



House of Commons
Home Affairs Committee

**The draft Anti-social
Behaviour Bill:
pre-legislative scrutiny**

Twelfth Report of Session 2012–13



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Volume I: Report, together with formal minutes

Volume II: Oral and written evidence

Additional written evidence is contained in Volume III, available on the Committee website at www.parliament.uk/homeaffairscom

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Home Affairs Committee

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The Reports and evidence of the Committee are published by The Stationery Office by Order of the House. All publications of the Committee (including press notices) are on the Internet at www.parliament.uk/homeaffairscom.

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Key facts

- Around 2.4 million incidents of anti-social behaviour (ASB) were recorded by the police in England and Wales for the year ending September 2012.
- From April 1999 to December 2011 21,749 ASBOs were issued.
- 1,414 ASBOs were issued in 2011.
- Since 2000, 85% of ASBOs were issued to men and boys.
- Since 2000, 57.3% of ASBOs were breached at least once, 42.9% more than once.
- If an ASBO is breached, it is breached an average of 4.7 times.
- 38% of anti-social behaviour orders have been issued to 10–17 year olds, despite them comprising only around 13% of the population.¹
- The ASBO breach rate is 68% for children and 52% for adults.
- Custody has followed breach of ASBOs by 10–17 year olds in 38% of cases.
- Housing providers deal with over 300,000 ASB cases each year.
- Between 2009–10 and 2010–11, there were 835 fewer posts in youth offending teams (YOTs) in England and Wales, a 4% reduction in staff during the year.
- Council spending on services for young people fell by 12.3% in the past year, down from £116 to £102.49 per person per year—28p per young person per day.

¹ Ministry of Justice, *Anti-Social Behaviour Order Statistics - England and Wales 2011* (2012), Table 1

Introduction

1. The draft Anti-Social Behaviour Bill was published on 13 December 2012. It is the Government's intention to tidy up the tool-kit for dealing with anti-social behaviour (ASB) and to involve victims and communities more directly in dealing with the problem.

2. Although interventions can be effective in some cases, ASB continues to be a blight on many people's lives, affecting communities across the country. ASB can take many forms, both in the open and behind closed doors: people being drunk or rowdy in public places, noisy neighbours, litter lying around, vandalism, graffiti and damage to property, and people using or dealing drugs.² It can affect individuals, businesses and public service providers such as schools and hospitals, and can lead to spiralling crime and decline in local communities.³ It remains a significant problem and often under-reported—a survey in Houghton and Sunderland South found that 50% of respondents had reported ASB to the police or Sunderland Council, 40% had not reported ASB to either and 10% had not experienced anti-social behaviour.⁴

3. There is broad recognition that ASB is the responsibility of multiple agencies, including the police, local councils, businesses and housing providers.⁵ However, we heard many accounts of unacceptable delays in reaching resolution and a sense of helplessness among victims who were passed from agency to agency.⁶ In some cases, ASB was considered victimless or trifling and simply ignored.⁷

4. In particular, it is the cumulative impact of continuous or repeated, low-level ASB that can cause some of the most significant suffering among victims, but remains most resistant to intervention by the authorities.⁸ It can make people feel isolated and vulnerable, worsen mental health problems and cause people to withdraw completely from their work social lives.⁹ In a few terrible cases, such as those of Fiona Pilkington in Leicestershire and Dr Suzanne Dow in Broxtowe, persistent ASB has been cited as a factor which contributed to victims taking their own lives.

5. The current powers available to tackle anti-social behaviour were considered by many witnesses to be effective when used properly, but often slow and difficult to deploy.¹⁰ Evidence from Police and Crime Commissioners and others showed that dealing with ASB remains high on the public agenda, but stubbornly difficult to carry out effectively.¹¹ In

² Ev w1 [Paddy Tipping], addendum

³ Ev w74 [MOPAC], paragraph 4

⁴ Ev w101 [Bridget Phillipson MP]

⁵ Ev w74 [MOPAC], paragraph 4; Ev w68 [Social Landlords Crime and Nuisance Group], paragraph 3.2

⁶ Ev 42, 45 [LGA], paragraph 4.2

⁷ Ev w15 [Association of Convenience Stores], paragraph 11

⁸ Ev w13 [John Dwyer]

⁹ Ev 38 [Victim Support], paragraph 1.3; Ev 42 [LGA], paragraph 2; Ev w95 [South Yorkshire Police]

¹⁰ Ev 34 [National Housing Federation], paragraph 3.1

¹¹ Ev w74 [MOPAC], paragraph 8; Ev w15 [Association of Convenience Stores], paragraph 16; Ev w15 [Association of Convenience Stores], paragraph 5

addition there is the problem of balance—how to tackle problem behaviour without placing undue constraints on perfectly reasonable behaviour. Most witnesses welcomed the proposed reduction in the number and complexity of tools as a way of simplifying and streamlining the process.

6. Antisocial behaviour continues to trouble communities across the country. For some, it is no more than a background irritation, but for others antisocial behaviour can be a debilitating blight on their lives. It can corrode community spirit, creating a breeding ground for more serious crime.

7. The current antisocial behaviour control regime, though effective in some cases, leaves many people frustrated by a slow and uncoordinated response. Persistent antisocial behaviour, if it is not addressed quickly and conclusively, can be mean months or years of misery for the victims. The impact of anti-social behaviour on the individuals and communities affected must not be under-estimated. Perpetrators continue to reoffend and overall levels of antisocial behaviour are stubbornly high. In this context, we welcome the Government's decision to review and rationalise the statutory framework for dealing with ASB. However, as we go on to explain in this report, dealing with ASB depends on more than just the formal interventions available—it depends on facilitating inter-agency working, providing support services, and providing a speedy and predictable process through the court system. If the Government is serious about tackling ASB, then it will bring forward proposals on these as companion measures during the Bill's eventual passage through Parliament.

Our pre-legislative scrutiny

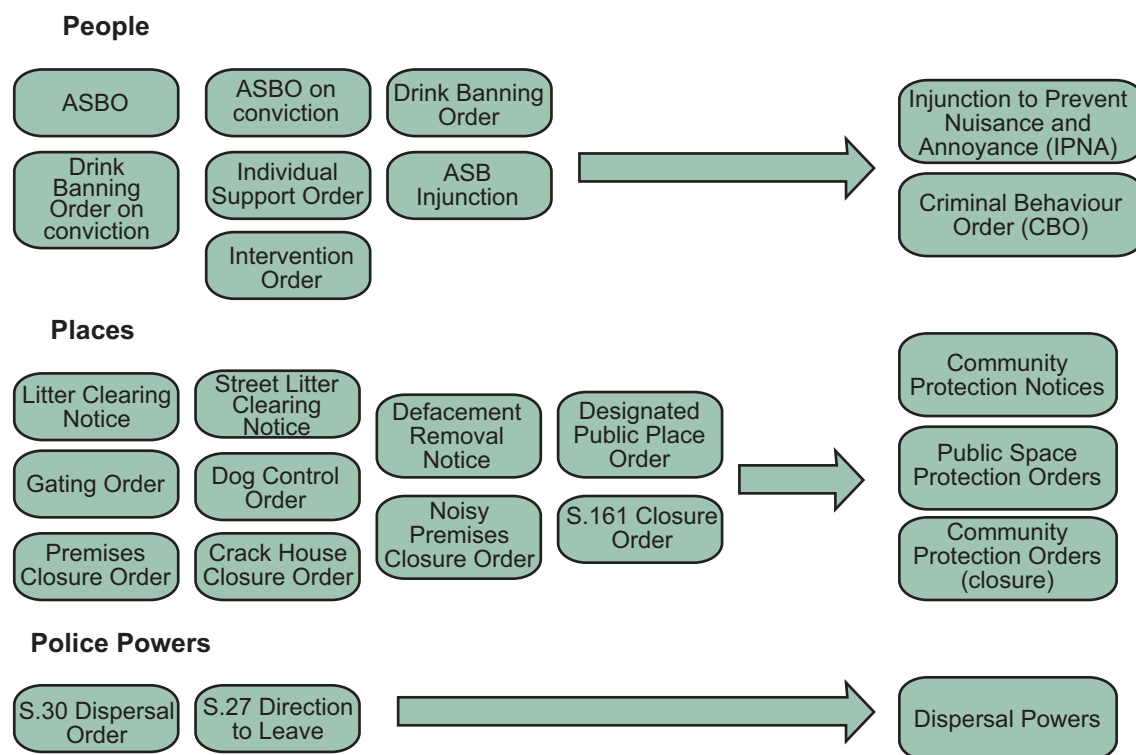
8. The draft Bill follows a Home Office consultation, *More Effective Responses to Anti-Social Behaviour*, in February 2011; a white paper, *Putting Victims First*, in May 2012; and a DCLG consultation, *A New Mandatory Power of Possession*, August 2011. The draft bill is in seven parts:

