



**Criminal  
Justice  
Alliance**



**The  
Children's  
Society**



## **Anti-social Behaviour, Crime and Policing Bill House of Lords Report Stage**

### **Briefing and suggested amendments on anti-social behaviour December 2013**

#### **Introduction**

1. The Anti-social Behaviour, Crime and Policing Bill introduces new powers to tackle anti-social behaviour, including a new Police Dispersal Power and an Injunction to prevent Nuisance and Annoyance, which replaces the ASBO on application. Our organisations have previously produced detailed briefings on the Bill, raising our concerns regarding the principle of introducing new provisions concerning anti-social behaviour, as well as other parts of the Bill. While our concerns as set out in those briefings remain, for the purposes of Report Stage, we focus here upon three key aspects of the proposed Injunction to Prevent Nuisance and Annoyance and Dispersal Power that in our view must not become legislation. This briefing suggests amendments regarding the definition proposed for the new injunction, imprisonment of children upon breach and restrictions upon identifying children the subject of injunction proceedings. In our view the standards are set far too low and risk ostracising behaviour which ought to be accommodated or ameliorated in a democratic and tolerant society.

**We urge Peers to support the following suggested amendments in this regard.**

## 1. Definition

### *Clause 1 power to grant injunctions*

#### Amendment proposed by Lord Dear

Page 1, line 8, leave out from “in” to end of line 9 and insert “anti-social behaviour.

( ) Anti-social behaviour is—

- (a) conduct that has caused, or likely to cause, harassment, alarm or distress to any person, or
- (b) in the case of an application for an injunction under this section by a housing provider, conduct capable of causing nuisance or annoyance to any person.”

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2. We welcome the move away from criminalising conduct that the IPNA provides, by placing control of anti-social behaviour in the civil rather than criminal context. We also welcome the intention of using community-based remedies rather than resorting to the courts, to resolve disputes. However, the ‘nuisance or annoyance’ test is in our view far too low a threshold to ensure reasonable application. We support Lord Dear’s amendment, which would ensure that the test of ‘behaviour causing or likely to cause harassment, alarm or distress,’ which is currently applied to Anti-social Behaviour Orders, should continue to be applied to the proposed injunctions, thereby ensuring that minor irritations are not brought into the courts, with the ultimate sanction of imprisonment upon breach a potential consequence.
3. The ‘nuisance or annoyance’ test currently applies to Anti-social Behaviour Injunctions (ASBIs),<sup>1</sup> however, these are only available to social landlords, and must relate to housing management functions and behaviour as between their residents. While ‘nuisance or annoyance’ may be considered the appropriate test in housing related disputes; because people living in close proximity can affect each other’s enjoyment of their private lives and property rights, it is not for wide ranging anti-social behaviour. Further, ASBIs only allow ‘prevention of engagement in conduct causing nuisance and annoyance’. The proposed IPNAs would afford wide ranging terms to be imposed for very broad types of behaviour, occurring anywhere, on the application of a whole host of bodies and organisations listed in clause 4.
4. The consequences of this lower threshold are draconian and unreasonable when applied to society as a whole. As drafted, the injunction could be applied to impede freedom of speech and peaceful assembly, rights protected by articles 10 and 11

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<sup>1</sup> Section 153A Housing Act 1996 and a few other narrowly defined activities.

ECHR, which can only be interfered with in pursuance of a legitimate aim and by necessary and proportionate means. As Lord Macdonald has set out in his scathing opinion of the proposals for the Christian Institute,<sup>2</sup> a lone individual standing outside the entrance to a bank holding a sign objecting to its role in the financial crisis; a busker outside a shopping centre; or a street preacher proclaiming the end of days to passers-by may all be capable of causing nuisance and annoyance to some person, who would otherwise be exercising rights afforded to them under the Convention, and previously respected at common law.

