

Written evidence from the Standing Committee for Youth Justice on the draft Anti-Social Behaviour Bill

About the Standing Committee for Youth Justice

The Standing Committee for Youth Justice (SCYJ) is a coalition of 31 organisations working with young people engaged in antisocial behaviour and in the youth justice system. 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 response please contact Ali Crossley, Policy and Parliamentary Officer on a.crossley@scyj.org.uk

Summary

- The SCYJ is concerned that the new powers will have a disproportionate and counterproductive impact on children (under-18s). Our view is based on the fact that, historically, this age group have been excessively targeted by formal antisocial behaviour (ASB) interventions. Such measures have tended to act as a fast-track into the youth justice system and into custody rather than as an effective means of addressing ASB. We believe that the new orders should not apply to children. Children's ASB would be most effectively addressed using the methods of restorative justice, welfare measures and out-of-court disposals.
- SCYJ is seriously concerned that imprisonment is available for under-18s as a sanction for breach of injunctions, Criminal Behaviour Orders (CBO) and the new dispersal powers. We do not believe that custody can be justified as a sanction for breach of civil orders that are imposed for non-criminal behaviour. If the new orders are taken forward, imprisonment (also referred to within the Bill as a Detention Order) should not be available as a sanction for breach by under-18s.
- If the new orders are taken forward for children, attaching positive requirements to orders could increase their effectiveness by addressing the complex problems that underlie ASB. However, greater efforts need to be made to ensure that there is both the provision available to support such requirements and awareness of their existence amongst sentencers. Without this, such requirements will be of limited availability and, in any case, little used.

- We are concerned that the draft Bill provides for the ‘naming and shaming’ of children subject to proceedings. This is contrary to the presumption of anonymity for children in criminal proceedings and is likely to hinder their successful rehabilitation.

Introduction

1. SCYJ is pleased to have the opportunity to respond to the Home Affairs Committee’s call for evidence on the Government’s draft Anti-Social Behaviour Bill. Given the tight timetable of the inquiry and, accordingly, the short space of time in which this submission has been completed, this is a provisional response.
2. Scrutiny of the Bill 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’.¹
3. We recognise that antisocial behaviour causes serious harm to individuals and communities. Robust and effective responses are required if such behaviour is to be properly addressed. However we do not believe that the measures proposed in the Bill are useful tools for responding to children’s antisocial behaviour (ASB).
4. The SCYJ is concerned that the new powers – principally the injunction and Criminal Behaviour Order (CBO) – will have a disproportionate and counterproductive impact on children (under-18s). Similar such tools have been used excessively on children, for example 40 per cent of ASBOs are issued to 10-17 year olds, despite them comprising only about 13 per cent of the population.² What is more, these formal powers are ineffective as indicated by the very high breach rate (68 per cent compared to 50 per cent of adults³) by children subject to ASBOs. And the consequent use of custodial sentences as a sanction for juvenile ASBO breach in 40 per cent of cases – a method widely shown to be counterproductive and particularly harmful for young offenders⁴ - points to such orders facilitating entry into the youth justice system rather than addressing problem behaviour. More generally, there is significant geographical variation in the use of ASBOs across England and Wales, comprising inequitable quasi-criminalisation; in other words, ‘justice by geography’.

¹ Pople L (2010), ‘Responding to antisocial behaviour’ in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, p154

² Ministry of Justice (2011) Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics England and Wales 2010, p2

³ Ibid, p2

⁴ See for example, Smith D (2010) *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

How the new measures would affect young people in particular

5. Children are distinct from adults in a variety of important ways, including their immaturity, vulnerability, competency and potential for change. In recognition of this, youth justice arrangements and legislation are separate from those for adults. We firmly believe that the same should apply here. The new orders should not apply to under-18s. Children's ASB would be most effectively addressed 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 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 application⁵
6. We are particularly anxious about the new powers being implemented in the context of reductions in youth service provision. Such services play a key role in preventing children's behaviour from reaching the stage where civil orders are necessary and in providing a *place* for children to engage in positive activities. The introduction of the new measures accompanied by the cutbacks to these services increases the risk of more children falling into the formal ASB framework.
7. 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 would highlight the fact that similar provision exists for children in the form of the Individual Support Order (ISO) – a civil order designed to address the underlying causes of behaviour and available for 10-17 year olds subject to ASBOs – but has been severely underused. Many sentencers are apparently unaware of their existence;⁶ in 2006, only 18 per cent of young people with relevant (stand-alone) ASBOs received an ISO.⁷ We also have considerable concerns that cuts in local authority budgets, and in particular to youth service and youth offending service (YOS) funding, will limit the availability of positive requirements for children subject to these orders. A related issue is that the existence of discrepancies in 'positive provision' across England and Wales may result in inequitable opportunities for those subject to civil orders to address their behaviour. What's more, under the proposals, the court will not be able to issue positive requirements if there is not the provision to support these in the local area; experience in the youth justice system with the Youth Rehabilitation Order shows that the

⁵ 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

⁶ Solanki et al (2006), *Anti-social behaviour orders summary*, London: Youth Justice board, p14

⁷ Pople L (2010), 'Responding to antisocial behaviour' in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, p162

menu of options available is therefore likely to be severely limited. In our view, if the Government is to realise its commitment to tackling the causes of ASB, more needs to be done to increase both the availability of provision to support positive requirements and awareness of them amongst sentencers.