- Part 1 makes provision for a new, civil Injunction to Prevent Nuisance and Annoyance (IPNA), which replaces four current orders: the Anti-Social Behaviour Injunction, drinking banning order on application, intervention orders and individual support orders.
- Part 2 makes provision for an order on conviction to prevent anti-social behaviour, to be called Criminal Behaviour Order (CBO) and is designed to replace the Anti-Social Behaviour Order (ASBO) on conviction. A CBO would be given on application by the prosecution, in addition to a court sentence
- Part 3 contains power for the police to disperse people whose presence or behaviour in an area they have reasonable grounds to suspect has contributed or is likely to contribute to ASB, crime or disorder.
- Part 4 covers new powers given to the police, local authority and some housing associations to deal with community protection and for these bodies to serve on individuals a Community Protection Notice (CPN). It also contains provisions to close properties associated with nuisance or disorder.

- Part 5 makes provision for the possession of houses on anti-social behaviour grounds, including a new absolute ground for possession.
- Part 6 of the bill contains provisions on establishing a new “Community Remedy”, which will allow victims of anti-social behaviour to choose from a list of punishment options (such as mediation, compensation to the victim or reparation) and a “Community Trigger”, which would launch a review of a response to ASB when a certain locally-determined threshold (such as five calls) is reached.
- Part 7 of the draft legislation contains general provisions.

Transitional arrangements would mean that existing orders to deal with ASB continue in force after the bill comes into effect, but cannot be varied or extended, and after five years will come to an end. Figure 1 below shows how the draft Bill will rationalise the 18 existing remedies against ASB into six.

Rationalisation of ASB tools



Electronic format of the draft Bill

9. The draft Bill was published on-line as a single-volume PDF file, incorporating both the text of the draft Bill and the Explanatory Notes. However, whereas the Explanatory Notes were published in a format which could be searched electronically, copied and pasted, and put through text-to-speech software, these features were disabled in the electronic text of the draft Bill itself. These features are available when a Bill is published on-line by the House, but draft Bills (which are in effect consultative documents) are generally published

as Command Papers and their format is a matter for the Department concerned. We can see no good reason for disabling these features, an act which presented a minor inconvenience to all users but potentially a significant and unnecessary obstacle to those who rely on text-to-speech conversion.

10. One of our witnesses complained about the inaccessible format, which was not suitable for text-to-speech software for people with impaired vision and had spent time using optical character recognition software to produce some accessible versions of the text of the draft Bill. He noted that this was contrary to the principles set out in the Disability Discrimination Act 2005 and the Equality Act 2010.

11. We recommend that the Leader of the House of Commons ensure that in future all draft Bills are published in a form in which the normal features of the chosen format are enabled, so that users can make full use of search, copy and paste, and text-to-speech features. This is not just a matter of convenience—though convenience alone is a compelling argument—it is about providing information in the most accessible format possible.

12. While we welcome the opportunity to comment on this legislation in draft form, we note the conclusion of the Liaison Committee that if the Government is serious about the role that pre-legislative scrutiny can play in making better legislation, it needs to ensure that the committees tasked with conducting that scrutiny are given a reasonable amount of time in which to do it: a bare minimum of twelve weeks.¹²

13. Publication of the draft bill was delayed by over a month compared with the timetable initially proposed to us by the Home Office. This left us just six working weeks for our inquiry, an unacceptably short period for pre-legislative scrutiny. This was a particular problem for witnesses, who in effect had only the Christmas period to produce submissions to us. It was clear from several responses to our call for evidence that witnesses were basing their responses on the White Paper and had not yet had time to reflect on the detail of the draft Bill. Moreover, the Government will continue to consult on the Community Remedy until 7 March 2013, so its position on this important component of the bill is not yet formed.

¹² Liaison Committee, *The Work of Committees in 2008-09: Government Response to the Committee's Second Report of 2009-10*, 2 August 2010, HC 415, Government Response

The draft bill

14. While reducing the number of instruments to tackle anti-social behaviour, the draft bill potentially widens the application and effects of the instruments available in four ways: a broader definition; a lower standard of proof; increased sanctions; and increased durations.

Instrument	Definition of ASB	Standard of proof	Sanction	Duration
Injunction to Prevent Nuisance and Annoyance (IPNA)	Engagement or the threat of engaging in “conduct capable of causing nuisance or annoyance to any person”	Balance of probabilities (civil standard)	Up to 2 years imprisonment or an unlimited fine (contempt of court)	Unlimited
Criminal Behaviour Order (CBO)	Engagement in “behaviour that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender”	Beyond reasonable doubt (criminal standard) for initial crime, but the CBO does not have to arise out of the facts upon which the conviction was found.	On summary conviction, up to 6 months imprisonment and/or a fine of up to £5,000. On indictment up to 5 years imprisonment and/or a unlimited fine	Minimum 1 year for children, 2 years for adults, maximum 3 years for children, indefinite for adults
Community Protection Notice	Conduct that is “unreasonable” and “having a detrimental effect, of a persistent and continuing nature, on the quality of life of those in the locality”	Balance of probabilities (civil standard)	Fixed penalty notice or prosecution. Fine up to £2,500 for individuals or £20,000 for businesses, or fixed penalty notice up to £100	Unlimited
Dispersal powers	Presence or behaviour in that locality that has contributed to or is likely to contribute to harassment, alarm or distress or the occurrence of crime or disorder	Reasonable grounds for suspicion	Up to 3 months imprisonment and/or fine of up to £2,500	Maximum 48 hours

Definitions

15. Anti-social behaviour (ASB) is usually defined by its effect, rather than by the act itself and almost any act could, in certain circumstances, potentially constitute ASB. Two “thresholds” have developed for defining when behaviour becomes anti-social behaviour. ASB was first defined in the Crime and Disorder Act 1998 as behaviour that is “likely to cause harassment, alarm or distress”—the stronger test. For housing-related issues, the Housing Act 1996

defined ASB as conduct “capable of causing nuisance or annoyance to any person” and/or the use of premises for unlawful purposes—the weaker test.¹³

16. One of the features of anti-social behaviour interventions that has attracted most criticism is the application of criminal law sanctions for breach of conditions applied because of civil wrongs.¹⁴ Some witnesses, such as the Mayor’s Office for Policing and Crime (MOPAC), believed that all anti-social behaviour should be treated as criminal, suggesting that ASB should be known as “Quality of Life Crime”.¹⁵ Martyn Underhill, Police and Crime Commissioner for Dorset, believed that a criminal injunction would be more effective than a civil injunction which, he said, “invariably have less power and tend to be more bureaucratic”.¹⁶ Swindon Borough Council noted that in its experience, the criminal character of breach of ASBOs gave the police more “ownership” of an order than with ASBIs, which led to better oversight and management of cases and enhanced protection for victims.¹⁷

Injunction to Prevent Nuisance and Annoyance (IPNA)

Availability

17. The draft bill would further widen the scope of anti-social behaviour interventions. The weaker, “nuisance or annoyance” test currently applies for Anti-Social Behaviour Injunctions (ASBIs), but these are only available to social landlords and must relate to housing management functions and behaviour against persons within that neighbourhood.¹⁸

18. **The Injunction to Prevent Nuisance and Annoyance (IPNA)** would be available to more agencies and uses the weaker threshold. Local authorities, housing providers, police, Transport for London, the Environment Agency and the NHS Business Services Authority would all be able to apply for an IPNA. Youth courts, county courts or the High Court can grant an injunction against anyone aged 10 or over where they have engaged or threaten to engage in ASB.

