



SCYJ briefing on the draft Antisocial Behaviour Bill March 2013

INTRODUCTION

Antisocial Behaviour (ASB) - background

The term antisocial behaviour (ASB) is a relatively new invention. ASB was barely mentioned before the 1990s. Fast forward to the 'noughties' and in just one month in 2006 the term appeared in more than 1,500 UK newspaper articles.¹ While such coverage would appear to indicate that ASB is a new and increasing problem, we do not know whether ASB is on the rise or not and such conduct is certainly not unique to this age. What is undoubtedly true is that ASB can be a source of serious distress, particularly in the most deprived neighbourhoods.² Efforts have accordingly been made to tackle such behaviour.

ASB has been subject to something of an arms race over the past 15 years, with political parties battling to 'out-tough' each other. While ASB was first mentioned in legislation by a Conservative government (in 1996), the Labour party very much adopted ASB as its own. Pledging to tackle such behaviour was a focal point of Labour's 1997 election campaign and they subsequently presided over a multiplicity of new ASB laws and policies.³ ASB measures introduced during this period include the infamous Antisocial Behaviour Order (ASBO), which can be imposed on an individual aged 10 or above who has behaved antisocially and 'contain prohibitions considered necessary to prevent a repetition of a person's antisocial behaviour'.⁴ These were designed to 'be used to sanction incivilities and offensive behaviour that might not reach the criminal threshold, and thus could not be dealt with by the criminal law'.⁵

The case of Fiona Pilkington and her learning disabled daughter brought the media spotlight back to ASB. In 2007 she committed suicide and killed her daughter, because of years of harassment and abuse by neighbours, and despite frequent calls to the police. It is now clear that a more effective response by the police using existing powers could have prevented Fiona Pilkington's tragic end. But the case fuelled calls to make ASB legal powers stronger, which were taken up by the Coalition Government when it came to power.

¹ Waiton (2007) cited in Pople L (2010), 'Responding to antisocial behaviour' in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, p144

² Pople L (2010), 'Responding to antisocial behaviour' in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing

³ *Ibid*, pp143-145

⁴ Youth Justice Board, *Antisocial behaviour orders – summary*, London: Youth Justice Board, 2006

⁵ *Ibid*

In 2011, thirteen years after the introduction of the ASBO, the new Coalition Government reported that ASBO usage had dramatically declined, breach rates were high and 3.5 million incidents of ASB were still being reported to the police every year.⁶ In a White Paper, the Coalition promised to move beyond the ASBO and address the underlying causes of the behaviour.⁷ Yet the new measures set out in the draft ASB Bill seem to be more of the same, albeit under a different name, with lower thresholds, fewer safeguards and less resource.

ASB interventions and under-18s

- ASB is often seen as synonymous with youth even though most ASB is not committed by under-18s.⁸ Between 2000 and 2010, 40 per cent of ASBOs were issued to 10-17 year olds.⁹
- Such measures can act as a fast-track into the youth justice system and custody rather than as an effective means of addressing ASB. There is compelling evidence that drawing young people prematurely into the youth justice system increases their likelihood of further offending.¹⁰ The breach rate for children subject to ASBOs is 68 per cent compared to 50 per cent of adults.¹¹ The breach rate for younger children subject to ASBOs is even higher: 73 per cent. Imprisonment is imposed as a sanction for juvenile ASBO breach in 40 per cent of cases – a measure widely shown to be counterproductive and particularly harmful for children.¹²
- Scrutiny of the effectiveness of ASB interventions is hampered by the fact that ‘little systematic evidence is available regarding the impact of antisocial behaviour-related interventions on different groups in the population’.¹³ However the high breach rate of ASBOs implies that such measures are ineffective. Neither have ASB interventions been robustly tested with longer term follow up of outcomes. Even the widely championed Family Intervention Projects, often a key component of ASB responses, have never been subjected to Randomised Control Trial-type evaluations (the gold standard of experiments used to test the effectiveness of interventions).

