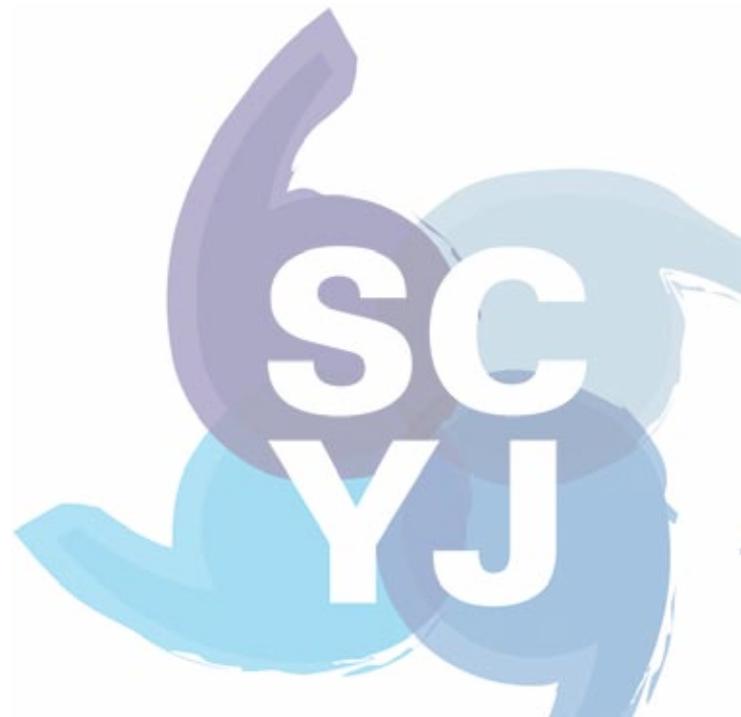




Standing Committee
for Youth Justice

SCYJ guide

to the new anti-social
behaviour powers



February 2015

The Standing Committee for Youth Justice (SCYJ) is an alliance of over 30 organisations working together to improve the youth justice system in England and Wales. We advocate a child-focused youth justice system that promotes the integration of children in trouble with the law into society and tackles the underlying causes of offending. Such a system would serve the best interests of the children themselves and the community at large.

www.scyj.org.uk

The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.

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Summary: SCYJ's local policy and practice recommendations – children and the new anti-social behaviour orders

The Anti-social Behaviour Act 2014 introduced new anti-social behaviour orders, which replace ASBOs and other orders. Below is a summary of the policies and practices SCYJ recommends are introduced locally with these new orders.

Recommendation: Police and local authorities should not use anti-social behaviour (ASB) orders to prohibit everyday childhood behaviour, even if it's annoying to some people.

Why? To prevent damaging relations between professionals and the community and to make sure local practice respects children's rights and is in keeping with the Government's statutory guidance on the new anti-social behaviour powers.

Recommendation: Police, children's services, community safety teams, YOTs, schools (and particularly Special Educational Needs Teams), CCGs and CAMHS should work in partnership with voluntary and statutory agencies to develop services needed to tackle ASB.

Why? These services are key to changing children's behaviour, supporting compliance with orders and keeping them out of further involvement with the youth justice system.

Recommendation: Police and local authorities should consult YOTs at each stage; before applications for the new injunctions or criminal behaviour orders (CBOs) against children are made; before breach proceedings are initiated; and before a decision is made to publicise an ASB order.

Why? To ensure local practice adheres to the Government's statutory guidance, because YOTs will have particular insights, and because these decisions will affect their work.

Recommendation: Local authorities (with the police and YOT) should develop a tiered approach to ASB including diverting children from the justice system, restorative approaches, and offering evidence-based voluntary support when needed (particularly family-based support), before an injunction or CBO is considered.

Why? To maximise the chance of changing children's behaviour and help to ensure local practice is in keeping with statutory guidance and child rights.

Recommendation: Police and local authority officers should ensure children behaving antisocially are screened for health and welfare needs. Children should be formally assessed when their ASB is persistent and every time an application for an ASB order is made.

Why? To maximise chances of changing a child's behaviour by identifying needs and so enabling the right support to be provided; ASB is linked to conduct disorder and can be associated with other needs, such as autism, and speech and language needs.

Recommendation: Local authorities and police should apply for the new CBOs and injunctions for the shortest period possible and ensure that conditions are achievable and tailored to individual children's capacity, needs and circumstances. YOTs should support children to comply with injunctions and CBOs.

Why? Evidence from ASBOs shows this will maximise the chance of children complying with ASB orders; and it's necessary to ensure compliance with duties under the Equality Act 2010.

Recommendation: Police and local authority officers should avoid taking children to court for failing to comply with an injunction if they are genuinely engaged with their order; YOTs, police and local authorities should have processes in place to give children every opportunity to engage before breach proceedings are initiated. (Examples of such processes are in Section 2).

Why? Strict enforcement does not lead to changes in behaviour, genuine engagement does.

Recommendation: The identity of children subject to injunctions and CBOs should not to be publicised by police or local authorities, unless compelling reasons to do so have been clearly set out, and only after the impact on the child, their family, and their rights has been considered. YOTs should set out their views on identification to the court.

Why? The benefits of publicising an order will rarely, if ever, outweigh the negative impact on the child and their family. YOTs can influence the court's decision on whether to permit a child's identity to be made public.

Recommendation: When applying for injunctions, local authorities and police should be required to apply for a "section 39 order" at the same time (if they do not want to publicise the injunction).

If there are plans to publicise the injunction or CBO, the police or local authority should be required to tell the child, and their representative, that they can apply for a section 39 order themselves.

Why? If no section 39 order is made, the press can still reveal a child's identity even when practitioners agree that this would be damaging. Responsibility for applying for section 39 orders needs to be clearly assigned and children, and their representatives, need to know they can make an application themselves.