19. We heard a number of suggestions for adding safeguards to this new, wider definition. Justice pointed out that a test of “necessity” was required for ASBOs—“that such an order is necessary to protect relevant persons from further anti-social acts by him”—and proposed

¹³ As amended by the Anti-social Behaviour Act 2003; Anti-Social Behaviour Orders (ASBOs) were introduced by section 1 of the Crime and Disorder Act 1998 which came into force on 1 April 1999. That Act has since been amended by the Police Reform Act 2002, the Anti-social Behaviour Act 2003 and the Serious Organised Crime and Police Act 2005.

There was concern about inconsistent drafting in the bill, which refer at various to victims being “members of the public” and “those in the vicinity”. Kirklees Council noted inconsistent terminology around closure notices and orders, ranging from “nuisance to members of the public” (clause 66(1)) to “public nuisance” (Explanatory Notes, paragraph 55) and “serious nuisance” ((clause 70), Explanatory Notes, paragraph 57). The Council pointed out that “public nuisance” has a specific common law meaning and recommended the consistent use of the term “serious nuisance”.

¹⁴ Ev w96 [Justice], paragraph 6

¹⁵ Ev w74 [MOPAC], paragraph 11

¹⁶ Ev w17 [Martyn Underhill]

¹⁷ Ev w29 [Swindon Borough Council], paragraph 2.3

¹⁸ Q 158 [Jeremy Browne MP]

that the same protection should be applied to IPNAs.¹⁹ Others suggested that an assessment of the “harm” caused would be an appropriate safeguard.²⁰

20. The percentage of ASBO applications granted was already over 95% and this success rate reflected some cases of ASBOS being granted inappropriately.²¹ Big Brother Watch proposed that a requirement that either “intent or recklessness” be demonstrated should be attached to the injunction, noting that “to some people politicians canvassing would comfortably meet this threshold, while junk mail or spam text messages would both seem to qualify” under the proposed threshold.²²

Standard of proof

21. The draft bill includes elements that would further conflate the civil with the criminal. Justice called for the criminal standard of proof to apply to the IPNA, along with guarantees of a fair trial in criminal proceedings pursuant to Article 6 ECHR.²³ It argued that “the injunctions are ASBOs in all but name but attract much milder behaviour, without the safeguards that are currently available before the criminal courts and applying criminal evidential standards”.²⁴

22. Some witnesses, such as the UK Noise Association, welcomed the fact that the IPNA required a lower standard of proof than previous legislation.²⁵ However, several witnesses were concerned that this low-threshold test had the potential to bring much a much wider range of behaviour under the umbrella of anti-social behaviour, potentially covering almost any kind of activity, potentially prompting disproportionate responses to very minor bad behaviour. Camden Council called the definition “dangerously ambiguous”. This was part of a long-term trend to lower the legal threshold for prosecutions, which had not resulted in any discernible reduction in levels of ASB.²⁶

23. Big Brother Watch highlighted that in the draft bill electronic tagging would be available in court proceedings relying on a civil standard of proof and argued that lowering the threshold to someone who has never been convicted of a criminal offence was a significant step.²⁷ Mark Dziecielewski was also concerned about tagging, noting that there was no provision in the bill for holding companies responsible for administering this kind of scheme—such as G4S—to account.²⁸ We share these concerns.

¹⁹ Ev w96 [Justice], paragraph 16; Section 1(1)(b) CDA

²⁰ Ev w3 [Kent Police]

²¹ Ev w44 [Criminal Justice Alliance], paragraph 7

²² Ev w37 [Big Brother Watch], paragraph 8

²³ Ev w96 [Justice], paragraph 26

²⁴ Ev w96 [Justice], paragraph 12

²⁵ Ev w1 [UK Noise Association], paragraph 2.1; Ev w1 [Paddy Tipping], addendum

²⁶ Ev w96 [Justice], paragraph 15; Ev w77 [Mark Dziecielewski]; Ev w44 [Criminal Justice Alliance]; Ev w37 [Big Brother Watch], paragraph 2; EV w8 [London Borough of Camden], paragraph 2.1

²⁷ Ev w37 [Big Brother Watch], paragraph 28

²⁸ Ev w77 [Mark Dziecielewski]

Breadth

24. The IPNA grants judicial discretion to either prohibit the respondent from “doing anything” contained in the injunction, or to require the respondent to “do anything” contained in the injunction. This is clearly a broad power and is not qualified, save for the limited caveats contained within Section 5. This introduces specific flexibility for religion, work, school and court orders, but should grant wider judicial discretion to cover matters such as childcare arrangements or health needs. In general, specific prohibitions and requirements should be only those necessary and proportionate to address the behaviour.

Duration

25. Long-lasting ASBOs have been criticised for making breach “almost inevitable” and without an end point to work towards, people have “little incentive to comply”.²⁹ The Criminal Justice Alliance believed the minimum and maximum duration periods for the CBO would be far longer than necessary.³⁰ Justice suggested that IPNAs should last for a maximum of two years and should be reviewable during that period.³¹ The Social Landlords Crime and Nuisance Group also argued that there should be provision for IPNAs to be varied by agencies other than the original applicant, in consultation with the original applicant.³²

Penalty

26. While breach of an IPNA does not in itself constitute a criminal offence, as breach of an ASBO on application does, it is open to a court to punish breach of an IPNA through criminal contempt of court proceedings. This could ultimately lead to up to two years’ imprisonment or an unlimited fine.

27. Breach of an Anti-Social Behaviour Order (ASBO) on application was a criminal offence, but breach of an Injunction to Prevent Nuisance and Annoyance (IPNA) is not. We welcome the move away from automatic criminalisation for breach in the case of the IPNA, which is likely to be the main tool in the new ASB regime.

28. However, breach of this civil injunction could still ultimately lead to imprisonment. It is therefore concerning how much easier it is likely to be to obtain an IPNA than an ASBO. The IPNA is available on a lower standard of proof than the old ASBO on application, and available to more agencies than the old Anti-Social Behaviour Injunction (ASBI). Widening access to the IPNA risks imposing severe restrictions on more people and additional safeguards must be applied. For the IPNA, the threshold of “conduct capable of causing nuisance or annoyance” is far too broad and could be applied even if there were no actual nuisance or annoyance whatsoever. A proportionality test and a requirement that either “intent or recklessness” be demonstrated should be attached to the IPNA, as well as the requirement “that such an injunction is necessary to protect relevant persons from further anti-social acts by the respondent”.

²⁹ Ev 48 [SCYJ], paragraph 11; Ev w44 [Criminal Justice Alliance], paragraph 9

³⁰ Ev w44 [Criminal Justice Alliance], paragraph 9

³¹ Ev w96 [Justice], paragraph 17

³² Ev w68 [Social Landlords Crime and Nuisance Group], paragraph 5

29. We also believe that there should be a specific requirement for any individual prohibition or requirement to be necessary and proportionate for the purposes of addressing the behaviour that led to the application for an injunction.

Other instruments

30. The threshold for a **Criminal Behaviour Order** is that the court is satisfied that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to a person and considers that making the order “will help in preventing the offender from engaging in such behaviour”. This is weaker than the current test in which the court considers whether the order is “necessary to protect persons from further anti-social acts by the offender”.³³ It also places a new emphasis on the Order’s utility as a means of helping the offender to address their own behaviour. **We note that there is a mechanism to allow offenders over 16 to shorten the period a Criminal Behaviour Order applied for if they complete an approved course. We see no reason why someone younger should be debarred from this option.**

31. The new **dispersal power** empowers a constable to direct people to leave an area without the requirement for prior authorisation that applied to the previous dispersal powers. The proposed power would be available in the event of the public being harassed, alarmed or distressed, or the occurrence of crime and disorder. This is a lower threshold than the necessity to demonstrate a significant and persistent problem in the locality, which applies under the current regime.³⁴

32. The use of dispersal powers against behaviour “likely to” contribute to harassment, alarm or distress or criminal acts was noted as extremely subjective and its application in the case of any “crime or disorder” could allow it to be used in the case of crime completely unrelated to ASB.³⁵ **We note that there is a specific exemption from dispersal powers for peaceful picketing and recommend that this be extended to cover all forms of peaceful protest.**

33. For dispersal powers, our witnesses pointed to the removal of key oversight structures built around multi-agency approval and risk assessment.³⁶ The current regime includes an exit strategy, community involvement and the responsibility not to displace the problem elsewhere. ACPO noted that the draft bill would only apply the oversight of police and crime commissioners after the powers were applied, which could result in disproportionate use of the powers and heightened tensions in some communities.³⁷ Several witnesses believed the maximum penalty of three months imprisonment for doing so was disproportionate.³⁸