5. The power becomes all the more disproportionate when applied to children and vulnerable people who have little insight into what constitutes a nuisance or annoyance. Senior police officers have voiced their own concerns about how the power may go too far. As ACPO lead for children and young people Jacqui Cheer recently said:<sup>3</sup>

I think we are too ready as a society, as the police and particularly with some legislation coming up on the books, to label what looks like growing up to me as anti-social behaviour... what's anti-social to one person is just what I did and what many young people do. We've closed down a lot of places that people are allowed to go to. We've fenced off school grounds, I get it, but where do people collect? When you're in a crowd of 3 or 4 it can get a bit noisy; is that anti-social? When you're walking down a street and might be having a bit of a laugh and joke; is that anti-social?

Assistant Chief Constable Bennett gave evidence to the Public Bill Committee<sup>4</sup>, in which he said:

One of our concerns is that one person's annoyance may be another person's boisterous behaviour, or young people behaving as they do. We certainly get complaints from members of the public about people using playing fields, for instance, which the rest of the community thinks is the appropriate thing to do, but if you live next to the playing field it can be very annoying.

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<sup>2</sup> Lord Macdonald, *Opinion for the Christian Institute on the Anti-social Behaviour, Crime and Policing Bill* (29<sup>th</sup> October 2013), available at [http://www.christian.org.uk/wp-content/downloads/Lord\\_Macdonald\\_QC\\_advice\\_on\\_ASBO\\_Bill-highlighted.pdf](http://www.christian.org.uk/wp-content/downloads/Lord_Macdonald_QC_advice_on_ASBO_Bill-highlighted.pdf)

<sup>3</sup> At the APPG on Children meeting, 5<sup>th</sup> November 2013, on Children and the Police.

<sup>4</sup> House of Commons, 1<sup>st</sup> Sitting, 18<sup>th</sup> June 2013, col. 65.

6. We need only look at the types of behaviour which attracted ASBOs in its early years to see that applications are made and granted in circumstances which are clearly inappropriate to the objective and reasonable person.<sup>5</sup> When the prospect of obtaining legal aid against an application for an IPNA is slim, people, especially those who are vulnerable, must not be made to face a court injunction, with potential imprisonment for breach amongst criminals, where they have simply caused annoyance.
7. Lord Dear's amendment would impose the higher threshold of 'harassment, alarm, or distress', with which the courts are now familiar, as well as retaining the 'nuisance or annoyance' test for the housing context. We wholly support this approach.

## 2. Detention of children

### *Schedule 2 on IPNA and clause 37 on Dispersal*

#### Amendments proposed by the Earl of Listowel

##### *Schedule 2*

Page 138, line 34, leave out paragraph (b)

Page 139, line 9, leave out sub-paragraphs (5) and (6)

Page 147, line 9, leave out paragraphs 14 and 15

##### *Clause 37*

Page 21, line 23, after "person" insert "over-18"

Page 21, line 27, at end insert—

"(2A) A person under-18 guilty of an offence under subsection (1) is liable on conviction to—

(a) a fine not exceeding level 4 on the standard scale; or

(b) being made subject to a supervision order or being made subject to a Youth Rehabilitation Order."

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<sup>5</sup> Statewatch has compiled a collection of ASBOs that have been imposed upon vulnerable persons where alternative approaches would have been more appropriate, <http://www.statewatch.org/asbo/asbowatch-mentalhealth.htm>. For example, [Amy Beth Dallamura](#) was reported to suffer from a serious emotional disorder and had been rescued by emergency services over 50 times from suicide attempts. She was given an ASBO that banned her from going onto beaches and into the sea. She breached this at least five times (December 2007, <http://news.bbc.co.uk/1/hi/wales/mid/7151025.stm>); The National Association of Probation Officers gave evidence to the 2005 Home Affairs Committee Inquiry on Anti-social Behaviour, highlighting similar cases. These included a homeless man who received an ASBO for begging in a non-aggressive way in a shop car park; he was jailed for breach and died before finishing his sentence; and an 87-year-old man who, among other things, was forbidden from being sarcastic to his neighbours (July 2003), Fifth Report of Session 2004-2005, HC 80-III (22<sup>nd</sup> March 2005), <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhaff/80/80we20.htm>.

