

Local Government Association (LGA) briefing for Report Stage of the *Anti-Social Behaviour, Crime and Policing Bill* (Lords)

8 January 2014



KEY MESSAGES

- The **LGA welcomes the added flexibility to tackle anti-social behaviour** that this Bill¹ provides. **Councils know that the most effective way of tackling anti-social behaviour is to stop it happening in the first place.** This means working in partnership with schools, youth offending teams, health, fire services, probation services and the police to steer people away from activity which causes harassment or distress to others.
- **Councils have a good track record of providing services that turn lives around**, both in terms of supporting those affected by anti-social behaviour and rehabilitating perpetrators. **However, continuing this support will not be easy due to the budget pressures** on councils and other public services.
- The provisions in this Bill relate to all persons from the age of ten years and over. The Bill thus presents an opportunity to consider how anti-social behaviour legislation should apply to young people. Where they are responsible for such behaviour, the focus of the response must be to help them grow into law-abiding citizens and be proportionate to their behaviour and any similar history.
- As the use of **dispersal powers** can be controversial locally the LGA believes provision should be made for a statutory duty on the police to notify councils of the use of the power before it is implemented.
- **Clarity is needed from the Home Office on the cost of imposing 'positive requirements'** (Part 1) on perpetrators of anti-social behaviour. The LGA is concerned that the overall estimates that the injunctions will be cheaper to use than ASBOs may not be right and positive requirements may impose an additional financial burden on councils.
- The LGA appreciates the value of the community trigger (Part 6), which has been explored through Home Office pilots around the UK. **However, we would like to see the trigger threshold set by local partners, including the police and council.** A national threshold (as currently in the Bill) will fail to take account of local circumstances.
- The extension of powers for the police and councils to deal with **dangerously out of control dogs** (Part 7) on private property is welcome, and combined with measures in the Bill around anti-social behaviour, will provide local partners with the powers they need to tackle irresponsible owners.

Part 1 – Injunctions to prevent nuisance and annoyance

- The LGA supports the creation of a genuine civil order that allows councils and other partners to act swiftly to protect victims and communities, and can

¹ The Bill and related documentation can be found on the Parliament website at <http://services.parliament.uk/bills/2013-14/antisocialbehaviourcrimeandpolicingbill.html>.

be obtained on a civil burden of proof. As the proposals were being developed, the LGA raised concerns that a power of arrest could not be attached to the injunction, so the Government's decision to provide for a power of arrest to be attached is welcome.

- The definition of anti-social behaviour set out in Clause 1 of the Bill has generated considerable debate about whether the definition used in the anti-social behaviour orders legislation would be preferable. The definition used for injunctions to prevent nuisance and annoyance was introduced in the anti-social behaviour injunction provisions contained in the Housing Act 1996 and then amended by the Anti-Social Behaviour Act 2003. It has been used by social landlords to deal with anti-social behaviour in their properties for over 15 years without issues being raised about its impact on civil liberties.
- The LGA believes **a balance needs to be struck between providing practitioners with a tool that is simple, efficient and effective to use, and one that is also proportionate to the problem it is seeking to address.** We are therefore open to debate on whether the definitions used in the Bill will both protect the victims of anti-social behaviour and also protect the public's right to **engage in legitimate activity that some may find a nuisance or an annoyance.**
- Local authorities have raised significant concerns about being able to effectively address persistent anti-social behaviour, such as aggressive begging, where a power of arrest is not attached to the injunction to prevent nuisance and annoyance. The government in response has indicated that the various powers in the Bill will allow local authorities and the police to address persistent anti-social behaviour. **The LGA believes the draft guidance issued by the Home Office should specifically set out how the provisions in the Bill could be used to address problems of persistent anti-social behaviour like aggressive begging, so councils are clear on how they can protect their communities.**
- We have also been concerned that there were not enough powers available to councils to deal with anti-social tenants in private rented accommodation. The LGA is pleased that the Government has listened to our recommendations following previous feedback from councils during the pre-legislative scrutiny, and in the Commons stages of the Bill amended it so councils have the power to exclude people engaging in anti-social behaviour from where they live regardless of tenure.
- Whilst these powers are a welcome step, councils want landlords in the private sector to be more actively involved in preventing anti-social behaviour. The ability to serve anti-social behaviour notices on landlords as councils are able to do in Scotland through the Anti-Social Behaviour etc. (Scotland) Act 2004, would assist. **This would allow councils to prescribe action landlords should take to deal with anti-social behaviour. It would also allow councils to recover the costs of any action they take where the landlord does not act, and would mean there were financial penalties for landlords who refuse to act.**
- Councils have a good record of providing services that turn lives around. **Continuing this support will not be easy due to budget pressures on**

councils and other public services. The Impact Assessment for the injunctions (Part 1) does not quantify the cost of imposing 'positive requirements'², partly because the existing Individual Support Orders or Intervention Orders have been used so infrequently. The LGA is concerned that, given the use of positive requirements is predicted to impose additional financial burdens on councils, the estimates that the injunctions will be cheaper than ASBOs may not be right, and councils may be placed under an additional financial burden.