34. **Public Spaces Protection Orders (PSPO)** could be applied to “all persons, or only to persons in specified categories or to all persons except those in specified categories” without taking into account individuals’ intent or conduct. Big Brother Watch warned about a

³³ Ev w96 [Justice], paragraph 28

³⁴ Ev w96 [Justice], paragraph 35

³⁵ Ev w20 [ACPO], paragraph 18; Ev 46 [CIH], paragraph 2.6

³⁶ Ev w20 [ACPO], paragraph 17; Ev 42, Ev 45 [LGA], paragraph 2; Ev w8 [London Borough of Camden], paragraph 2.3; Ev w23 [Leicestershire Police], paragraph 4.2; Ev w13 [John Dwyer]

³⁷ Ev w20 [ACPO], paragraph 17

³⁸ Ev w44 [Criminal Justice Alliance], paragraph 11

scenario where “a city centre has a PSPO for under 16s between 9pm and 6am in a specific area of the town centre, the Bill is drafted as to create a test of strict liability that would mean a 15 year old returning home at 10pm would not be able to walk across a town centre from a train station to a bus station”.³⁹ It considered the option for an order to be issued for three years without a requirement for interim approval to be disproportionate, especially given that breach would be a criminal offence.⁴⁰ The Ramblers Association agreed that this power could be applied widely to places where the public has the right of recreation, such as registered common land and registered village greens and there appeared to be no restriction on the size or locality of spaces covered.⁴¹

35. Each time successive Governments have amended the ASB regime, the definition of anti-social behaviour has grown wider, the standard of proof has fallen lower and the punishment for breach has toughened. This arms race must end. We are not convinced that widening the net to open up more kinds of behaviour to formal intervention will actually help to deal with the problem at hand. A duty to consult local authorities must be included in the dispersal power where it is applied for a period of longer than six hours. Public Spaces Protection Orders must include a requirement for six monthly interim approval. There should also be a clear exemption to dispersal powers where there is a genuine need to travel through the area.

³⁹ Ev w37 [Big Brother Watch], paragraph 20

⁴⁰ Ev w37 [Big Brother Watch], paragraph 22

⁴¹ Ev w51 [Ramblers and the Open Spaces Society], paragraph 8

Young people

36. The anti-social behaviour prevention regime has always leaned heavily toward young people: 40% of ASBOs are issued to 10–17 year olds, who comprise only 13% of the population. The breach rate by children and young people subject to ASBOs is 68%, compared to 52% of adults, suggesting that ASBOs have not been effective in changing behaviour in most cases.⁴² Furthermore, custody has been used as a sanction for breach by 10–17 year olds in 38% of breach cases.⁴³ The IPNA, the CBO and the dispersal power all carry a potential penalty of imprisonment for non-compliance.⁴⁴

37. ASB among young people is a complex matter. Young people are often both the victims and perpetrators, and those who are victims are more likely to become perpetrators themselves.⁴⁵ This can have a knock on effect in other areas such as negative education outcomes and the likelihood of gang membership.⁴⁶

38. The British Crime Survey showed that “teenagers hanging around” has been the issue that generates the most continuous concern amongst the public.⁴⁷ 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”.⁴⁸

39. The new measures will bring young people further into the remit of ASB powers to a significant extent. The Injunction to Prevent Nuisance and Annoyance (IPNA) may be issued against children aged 10 and over, in contrast to the ASBI, which can only be used against adults aged 18 and over.⁴⁹ The breach of the IPNA will be a civil matter—and young people would no longer face a criminal record for a breach, as they did under the ASBO. They will only enter the criminal justice system if there is a power of arrest attached to the order and the injunction is then breached, or if a warrant is issued under clause 9.⁵⁰ However, the Government has said it will continue to consider whether a custodial sentence should be available for breach of an Injunction by a young person.⁵¹

⁴² Ministry of Justice, *Anti-Social Behaviour Order Statistics - England and Wales 2011* (2012), Table 11.

⁴³ Ministry of Justice, *Anti-Social Behaviour Order Statistics - England and Wales 2011* (2012), Table 11. Of the 58,198 total breach occasions, 38.7% (22,516) resulted in a custodial sentence. The average sentence length was 4.1 months.

⁴⁴ Ev 48 [SCYJ], paragraph 10

⁴⁵ Victim Support, *Hoodie or Goodie*, September 2007

⁴⁶ Ev w18 [Catch22], paragraph 3.12; Ev w40 [Transition to Adulthood Alliance]

⁴⁷ Ev 48 [SCYJ]

⁴⁸ Ev 48 [SCYJ], paragraph 15; Children’s Society (2011), *The Children’s Society’s response to the Home Office consultation ‘More Effective Responses to Anti-Social Behaviour*, p5

⁴⁹ Ev 34 [National Housing Federation], paragraph 6.1

⁵⁰ Ev 42, Ev 45 [LGA], paragraph 7.3

⁵¹ Ev 34 [National Housing Federation], paragraph 6.3; EV w27 [Catch22], paragraph 3.13; *Impact Assessment: Reform of the anti-social behaviour toolkit*, Home Office, p.10: www.homeoffice.gov.uk/publications/about-us/consultations/community-remedy-consultation/ia-asb-toolkit?view=Binary

Youth anti-social behaviour

We heard cases of curmudgeonly intolerance for young people, but also very serious cases where young people's behaviour crossed a line into anti-social behaviour, sometimes mixed with criminal behaviour.

One constituent in Houghton and Sunderland South described a combination of vandalism and criminal damage, with littering and drinking and the way it could change the character of a community area:

"Youths drinking lager/cider/cheap wine in the surrounding countryside (land between Hastings Hill and Herrington). They smash bottles and litter the area with cans creating a no-go area for dog walkers and the local residents. The same areas are regularly used by fly tippers. The majority of the destruction and vandalism is carried away from view, so damage only becomes visible when we pass through the area or when children and pets are injured."

Ev w101 [Bridget Phillipson MP]

40. We heard that the incorporation of positive requirements in CBOs was likely to lead to an even higher breach rate, making it even more likely to push more young people into the criminal justice system and custody.⁵² This could have a long-lasting effect on children's identity and future prospects.⁵³ Justice, Barnardo's, the Standing Committee on Youth Justice and the Children's Society, among others, did not support the use of CBOs for children and young people under 18.⁵⁴

41. These groups advocated informal measures such as Acceptable Behaviour Agreements, restorative justice, welfare measures and out-of-court disposals and support for children and families as an alternative intervention.⁵⁵ Moreover, the National Audit Office found that ASB warning letters and ABCs cost less than a tenth of the £3,100 required for each ASBO application.⁵⁶

42. Although young people are disproportionately responsible for crime and a significant proportion of the caseload in the criminal justice system, young people are also most likely to desist from crime and "grow out" of poor behaviour with the right support.⁵⁷

43. Anti-social behaviour measures must be a short, focused nudge for young people to set them on the right track, not a millstone that will weigh around their necks for years to come. 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.

⁵² Ev w96 [Justice], paragraphs 32–33

⁵³ Ev 42, 45 [LGA], paragraph 4.4

⁵⁴ Ev 48 [SCYJ], summary; Ev w96 [Justice], paragraphs 32–33

⁵⁵ Ev w96 [Justice], paragraphs 32–33

⁵⁶ Ev 48 [SCYJ], paragraph 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

⁵⁷ Ev w40 [Transition to Adulthood Alliance], executive summary; Ev w62 [Buckinghamshire Count Council], paragraph 2.6; Ev 48 [SCYJ], paragraph 11

44. For under-18s, IPNAs should be available for a maximum of 12 months and should only be available after attempts to resolve the issue through informal support and acceptable behaviour agreements have failed.

“Naming and shaming”

45. Under draft Bill, section 49 Children and Young Persons Act 1933, which restricts reports on proceedings in which young people are concerned, would not apply to proceedings involving IPNAs or CBOs.⁵⁸ Where there are proceedings for breach of a CBO, the court is permitted to use its discretion to restrict reporting, but if it does, it must provide reasons for doing so.⁵⁹

46. Witnesses were concerned that this would be contrary to the presumption of anonymity for children in criminal proceedings and likely to hinder their successful rehabilitation.⁶⁰ They questioned whether this would be contrary to the right to privacy in the UN Convention on the Rights of the Child (UNCRC), to which the UK is a signatory. The Standing Committee on Youth Justice said there were many instances where young people had struggled to gain employment and housing as a consequence of being “named and shamed” during or after court proceedings.⁶¹

47. Young people’s sense of identity can be influenced by labels at a formative stage in their lives. ASBOs have been both a stigma and a badge of honour because of their infamy—both can undermine the effectiveness of the intervention. However, we are happy to leave the decision not to name a young person to the discretion of the judge, as envisaged by the draft bill.