Recommendation: YOTs' Pre-Sentence Reports should never recommend custody as punishment for breach in cases where the breach of an injunction or CBO has not caused any harm.

Why? Custody is expensive, harmful and does not help to change behaviour. Detaining children for non-harmful breach of ASB orders may contravene their rights.

Introduction

“During this assessment he was asked if he was able to tell the time. He replied no, he could not. He had never had a watch and had never been able to tell the time, but no-one had asked when the curfew was set”¹.

This is a clinical psychologist’s recollection of assessing a young person with special needs, detained in custody for breaching the curfew on his ASBO. It exemplifies many of the flaws in previous attempts to tackle anti-social behaviour (ASB), which too often set children up to fail, didn’t address the underlying causes of behaviour, and therefore failed to protect communities.

The new powers to tackle ASB, introduced by the Anti-social Behaviour Crime and Policing Act 2014, are an opportunity for a new approach; one that aims to bring about lasting changes in how children behave and which ultimately reduces ASB in communities. The Standing Committee for Youth Justice (SCYJ) recognises ASB can be a source of serious distress, particularly in some of the most deprived neighbourhoods, and believes this is best alleviated through changing children’s behaviour; with the right support, children can change their ways to the benefit of communities.

This briefing is designed to help decision-makers to use their new powers to bring about lasting changes in children’s behaviour (which, in turn, is likely to reduce costs for local agencies over the longer-term). SCYJ believes that dealing with ASB requires robust action to tackle its underlying causes, using proven interventions.

Though anti-social behaviour needs to be addressed, no-one wants the new legislation to stop children playing, or indulging in harmless high spirits; it’s not fair (or lawful) and can damage relations between authorities and communities. We are concerned that the new powers should not be used to suppress normal teenage high spirits or impose sanctions which are counter-productive. With measured local policies, and appropriate networks of support, this can be avoided, and a system developed that tackles the root causes of ASB.

Anti-social behaviour (ASB) – background and the 2014 Act

ASB has been subject to something of an arms race over the past 15 years. Yet responses have tended to focus on enforcement rather than adopting approaches most likely to change behaviour. The last Labour Government introduced a multiplicity of new ASB laws and policies, including the now infamous Anti-social Behaviour Order (ASBO), which could be imposed on a child aged 10 or above.

¹Prison Reform Trust, 2011, “Into the Breach: the enforcement of statutory orders in the youth justice system”: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

The Coalition Government's Anti-social Behaviour, Crime and Policing Act 2014 (ASB Act) replaces ASBOs, and numerous other ASB orders, with a new range of powers, including a new Dispersal Power, a Criminal Behaviour Order (CBO), a new Civil Injunction (injunction) and Public Space Protection Orders (PSPOs). In July 2014, the Government published statutory guidance for "frontline professionals" on the implementation of the new ASB orders.²

This briefing looks at how best to use these new powers to bring about changes in children's behaviour, within a supportive system, and in a way that is in keeping with children's rights and the Government's statutory guidance. It focuses on the new injunctions, but touches on CBOs, Dispersal Orders and the Public Space Protection Order (PSPO) too.

Who should read this briefing?

This briefing is designed to assist decision makers in developing local policy and practice to implement the new ASB measures contained in the Anti-social Behaviour, Crime and Policing Act 2014.

It will be relevant to all those with responsibility for implementing the new legislation and statutory guidance in relation to children and young people. This includes Directors of Children's Services, Youth Offending Team (YOT) Managers, Chief Constables, Community Safety teams and Police and Crime Commissioners.

Community Safety Partnerships, Health and Wellbeing Boards and Clinical Commissioning Groups will also have a strong role in developing effective policy and practice to give the new orders the best chance of changing children's behaviour.

SCYJ believes that ASB needs to be tackled by dealing with its underlying causes and by using effective and cost efficient approaches³ to support children and young people to change – particularly community and family-based interventions. Such an approach is most effective, best protects communities, is likely to save costs in the longer term, respects the rights of children (enshrined in the United Nations Convention on the Rights of the Child), and helps to ensure practice complies with equality law (the Equality Act 2010). This briefing recommends how to implement the new ASB powers to these ends.

² Home Office: "Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professional". Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

³ See National Institute for Health and Care Excellence 2013 "Antisocial behaviour and conduct disorders in children and young people: recognition, intervention and management" <http://www.nice.org.uk/guidance/cg158>

Who can apply for the new orders?

Local councils and the chief officer of police for a local area (amongst others) can apply for an injunction and the council or police can request that the Crown Prosecution Service applies for a CBO. In both cases, the relevant YOT must be consulted. To make sure these new powers are used effectively and fairly, all practitioners involved will need a good understanding of child rights as well as the health and welfare issues associated with ASB, and how to spot them. Uniformed police can use the dispersal power (and Police Community Support Officers if given the power to do so by their chief constable) and local authorities can issue PSPOs after consultation with the police, the Police and Crime Commissioner and others.

ASB, underlying needs and the Equality Act 2010

There is good evidence that unmet health and/or welfare needs are the underlying cause of ASB.⁴ Conduct disorder is the most common childhood mental health problem and is strongly associated with ASB. It affects 5% of 5-16 year olds and is “characterised by repetitive and persistent patterns of anti-social, aggressive or defiant behaviour”.⁵ Though the vast majority of children don’t get support⁶ to help them change, interventions – particularly family-based and community ones – can make a real difference.⁷

In 2013, the National Institute for Health and Care Excellence (NICE) published guidance on ASB and conduct disorder. The interventions it recommends all “focus on working with parents and families”, and recognise the importance of the wider social system in enabling children to change.⁸ The NICE Guidance is an essential reference point in dealing with ASB.

