

Anti-social Behaviour, Crime and Policing Bill

Fact sheet: Replacing the ASBO (Parts 1 and 2)

Background

1. Local professionals need fast and effective powers to address individuals who persistently behave anti-socially, causing harm to both victims and communities. The Anti-social Behaviour Order (“ASBO”) isn’t working: breach rates are high and the number issued has been steadily declining since 2005. The two new powers replacing the ASBO will be faster and more effective, both stopping the anti-social behaviour before it escalates and working with individuals to tackle the root causes of their behaviour.
2. The injunction to prevent nuisance and annoyance and the criminal behaviour order (CBO) are two of the new powers that will be available to professionals to tackle anti-social behaviour (ASB). They are designed not only to provide effective respite for victims and communities, but also to stop future ASB by the offender. Through the inclusion of ‘positive requirements’, perpetrators may be required to address the underlying causes of their behaviour, for example, substance misuse, anger management or problem drinking.
3. These new powers will replace a range of existing tools, including the ASBO. By focusing on prohibitions and enforcement, the ASBO failed to change the behaviour of perpetrators, and therefore failed to stop breaches and provide long term protection to victims and communities. During our consultation with front line professionals, they told us that securing an ASBO on application can be a slow, bureaucratic and expensive process, and that it often fails to change a perpetrator’s behaviour. Statistics issued by the Ministry of Justice (MoJ) show that 57 per cent of ASBOs issued up to the end of 2011 have been breached at least once, and over 42 per cent have been breached more than once. The new powers will be faster, easier to use and more effective.
4. The new injunction will be available to tackle low-level ASB, to nip emerging problems in the bud. Breach of the injunction would constitute contempt of court attracting a maximum penalty of two years’ imprisonment for an adult, or a three month detention order for a young person aged 14 to 17. For the most serious cases of anti-social behaviour, which result in a criminal conviction, the CBO will be available. Breach of the CBO will be a criminal offence with tough criminal sanctions of up to five years’ imprisonment for adults and up to a two year detention and training order for under 18s. Such tough sanctions will ensure that perpetrators realise there are serious consequences if they fail to change their behaviour and continue to commit ASB.

The injunction to prevent nuisance and annoyance

5. The new injunction is a purely civil order and is available against individuals aged 10 or over. It is modelled on the existing Anti-social Behaviour Injunction (ASBI), which has been used successfully by social landlords for over a decade to deal with ASB, but can be applied for by a wider range of agencies. It will replace the ASBI and several other tools designed to deal with anti-social individuals including: ASBOs on application, Drinking Banning Orders (DBO) on application, intervention

orders and individual support orders. It is a flexible tool and can be used to tackle any form of anti-social behaviour including where misuse of alcohol is a factor. The police (including the British Transport Police), local authorities, NHS Protect in England and the equivalent body in Wales, private registered providers of social housing, Transport for London, the Environment Agency and the National Resources Body for Wales will all be able to apply for the injunction.

6. The injunction will be available in the county court for adults and in the youth court (sitting in its civil capacity) for under 18s, and will rest on the civil standard of proof (that is, 'on the balance of probabilities'). There is a two-stage test to obtain the new injunction. The court must first be satisfied that an individual has engaged in or threatens to engage in conduct capable of causing nuisance and annoyance. This is the same as the current ASBI test with which the county courts are already familiar. The court must also be satisfied that it would be just and convenient to grant the injunction.
7. There is no minimum or maximum term for an injunction for adults but in the case of under 18s, the maximum term is 12 months. This will provide victims and communities with the respite they deserve, send a strong message to perpetrators that their behaviour is not acceptable and provide sufficient time for them to work with local agencies to address any underlying issues driving the behaviour.
8. As well as prohibitions to prevent ASB, the court could also include positive requirements in the injunction to get the perpetrator to address the underlying reasons for their ASB – potentially reducing breach rates in the longer term.
9. Applicants for an injunction must seek the views of the local youth offending team (YOT) if the application is against someone under the age of 18. This consultation requirement does not apply to 'without-notice' applications where there is a need to tackle serious problems urgently. Alongside the formal consultation requirement, the applicant must also inform other agencies or individuals of the application if they (the applicant) think it is appropriate, for instance, social services, mental health teams, etc.
10. While in most cases we would expect informal measures (such as acceptable behaviour contracts) to be considered before the use of the new injunction, we do not want to fetter professionals' discretion. We support professionals using their experience to deal with problems in the way that best meets the needs of victims. If the injunction is the right first step in the circumstances, professionals should be able to use it straightaway.
11. A power of arrest can be attached to an injunction if the perpetrator had used or threatened violence, or if there is a significant risk of harm to others.
12. Unlike for ASBOs, breach of the injunction would not be a criminal offence and so individuals would not be criminalised for low level, persistent anti-social behaviour, giving them a chance to turn their lives around without the stigma of a criminal record. However, for those who do not make changes to their behaviour, there are still serious sanctions available to the court, including prison.
13. If an adult breaches the injunction, it would be a civil contempt of court, and could result in imprisonment of up to two years or an unlimited fine. In the case of under 18s, breach could result in the court making a supervision order with a curfew,

activity or supervision requirement. In the most serious cases, (that is, 'where the court determines that because of the severity or extent of the breach, no other power is available to it is appropriate') the court may impose a detention order on an under 18 for breaching a condition in the injunction.