⁵⁸ Clauses 17 and 22(8)(a), draft Bill

⁵⁹ Clause 28(6), draft Bill

⁶⁰ Ev 48 [SCYJ], paragraph 4; Ev w96 [Justice], paragraph 22; Ev w77 [Mark Dziecielewski]

⁶¹ Ev 48 [SCYJ], paragraph 12

Involving the victims

Community remedy: Restorative approaches

48. On 13 December 2012 the Government launched a new consultation on a “community remedy”, which will run until 7 March 2013. The consultation seeks views on proposals to introduce legislation to allow police and crime commissioners (or the relevant local policing body) to give victims of low-level crime (such as low-level criminal damage and low-value thefts) and antisocial behaviour a say in the punishment of the offender.⁶²

49. Not all witnesses were convinced by the effectiveness of out-of-court disposals. The Association of Convenience Stores highlighted that 34,688 fixed penalty notices were issued in 2011 for retail theft under £200, but over half of these notices went unpaid. Some were issued inappropriately to repeat offenders, or where violence had been threatened.⁶³

ASB 18 [Catch 22], paragraph 3.7

A successful community programme:

Community Space Challenge, a national environmental programme designed to support young people to play a positive role in improving their local community. During its first five years, Community Space Challenge has worked with nearly 7,932 young people who have been formally identified as at risk of offending on initiatives to tackle anti-social behaviour and improve local community spaces. Of those involved, 5,156 (65%) felt more a part of their community; 5,949 (75%) had been in trouble less or not at all and 6,346 (82%) reported feeling that they could now make a difference to improve where they live, and 2,198(27%) were supported to get back into education employment or training.

50. However, many witnesses attested to the value of alternative disposals.⁶⁴ Restorative practices have achieved a reduction in re-offending, from serious crime to low-level anti-social behaviour, according to Kent Police.⁶⁵ Victim Support agreed that, as long as proper safeguards are in place to ensure that the perpetrator cannot victimise them again, and as long as there is a real choice about participation, then involvement between perpetrator and victim can be very helpful.⁶⁶ Often a simple apology or an undertaking not to repeat the behaviour is all that a victim requires, and perhaps some time and effort to make up for ASB, rather than expose the perpetrator to formal interventions. Moreover, the more the sanction is related to the actions leading to it, the more likely it is to discourage reoffending.⁶⁷

51. Of course, careful protections will be necessary, including a full risk assessment. In one case, a homicide followed such interventions between ex-partners—the murder of Vandana

⁶² <https://www.homeofficesurveys.homeoffice.gov.uk/v.asp?i=65591ewsbm>

⁶³ Ev w15 [Association of Convenience Stores], paragraph 17

⁶⁴ Ev w20 [ACPO], paragraph 23

⁶⁵ Ev w3 [Kent Police]

⁶⁶ Ev 38, 41 [Victim Support], paragraph 2.5

⁶⁷ Ev w27 [Catch22], paragraph 3.4

Patel by her husband at Stoke Newington Police Station in 1991.⁶⁸ Victim Support pointed out that:

The draft Bill currently requires only that the perpetrator admits culpability (s.90(1)(b)), that the victim expresses a view that this or any other option would be appropriate (s.90(3)) and that the decision-making officer does not feel it would be inappropriate (s.90(4)). This is an inadequate level of protection for a restorative option to be selected: for example, this is likely to be unsuitable in a case where the perpetrator admits culpability for the isolated incident but blames the victim for provoking them, or where there is a relationship between the two involving complex power dynamics, for example a continuing or past sexual relationship.⁶⁹

52. There was also concern that a pre-conceived menu of options could limit police officers' discretion in dealing with ASB. ACPO believed that the menu should be kept as broad as possible and proposed strengthening the caveats around an officer's freedom to use other measures, with an inspector's approval.⁷⁰ This would be necessary if the list contains some punitive options, particularly if the perpetrator has learning difficulties, mental health issues or lacks maturity.⁷¹ Other police forces were concerned about increased bureaucracy or a "tick box" approach.⁷²

53. According to the draft bill, the list of possible options will be agreed by the Chief Constable and the PCC. In order to secure proper community representation and involvement, wider consultation with local Police and Crime Panels and communities themselves may be necessary.⁷³

54. The Community Remedy is a welcome addition to the ASB response, if it can help to achieve an outcome that satisfies victims and helps to mend the ways of perpetrators without exposing them to the criminal justice system. However, the Community Remedy must not become the modern pillory or stocks. Additional safeguards are needed to ensure that officers have the discretion to choose alternative disposals, where appropriate. Additional assurances are also needed to ensure that victims are not drawn into the process without their full consent and understanding.

The Community Trigger

55. The Community Trigger allows members of the community to demand a response to complaints of anti-social behaviour when a certain threshold is met.⁷⁴ This is intended to

⁶⁸ Ev 38, 41 [Victim Support], paragraph 2.8

⁶⁹ Ev 38, 41 [Victim Support], paragraph 2.8

⁷⁰ Ev w20 [ACPO], paragraph 24

⁷¹ Ev w44 [Criminal Justice Alliance], paragraph 23

⁷² Ev w23 [Leicestershire Police], paragraph 8.4

⁷³ Ev 42, 45 [LGA], paragraph 4.4

⁷⁴ Community safety partnerships (CSPs) are made up of representatives from the police and police authority, the local council, and the fire, health and probation services (the 'responsible authorities'). Community safety partnerships were set up as statutory bodies under Sections 5-7 of the Crime and Disorder Act 1998. The responsible authorities work together to develop and implement strategies to protect their local communities from crime and to help people feel safe. They work out local approaches to deal with issues including antisocial behaviour, drug or alcohol misuse and re-offending.

provide a route for members of the public who are frustrated by agencies' action on ASB and to prevent repeat cases or serious instances of ASB from slipping through the net.⁷⁵

56. The arrangements for reviewing complaints must be published, with the PCC having to be consulted before making and revising the arrangements. Third parties, including relatives or friend, may make a complaint and potentially activate the trigger on behalf of the victim.

57. Pilots of the Trigger are being carried out in several areas, including: Brighton, West Lindsey, Boston, Richmond Housing, and Manchester. An evaluation report about all the trials will be published by Easter 2013. This is intended to serve as "best practice" guidance for local authorities.

58. Ian Whiteway from Richmond Council said that the different characteristics of different areas should be recognised "there should probably be two thresholds, one for maybe inner-city, urban areas, and one for maybe countryside areas, because obviously the level of tolerance might be slightly different in different areas".⁷⁶ However, he believed that "It would be better to have one national trigger, because what you might find is some areas might set the trigger higher to maybe areas that might be less well equipped to deal with the volume that might come through". Rebecca Bryant of Manchester City Council, on the other hand, believed it should be a local trigger based on the types of cases.