Persistent anti-social behaviour may be driven by other difficulties too. Children with autistic traits, speech and language difficulties, acquired brain injury, or those who have experienced prolonged or extreme trauma, often find themselves on the edges of the youth justice system.⁹ To ensure these children get the support they need, a full health assessment and

⁴ 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

⁵ National Institute for Health and Care Excellence 2013 “*Antisocial behaviour and conduct disorders in children and young people: recognition, intervention and management*” <http://www.nice.org.uk/guidance/cg158>

⁶ Green, H., McGinnity, A., Meltzer, H., Ford, T. and Goodman, R. (200) *Mental Health of children and young people in Great Britain, 2004*. London: Palgrave Macmillan.

⁷ Centre for Mental Health “*Childhood behavioural problems – A Briefing for Troubled Families Teams*” 2014 http://www.centreformentalhealth.org.uk/pdfs/parenting_briefing_troubledfamilies.pdf

⁸ NICE 2013 “*Antisocial behaviour and conduct disorders in children and young people: recognition, intervention and management*” <http://www.nice.org.uk/guidance/cg158>

⁹ See for example, Department for Education 2012, “*The relationship between speech, language and communication needs (SLCN) and behavioural, emotional and social difficulties (BESD)*” <https://www.gov.uk/government/publications/the-relationship-between-speech-language-and-communication-needs-slc-and-behavioural-emotional-and-social-difficulties-besd>
US Department of Veterans Affairs “*PTSD in Children and Teens*” <http://www.ptsd.va.gov/public/family/ptsd-children-adolescents.asp> accessed January 2015.

good pathways (via school nurses, YOT health practitioners and GPs) to local community paediatricians, Special Educational Needs teams, Speech and Language Therapists and Specialist CAMHS teams should be developed.

The Equality Act 2010 makes it illegal to discriminate against a person because of their disability. This is because disability is a “protected characteristic” under the Act. The Equalities and Human Rights Commission explain that discrimination can include “putting in place a rule or policy or way of doing things that has a worse impact on someone with a protected characteristic than someone without one”.¹⁰ The Act also requires various bodies (including criminal and civil justice agencies) to make “reasonable adjustments”¹¹ for people with disabilities. It is important to make sure that responses to ASB do not discriminate against children with disabilities (particularly “hidden disabilities” like conduct disorder, autism, and speech and language difficulties), and that reasonable adjustments are made to meet their needs.

¹⁰ <http://www.equalityhumanrights.com/private-and-public-sector-guidance/guidance-all/faqs>

¹¹ *Equalities and Human Rights Commission, Core guidance: Criminal and civil justice systems and national security:* <http://www.equalityhumanrights.com/your-rights/service-users/justice-and-security/core-guidance-criminal-and-civil-justice-systems-and-national-security>

1: Appropriate use of civil injunctions

ASB orders aren't the way to respond to everyday behaviour, even if it is annoying. Where a child's behaviour does meet the definition of anti-social (that is, it's likely to cause 'harassment, alarm and distress'), diversion and support should generally be the first response. Where possible and reasonable, children and young people should not be given injunctions – outreaching voluntary support is more likely to change behaviour in the long-term than ASB orders.

Trivial and everyday behaviours

What's the issue?

Some people find everyday behaviours annoying. But that doesn't mean they should be prohibited; children have a right to play and to gather together (see Appendix). The experience of ASBOs shows that over-zealous use of ASB orders can damage relations between authorities and children, and their parents.

What does the statutory guidance say?

Injunctions and CBOs should not be used to stop "reasonable, trivial or benign behaviours". PSPOs may only be used where behaviour is 'unreasonable'. When using the dispersal power, the police should consider the Human Right to freedom of expression and freedom of assembly.¹²

Best practice

Instead of resorting to ASB orders, good communication and alternative resolutions should be used to resolve tensions. Injunctions, CBOs, the dispersal power and PSPOs should never be used to prevent trivial or everyday behaviours.

Recommended policy

Police and local authorities should never use anti-social behaviour (ASB) orders to prohibit everyday behaviour, even if it's annoying to some people.

"A few years ago [my son] and his mates were in the habit of standing at the end of the 40 foot turning circle in the cul-de-sac, outside our house, about six feet apart from each other, chatting and passing a soft football on the ground to each other. The neighbour opposite went mad, ranting about his car and swearing at them. The ball never went within twelve feet of his car [...] The upshot was, a policeman [came] round our house threatening our [...] son with an ASBO [...] basically for standing in the street rolling a football with his friends. Absolutely ridiculous".¹³

¹² See pages 23, 29, 34 and 46 of "Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals" https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

¹³ Mumsnet, comment on "Draconian new 'Asbo' laws will demonise teenagers": Accessed January 2015) http://www.mumsnet.com/Talk/guest_posts/a1892267-Draconian-new-Asbo-laws-will-demonise-teenagersStatutoryGuidanceFrontline.pdf

Anti-social behaviour: Diversion, voluntary support and identifying unmet needs

What's the issue?

Injunctions bring children and young people into the formal youth justice system. This is risky; there's strong evidence that contact with the justice system is likely to lead to more offending behaviour in the future, rather than less.¹⁴ Diversion into informal interventions, such as restorative justice is strongly associated with desistance from offending and positive changes in behaviour.¹⁵

There is good evidence that unmet health and/or welfare needs are the underlying cause of ASB¹⁶, particularly conduct disorder (see introduction). Evidence-based interventions (such as therapies), tailored to the needs and circumstances of individual children and their families, can make a real difference to changing a child's behaviour in the long-term. However, this is only possible if needs have been identified, which requires screening and assessment.

We know that interventions don't generally work when children and young people see them solely as punishment. Those that they perceive as fair and legitimate, and where they engage and want to complete the programme, are much more likely to be effective.¹⁷ Children are more likely to have a positive view of voluntary interventions, where they have chosen to participate,¹⁸ so these are likely to be more successful in changing behaviour.