⁶ Home Office (2011) *More effective responses to antisocial behaviour*, pp7-8 [accessed via: <http://www.homeoffice.gov.uk/publications/consultations/cons-2010-antisocial-behaviour/asp-consultation-document?view=Binary> (01/03/2013)]

⁷ Home Office (2012) *Putting Victims First: more effective responses to antisocial behaviour*, The Stationary Office, p3

⁸ Police Foundation (2010) *Time for a fresh start: The report of the Independent Commission on Youth Crime and Antisocial Behaviour*, London: The Police Foundation, p66; Pople L (2010), ‘Responding to antisocial behaviour’ in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, p174

⁹ Ministry of Justice (2011) *Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics England and Wales 2010*, p2

¹⁰ Petrosino A, Turpin-Petrosino C, Guckenburg S (2010) *Formal System Processing of Juveniles: Effects of Delinquency*, Oslo: The Campbell Collaboration

¹¹ *Ibid*, p2

¹² See for example, Smith D (2010) ‘The need for a fresh start’ in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, pp12-13; and Nagin D et al., (2009), ‘Imprisonment and Reoffending’ in M Tonry (ed) *Crime and Justice: A Review of Research*, vol 29, p145

¹³ Pople L (2010), ‘Responding to antisocial behaviour’ in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, p154

- There is significant geographical variation in the use of ASBOs across England and Wales, comprising inequitable quasi-criminalisation; in other words, ‘justice by geography’.

ASB Bill - context

- In December 2012, the Home Office published a draft Bill on Anti-Social Behaviour (ASB). The Bill follows the Home Office’s [White Paper on ASB](#), published in May 2012 and the public [consultation](#) on its plans to reform the toolkit used to tackle ASB, which was launched in February 2011.
- The aim of the Home Office consultation process has been to develop ‘faster, more flexible...more effective sanctions’ to ASB. Proposed reforms include: replacing the ASBO, rationalising the multiplicity of ASB measures into just six, making informal and out-of-court measures more restorative and rehabilitative, and introducing a ‘Community Trigger’ to give victims the right to demand that agencies address persistent antisocial behaviour.
- The [draft Bill](#) reflects the proposals outlined in the above-mentioned preceding documents, with the exception of the ‘Community Remedy’. This is a new proposal and is subject to an additional consultation exercise, which closed on 7 March 2013.
- The Bill has undergone [pre-legislative scrutiny by the Home Affairs Select Committee](#) – completed in just 6 weeks. The Home Office intends to introduce the Bill to Parliament in the 2013/14 legislative programme (i.e. May 2013).¹⁴

INJUNCTION TO PREVENT NUISANCE AND ANNOYANCE (IPNA)

What is it?

- The IPNA replaces a number of existing tools, including the ASBO, the antisocial behaviour injunction (ASBI), and individual support orders.
- It is a civil order and is available in the youth court for those under the age of 18.
- The test for an IPNA to be granted is that the court is satisfied that on the ‘balance of probabilities’ the person ‘has engaged or threatens to engage in conduct capable of causing nuisance and annoyance’. The court must also consider it ‘just and convenient’ to grant an injunction.¹⁵
- There is no requirement to show that all other remedies have been exhausted, nor that an order is the only suitable way of dealing with the problem. Neither is there a requirement to screen for mental health, neurodevelopmental or learning difficulties.

¹⁴ Home Affairs Select Committee, *Committee issues its call for evidence on the Government’s draft Anti-Social Behaviour Bill* [accessed via: <http://www.parliament.uk/business/committees/committees-a-z/commons-select/home-affairs-committee/news/121214-asb-bill-inquiry/> (26/02/13)]