59. Some witnesses were concerned about the potential for perverse effects if local schemes responded readily to those who complain the loudest at the expense of the most vulnerable.⁷⁷ Individuals could use the trigger in a malicious, vexatious or indeed prejudicial way and weeding out the spurious cases could impose an extra burden on time and resources.⁷⁸

60. The Association of Convenience Stores proposed a maximum threshold for the number of instances of reported crime in a prescribed timeframe, which would allow for local variation while setting a consistent standard across the country.⁷⁹

61. Other witnesses recommended a qualitative test, centred on harm to the victim or victims, would be preferable to an arbitrary numerical threshold, such as the "spectrum of harm" model described by ACPO, the Social Landlords Crime and Nuisance Group and Richmond Housing Partnership.⁸⁰ This could help to prioritise agencies' response to the most vulnerable or those suffering the greatest harms. The draft Bill indicates only that the review procedures "may" make provision for this purpose by reference "either" to "the persistence of the anti-social behaviour about which the original complaint was made", or "the adequacy of the response to that behaviour".⁸¹

⁷⁵ Q 37

⁷⁶ Q 35

⁷⁷ Ev 34 [National Housing Federation], paragraph 1.3; Ev 42, Ev 45 [LGA], paragraph 4.3

⁷⁸ Ev w13 [John Dwyer]; Ev w20 [ACPO], paragraph 25; Ev w23 [Leicestershire Police], paragraph 9.1; Ev w62 [Buckinghamshire County Council], paragraph 2.5; Ev w95 [South Yorkshire Police]; Ev 34 [National Housing Federation], paragraph 3.16; Ev w3 [Kent Police]

⁷⁹ Ev w15 [Association of Convenience Stores], paragraph 12

⁸⁰ Ev 41, Ev 42 [Victim Support], paragraph 2.2; Ev w13 [John Dwyer]; Ev w20 [ACPO], paragraph 2; Q 85 [Eamon Lynch]

⁸¹ Ev 38, Ev 41 [Victim Support], paragraph 2.3

62. Buckinghamshire County Council pointed out that what complainants will want to know is when the issue will be resolved, but there is no requirement for a timescale set out in the draft bill.⁸²

63. We agree that some element of local flexibility is a helpful feature of the Community Trigger, but it will not be an effective backstop against neglect of ASB unless there is a common failsafe. A guaranteed response to ASB must not be dependent on where you live. We recommend a national maximum of five complaints as a backstop for the trigger, with an option to set a lower threshold at local level. We recommend that this quantitative measure must be combined in all cases with a review of the potential for harm, taking into account the nature of the activity and the vulnerability of victims.

64. If the trigger is activated and a response deemed necessary then agencies should be obliged to agree a timetable for dealing with the problem which they must share with the victims involved. Without a clear timetable for dealing with persistent ASB, then the Community Trigger would be little more than a gimmick.

65. The Community Trigger needs a bullet—it must be clear not only what the trigger is, but what response will happen when it is activated. The Minister told us that it will be activated when something has gone wrong and there must be a way of holding agencies to account when they repeatedly fail to act. Otherwise, there is a risk that the trigger could delay action, as authorities wait for the trigger before taking action.

66. But this must not be a disincentive for the trigger to be activated. Police and crime commissioners should therefore be kept informed each time the national backstop of five complaints is reached and audit the case review meetings. In areas where the trigger is set at fewer than five complaints, the involvement of PCCs should come if there are further complaints subsequent to the agreed trigger action. Local councils should be obliged to publish the number of times the trigger is activated on a six-monthly basis.

⁸² Ev w62 [Buckinghamshire County Council], paragraph 3.6.5

What is missing from the bill

67. The overriding message from our witnesses was that tackling anti-social behaviour depends as much on effective inter-agency cooperation and information exchange and wider support regimes as it does on formal powers.⁸³ And for victims, the important thing was to have a problem resolved quickly and for the anti-social behaviour to stop.⁸⁴

Speed of response: court jurisdiction

68. We recognise that the lower threshold of proof and the wider access for agencies to apply for ASB interventions is intended to speed up the response. However, our witnesses believed that delay was more to do with the court process itself than the legislation.⁸⁵ Clause 1(8) provides that jurisdiction for the Injunction to Prevent Nuisance and Annoyance (IPNA) will extend to Youth Courts for under-18s and the High Court or the County Court for adults. In contrast to the current ASB regime, the Magistrates' Court will not be involved.

69. We heard that this was likely to severely slow down the process for dealing with ASB as County Courts are under pressure from reduced staffing and more litigants in person because of the reduction in eligibility to civil legal aid. County Courts were also likely to be further away for victims to attend.⁸⁶

70. There were further risks associated with a move to County Courts. Magistrates Courts would typically have a Duty Probation Officer in attendance who would be able to arrange any practical follow-up provisions, such as make-good in the community. As Swindon Borough Council noted, "the County Court can imprison a defendant for breach of Injunction or fine a defendant. But it is simply not equipped to offer reform, rehabilitation and reparation".⁸⁷ Also, the number of firms taking on cases with legal aid in County Court was questioned.⁸⁸

71. Swindon Borough Council highlighted the existing Civil Procedure Rules 1998 which provide that in respect of ASBI, following an adjournment of court, proceedings must be dealt with within 28 days of the date on which the arrested person appeared in Court.⁸⁹

72. Current court timescales do not reflect the misery caused by ASB. The Government must not exacerbate delays by limiting ASB proceedings on IPNAs to County Courts. The bill must provide for proceedings to take place in Magistrates Courts as well. There must be a strict timescale of 28 days for Courts to deal with any breach of conditions.

⁸³ Ev w37 [Big Brother Watch], paragraph 2]; Ev w68 [Social Landlords Crime and Nuisance Group], paragraph 6

⁸⁴ Ev 52 [Law Society], paragraph 3; HC 836 [Liz Walker]

⁸⁵ Q 80 [Jane Plant]

⁸⁶ Ev w23 [Leicestershire Police], paragraph 2.1; Ev w29 [Swindon Borough Council], paragraph 5.7

⁸⁷ Ev w29 [Swindon Borough Council], paragraph 5.10

⁸⁸ Ev w29 [Swindon Borough Council], paragraph 5.5

⁸⁹ Ev w29 [Swindon Borough Council], paragraph 6.1

Preventing ASB before it happens

73. Time could be saved in court and much misery avoided by strengthening the informal interventions and services that prevent anti-social behaviour from occurring and recurring in the first place. In some cases, especially persistent neighbourly issues, ASB was often only alleviated by formal interventions.⁹⁰ However, for most of our witnesses, early informal intervention was the most effective route to deal with ASB. Witnesses were anxious about the introduction of new powers in the context of reductions in other provisions, such as youth services and early intervention schemes.⁹¹

Positive requirements

74. The draft bill makes an important step in dealing with underlying issues and tackling the causes of ASB by allowing positive requirements to be attached to IPNAs and CBOs—such as a requirement to attend an anger-management course—rather than rely solely on the kind of negative measures that are available under the present regime..

75. However, there was serious concern about agencies' capacity to deliver this support in difficult economic circumstances.⁹² It will be up to local councils (and other organisations proposing positive requirements) to provide positive services and, where funding is not available, those options cannot be attached to ASB interventions.⁹³ The Standing Committee on Youth Justice said that experience with the Youth Rehabilitation Order showed that the menu of options available was likely to be severely limited.⁹⁴ According to Kent Police, the more onerous the costs, the more reluctant agencies may be to pursue positive measures, to the detriment of the community.⁹⁵ Cuts could also affect the ability of agencies to monitor compliance.⁹⁶ Catch 22 agreed that the usefulness of positive measures would be limited by the availability of good quality services to address these needs.⁹⁷

Wider savings

76. We heard that these extra requirements would come at a time when support services were being affected by the need for major cuts in public expenditure.⁹⁸ Support services can prevent behaviour from reaching the stage where formal interventions are necessary and cutting these services could increase the chance of criminalising perpetrators, which itself can lead to further anti-social behaviour.⁹⁹ Following our evidence session with children's experts, we asked for examples of cuts in services:

⁹⁰ Ev w1 [Paddy Tipping], addendum

⁹¹ Ev w8 [London Borough of Camden], paragraph 1.2; Ev 42, Ev 45 [LGA], paragraph 2

⁹² Ev w20 [ACPO], paragraph 11

⁹³ Ev 46 [CIH], paragraph 2.4; Ev 42, Ev 45 [LGA], paragraph 2

⁹⁴ Ev 48 [SCYJ], paragraph 7

⁹⁵ Ev w3 [Kent Police]

⁹⁶ Ev w54 [London Borough of Hammersmith & Fulham], paragraph 3.4

⁹⁷ Ev w27 [Catch22], paragraph 5.1

⁹⁸ Ev w50 [Norwich City Council], paragraph 1

⁹⁹ Ev 48 [SCYJ], paragraph 6; Ev w50 [Norwich City Council], paragraph 1

- a) some councils are cutting 70%, 80% or even 100% of youth services.
- b) almost 3,000 full-time youth services staff have been lost: 96% of respondents to a 2011 survey of the Confederation of Heads of Young People's Services said youth club activities would be either reduced or stopped altogether by April 2012.
- c) between 2009–10 and 2010–11, there were 835 fewer posts in youth offending teams (YOTs) in England and Wales, a 4% reduction in staff during the year. Further posts may have been “frozen” rather than deleted.
- d) Among 430 English and Welsh councils spending on services for young people had dropped by an average of 12.3% in the past year, down from an average of £116 to £102.49 per year. This equated to 28 pence per young person per day.
- e) 20% of youth centres will close in the next year.
- f) The Early Intervention Grant, which includes funding for young people's services such as teenage pregnancy, has been cut by at least 25% over the course of this Parliament.¹⁰⁰

Inter-agency cooperation

77. The new tools will not address inadequacies in case management skills, enforcement processes, information sharing and inter-agency working.¹⁰¹ For example, the new dispersal power could simply move people on to another area and fail to address the underlying causes of the problem behaviour.¹⁰² ACPO suggested that working practices may be improved by a positive requirement for Community Safety Partners to pro-actively share information.¹⁰³ We note the Cabinet Office programme to establish “what works” centres, such as the College of Policing, which may provide a model for promoting effective solutions to anti-social behaviour.