One study found a third of ASBO recipients had mental health and/or learning difficulties; another that 60% had problems such as a disability, psychological needs or drug and alcohol misuse.¹⁹

What does the statutory guidance say?

The guidance sets out that, "early intervention, especially through informal approaches, can be successful in stopping anti-social behaviour committed by the majority of perpetrators... Informal interventions should be considered first in most cases, particularly when dealing

¹⁴ Petrosino A, Turpin-Petrosino C, Guckenburg S (2010) *Formal System Processing of Juveniles: Effects of Delinquency*, Oslo: The Campbell Collaboration;

¹⁵ McAra, L and McVie, S (2007) 'Youth justice?: The impact of system contact on patterns of desistance from offending' in *European journal of criminology* 4(3)

¹⁶ 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

¹⁷ Tyler, T (1993) "Why people obey the law" and Bottoms, A (2001) 'Compliance and community penalties' in Bottoms, A, Gelthorpe, L and Rex, S (eds) *Community penalties: changes and challenges*.

¹⁸ See *Beyond Youth Custody 2014 "Engaging young people in resettlement a practitioner's guide"* accessed at: <http://www.beyondyouthcustody.net/wp-content/uploads/BYC-engaging-young-people-guide1.pdf>

¹⁹ 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)];

with young people”²⁰. It goes on to recommend a variety of informal interventions, including community resolution (which can include restorative justice), parenting contracts, and support and counselling. Local authorities and the police are required to consult YOTs before applying for an injunction. The prosecution is required to consult YOTs before applying for a CBO.

Best practice

Children should be diverted away from the youth justice system as far as is reasonable, to informal interventions (like restorative justice), and voluntary evidence-based interventions (such as therapies, see the box opposite) based on need, before resorting to injunctions or CBOs. This is likely to be productive in changing behaviour in the long term

Adopting a formal tiered approach locally helps to ensure that a range of interventions are tried before injunction or CBO applications are made, and that a range of different interventions are offered. Research on ASBOs found that partnership working, and involving YOTs in decision-making, led to more thorough and developed tiered approaches in local areas.²¹

Screening children for health and social needs when they first start exhibiting anti-social behaviour means they can be offered appropriate support. Because of the close link between ASB and conduct disorder, speech and language difficulties, autism and trauma, children persistently behaving anti-socially should be assessed for health needs and referred to the necessary services.²² If an application is made for an injunction or CBO, a full health assessment should be completed.²³

Unless children have already been involved in the justice system, it’s best to make sure these health and social need screenings and assessments are not carried out by justice system staff – this is to avoid children coming into contact with the system unnecessarily, with its associated risks.

Recommended policies:

- Local authorities (with the police and YOT) should develop a tiered approach to ASB including diverting children from the justice system, restorative approaches, and offering evidence-based voluntary support when needed (particularly family based or evidence based health support), before an injunction or CBO is considered.

²⁰ Page 17 of “Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers statutory guidance for frontline professionals” https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

²¹ Youth Justice Board, 2006, “A summary of research into Anti-Social Behaviour Orders given to young people between January 2004 and January 2005.” London. YJB.

²² For instance, their health should be assessed with a strengths and difficulties questionnaire and, with follow-up referrals to local interventions, as per the NICE guidance.

²³ For instance, a full health assessment using the Comprehensive Health Assessment Tool (CHAT), a Strengths and Difficulties Questionnaire along with a tool such as the learning disability screening questionnaire.

- Police and local authority officers should ensure children behaving anti-socially are screened for health and welfare needs, and are formally assessed before an order application is made or if a child's ASB is persistent.
- Police and local authorities should consult YOTs before applying for an injunction.
- Police, children's services, community safety teams, YOTs, schools (and particularly Special Educational Needs Teams), CCGs and CAMHS should work in partnership with voluntary and statutory agencies to develop services needed to tackle ASB.

Restorative Justice

Restorative justice is an important informal intervention which brings together victims and perpetrators. Allowing the two to communicate can make victims feel empowered, giving them the chance to tell their side of the story, and perpetrators to understand the consequences of their actions and take responsibility. According to the Restorative Justice Council, it has an 85% victim satisfaction rate. Victim Support says it believes RJ is "a very effective approach and we'd like to see it offered to many more victims of crime".²⁴

See the Restorative Justice Council for more information.
www.restorativejustice.org.uk

Evidence-based interventions

Studies show that low-cost parenting programmes are effective for lower-level problematic behaviours. For more severe and persistent behaviour, research on conduct disorder gives us a good idea of what helps to turn children around. This shows that interventions supporting parents or addressing the risk factors surrounding young children, are most effective. For instance, Multi-Systemic Therapy, Functional Family Therapy, and Aggression Replacement Therapy.

See Centre for Mental Health "A briefing for Troubled Families Teams" and NICE guidance on ASB and conduct disorder for more information.²⁵

²⁴ <https://www.victimsupport.org.uk/help-victims/your-rights/restorative-justice>

²⁵ Centre for Mental Health, 2014, "Childhood behavioural problems – A Briefing for Troubled Families Teams" http://www.centreformentalhealth.org.uk/pdfs/parenting_briefing_troubledfamilies.pdf See also, National Institute for Health and Care Excellence 2013 "Antisocial behaviour and conduct disorders in children and young people: recognition, intervention and management" <http://www.nice.org.uk/guidance/cg158>

2: The purpose of ASB orders: compliance and breach

The vast majority of children failed to comply with the conditions of their ASBOs and were taken to court and prosecuted for breach as a result. Official figures show that on average around 70% of children given an ASBO were “breached”.²⁶ This suggests that the orders just weren’t working, either to change children’s behaviour or to protect communities from ASB.