¹⁵ Draft Anti-social Behaviour Bill 2012, clause 1, p1

- Potential applicants for an IPNA include: local authorities; housing providers and the police.
- If an IPNA is being applied for a person aged under 18, the youth offending team (YOT) must be consulted in advance (although in practice, this might be on the day of the hearing).
- The IPNA can include both prohibitions and positive requirements, both of which are enforceable.
- If a hearing application is adjourned, an interim injunction can be imposed on a child without notice if the court believes that it is 'just to do so'. In such cases, the court does not have to consider the tests for granting an injunction (the court is satisfied on the balance of probabilities that the person has engaged in or has threatened to engage in ASB and it is just and convenient to grant the injunction). Under clause 6 (3), if the injunction is granted without notice, the court does not have the power to impose 'particular activities', such as the requirement on the young person to keep in touch with the responsible officer.¹⁶
- An injunction does not have a minimum duration and can last indefinitely. If indefinite, the order can only be discharged by the court following an application from the original injunction applicant or the person on whom it is imposed.
- Reporting restrictions (s49 Children & Young Persons Act 1933) do not apply to IPNA proceedings but s39 (C&YPA 1933) does apply, meaning that the court has the power to prohibit publication of certain matters. This is equivalent to current arrangements for ASBO proceedings.
- Breach of an IPNA is contempt of court and is not a criminal offence. The youth court must be satisfied 'beyond reasonable doubt' that the order has been breached. The sanction for breach by under-18s is a supervision order not exceeding 6 months, with supervision, curfew and/or electronic monitoring requirements.¹⁷ For those aged 14 – 17 years old, three months detention is available as a last resort.¹⁸ The YOT must be consulted with before any order is made in response to breach and the court must consider any 'representations' made by the YOT.¹⁹
- Committal proceedings for contempt of court are criminal proceedings for the purposes of Article 6 European Convention of Human Rights. As reporting restrictions apply to youth court proceedings involving children (s49 C&YPA 1933), there is a presumption against revealing details about children who breach IPNAs.²⁰ Naming and shaming would only be possible in these circumstances if the court dispensed with part or all of s49 regarding the case at hand.

¹⁶ Draft Antisocial Behaviour Bill Explanatory Notes (2012), p113; Draft Antisocial Behaviour Bill (2012), clauses 5 and 6

¹⁷ Draft Antisocial Behaviour Bill (2012), *Schedule 2* pp70-76

¹⁸ Draft Antisocial Behaviour Bill Explanatory Notes (2012), p144

¹⁹ Draft Antisocial Behaviour Bill (2012), *Schedule 2* pp70-71

²⁰ Draft Antisocial Behaviour Bill Explanatory Notes (2012), p144

What are the key differences between the IPNA and ASBO?

- The criteria for granting an ASBO is higher: the court must be satisfied 'beyond reasonable doubt' that the person has engaged in conduct causing 'harassment, alarm or distress'.
- Like the IPNA, ASBOs can last indefinitely (and must run for a minimum of 2 years). However, since 2009 there has been a legal requirement that ASBOs must be reviewed every 12 months (Criminal Justice and Evidence Act 2008);²¹ this has not been applied to IPNAs.
- Positive requirements cannot be included in ASBOs, but are instead attached through the Individual Support Order (ISO).
- The maximum penalty available for a child breaching an ASBO is two years detention compared to three months for the IPNA.²²
- Unlike the IPNA, breach of an ASBO does constitute a criminal offence, but the presumption of anonymity does not exist in ASBO breach proceedings; use of s49 C&YPA 1933 – the presumption against revealing details - is specifically exempted. Instead the court has the power under s45 Youth Justice and Criminal Evidence Act 1999 to restrict reporting of proceedings involving children, but must give its reasons for exercising the power (as set out in s141 Serious Organised Crime and Police Act 2005).²³
- The youth court has the same sentencing powers for breach of an ASBO as for other criminal offences. Therefore, a custodial sentence as a sanction for breach of ASBO is only available for those aged 12 and above and cannot be imposed on 12-14 year olds unless the child is a 'persistent offender'.²⁴ The Sentencing Guidelines Council provides guidance on determining persistence.²⁵ In contrast, only children aged 14 and above can be detained for breach of an IPNA.

CRIMINAL BEHAVIOUR ORDER (CBO)

- The CBO replaces the ASBO on conviction (often known as the CRASBO²⁶).
- The prosecutor can apply for a CBO alongside prosecution for a criminal offence; they must consult with the YOT before applying.