78. As well as youth services, other support measures were relevant for preventing ASB. Mental health issues were common in victims and offenders alike, but the involvement of mental health organisations in dealing with ASB was patchy.¹⁰⁴ MOPAC suggest that organisations should cooperate to discuss these cases, if necessary in a secure environment where privacy can be maintained. MOPAC suggests that the Multi-Agency Risk Assessment Conference (MARAC) approach that is used for domestic violence victims may have some relevance for these cases.¹⁰⁵

79. Victims of anti-social behaviour should receive the correct service, from the correct agency, at the first time of asking. To deal with ASB effectively, there must be good inter-agency working, intelligent information sharing and a network of services to support

¹⁰⁰ Ev 53 [Barnado's Supplementary]

¹⁰¹ Ev w20 [ACPO], paragraph 28; Ev w23 [Leicestershire Police], paragraph 10.1; Ev 42, Ev 45 [LGA], paragraph 2; Ev w13 [John Dwyer]

¹⁰² Ev w3 [Kent Police]

¹⁰³ Ev w20 [ACPO], paragraph 12

¹⁰⁴ Ev w1 [Paddy Tipping], addendum

¹⁰⁵ Ev w74 [MOPAC], paragraph 20

victims and tackle the underlying causes of anti-social behaviour before it can manifest itself. This early intervention helps to protect the public and helps to keep those who may be prone to committing ASB from setting out on a course that could lead them into trouble.

80. This draft bill does nothing to strengthen these vital networks of support. That objective cannot readily be achieved by legislation. However, the bill comes at a time when frontline services tackling ASB—such as youth offending teams—are beginning to feel the effects of the current fiscal climate. If they are to continue to be effective, they must find new and effective ways of working in partnership together, adapting models of best practice to their own local circumstances and building strong local alliances in the fight against anti-social behaviour.

81. In order to support the identification and dissemination of best practice, we recommend that the Government establish a National Anti-Social Behaviour Forum—headed by a chief constable, a housing association chief executive, and a local council leader for a term of two years—to identify “what works” in ASB reduction on the basis of cost-benefit evidence and local best practice.

Conclusions and recommendations

Introduction

1. Antisocial behaviour continues to trouble communities across the country. For some, it is no more than a background irritation, but for others antisocial behaviour can be a debilitating blight on their lives. It can corrode community spirit, creating a breeding ground for more serious crime. (Paragraph 6)
2. The current antisocial behaviour control regime, though effective in some cases, leaves many people frustrated by a slow and uncoordinated response. Persistent antisocial behaviour, if it is not addressed quickly and conclusively, can be mean months or years of misery for the victims. The impact of anti-social behaviour on the individuals and communities affected must not be under-estimated. Perpetrators continue to reoffend and overall levels of antisocial behaviour are stubbornly high. In this context, we welcome the Government's decision to review and rationalise the statutory framework for dealing with ASB. However, as we go on to explain in this report, dealing with ASB depends on more than just the formal interventions available—it depends on facilitating inter-agency working, providing support services, and providing a speedy and predictable process through the court system. If the Government is serious about tackling ASB, then it will bring forward proposals on these as companion measures during the Bill's eventual passage through Parliament. (Paragraph 7)

Electronic format of the draft Bill

3. We recommend that the Leader of the House of Commons ensure that in future all draft Bills are published in a form in which the normal features of the chosen format are enabled, so that users can make full use of search, copy and paste, and text-to-speech features. This is not just a matter of convenience—though convenience alone is a compelling argument—it is about providing information in the most accessible formal possible. (Paragraph 11)
4. Publication of the draft bill was delayed by over a month compared with the timetable initially proposed to us by the Home Office. This left us just six working weeks for our inquiry, an unacceptably short period for pre-legislative scrutiny. This was a particular problem for witnesses, who in effect had only the Christmas period to produce submissions to us. It was clear from several responses to our call for evidence that witnesses were basing their responses on the White Paper and had not yet had time to reflect on the detail of the draft Bill. Moreover, the Government will continue to consult on the Community Remedy until 7 March 2013, so its position on this important component of the bill is not yet formed. (Paragraph 13)

Penalty

5. Breach of an Anti-Social Behaviour Order (ASBO) on application was a criminal offence, but breach of an Injunction to Prevent Nuisance and Annoyance (IPNA) is not.

We welcome the move away from automatic criminalisation for breach in the case of the IPNA, which is likely to be the main tool in the new ASB regime. (Paragraph 27)

6. However, breach of this civil injunction could still ultimately lead to imprisonment. It is therefore concerning how much easier it is likely to be to obtain an IPNA than an ASBO. The IPNA is available on a lower standard of proof than the old ASBO on application, and available to more agencies than the old Anti-Social Behaviour Injunction (ASBI). Widening access to the IPNA risks imposing severe restrictions on more people and additional safeguards must be applied. For the IPNA, the threshold of “conduct capable of causing nuisance or annoyance” is far too broad and could be applied even if there were no actual nuisance or annoyance whatsoever. A proportionality test and a requirement that either “intent or recklessness” be demonstrated should be attached to the IPNA, as well as the requirement “that such an injunction is necessary to protect relevant persons from further anti-social acts by the respondent”. (Paragraph 28)
7. We also believe that there should be a specific requirement for any individual prohibition or requirement to be necessary and proportionate for the purposes of addressing the behaviour that led to the application for an injunction. (Paragraph 29)
8. We note that there is a mechanism to allow offenders over 16 to shorten the period a Criminal Behaviour Order applied for if they complete an approved course. We see no reason why someone younger should be debarred from this option. (Paragraph 30)
9. We note that there is a specific exemption from dispersal powers for peaceful picketing and recommend that this be extended to cover all forms of peaceful protest. (Paragraph 32)

Other instruments

10. Each time successive Governments have amended the ASB regime, the definition of anti-social behaviour has grown wider, the standard of proof has fallen lower and the punishment for breach has toughened. This arms race must end. We are not convinced that widening the net to open up more kinds of behaviour to formal intervention will actually help to deal with the problem at hand. A duty to consult local authorities must be included in the dispersal power where it is applied for a period of longer than six hours. Public Spaces Protection Orders must include a requirement for six monthly interim approval. There should also be a clear exemption to dispersal powers where there is a genuine need to travel through the area. (Paragraph 35)

Young people

11. Anti-social behaviour measures must be a short, focused nudge for young people to set them on the right track, not a millstone that will weigh around their necks for years to come. 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. (Paragraph 43)

12. For under-18s, IPNAs should be available for a maximum of 12 months and should only be available after attempts to resolve the issue through informal support and acceptable behaviour agreements have failed. (Paragraph 44)

“Naming and shaming”

13. 47. Young people’s sense of identity can be influenced by labels at a formative stage in their lives. ASBOs have been both a stigma and a badge of honour because of their infamy—both can undermine the effectiveness of the intervention. However, we are happy to leave the decision not to name a young person to the discretion of the judge, as envisaged by the draft bill. (Paragraph 47)

Community remedy: Restorative approaches

14. The Community Remedy is a welcome addition to the ASB response, if it can help to achieve an outcome that satisfies victims and helps to mend the ways of perpetrators without exposing them to the criminal justice system. However, the Community Remedy must not become the modern pillory or stocks. Additional safeguards are needed to ensure that officers have the discretion to choose alternative disposals, where appropriate. Additional assurances are also needed to ensure that victims are not drawn into the process without their full consent and understanding. (Paragraph 54)