The ultimate aim of any ASB intervention should be to secure lasting changes in children’s behaviours as this is ultimately the best way to protect communities, and is also likely to save significant costs over the longer term. By carefully selecting conditions, supporting children, and adopting a measured approach towards breach proceedings, local areas can maximise the chances of children complying and engaging with their orders, and so changing their behaviour.

Non-compliance

What’s the issue?

The vast majority of children failed to comply with their ASBO.²⁷ Studies have found that there are some common reasons for this. Children can face practical barriers like a lack of transport, inability to tell the time, and clashes with appointments, which can result in them breaching an order. Some children simply don’t understand what they have to do to comply, although they may claim otherwise.²⁸ As outlined earlier in this briefing, cognitive, developmental and communication difficulties are relatively common amongst children behaving anti-socially and can affect understanding and compliance.

“During this assessment [in custody] he was asked if he was able to tell the time. He replied no, he could not. He had never had a watch and had never been able to tell the time, but no-one had asked when the [ASBO] curfew was set”.²⁹

ASBOs often seemed unachievable to children, and this contributed to the high breach rate. They often contained many conditions, some of which were extremely restrictive. These were the most likely to be flouted. For instance, conditions preventing a child going to certain areas,

²⁶ *Anti-social behaviour order statistics: England and Wales 2012, Table 11: The percentage of Anti-Social Behaviour Orders (ASBOs) proven in court to have been breached(1) in each Criminal Justice System (CJS) area, by age group(2), 1 June 2000 to 31 December 2012(3)* <https://www.gov.uk/government/publications/anti-social-behaviour-order-statistics-england-and-wales-2012>

²⁷ *Ibid*

²⁸ *Prison Reform Trust, 2011, “Into the Breach: the enforcement of statutory orders in the youth justice system”:* <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

²⁹ *Clinical Psychologist, cited by The Prison Reform Trust, 2011, “Into the Breach – the enforcement of statutory orders in the youth justice system”* Accessed at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

from associating with particular people, and those imposing curfews, were most likely to be breached by children.³⁰ ASBOs lasted for a minimum of two years, which was said to make breach “almost inevitable” as children could never see an end in sight.³¹ The new injunctions have a six-month minimum and last for a maximum of one year.

“It’s non-association that causes the issues – particularly if one young person is on an ASBO and the other isn’t: ‘He came up to me!’”.

*“There was a car thief, he was banned from being in the front seat of cars – he was a nice kid but couldn’t grasp it, thought it was a bit of fun. He kept breaching”.*³²

Children with chaotic or violent homes and families, or unstable accommodation, struggle with compliance, as can looked after children, particularly those in residential care.³³ It goes without saying that children with supportive and encouraging parents and a stable home environment face far fewer challenges in complying with court orders.

“In the latest breach of ASBO, his mother’s drunken ex came in and threatened him so he broke his curfew. The police breached him and he ended up in a police cell”.

*“A girl breached her curfew for four nights but it was fraught at home – she’d moved out and was homeless”.*³⁴

What the statutory guidance says:

YOTs will be important in ensuring children understand the conditions in their injunctions.

YOTs and injunction applicants will work together as part of a multi-agency approach to ensure that positive requirements are tailored to each child’s needs. The prohibitions or requirements in the injunction must be reasonable.³⁵

³⁰ Prison Reform Trust, 2011, “Into the Breach: the enforcement of statutory orders in the youth justice system”: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf> and Youth Justice Board 2006, “A summary of research into Anti-Social Behaviour Orders given to young people between January 2004 and January 2005”.

³¹ 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

³² Anti-social behaviour practitioners, quoted by the Prison Reform Trust, 2011, “Into the Breach – the enforcement of statutory orders in the youth justice system” Accessed at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

³³ Prison Reform Trust, 2011, “Into the Breach: the enforcement of statutory orders in the youth justice system”: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf> National Children’s Bureau, 2010, “Children and young people in ‘breach’: A scoping report on policy and practice in the enforcement of criminal justice and anti-social behaviour orders” http://www.ncb.org.uk/media/122395/breach_final.pdf

³⁴ YOT Managers and Anti-social Behaviour Practitioners, quoted by The Prison Reform Trust, 2011, “Into the Breach – the enforcement of statutory orders in the youth justice system” Accessed at <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

³⁵ Page 23 of “Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals” https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

Best practice

Many of these barriers can be overcome by making sure that the conditions contained in orders are achievable and that children are supported to comply.

Tailoring conditions to a child's circumstances, based on an assessment of their needs, gives them the best possible chance of complying, as does clear communication of the terms of the order (and checking their understanding). This also helps to ensure practice is in keeping with the Equalities Act 2010, which requires reasonable adjustments to be made for disabilities (see Introduction). Involving children and parents in deciding the conditions of the order can help to ensure they are realistic and gives them a stake in complying.³⁶ Making orders for the minimum time possible makes it more likely that children will be able to comply as they can "see the end in sight".

It is important that children are supported to comply with orders. Some YOTs have found it helpful to start off with a checklist of barriers to compliance and potential solutions, which they go through with a child. Texting or ringing with reminders of appointments, arranging pick-ups, and negotiating with children on the time and place of appointments, all support a child to meet the conditions of their order.³⁷ Children with learning, developmental and communication difficulties may need access to an independent advocate to understand their orders and to have their say.

Recommended policies

- Local authorities and police should apply for injunctions for the shortest period possible and ensure that conditions are achievable and tailored to individual children.
- YOTs should support children to comply with injunctions and CBOs.

Breach

What's the issue?