²¹ CPS, *Anti-Social Behaviour Orders on Conviction* [accessed via:

http://www.cps.gov.uk/legal/a_to_c/anti_social_behaviour_guidance/#an11 (14/02/13)]

²² Sentencing Guidelines Council (2008) *Breach of an Anti-Social Behaviour Order: Definitive Guideline*, p19 [accessed via: http://sentencingcouncil.judiciary.gov.uk/docs/web_Breach_of_an_Anti-Social_behaviour_order.pdf (15/02/13)]

²³ See for example, Nacro, (2007) *Youth Crime briefing – Naming and Shaming*, Youth Crime briefing, September 2007 [accessed via: <http://www.nacro.org.uk/data/files/nacro-2008050102-558.pdf> (14/02/13)]; CPS, *Anti-Social Behaviour Orders on Conviction* [accessed via:

http://www.cps.gov.uk/legal/a_to_c/anti_social_behaviour_guidance/#an11 (14/02/13)]

²⁴ Sentencing Guidelines Council (2008) *Breach of an Anti-Social Behaviour Order: Definitive Guideline*, p19 [accessed via: http://sentencingcouncil.judiciary.gov.uk/docs/web_Breach_of_an_Anti-Social_behaviour_order.pdf (15/02/13)]

²⁵ Sentencing Guidelines Council (2009) *Overarching Principles – Sentencing Youths: Definitive Guideline*, p11 [accessed via: http://sentencingcouncil.judiciary.gov.uk/docs/web_overarching_principles_sentencing_youths.pdf (15/02/13)]

²⁶ Crime and Disorder Act 1998, Section 1C

- The test for granting a CBO is that the offender has ‘engaged in behaviour that caused or was likely to cause harassment, alarm or distress’ and that the order will help prevent such behaviour.
- As with the injunction, the CBO can include both prohibitions and positive requirements; both of which are enforceable.
- The court must be satisfied that the CBO doesn’t conflict with any other court order.
- Where a court adjourns the hearing of a CBO application it may make an interim CBO. The order can be imposed in the offender’s absence if he/she has been previously warned that this could occur. When making an interim order, clauses 21 (2-4 & 6-8), 24 (3-5) and 25 do not apply. This means that the court does not need to satisfy the tests for granting a CBO (that the court is satisfied that the offender has engaged in ASB that caused or is likely to cause harassment, alarm or distress and that the order will help to prevent such behaviour) or find out the views of the local YOT.²⁷
- A CBO imposed on a person aged under 18 must last for a minimum of one year and can be a maximum of three years.
- There is a mechanism to allow offenders over 16 to shorten the period of a CBO if they complete an approved course.
- The youth court has the same sentencing powers for breach of a CBO as for other criminal offences. Therefore, a maximum custodial sentence of 24 months (i.e. a 24 month DTO) as a sanction for breach is available for those aged 12 and above and cannot be imposed on 12-14 year olds unless the child is a ‘persistent offender’.²⁸ This is the same as current arrangements – i.e. for the CRASBO.
- In the case of a CBO, reporting restrictions do not apply (s49 C& YPA 1933) but s39 C&YPA 1933 does apply, meaning that the court has the power to prohibit publication of certain matters. This is the same as current arrangements – i.e. for the CRASBO.
- In the case of a CBO, breach is a criminal offence but the presumption of anonymity does not exist. Instead, the court has the power under s45 Youth Justice and Criminal Evidence Act 1999 to restrict reporting of proceedings involving children. If the court exercises its power under s45 to restrict reporting of breach it must give its reasons for doing so (as set out in s141 Serious Organised Crime and Police Act 2005). Again, this mirrors current arrangements for the CRASBO.²⁹

²⁷ Draft Antisocial Behaviour Bill (2012) clause 26; Draft Antisocial Behaviour Bill Explanatory Notes (2012), pp122-123