Case study – Accident and Emergency

An individual is always drunk and abusive and repeatedly visits the A&E department of a local hospital demanding to be seen by doctors. He often threatens the staff and public when he is refused treatment.

NHS Protect, the body responsible for protecting NHS staff, property and resources against crime and disorder, decide to apply directly to the court for an injunction to stop the offender's ASB. The court agrees that the individual's behaviour is anti-social and an injunction is granted to provide immediate protection for staff, patients and members of the public.

The injunction prohibits the offender from visiting A&E without a legitimate reason and from causing ASB. It also includes a positive requirement to get the offender to deal with the underlying cause of his behaviour, namely misuse of alcohol, by attending a local alcohol awareness session.

The criminal behaviour order

14. The criminal behaviour order (CBO) will replace the ASBO on conviction and the DBO on conviction and will be available in the Crown Court, magistrates' courts, or the youth court. The CBO will be available for the most seriously anti-social individuals and could be applied for on conviction for any criminal offence in any criminal court. The CBO can only be made on the application of the prosecutor (in most cases the Crown Prosecution Service, either at their own initiative or at the request of the police or local authority).
15. In granting a CBO, the court must be satisfied that the offender has committed behaviour causing harassment, alarm and distress (the same test used for the ASBO) and that granting the order would help prevent future ASB. The CBO could relate to wider relevant behaviour than that proved through the criminal conviction. Hearsay evidence (which may not have been admissible in the criminal proceedings) is allowed in CBO proceedings.
16. The automatic reporting restrictions of certain information, which normally applies in legal proceedings for offenders aged under 18, does not apply in CBO hearings. However, the courts will have discretion to apply reporting restrictions in both CBO applications and CBO breach proceedings. This allows the court to decide whether it is right to name a young person when issuing an order. Such decisions are rare, but we recognise that it may be necessary, in some circumstances, to help in enforcing the order and to protect victims and communities.
17. In cases where the offender is under 18, the police or local authority must seek the views of the YOT before applying for a CBO, and the police or local authority must inform the CPS prosecutor of the views expressed. Under 18s should be given the chance to express their own views, in line with their rights under the UN Convention on Rights of the Child. This could be done either by the YOT at the time of pre-sentencing report (PSR), or by the judge engaging directly with the offender at the time of the application. Consulting the offender in this way would ensure that the courts can explore the underlying reasons why the individual has behaved anti-socially, which would help the court's decision in deciding whether to

include positive requirements in the order and, if so, what those positive requirements should be.

18. As well as prohibiting certain behaviour, the court could include positive requirements proposed by the applicant in the order – a key difference from the ASBO on conviction. The court must be satisfied that the positive requirement is both suitable and enforceable. For adults, the minimum term of a CBO is two years, with no maximum, but for under 18s, the minimum term is one year and the maximum term is three years. Agencies must undertake an annual review of CBOs awarded against an under 18. The review should consider how the offender has complied with the order, the adequacy of any support available to them to help with compliance, and any matters relevant to an application to vary or discharge the CBO.
19. Unlike breach of the new injunction, breach of a CBO would be a criminal offence, with a maximum sentence of up to five years' imprisonment or a fine, or both for an adult. Breach proceedings for under-18s would take place in the youth court, where the maximum custodial sentence that a young person could receive is a two year detention and training order. These tough sanctions will demonstrate to offenders and the community the seriousness of breach and, as it is an order on conviction, there is no risk of criminalising someone for the first time for breach of the order.

Case study – Drunk group

A group of drunk young men and women have targeted some elderly neighbours. In one incident, they dug up flowers from the garden and threw stones at one victim's house, breaking a window and causing criminal damage.

Some of them are subsequently convicted of criminal damage. The prosecutor also produces evidence that the young people had persistently harassed and intimidated other people in the neighbourhood for a sustained period. The prosecutor successfully applied for a CBO to prevent future ASB. The court also included positive requirements in the CBO against the convicted youths to require them to make good the damage to the victim's home and engage with a mentoring programme to address the reasons why they were persistently harassing people.

The local authority also successfully applied for an injunction against other members of the group who were not charged but who had also committed ASB against the elderly neighbours. The injunction included similar positive requirements to the CBO to get the young people to address the underlying causes of their behaviour.

The YOTs were consulted in both the CBO and injunction proceedings.