Enormous numbers of children have been taken to court for failing to comply with their ASBOs (known as being "breached").³⁸ Breach was the automatic response when children broke the conditions of an ASBO. However the new injunctions generally offer far more flexibility³⁹ – professionals have discretion to decide whether or not to take a child to court for failing to

³⁶ National Children's Bureau, 2010, "Children and young people in 'breach': A scoping report on policy and practice in the enforcement of criminal justice and anti-social behaviour orders" http://www.ncb.org.uk/media/122395/breach_final.pdf

³⁷ Ibid and Prison Reform Trust, 2011, "Into the Breach: the enforcement of statutory orders in the youth justice system" <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

³⁸ Anti-social behaviour order statistics: England and Wales 2012, Table 11: The percentage of Anti-Social Behaviour Orders (ASBOs) proven in court to have been breached(1) in each Criminal Justice System (CJS) area, by age group(2), 1 June 2000 to 31 December 2012(3) <https://www.gov.uk/government/publications/anti-social-behaviour-order-statistics-england-and-wales-2012>

³⁹ Where a power of arrest is attached to a prohibition or a requirement of an injunction the police can arrest the respondent and must then present them to court. For all other injunction provisions (those to which no power of arrest is attached), the person who applied for an injunction *may* apply to a court for the issue of a warrant for a child's arrest where they think they the child has failed to comply with the injunction. This offers a good deal of practitioner discretion.

comply. SCYJ understands that professionals need to enforce orders but we believe that breach can be counterproductive and should be a last resort.

Changing behaviour is the ultimate aim of ASB orders. However, the evidence suggests that strict enforcement in itself does not achieve this. In fact, “heavy handed enforcement” can alienate children who are trying, but struggling, to comply.⁴⁰ Genuine engagement is likely to be the most important factor; a child who is genuinely engaged with an order, even if they do not always strictly comply, is most likely to change their behaviour in the long-term.

Best practice

Avoiding breaching children who are genuinely engaged and giving children every opportunity to engage before starting breach proceedings may be the best way to change behaviour. Alternatives to breach proceedings can be used, such as warnings, and other pre-court disposals, or children could be allowed to “pay back” for non-compliance.

Some YOTs hold meetings with a child, their parents and interested parties before breach proceedings are started. They discuss why the child is not engaging, what can be done about it, and whether all relevant agencies have done all they can to support the child.⁴¹ Children with communication, learning or developmental difficulties may need access to independent advocacy to have their say.

YOTs will supervise the new injunctions and so have the most insight into how children are engaging and why they aren’t complying with parts of an order. Therefore they should be consulted before breach proceedings are initiated.

*“Jason was in custody solely for breach of his ASBO. He had learning difficulties and although he understood what the order said, he did not fully understand why it had been imposed or its implications”.*⁴²

Recommended policies

- Police and local authority officers should avoid taking children to court for failing to comply with an injunction if they are genuinely engaged and should consult with YOTs before initiating breach proceedings;
- YOTs, police and local authorities should have processes in place to give children every opportunity to engage with an injunction before breach proceedings are initiated.

⁴⁰ Prison Reform Trust, 2011, “Into the Breach: the enforcement of statutory orders in the youth justice system”: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

⁴¹ *Ibid*

⁴² The Prison Reform Trust, 2011, “Into the Breach – the enforcement of statutory orders in the youth justice system” Accessed at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

3: Publicity and anonymity

Children in the justice system are usually anonymous, reflecting the serious negative impact naming a child can have. However, this doesn't apply to applications and breach proceedings for injunctions and CBOs; in these proceedings, children can be identified unless the court orders otherwise. This is to give professionals the freedom to publicise orders. However, SCYJ believes that the serious harm naming a child can do means publicity will rarely, if ever, be justifiable, and that local policies are needed to protect vulnerable children.

Publicise or not?

What's the issue?

The Government wants professionals to have the freedom to publicise injunctions and CBOs made against children when they feel it is "necessary and proportionate" to do so. The significant negative effects publicity can have need to be considered when coming to this decision.

Publicly naming a child can have a devastating impact on rehabilitation, giving a child a reputation they may then try to live up to, and making it almost impossible to escape the past, particularly in the age of the internet.⁴³

Details of a child's family life are often revealed when information about an order is made public, this means their families, particularly their siblings, lose their privacy too and family members can be stigmatised and bullied as a result, and are put at risk. The negative effects of publicity can cause psychological harm to children and puts them at risk of physical attack and sexual exploitation. Recent cases where vulnerable children have been targeted by predators show this is a real, not theoretical, risk.⁴⁴

The UN Convention on the Rights of the Child (UNCRC) states that children have a right to privacy in judicial proceedings and that a child's best interests must be "a primary consideration" when decisions are made about them. It also states that rehabilitation should be the aim of the youth justice system.⁴⁵ The UN Committee on the Rights of the Child has made clear in the past that naming children is not in their best interests.

⁴³ See Standing Committee for Youth Justice 2014, "What's in A Name? The Identification of Children in Trouble with the Law" http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf

⁴⁴ *Ibid*

⁴⁵ See Articles 40, 3 and 16 of the UN Convention on the Rights of the Child, and the Appendix of this Briefing.

What the statutory guidance says:

When deciding whether to publicise the name of a child, police and the local council must “consider that it is necessary and proportionate to interfere with the young person’s right to privacy and the likely impact on a young person’s behaviour”.⁴⁶

Best practice

The UNCRC, and the extremely serious impact identifying a child can have, weigh heavily against naming a child. So heavily in fact, that publicising an ASB order made against a child will rarely, if ever, be justifiable. As such, injunctions and CBOs made against children should not be publicised and any decisions to the contrary should require a robust rationale.

Naming a child will have a significant impact on the work of the YOT, including making safeguarding the child more difficult. YOTs may also have particular insights into the impact naming a child will have and should be consulted on decisions to publicise an order. Where YOTs feel naming is not appropriate, it is a good idea for them to write to the court to explain why – doing so can make a real difference to the court’s decision on whether or not to allow a child to be identified.