²⁸ Sentencing Guidelines Council (2008) *Breach of an Anti-Social Behaviour Order: Definitive Guideline*, p19 [accessed via: http://sentencingcouncil.judiciary.gov.uk/docs/web_Breach_of_an_Anti-Social_behaviour_order.pdf (15/02/13)]; Note that clause 28 of the Bill states that the maximum penalty for ‘on conviction on indictment’ is 5 years but this does not apply to children as breach of an ASB order by a person aged under 18 is not an indictable offence. The Bill states that the maximum penalty on summary conviction is 6 months. However, the youth court jurisdiction does not fall within the definition of ‘summary’. Therefore the youth court maximum penalty of 2 years imprisonment applies.

²⁹ See for example, Nacro, (2007) *Youth Crime briefing – Naming and Shaming*, Youth Crime briefing, September 2007 [accessed via: <http://www.nacro.org.uk/data/files/nacro-2008050102-558.pdf> (14/02/13)]; CPS, *Anti-Social Behaviour Orders on Conviction* [accessed via: http://www.cps.gov.uk/legal/a_to_c/anti_social_behaviour_guidance/#an11 (14/02/13)]

- There is an added complication with naming and shaming young people with a CBO because under s49 C&YPA 1933 they must remain anonymous for the criminal offence to which the CBO (or currently the CRASBO) is attached. However in practice s49 is likely to be circumvented in such cases: if it is publicised that a child has a CBO, people are likely to deduce that the child has a criminal record.³⁰

What are the key differences between the CBO and the CRASBO?

- The CRASBO must be for a period not less than two years specified in the order or until further order whereas the CBO has a one-year minimum period.
- The threshold for making a CBO – whether it will help in preventing ASB – is broader than the CRASBO test, which requires the court to consider whether the order is “necessary to protect persons from further anti-social acts by the offender”.

NEW POLICE DISPERSAL POWER

- The new power will enable police officers to direct a person aged 10 and above who has committed, or is likely to commit, ASB to leave a specified area and not return for a specified period of up to 48 hours.³¹ The officer must also judge that issuing the direction is necessary for the purpose of removing or reducing the likelihood of ASB or crime and disorder.
- As with the current powers,³² a person who is directed to leave under the power has not committed a criminal offence but refusal to comply with the direction is a criminal offence.³³
- Non-compliance carries a maximum penalty of a fine or three months detention.³⁴ This is in line with the current power.³⁵
- The power to return a child under the age of 16 (who is on the streets between 9pm and 6am without an adult) home or to a place of safety is being retained.³⁶
- Police officers will be able to confiscate items causing or likely to cause ASB. Items can be held at the police station for 28 days and the officer can refuse to return the item if the individual is under 16 and not accompanied by an adult.³⁷

³⁰ Nacro, (2007) *Youth Crime briefing – Naming and Shaming*, Youth Crime briefing, September 2007 [accessed via: <http://www.nacro.org.uk/data/files/nacro-2008050102-558.pdf>]

³¹ Draft Antisocial Behaviour Bill Explanatory Notes (2012), p144

³² Anti-social Behavior Act 2003, s 30

³³ Home Office, *The Direction Power* [accessed via:

<http://www.homeoffice.gov.uk/publications/consultations/asb-consultation/direction-power?view=Html> (18/02/13)]

³⁴ Draft Antisocial Behaviour Bill 2012

³⁵ CPS, *Dispersal* [accessed via: http://www.cps.gov.uk/legal/d_to_g/dispersal_orders/ (21/02/13)]

³⁶ Draft Antisocial Behaviour Bill Explanatory Notes (2012), p144

³⁷ Draft Antisocial Behaviour Bill Explanatory Notes (2012), p102

How does the new dispersal power differ from current arrangements?

