOs, however, it will be essential that proportionality is maintained, and that individuals are not overloaded with requirements and so set up to fail.

Q8: What are your views on the proposed breach sanctions for over-18s and for under-18s for the Crime Prevention Injunction?

Home Office data shows that a high proportion of ASBOs issued to children have been breached, with younger children most likely to breach. For example, 72% of ASBOs issued to 10-14 year olds have been breached, compared to 65% of those issued to 15-17 year olds. In eight of the 32 criminal justice areas that have issued ASBOs to 10-11 year olds, all of them have been breached. Whilst children who breach ASBOs are less likely than adults to receive a custodial sentence, the average sentence length is longer, at 6.3 months versus 4.9 months.⁵ As these statistics demonstrate, many children find compliance especially difficult, particularly given the 'restrictive' nature of many of the requirements available and the lack of help attached to orders to ensure children are supported to comply.

⁵ Prison Reform Trust (2011) *Into the Breach – the enforcement of statutory orders in the youth justice system*

The use of imprisonment to sanction technical breach of any statutory order by children is wholly inappropriate and in contravention of the spirit of the UN Convention on the Rights of the Child. The UNRCR, of which the UK is a signatory, states that child imprisonment should only be used as a last resort and for the shortest possible period of time. Breach of a civil order, where the burden of proof lies on the balance of probabilities, does not constitute sufficient criteria for 'last resort'. Any other potential sanctions (supervision, activity and/or curfew) should only be imposed if the child has been assessed by the local youth offending team and the proposed sanctions recommended by them.

We would draw the review team's attention to the recent Prison Reform Trust report entitled *Into the Breach: the enforcement of statutory orders in the youth justice system*, which comprises a formal part of our submission to this consultation⁶.

We are also concerned by the proposed sanctions for adults who breach. We feel a fine may be appropriate in some circumstances only where the individual demonstrably has the ability to pay, but that a prison sentence of six months is wholly inappropriate. We believe prison should be reserved for those individuals who commit serious, violent crimes and that a prison sentence, as the most serious sentence available to the court, should only be imposed in cases where there is a criminal standard of proof. We would like further guidance on the kind of sentences proposed for sanctioning breach.

⁶ http://www.outoftrouble.org.uk/sites/default/files/Into_the_Breach_low_res.pdf

4.3 COMMUNITY PROTECTION ORDER

Q1: 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 CJA's response to this question which states:

The CJA believes that bringing existing tools together into a single Community Protection Order will help to simplify the system. However, the plans to impose financial penalties as sanctions for breach of the order need to be thought about carefully. We are particularly concerned by the proposed use of fixed penalties in response to a breach. A report by Revolving Doors, a member of the CJA, has highlighted the problematic nature of financial penalties that are not linked to an individual's income and ability to pay, observing that "these fines may lead people to resort to crime as a means of getting the money to pay the fine ... [they] can be seen as a fast track into the criminal justice system for vulnerable people if used inappropriately."⁷ As such, we would argue that any fines imposed should take into account an individual's financial circumstances. We would also question whether breach of a Community Protection Order needs to be a criminal offence, and would suggest that, as with Crime Prevention Injunctions, breach of the order could be dealt with under civil law. Criminal convictions can act as significant barrier to, amongst other things, gaining employment, and so can prevent many people with a criminal record from making positive and stabilising changes in their lives.

⁷ p.91; Pratt, E. and Jones, S. (2009) *Hand to mouth: The impact of poverty and financial exclusion on adults with multiple needs*, London: Revolving Doors.

4.5 INFORMAL TOOLS AND OUT-OF-COURT DISPOSALS

Q1: How do you think more restorative and rehabilitative informal tools and out-of-court disposals could help reduce anti-social behaviour?

We advocate the use of informal tools and out-of-court disposals in place of anti-social behaviour orders wherever possible. We are particularly supportive of restorative approaches to dealing with anti-social behaviour. Restorative justice, when used correctly, is one of the most powerful means of getting those who harm others to understand the impact of their behaviour and to make amends in a meaningful way and, where it is used properly, has significant victim participation and satisfaction rates⁸. Restorative justice would empower local communities to engage with perpetrators and to share in deciding how best they can make amends for the harm they have caused.

Q2: What are the barriers to communities getting involved in the way agencies use informal and out-of-court disposals in their area?

There are significant barriers to communities getting involved in the way agencies use informal and out-of-court disposals in their area. Communities frequently feel that they have no power to make a difference and that their concerns are not taken seriously. In few areas do communities have the training or the mechanisms to work with agencies to use restorative justice.

⁸ Prison Reform Trust (2009) *Making amends: restorative youth justice in Northern Ireland*

4.6 THE COMMUNITY TRIGGER

Q1. 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 do not think it is necessary to introduce a duty on community safety partnerships to deal with complaints of persistent anti-social behaviour. If local people feel their complaints are not being heard, they should contact their local authority, their local councillor and/or the local crime commissioner. If local people feel their complaints are not being dealt with, they should use democratic means to express their unhappiness.