Recommended policies

- Police and local authorities should consult the YOT when deciding whether to publicise an order.
- ASB orders against children should not be publicised by police or local authorities, unless compelling reasons to do so have been clearly set-out, and after the impact on the child, their family, and their rights has been considered.
- YOTs should set out their views on identifying the child to the court.

*“[A child] may already be struggling to understand what they did, and this will confirm their sense of being beyond redemption. They may also be so terrified of retribution that they cannot engage with the help on offer. This is the case even where children have not been publicly identified but naming them can only make matters worse”.*⁴⁷

*“People living in the same hostel recognised her from the newspaper reports and began to comment... She became depressed and lost her place at the hostel and was homeless over Christmas...It took a huge amount of work to rescue that situation”.*⁴⁸

⁴⁶ Pages 25 and 30 of “Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals” https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

⁴⁷ Professor Sue Bailey, President of the Royal College of Psychiatrists quoted in SCYJ, 2014, “What’s in A Name? The identification of children in trouble with the law.” Accessed at http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf

⁴⁸ YOT Manager quoted in SCYJ, 2014, “What’s in A Name? The identification of children in trouble with the law.” Accessed at http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf

“My little sister was picked on”, says Connor. His mother confirms that the eight-year-old was taunted and slapped in the playground. There has also been abuse from strangers. “One day someone shouted from a van, ‘There goes the ASBO family’”.⁴⁹

One YOT manager reports how he protected a young child from being named:

“Her whole family was involved in the case. After the trial ended, the Judge ordered a PSR and in doing so said he was considering custody for all but the youngest. The media wanted to name the whole family. I wrote to the Judge saying that if he did, then the greatest impact would be on the youngest and least culpable defendant and it would make the work of the YOT very difficult. He agreed and quoted my letter in Court in rejecting the application from the press”.

Publicity and section 39 orders

What’s the issue?

Deciding whether to publicise a case is different to a child being granted anonymity. Professionals might decide not to publicise a particular case, for example, because it would severely damage a child. But unless the court makes a “section 39” order, that case could still be reported in the press or publicised by local residents. A section 39 order prohibits anyone from revealing the identity of a child and is the only way to prevent the press, and others, from reporting a case if you think a child should remain anonymous.

The ASB Act and the statutory guidance don’t give any one person or agency responsibility for applying to the court for a section 39 order. This is extremely worrying; it means there may well be cases where no application is made for a section 39 order despite the YOT, local authority and police agreeing that revealing the child’s identity would be deeply damaging. The local press or local community may then legally reveal the child’s name –there is nothing to stop them doing so unless a section 39 order is made – so causing the damage the YOT, police and local authority had wanted to avoid.

Many children won’t realise that their names could be identified when an order is made and wouldn’t know how to stop it even if they did.

⁴⁹ SCYJ, 2014, “What’s in A Name? The identification of children in trouble with the law.” Accessed at http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf

“No one explained it – I remember them speaking about it in front of me in the court – asking them not to – but I thought they said put my dad’s name and not mine”.⁵⁰

Best practice

SCYJ believes that local policy can and should fill the gap left by the Act and statutory guidance. The person applying for an injunction should be required to apply for a section 39 order at the same time (where it has been decided that the case should not be publicised).

Recommended policies

- When applying for injunctions local authorities and police should be required to apply for a “section 39 order” at the same time (if they do not want to publicise the injunction).
- If there are plans to publicise the injunction or CBO, the police or local authority should be required to tell the child, and their representative, that they can apply for a section 39 order themselves.

⁵⁰ *What’s In A Name? The Identification of children in trouble with the law. Standing Committee for Youth Justice 2014. Accessed at http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf*

4: Detention for breach

Prison has a damaging impact on children. SCYJ's long-held position is that it should only be used for the most serious offenders. However, the ASB Act allows children over 14 to be imprisoned for breach of an injunction and all children to be imprisoned for breach of a CBO. Though it's up to sentencers to decide the sanction for breach, the Pre-Sentence Report will have an impact.

What's the issue?

Imprisoning children is an ineffective and costly way to deal with problematic behaviour. The average place in custody costs £100,000 per year⁵¹, yet around 70% of children released from custody reoffend within a year.⁵² Imprisoning children, even for a short period, can fast-track children into a life in the criminal justice system by introducing them to criminal networks they are unable to escape. There is very strong evidence to show that there are far more effective ways to support children to change problematic behaviours⁵³. Custody is not the answer.

There is good evidence that alternative interventions (such as multi systemic therapy, Aggression Replacement Therapy, Functional Family Therapy and multi-dimensional treatment fostering) are more effective and more cost-efficient than custody when seeking to change ASB.⁵⁴

SCYJ believes that prison should be reserved for the most serious offenders, a position supported by the UN Convention on the Rights of the Child (UNCRC), which says prison should be used as a last resort and for the shortest time possible.⁵⁵ This is entirely at odds with the use of prison as a punishment for children breaching the new ASB orders, particularly injunctions.

What does the statutory guidance say?

"In the most serious cases, (that is, 'where the court determines that because of the severity or extent of the breach no other power available to it is appropriate') the court may impose a detention order on a young person for breaching the terms of the injunction – including breach of a positive requirement."⁵⁶

⁵¹ See Ministry of Justice 2013, "Transforming Youth Custody". Accessed at https://consult.justice.gov.uk/digital-communications/transforming-youth-custody/supporting_documents/transformingyouthcustody.pdf

⁵² See Ministry of Justice/Youth Justice Board "Youth justice annual statistics: 2012 to 2013" <https://www.gov.uk/government/publications/youth-justice-statistics>

⁵³ See, for instance, Lee, S. et al. (2012). *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes: April 2012 Update*. [ONLINE] Available at: <http://www.wsipp.wa.gov/rptfiles/12-04-1201.pdf>
And Social Research Unit (2013). *Investing in Children* Available at: <http://investinginchildren.eu>.