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8. Over the last few years, there has been a very welcome reduction in the numbers of children in custody as a result of the recognition that imprisonment is not an effective way to deal with children's offending behaviour. In spite of this, however, children who breach the IPNA can be given a supervision order or, if they are over-14, up to three months detention. In practice, detention is the same as imprisonment. Children convicted of failing to comply with the police dispersal order face a fine and/or up to three months imprisonment. These sanctions are disproportionate, counterproductive, incompatible with children's rights and risk reversing the positive downward trend seen in custody numbers. Furthermore, detention as sanction for children breaching IPNAs is anomalous; children cannot usually be detained for civil contempt of court. We believe custody should not be available as a sanction for breach of ASB orders by children.
9. Currently, the majority of children – nearly 7 in 10 – breach their ASBO. This is typically due to a lack of support rather than willful non-compliance and is a much higher breach rate than for adults. Imprisonment is imposed as a sanction for juvenile ASBO breach in 38% of cases, with an average sentence of 7.1 months.<sup>6</sup> The government's impact assessment estimates an overall IPNA breach rate of 40% and we would expect a higher rate of breach for children.
10. IPNAs are civil injunctions. Breach will be considered contempt of court which can result in imprisonment. Currently, the law does not allow for children to be committed to imprisonment if found in contempt of court, save in limited circumstances.<sup>7</sup> This Bill introduces detention for children in contempt for minor civil wrongs for the first time. In practice, detention is the same as imprisonment for children. Detained children will be held in the same institutions as children sentenced to imprisonment.
11. The purpose of the proposed amendments is to remove imprisonment as a sanction for children breaching an IPNA, or failing to comply with a Dispersal Order. We fully support these amendments. Imprisonment is not an appropriate punishment for children breaching a CBO or failing to comply with a dispersal order because:

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<sup>6</sup> Ministry of Justice (2012) Anti-Social Behaviour Order Statistics – England and Wales 2011, p3

<sup>7</sup> Powers of Criminal Courts (Sentencing) Act 2000, s89. A detention order is available where gang-related violence is committed, injunctive terms breached and then only if a supervision order imposed upon breach is not complied with, see schedule 5A, Part 2, para 12, and Part 3, Policing and Crime Act 2009.

*i) Detention is not effective and particularly harmful for children*

Custody is ineffective in preventing reoffending in children. In 2011/12 children released from custody had a re-offending rate of 72.6%.<sup>8</sup> This is markedly higher than the reoffending rate for other criminal justice interventions. There is no evidence that imprisonment for breaching an ASBO acts as a deterrent for children committing ASB.

Custody is particularly harmful for children's development. It is also counter-productive to children's rehabilitation. Imprisoning children, even for a short period, can fast-track them into a life in the criminal justice system by introducing them to criminal networks which become impossible to escape.

*ii) Imprisonment is a severe and disproportionate punishment*

Under Article 37 of the UN Convention of the Rights of the Child, children should be imprisoned only as a "measure of last resort". The United Nations Standard Minimum Rules for the Administration of Juvenile Justice state that:

Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person or of persistence in committing other serious offences and unless there is no other appropriate response.<sup>9</sup>

Imprisonment is too severe a punishment for children who breach a civil order or fail to comply with the dispersal order.