- At present dispersal powers may only be used in defined areas that have been authorised as such by senior police and the local authority, following a consultation process. Areas can be designated if there is believed to be persistent ASB and for a maximum duration of 6 months (with the possibility of extension). Within dispersal areas, police can tell people to leave the area and not return for a period of up to 24 hours.³⁸
- In contrast, the new proposed dispersal power enables a police officer to direct people to leave *any* area in the event of the public being harassed, alarmed or distressed, or the occurrence of crime and disorder; it is not restricted to use in zones that have been authorised by the local authority.³⁹
- Because the proposed power will not be used within a designated zone, the threshold for its use (i.e. the public being harassed, alarmed or distressed, or the occurrence of crime and disorder) will be *lower* than that which currently applies – i.e. in the event of the public being or likely to be harassed, alarmed and distressed *and* where there is a significant and persistent antisocial behaviour problem in the locality.⁴⁰
- The new power enables a direction for a 48 hour period, rather than the current 24 hours.⁴¹
- PCSOs will be able to use the proposed powers – at the discretion of the Chief Constable – without the current limitation of only within the area of prior authorisation.⁴² A number of groups, including JUSTICE and Liberty, have expressed concern at this.⁴³
- The new powers are not subject to the same oversight structures that are in place for the current powers. These include multi-agency approval, risk assessment and the responsibility not to displace the problem, which are part of the consultation process for obtaining dispersal zone authorisation. The new proposed powers will only be subject to the oversight of Police and Crime Commissioners (PCCs) once they have been used.⁴⁴
- The power to confiscate items is new; it is currently only available in relation to alcohol within controlled drinking zones.

SCYJ View

- SCYJ's position is that formal ASB orders should not be available for children. However, if the orders are applied to under-18s, SCYJ has a number of

³⁸ Anti-Social Behaviour Act 2003 s30-36

³⁹ Home Affairs Select Committee, (2013) *The draft Anti-social Behaviour Bill: pre-legislative scrutiny*, London: The Stationary Office, p12

⁴⁰ *Ibid*

⁴¹ JUSTICE, Draft Anti-Social Behaviour Bill: Written Evidence to the Home Affairs Committee, January 2013

⁴² JUSTICE, Draft Anti-Social Behaviour Bill: Written Evidence to the Home Affairs Committee, January 2013

⁴³ Home Affairs Select Committee, *Home Affairs – Written Evidence: Contents* [accessed via: <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmhaff/836/836vw01.htm> (21/02/13)]

⁴⁴ *ibid*

concerns that it would like to see addressed in the revised Bill. These are detailed below.

- Children's ASB would be most effectively remedied using the methods of restorative justice, welfare measures and out-of-court disposals. An out-of-court approach comprising informal remedies and provision of early evidence based help, as well as formal measures, such as warning letters and non-binding Antisocial Behaviour Contracts (ABCs) accompanied by support to address the underlying causes of the behaviour would render civil orders unnecessary. More serious (i.e. criminal) behaviour could and should be dealt with by means of youth justice court disposals. We highlight here the National Audit Office finding that ASB warning letters and ABCs cost less than a tenth of the £3,100 required for each ASBO application.⁴⁵
- We are particularly troubled by the proposal that imprisonment is available as a sanction for children who breach the new orders (two years detention for breach of a CBO and three months for breach of an IPNA or dispersal order). Only the most serious and dangerous young offenders should receive custodial sentences in the youth court. The sanction proposed here is therefore disproportionate and is not in our view in accordance with the UN Convention on the Rights of the Child (UNCRC) provision that custody should be used only as a last resort. **Custody should not be available as a sanction for breach of ASB orders by children.** Serious breaches should instead be addressed by means of robust community alternatives. **We suggest that a referral order be available in addition to a supervision order.**
- **SCYJ recommends that in all ASB breach proceedings involving under-18s a pre-sentence report should be supplied to the court for consideration.** The responsible officer should also demonstrate in court what support has been provided to the child to aid their compliance with the order.
- SCYJ is seriously concerned that the Bill provides for the imposition of interim injunctions and CBOs on children without notice and without the safeguards that are in place for granting 'full' injunctions and CBOs. Such provision could conceivably result in a child breaching an interim order without any knowledge of its existence. **We recommend that 'no notice interim ASB orders' are not available for under-18s.**
- Long-lasting ASBOs have been criticised for making breach 'almost inevitable' as young people cannot see the end in sight and, thus, have little incentive to comply.⁴⁶ In SCYJ's discussions with young people about the proposed ASB orders 12 months was felt to be too long a period, with one young person