8. The Government asserts that the introduction of positive requirements will lead to reductions in the breach rates of ASB orders. However we believe that 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. There also remains little information about how agencies will identify which requirements are appropriate. Positive requirements must be carefully matched to need and every effort should be made to support the child in complying.
9. If the new orders do apply to children, SCYJ recommends that there are separate guidelines on the inclusion of prohibitions for under-18s. Given the high breach rates of ASB orders by this age group and the consequent implication that prohibition-focussed elements are ineffective at addressing their behaviour, such options should only be included as a last resort and for the most serious antisocial behaviour.
10. We do not believe custody can be justified as a sanction for breaching orders that are imposed for non-criminal behaviour. Yet all three of the key orders – the injunction, the CBO and the dispersal power – carry a (maximum) penalty of imprisonment for non-compliance (3 months, 2 years and 3 months, respectively). As we highlight above, this aspect of the proposals is likely to have a particularly negative impact on children. They are likely to be disproportionately targeted by such measures and custody has been shown to be especially harmful for children, who are at a key stage in the formation of their identities. We are particularly troubled by the proposal that breach of a CBO should carry a (maximum) penalty of imprisonment for two years. Only the most serious and dangerous young offenders receive custodial sentences of two years in the youth court. The sanction proposed here is therefore totally disproportionate.
11. The SCYJ is alarmed at the implications for children of the proposal that injunctions be *indefinite* in duration. Neither do we support – in relation to the CBO - the minimum duration of one year and maximum length of three years for under-18s. No minimum duration should be specified and an order should last no more than one year. Long-lasting ASBO's have been criticised for making breach 'almost inevitable'⁸ as young people cannot see the end in sight and, thus, have little incentive to comply.⁹ Given that children are still developing, their behaviour is likely to change significantly as they mature; the proposed orders do not take account of this and are, therefore, likely to be counterproductive.

⁸ 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

12. We are concerned that the draft Bill provides for the ‘naming and shaming’ of children subject to proceedings. In so doing, an opportunity has been missed to address this harmful and counterproductive trend. In the case of both the injunction and the CBO, the restrictions on reporting proceedings in which children are involved¹⁰ do not apply.¹¹ With regards to breach proceedings for a CBO, the court is afforded the power to restrict reporting of proceedings involving under-18s. However, worryingly, if the court chooses to do this (i.e. restricts reporting) it is required to explain its reasons for doing so.¹² This presumption in favour of ‘naming and shaming’ contravenes the anonymity that is usually granted to children in criminal proceedings. This is unacceptable. It is also disregards the right to privacy in the UN Convention on the Rights of the Child (UNCRC), to which the UK is a signatory. What’s more, ‘naming and shaming’ is unnecessary and can clearly hinder successful rehabilitation. We have heard of many examples where young people have struggled to gain employment and housing as a consequence of being ‘named and shamed’. We strongly recommend that that there is a total bar on the reporting of court proceedings involving persons under 18. This should apply to mainstream and social media.
13. Should the inclusion of under-18s in the new orders go ahead, we are pleased to see that the Bill requires the prosecutor to find out the views of the local Youth Offending Team (YOT) prior to applying for the order. SCYJ also supports the decision that ASB proceedings involving children will be heard in the youth court.
14. SCYJ believes there is a real risk that the new orders may be used as a more easily obtainable alternative to criminal justice orders. This is because, as detailed below, the new orders do not have the same protections (i.e. they are issued on the basis of a lower standard of proof) as are available in criminal law, yet they comprise equally, if not more, demanding requirements. This is particularly worrying given the severe custodial penalties for non-compliance attached to the new orders. This could be mitigated against by ensuring that the processes for granting the new civil orders are subject to the same procedural safeguards bestowed on criminal law.