*iii) Children breach orders due to lack of support rather than willful non-compliance*

Many children in the justice system have poor literacy rates, and communication and learning difficulties. They may not understand the prohibitions contained in an ASBO or fully understand how to comply or overcome obstacles to compliance. The long-lasting ASBOs we have seen in the past also impose unrealistic restrictions on children – for example a 13 year old from South Shields was banned from riding his bike or seeing his four best friends for two years.<sup>10</sup>

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<sup>8</sup> Youth Justice Board/Ministry of Justice, 2013, "Youth Justice Statistics 2011/12, England and Wales", at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/218552/yjb-stats-2011-12.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/218552/yjb-stats-2011-12.pdf)

<sup>9</sup> A/RES/40/33, 29 November 1985, Principle 17.1(c).

<sup>10</sup> Asbo boy, 13, is back in court", South Shields Gazette, 9<sup>th</sup> March 2010 <http://www.shieldsgazette.com/news/local-news/asbo-boy-13-is-back-in-court-1-2037392>

### 3. Identifying children

#### Amendments

Remove Clause 17 (Page 9, line 25)

Remove provisions in Clauses 22 (subsection 8) and 29 (subsection 5) allowing the default naming of children

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12. The Bill suspends section 49 of the Children and Young Persons Act 1933 – where there is a presumption against revealing details of a child’s identity – for children subject to the new orders. This means that children will be named publicly as a default, unless the court makes an active choice not to name them<sup>11</sup>. This raises a number of concerns regarding rehabilitation and safeguarding, and is contrary to the usual presumption of anonymity that is granted to children in criminal proceedings.

13. *Safeguarding concerns*

The presumption to name children has significant implications for the safeguarding of children. Naming a child publicly could mean that they are subsequently targeted by individuals or gangs wishing to exploit their vulnerability. Identifying a child as having been involved in ASB could indicate that the child may engage in risk-taking behaviour or that they will be more susceptible to being groomed. Children with special educational needs are also more likely to be involved in ASB, making them particularly vulnerable to exploitation.

14. *It will hinder rehabilitation and is not effective*

Naming, and thereby, shaming children can hinder the successful rehabilitation of those who wish to make a fresh start. It can be counter-productive by prolonging the problems that children have in re-engaging positively with their community. It can also make it extremely difficult for professionals to obtain services that are instrumental to the child’s rehabilitation. There is also no evidence that identifying a child is effective as a deterrent.

15. *Long term impact*

In the age of the internet and social media, details of a child’s identity are indelible once revealed. Children should not have this stamp on them from such a young age

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<sup>11</sup> Pursuant to s39 Children and Young Person’s Act 1933

as this can affect their future ability to get a job, obtain housing and contribute to society. Naming and shaming through ASBOs has criminalised, stigmatised and negatively labelled young people and this has perpetuated problems rather than helping to resolve them.

16. *Right to privacy*

The Joint Committee on Human Rights has expressed concern about the impact of reporting on a child's right to privacy in its pre-legislative scrutiny report.<sup>12</sup> Naming and shaming contravenes the anonymity that is usually granted to children in criminal proceedings and disregards the right to privacy in the UN Convention on the Rights of the Child (UNCRC). The Local Government Association has also expressed concerns, particularly for a child who receives an IPNA, or breaches an IPNA, who has not actually committed a criminal offence.<sup>13</sup>

17. If the amendment does not proceed, we urge Peers to at least seek an undertaking from Government to draft guidance, or request that guidance be drafted, for the use of judges and magistrates imposing IPNAs and CBOs, on the exercise of their discretion pursuant to section 39 Children and Young Person's Act. Magistrates and district judges sitting in the Youth Court are accustomed to automatically imposing reporting restrictions. Without guidance, they may be unaware that it is necessary to consider imposing restrictions on a case by case basis.

**The Children's Society**  
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<sup>12</sup> <http://www.publications.parliament.uk/pa/jt201314/jtselect/jtrights/56/56.pdf>

<sup>13</sup> <http://www.local.gov.uk/documents/10180/5533246/LGA+briefing+for+House+of+Lords+-+second+reading+of+the+anti-social+behaviour%2C%20crime+and+policing+bill/45b9aa97-c72c-46fd-897f-d00317338c74>