The community trigger

15. We agree that some element of local flexibility is a helpful feature of the Community Trigger, but it will not be an effective backstop against neglect of ASB unless there is a common failsafe. A guaranteed response to ASB must not be dependent on where you live. We recommend a national maximum of five complaints as a backstop for the trigger, with an option to set a lower threshold at local level. We recommend that this quantitative measure must be combined in all cases with a review of the potential for harm, taking into account the nature of the activity and the vulnerability of victims. (Paragraph 63)
16. If the trigger is activated and a response deemed necessary then agencies should be obliged to agree a timetable for dealing with the problem which they must share with the victims involved. Without a clear timetable for dealing with persistent ASB, then the Community Trigger would be little more than a gimmick. (Paragraph 64)
17. The Community Trigger needs a bullet—it must be clear not only what the trigger is, but what response will happen when it is activated. The Minister told us that it will be activated when something has gone wrong and there must be a way of holding agencies to account when they repeatedly fail to act. Otherwise, there is a risk that the trigger could delay action, as authorities wait for the trigger before taking action. (Paragraph 65)
18. But this must not be a disincentive for the trigger to be activated. Police and crime commissioners should therefore be kept informed each time the national backstop of five complaints is reached and audit the case review meetings. In areas where the trigger is set at fewer than five complaints, the involvement of PCCs should come if there are

further complaints subsequent to the agreed trigger action. Local councils should be obliged to publish the number of times the trigger is activated on a six-monthly basis. (Paragraph 66)

Speed of response: court jurisdiction

19. Current court timescales do not reflect the misery caused by ASB. The Government must not exacerbate delays by limiting ASB proceedings on IPNAs to County Courts. The bill must provide for proceedings to take place in Magistrates Courts as well. There must be a strict timescale of 28 days for Courts to deal with any breach of conditions. (Paragraph 72)

Inter-agency cooperation

20. Victims of anti-social behaviour should receive the correct service, from the correct agency, at the first time of asking. To deal with ASB effectively, there must be good inter-agency working, intelligent information sharing and a network of services to support victims and tackle the underlying causes of anti-social behaviour before it can manifest itself. This early intervention helps to protect the public and helps to keep those who may be prone to committing ASB from setting out on a course that could lead them into trouble. (Paragraph 79)
21. This draft bill does nothing to strengthen these vital networks of support. That objective cannot readily be achieved by legislation. However, the bill comes at a time when frontline services tackling ASB—such as youth offending teams—are beginning to feel the effects of the current fiscal climate. If they are to continue to be effective, they must find new and effective ways of working in partnership together, adapting models of best practice to their won local circumstances and building strong local alliances in the fight against anti-social behaviour. (Paragraph 80)
22. In order to support the identification and dissemination of best practice, we recommend that the Government establish a National Anti-Social Behaviour Forum—headed by a chief constable, a housing association chief executive, and a local council leader for a term of two years—to identify “what works” in ASB reduction on the basis of cost-benefit evidence and local best practice. (Paragraph 81)

Formal Minutes

Tuesday 12 February 2013

Members present:

James Clappison	Keith Vaz, in the Chair	Bridget Phillipson
Michael Ellis		Mark Reckless
Julian Huppert		David Winnick

Draft Report (*The draft anti-social behaviour bill: pre-legislative scrutiny*), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 46 read and agreed to.

Paragraph 47 read, as follows:

Young people's sense of identity can be influenced by labels at a formative stage in their lives. ASBOs have been both a stigma and a badge of honour because of their infamy—both can undermine the effectiveness of the intervention. "Naming and shaming" risks perpetuating poor behaviour by making the young person feel separate from a community. Naming and shaming is more likely to be vindictive than effective and should be removed from the bill.

Amendment proposed, in line 3, to leave out from 'intervention' to the end of the paragraph and insert 'However, we are happy to leave the decision not to name a young person to the discretion of the judge, as envisaged by the draft bill.'—(*Michael Ellis*.)

Question put, That the Amendment be made.

The Committee divided.

Ayes, 4	Noes, 1
James Clappison	Dr Julian Huppert
Michael Ellis	
Bridget Phillipson	
Mark Reckless	

Paragraph, as amended, agreed to.

Paragraphs 48 to 81 read and agreed to.

Summary agreed to.

Resolved, That the Report be the Twelfth Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

Written evidence was ordered to be reported to the House for printing with the Report (in addition to that ordered to be reported for publishing on 15, 22 and 29 January, and 5 February 2013.

[Adjourned till Tuesday 12 February at 3.15 pm

Witnesses

Tuesday 15 January 2013

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Rebecca Bryant, ASB Services Lead, Manchester Council, **Ian Whiteway**, ASB Manager, Richmond Housing Partnership, and **Peter Castleton**, Community Safety Manager, Brighton & Hove City Council. Ev 1

Anita Lower, Local Government Association Ev 7

Eamon Lynch, Social Landlords Crime and Nuisance Group, **Gavin Smart**, Director of Police, Chartered Institute of Housing, **Kevin Williamson**, National Housing Federation, and **Jane Plant**, Law Society Housing Law Committee Ev 10

Tuesday 22 January 2013

Janet Grauberg, Director of UK Strategy, Barnado's, **Penelope Gibbs**, Chair, Standing Committee for Youth Justice, and **Ellen Broome**, Director of Police and Public Affairs, The Children's Society Ev 16

Liz Walker, Redoubt, Redoubt and **Javed Khan**, Chief Executive, Victim Support Ev 20

Tuesday 29 January 2013

Jeremy Browne MP, Minister of State, Home Office, and **Rt Hon Don Foster MP**, Parliamentary Under Secretary of State for Communities and Local Government Ev 26

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Victim Support	Ev 38, Ev 41
Local Government Association	Ev 42, Ev 45
Chartered Institute of Housing	Ev 46
Standing Committee for Youth Justice	Ev 48
Law Society of England and Wales	Ev 52
Barnado's	Ev 53
Manchester City Council	Ev 56

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(published in Volume III on the Committee's website www.parliament.uk/homeaffairscom)

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Paddy Tipping (Police and Crime Commissioner for Nottinghamshire)	Ev w1
Kent Police	Ev w3
The Kennel Club	Ev w5
Preston City Council	Ev w8
London Borough of Camden	Ev w8
Dog Trust	Ev w10
Living Streets	Ev w11
John Dwyer (Police and Crime Commissioner for Cheshire)	Ev w13
Association of Convenience Stores	Ev w15
Martyn Underhill (Police and Crime Commissioner for Dorset)	Ev w17
Blue Cross	Ev w18
Association of Chief Police Officers	Ev w15
Leicestershire Police and Sir Clive Loader (Police and Crime Commissioner for Leicestershire)	Ev w23
Catch 22	Ev w27
Swindon Borough Council	Ev w27
Katy Bourne (Police and Crime Commissioner for Sussex)	Ev w34
Guide Dogs for the Blind Association	Ev w35
Kirklees Council	Ev w37
Big Brother Watch	Ev w37
British Veterinary Association and the British Small Animal Veterinary Association	Ev w39
Transition to Adulthood Alliance	Ev w40
Criminal Justice Alliance	Ev w44
Stephen Braund	Ev w47
Norwich City Council	Ev w50
Ramblers and Open Spaces Society	Ev w51
London Borough of Hammersmith & Fulham	Ev w54
The Hyde Group	Ev w59
Buckinghamshire County Council	Ev w62
Wyre Forest Community Housing Group's anti Social Behaviour Unit	Ev w66
Social Landlords Crime and nuisance Group	Ev w68
Mayor's Office for Policing and Crime	Ev w74
Mark Dziecielewski	Ev w77
South Yorkshire Police	Ev w95
JUSTICE	Ev w95
Bridget Phillipson MP	Ev w101
The Office of the Children's Commissioner	Ev w106

Norfolk's County Community Safety Partnership
Liberty

Ev w110
Ev w112

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Third Report	Pre-appointment Hearing for Her Majesty's Chief Inspector of Constabulary	HC 183
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Sixth Report	The work of the Border Force	HC 523
Seventh Report	Olympics Security	HC 531
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Nineteenth Report	Roots of violent radicalisation	HC 1446

Twentieth Report	Extradition	HC 644
Twenty-first Report	Work of the UK Border Agency (August-Dec 2011)	HC 1722