⁵⁴ See, for instance, NICE 2013 "Antisocial behaviour and conduct disorders in children and young people: recognition, intervention and management" <http://www.nice.org.uk/guidance/cg158>
And Lee, S. et al. (2012). *Return on Investment: Evidence-Based Options to Improve Statewide Outcomes: April 2012 Update*. [ONLINE] Available at: <http://www.wsipp.wa.gov/rptfiles/12-04-1201.pdf>

⁵⁵ See Article 37 of the UN Convention on the Rights of the Child and the Appendix to this briefing.

⁵⁶ See page 26 of "Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers Statutory guidance for frontline professionals" https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/332839/StatutoryGuidanceFrontline.pdf

Best practice

In cases where breach has not caused harm, prison is a particularly severe and disproportionate punishment. For example, if a child fails to attend appointments, or flouts a curfew, thereby technically breaching an order, but doesn't behave anti-socially, imprisoning them as punishment is wholly disproportionate.

Serious breaches should be addressed by means of robust community alternatives. We believe that Pre-Sentence Reports (PSRs) should never recommend imprisonment or breach when no harm has been caused. Where breach did involve ASB, we would still recommend that PSRs advise community alternatives, rather than custody, as a sanction, other than in exceptional circumstances.

Recommended policy

YOTs' Pre-Sentence Reports should never recommend custody as punishment for breach in cases where the breach of an injunction or CBO has not caused harm.

*"Like on my birthday, I went into town – into JD Sports to see what the clothes were. The camera saw me and the police turned up. My picture went into the town centre – it was at the Post Office and McDonald's. I was breached at McDonald's – I wasn't being naughty – I was just sitting there".*⁵⁷

*"They prosecuted a 15 year old who was on the wrong side of the road for getting a sandwich".*⁵⁸

⁵⁷ Child in custody for ASBO breach, quoted by the Prison Reform Trust. The Prison Reform Trust, 2011, "Into the Breach – the enforcement of statutory orders in the youth justice system" Accessed at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

⁵⁸ ASB practitioner, quoted by the Prison Reform Trust The Prison Reform Trust, 2011, "Into the Breach – the enforcement of statutory orders in the youth justice system" Accessed at: <http://www.prisonreformtrust.org.uk/Portals/0/Documents/Into%20the%20Breach.pdf>

Appendix: children’s rights and the new ASB orders

The UK has signed and ratified the United Nations Convention on the Rights of the Child (UNCRC). This means all government policies and practices must comply with the Convention. The following Convention rights are relevant to the new ASB orders.

Best interests as a primary consideration

The UNCRC states that the best interests of children must be a primary consideration in decisions concerning them (UNCRC Article 3). This means that the child’s best interests must be considered first when making decisions about them. A child’s best interests should be a primary consideration at all stages of proceedings relating to the new ASB orders, including in deciding whether to publicise an order.

Freedom of assembly and association, and the right to play

Children have a right to play under Article 31 of the UNCRC, and a right to freedom of association and peaceful assembly under Article 15. In addition, the Human Right to freedom of association and peaceful assembly applies equally to children.⁵⁹

The new ASB powers must respect these rights; they must not be used to prevent children from playing, associating with others, or gathering somewhere in a peaceful way. The UK has been criticised in the past for failing to respect these rights when issuing ASBOs. In its 2008 report on the UK, the UN Committee on the Rights of the Child expressed concern that ASBOs were interfering with children’s rights to freedom of movement, and freedom of peaceful assembly.⁶⁰

A justice system for reintegration, not retribution

The UNCRC states that children in trouble with the law must be treated in a way that promotes their reintegration, and encourages them to assume a constructive role in society (Article 40). ASB orders should promote rehabilitation and reintegration of the child.

Proportionate response

Article 40 of the UNCRC says that children in trouble with the law should be dealt with in a manner that is “proportionate both to their circumstances and the offence”. Applications for ASB orders, the conditions they contain, and sanctions for non-compliance, must be proportionate to the ASB.

⁵⁹ *European Convention on Human Rights, Article 11;*

⁶⁰ *UN Committee on the Rights of the Child, ‘Concluding observations: United Kingdom of Great Britain and Northern Ireland’, 2008* [<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>]

Right to be heard

Article 12 of the UNCRC gives all children the right to be heard and to have their views given “due weight”, particularly in judicial and administrative proceedings affecting them. Children’s views should be listened to in all proceedings around the new ASB orders. For those with communication, developmental or learning disabilities, this may require an independent advocate.

Healthcare

Children have the right to “the highest attainable standard of health” and to “facilities for the treatment of illness and rehabilitation of health” under Article 24 of the UNHCR. Where health needs are the underlying cause of ASB, this should be identified and interventions offered. Conduct disorder is strongly linked to ASB but most children never get treatment.

Right to privacy

Children have a right to privacy under the UNCRC (Article 16). This includes a right to privacy at all stages of judicial proceedings (Article 40). The Human Right to privacy applies equally to children.⁶¹ The right to privacy must be considered when deciding whether to publicise an injunction or CBO. The UN Committee on the Rights of the Child has criticised the UK in the past for failing to protect children subject to ASBOs from negative media coverage and public ‘naming and shaming’.⁶²

Detention: a last resort

The UNCRC states that children accused of breaking the law should be imprisoned only as a measure of last resort and for the shortest amount of time possible (Article 37). Though it is permitted by the ASB Act, SCYJ does not believe that detaining children for breach of an injunction, or other ASB order, is in keeping with Article 37.

⁶¹ *European Convention on Human Rights, Article 8;*

⁶² *UN Committee on the Rights of the Child, ‘Concluding observations: United Kingdom of Great Britain and Northern Ireland’, 2008* [<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>]

Standing Committee for Youth Justice

8 Wakley Street, London, EC1V 7QE

020 7843 6079

www.scyj.org.uk

@thescyj