- As with current legislation, the provisions relate to persons from the age of ten years and over. The Bill therefore presents an opportunity to consider **how anti-social behaviour rules should apply to young people**. Where they are responsible for such behaviour, the focus of the response must be to help them grow into law-abiding citizens and be proportionate to their behaviour and any similar history.
- The distinction between the youth justice and the adult justice system in England is an important principle that should also underpin the response to anti-social behaviour. In accordance with the UK's obligation under Article 3 of the UN Committee on the Rights of the Child, the best interests of the child should be a primary consideration for decisions affecting them.
- The overwhelming evidence concerning the ineffectiveness of custody in preventing reoffending by young people reinforces the view that it should only be used as a genuine last resort. Three out of four of those leaving custody go on to commit further offences and in some cases it costs more than £200,000 a year for each young person detained.
- **The LGA supports the ability of the court to impose positive requirements as part of the injunction, and it is essential that there is consultation with youth offending teams where the young person is under 18.**
- We also think that the normal restriction that applies on the reporting of legal proceedings in relation to children under Section 49 of the Children and Young Persons Act 1933 should apply to IPNA proceedings. We are concerned that otherwise this is contrary to the usual presumption of anonymity that is granted to children and young people in criminal proceedings.

Part 2 – Criminal Behaviour Orders

- The LGA supports the introduction of Criminal Behaviour Orders, which is similar to the anti-social behaviour order currently available on conviction.
- It is important that before seeking an order against someone under 18 the Youth Offending Team is consulted in order that the support available to the offender is considered and any issues such as learning difficulties or mental health are understood. The LGA supports the introduction of an annual review where someone under 18 is subject to an order.

Part 3 – Dispersal powers

² Positive requirements could include for example, placing an offender on a substance misuse programme, if their behaviour is related to such a problem, or support for mental health problems.

- These provisions would see the decision made on whether to use dispersal powers resting solely in the hands of the police. While rationalisation of the powers is welcome, the current designation of areas where the police can exercise dispersal powers is done in consultation with the local authority, while in some cases councils have responsibility for making the orders.
- **Use of such powers can on occasion prove controversial, which is why their use should be dependent on democratic oversight.** This can be provided by Police and Crime Commissioners (PCCs), but given the local nature of the issues that dispersal powers are used for, and the large area PCCs cover, this will be challenging. Councillors on Police and Crime Panels or community safety scrutiny panels could provide alternative and valuable mechanisms. As a result, **the LGA would expect PCCs, when scrutinising the use of dispersal powers, to consult local authorities in their area** as to whether their use is appropriate proportionate, and effective.
- We also believe, given the controversy they can sometimes attract, that there should be a statutory duty on the police to notify the relevant council of that decision at the time it is made or immediately after.

Part 4 – Community protection

- **Community protection notices / Public spaces protection orders:** The LGA welcomes the introduction of these notices and the flexibility they offer, which will allow councils to decide how to take action swiftly and effectively to prevent and tackle anti-social behaviour. We do not believe they are in need of further amendment. The LGA will be seeking to work with councils to offer guidance on the effective use of these powers.
- **Closure notices and orders:** Councils are familiar with problem premises and these notices will allow them to take action swiftly with local partners to ensure property does not house or lead to anti-social behaviour. However, **the LGA has a concern about closure notices only being made if ‘reasonable’ efforts have been made to inform the owner in advance. Sometimes premises need to be shut down immediately** for the protection of the public, so the process should not be delayed and this should be clarified in any subsequent guidance.

Part 5 – Recovery of possession of dwelling-houses

- These powers represent a serious sanction and councils would use them in a proportionate way, investing in prevention and working with partners. Clearly it is crucial that the use of these powers do not result in displacement of the problem rather than solution. This is particularly important when considering councils’ homelessness duties and the Government should clarify how the new powers will interact together. The LGA will continue to consider the implications of this part of the Bill, given the possible impact on the statutory duty to re-house.

Part 6 – Local involvement and accountability

- Councils face a continual challenge to ensure the most vulnerable victims of antisocial behaviour do not slip through the net. As a result, the LGA

appreciates the value of the **community trigger**. The Home Office has published the results of the community trigger pilots and these identify a number of benefits of introducing the trigger and from it being able to identify cases of long term and persistent anti-social behaviour. **However, we would like to see the threshold for the trigger set by local partners, including the police and council.** A national threshold will fail to take account of local circumstances, where it may need to be higher or lower than the suggested three complaints.

Part 7 – Dangerous Dogs

- Local communities have suffered because police and councils have been left powerless to respond to growing concerns from residents about dangerous dogs and their owners. **The extension of dangerous dogs legislation to private land will help local partners respond to issues as they arise.**
- The LGA is aware of continued pressure for specific dog control notices to be included in the Bill. The LGA continues to have an open and productive dialogue with dog charities, however, we remain to be convinced that separate tools are necessary as no specific details have been provided on the gaps in the provisions provided by the Bill.
- The tools within the Bill also provide the opportunity for a more holistic approach where broader anti-social behaviour issues exist. However, we do recognise that past proposals for dog control notices did not require court approval and therefore would enable councils to respond quickly and with less resource.
- Educating the public about responsible ownership through all available avenues and **allowing councils to direct irresponsible owners to undertake training, can provide a greater protection for the public.**