⁴⁵ National Audit Office (2006), cited in The Independent Commission for Youth Crime and Antisocial Behaviour, *Time for a fresh start*, London: The Police Foundation, p67

⁴⁶ See for example Pople L, (2010) 'Responding to antisocial behaviour' in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, p159 9 Brogan D (2005) *Antisocial Behaviour Orders: An assessment of current management information systems and the scale of Antisocial Behaviour Order breaches resulting in custody*, London: Youth Justice Board, p24

stating: "two years feels like a lifetime with an ASBO at our age". In view of this, orders should not have a minimum duration and should last no longer than one year. We welcome the Home Affairs Select Committee's recommendation that 'for under-18s, IPNA should be available for a maximum of 12 months' and that 'the Bill must include an annual review of all formal ASB interventions imposed on under-18s to ensure that restrictions are not continued unnecessarily if behaviour has changed'.⁴⁷ However, SCYJ would go further: **for under-18s, both IPNAs and CBOs should be available for a maximum of 12 months and be reviewed every 6 months. SCYJ also supports the Home Affairs Select Committee's recommendation that the mechanism allowing CBOs to be shortened for over 16s if they complete an approved course should be extended to children aged below 16.**

- SCYJ is seriously concerned that the adoption of the lower threshold of 'causing nuisance and annoyance' as the test for the injunction to be granted will have a particularly detrimental effect on children. The existing test – 'harassment, alarm and distress'- is already low and has the scope to encompass a wide range of behaviour. Lowering the threshold risks children being made subject to such orders simply for being 'annoying', thus widening the net of children subject to ASB orders. ACPO and several Police and Crime Commissioners expressed their concerns about the legislation in the *Telegraph*, stating that the new threshold was at risk of being 'too subjective' and could 'unnecessarily criminalise' children.⁴⁸ **SCYJ believes that current test of 'harassment, alarm and distress' should remain.**
- SCYJ is troubled that granting an IPNA will only require the civil standard of proof – balance of probabilities – to be met, rather than the more rigorous, currently-used criminal standard test, 'beyond reasonable doubt'. We view this as all the more problematic given that imprisonment is available as a sanction for breach by children. The Bill should also make clear whether or not the CBO standard of proof is 'beyond reasonable doubt' as it is currently silent on this issue.
- The exclusion of s49 C&YPA 1933 – the presumption against revealing details of a child's identity – from the Bill is problematic for several reasons. It contravenes the anonymity that is usually granted to children in criminal proceedings; disregards the right to privacy in the UNCRC, to which the UK is a signatory; can hinder successful rehabilitation; is a safeguarding issue; and can be a 'badge of honour' – an incentive for a child to engage in ASB. And in our age of the internet and social media, details of a child's identity are indelible once revealed. **SCYJ is calling for s49 Children and Young Persons Act 1933 – the presumption against revealing details of a**

⁴⁷ Home Affairs Select Committee, (2013) *The draft Anti-social Behaviour Bill: pre-legislative scrutiny*, London: The Stationary Office, pp15-16

⁴⁸ *Telegraph*, *Children face court for being 'annoying' under new ASBO scheme*, 29 Jan 2013 [accessed via: <http://www.telegraph.co.uk/news/9829532/Children-face-court-action-for-being-annoying-under-new-Asbo-scheme.html> (04/02/13)]

child's identity – to be applied to all ASB intervention and breach proceedings involving under-18s.