The injunction

15. SCYJ believes 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 widening the net of individuals subject to ASB orders. There is evidence to suggest that this might disproportionately affect children. For example, the British Crime Survey has

¹⁰ Provided for Section 49 of the Children and Young Persons Act 1933

¹¹ Draft Anti-Social Behaviour Bill (2012), s17 and s22 (8a), p8-12

¹² Ibid, s28 (5 & 6); power to restrict reporting of proceedings is provided for under s45 of the Youth Justice and Criminal Evidence Act 1999

shown that ‘teenagers hanging around’ has been the issue that generates the most continuous concern amongst the public.¹³ Similarly, the Children’s Society reported that there are ‘many cases in which complaints about ASB have turned out to be general intolerance for young people...playing football in the park and spending time with friends’.¹⁴

16. We remain seriously concerned that granting an injunction 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.¹⁵ The reform also contravenes the principle of the 2002 House of Lords judgement (see R on behalf of McCann v Crown Court at Manchester) that the criminal standard of proof should be used in ASBO cases, even though they are civil proceedings.¹⁶
17. We oppose the provision under s18 (2) to allow the transfer of cases from the youth court to the high court if the young person turns 18 after the commencement of proceedings. Children are tried under youth court law if they have committed the offence as a youth; the arrangements for ASB proceedings should be no different.

The Criminal Behaviour Order (CBO)

18. We question the use of CBOs at all; the criminal order of the court to which they are added and the associated powers of the court should be sufficient to address the problematic behaviour. Furthermore, imposing two orders simultaneously arguably comprises disproportionate sanctioning and risks setting children up to fail. SCYJ also doubts whether the proposals will simplify the current arrangements. A child who has both a CBO and a youth court order or a conditional caution could feasibly be required ‘to do the same thing, potentially with different supervisors or, even worse, with conflicting conditions’.¹⁷ If such orders are taken forward in relation to under-18s, they should only be used where absolutely necessary.
19. We are concerned that the process for granting a CBO does not include sufficient safeguards. For example, the explanatory notes of the Bill specify that applications for the CBO can include evidence that is not admissible in criminal proceedings, such as hearsay or bad character evidence. In our view, such evidence should not be allowable in the civil court regarding CBO proceedings.

¹³ Moon et al (2009) cited in Pople L (2010), ‘Responding to antisocial behaviour’ in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing pp150-151

¹⁴ Children’s Society (2011), *The Children’s Society’s response to the Home Office consultation ‘More Effective Responses to Anti-Social Behaviour*, p5

¹⁵ Although the court must be satisfied ‘beyond reasonable doubt’ that the order has been breached. Breach of an injunction does not comprise a criminal offence, whereas breach of a CBO does.

¹⁶ McCann (2002) cited in Pople. L (2010) ‘Responding to antisocial behaviour’ in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing, p158

¹⁷ Children’s Society (2011), *The Children’s Society’s response to the Home Office consultation ‘More Effective Responses to Anti-Social Behaviour* p3

The community remedy

20. The SCYJ believes that responding to the ASB of under-18s outside the formal court system is the most effective means of addressing their behaviour. In this light, the informal approach offered by the community remedy has the potential to benefit young people. PCC consultation with the local community on the content of the 'the community remedy menu' of options may also help to increase local communities' confidence in and awareness of the action being taken to address ASB. However, given that the content of the menu will depend on the views of victims and the public, there is a risk here that the options chosen may be overly punitive and, thus, counterproductive. Although the Bill requires that the constable must be satisfied that any action chosen by the victim is reasonable and proportionate to the behaviour committed, we do not consider this to be a sufficient safeguard.

The new police dispersal power

21. The current dispersal powers have been most commonly used in relation to young people. Although such tools can provide respite from problematic behaviour, the research evidence indicates that the powers often only serve to displace the activity to nearby areas.¹⁸ We are therefore concerned that the new single directions power, despite being designed to be quicker and easier to use, remains an ineffective response. The new power is all the more worrying in that non-compliance, unlike the current dispersal order, carries a maximum penalty of three months imprisonment. As young people are most frequently the target of such powers, this is likely to impact disproportionately on this group. If this power is made available for under-18s, there should be rigorous monitoring of their use, their rate of breach by under-18s and the resulting use of custody for this age group. This information should be made publically available.

22. We are supportive of affording officers the power to return children under the age of 16 home or to a place of safety. However, we share the concerns of SCYJ member Barnardo's (highlighted in their response to the initial ASB consultation) that such powers could result in children being sent back to abusive or unsafe environments, thus placing them in greater danger. We do not consider this risk to have been sufficiently addressed either by this Bill or the preceding white paper.

¹⁸ Crawford and Lister (2007), cited in Pople L (2010), 'Responding to antisocial behaviour' in D Smith (ed) *A New Response to Youth Crime*, Devon: Willan Publishing pp167-169

Our members are: Action for Children, 4Children, Association of YOT Managers, Association of Panel Members, Barnardo's, Catch 22, The Children's Society, The Care Leavers' Association, Centre for Mental Health, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Inquest, Just for Kids Law, JUSTICE, MAC-UK, Nacro, National Association of Youth Justice, NCB, NSPCC, NCVYS, National Youth Agency, TACT, Prisoners' Education Trust, Transform Justice, Prison Reform Trust, Secure Accommodation Network, Spark Inside, User Voice, Voice. The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.

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