- Should the draft Bill proposals be taken forward, SCYJ recommends that in order for a IPNA or CBO to be granted, the local authority must be able to demonstrate that informal remedies and out-of-court formal measures have been used and exhausted. We fully support the Home Affairs Select Committee's recommendation that 'IPNAs...should only be available after attempts to resolve the issue through informal support and acceptable behaviour agreements have failed'.⁴⁹ **SCYJ recommends that there be a clause added to the Bill specifying that the IPNA and CBO are imposed only as a last resort.**
- Research by BIBIC revealed that one-third of ASBO recipients have mental health problems and/or learning difficulties and a Home Office study found that over 60 per cent had underlying problems, such as psychological issues, learning disabilities, and drug or alcohol abuse.⁵⁰ Early persistent behavioural problems constitute one of the most common childhood mental health problems, affecting 6 per cent of children.⁵¹ These children face some of the worst and most costly health and social outcomes. Consequently there is a strong argument for proper assessment and early help via well-proven interventions (e.g. evidence-based parenting interventions, multi systemic therapy, functional family therapy, multi dimensional treatment fostering, NICE guidance backed ADHD services, etc.) many of which have demonstrated potential for improved outcomes and significant savings across a range of budgets in the longer term.⁵² The ASB White Paper acknowledges that there are strong links between ASB and health issues. However nowhere in the Bill are such needs provided for. **SCYJ believes that children should have a full health and social assessment before any ASB order is granted.** The order should take account of any identified needs and clearly set out how they are to be addressed. Any child arrested for breach of an ASB order (IPNA, CBO or dispersal) with suspected mental health needs should be provided with support as early as possible, prior to court, in accordance with PACE legislation.⁵³

⁴⁹ Home Affairs Select Committee, (2013) *The draft Anti-social Behaviour Bill: pre-legislative scrutiny*, London: The Stationary Office, p27

⁵⁰ See BIBIC (2007) as cited in Centre for Mental Health, *A new mandatory power of possession for anti-social behaviour: Consultation Response from Centre for Mental Health* [accessed via: http://www.centreformentalhealth.org.uk/pdfs/Centre_response_power_of_possession.pdf (22/02/13)]; and Campbell S (2002), *A review of anti-social behaviour orders - Home Office Research Study 236*, London: Home Office, p18

⁵¹ Centre for Mental Health (2012) *A chance to change: delivering effective parenting programmes to transform lives*, London: Centre for Mental Health, p5; Scott

⁵² Aos S, Miller M & Drake E (2006) *Evidence-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and crime rates*, Washington State: Olympia: Washington State Institute for Public Policy; Centre for Mental Health (2009) *Chance of a lifetime*. London: Centre for Mental Health

⁵³ PACE legislation provides that where the police suspect a mental health condition Section 136 or 135 of the Mental Health Act 1983 (MHA) should be used by the police to facilitate a MH assessment by an approved clinician (formerly a registered medical practitioner), who ideally is approved by Section 12 of the Act, and by an approved mental health practitioner (AMHP) (formerly an approved social worker). Possible diversion via the MHA 1983 (sometimes to an inpatient setting - if severe

- If the new orders are taken forward for children, attaching positive requirements to orders could – if implemented in the right way – increase their effectiveness by addressing the complex problems that underlie ASB. However, we are skeptical about the Government’s assertion that the introduction of positive requirements will lead to reductions in the breach rates of ASB orders. There is a real risk that the opposite will be true for children; the more requirements that are attached, the more likely the order is to be breached. This will particularly be an issue for children with certain types of early mental health problems such as ADHD, ASD and conduct problems. A feature of these difficulties is a lack of consequential thinking together with impulsivity, making it more likely that breaches occur. Breaches have also anecdotally been seen to be more likely for young people with learning or communication difficulties where misunderstandings occur. Positive requirements must be carefully matched to need and every effort should be made to support the child in complying.

About the Standing Committee for Youth Justice

The Standing Committee for Youth Justice (SCYJ) is a coalition of over 25 organisations, which is working to improve the youth justice system in England and Wales. The SCYJ advocates child-focussed provision that promotes the integration of such children into society to serve their best interests and those of their communities. For more information on this briefing please contact Ali Crossley, Policy and Parliamentary Officer on a.crossley@scyj.org.uk

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mental illness is detected) would be facilitated through this process, or a decision would be made about the feasibility of continuing with the ASB or criminal justice process.