

The Local Government Association's Response to the 'More Effective Responses to Anti-Social Behaviour' consultation paper

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Introduction

1. The Local Government Association (LGA) is a voluntary membership body and our 422 member authorities cover every part of England and Wales. Together they represent over 50 million people and spend around £113 billion a year on local services. They include county councils, metropolitan district councils, English unitary authorities, London boroughs and shire district councils, along with fire authorities, police authorities, national park authorities and passenger transport authorities.

Background

2. This paper provides the LGA's response to the consultation issued by the Home Office setting out the government's vision of how there can be more effective responses to anti-social behaviour.
3. Anti-social behaviour (ASB) has been a major concern for the public, and therefore for councils and councillors over the last decade. Councils have been at the forefront of tackling ASB and have made extensive use of the powers they have been given to address the broad range of problems the communities they serve face. Making the tools and powers available to councils faster to use, more effective and more flexible would be a welcome move, provided they better protect victims and communities.
4. While the proposed changes to the tools and powers to deal with ASB will apply equally across England and Wales, the Welsh Local Government Association, which represents local authorities in Wales, is submitting its own response about the implications of the proposals in a Welsh context. The LGA's response therefore looks solely at how the proposals in the Green Paper will work in England.

Encouraging local initiative to tackle anti-social behaviour

5. While central government has been keen for the police, local authorities and other agencies to tackle ASB, for much of the time that ASB has had a clear definition, the emphasis has been on ensuring that local partnerships deliver an agenda set by Whitehall. As a result performance targets were combined with Home Office funding and intervention teams so that central government could prescribe what local partnerships should do to tackle ASB and how they should go about doing so. This approach overlooked the local nature of ASB, with the issues facing communities and neighbourhoods varying considerably and depending for example on whether they were urban or rural, or had high levels of deprivation or not. The LGA therefore agrees with the assessment in the consultation document that there cannot be a one-size-fits-all approach to ASB. We also agree that it is

Submission

local partnerships and the communities they serve that are best placed to find the solutions to the ASB problems in their area. Empowering those on the ground and the communities they work in is in our view the right way to ensure that ASB is tackled effectively. However such local initiatives will only work if the police, councils and other partners like Registered Social Landlords have the tools and powers available to take effective action.

Effective tools and powers to tackle anti-social behaviour

6. As the review of ASB found, there are now a considerable number of tools and powers available to local partnerships to address ASB. There are a range of factors that determine which tools are used including the costs of obtaining a court order, the speed with which the tool can be used, the sanctions related to the tool, what level of evidence has to be provided before the powers can be used, and as the consultation identified the familiarity of practitioners with the tools being used. The principle of reviewing the toolkit to ensure that practitioners have powers that are flexible, easy and inexpensive to use is in our view the right way to proceed. The LGA therefore supports the objectives in the consultation of giving local practitioners more flexible tools, of shortening the processes and reducing the costs associated with the more formal tools, and to make informal tools more effective so people are not unnecessarily criminalised.
7. We are not convinced that the proposed new powers in the consultation document will give local practitioners the effective range of tools and powers they need if they are to reduce ASB. In particular we are concerned that the proposals will marginalise the role of councils in reducing ASB, with primary responsibility for dealing with ASB falling to the police, while other partners including councils playing a subsidiary role. There are a number of instances where new powers are primarily tools for the police when they were previously ones held by local authorities, suggesting that the government's vision is no longer one of local partners being equally responsible for tackling ASB and more about creating a 'two-tier' level of responsibility for dealing with ASB, with the police having stronger powers than others. This division creates the risk that the police and councils will adopt a silo approach to tackling ASB rather than working together on both prevention and enforcement, which is the most effective means of tackling ASB.
8. A further area of concern is the lack of detail about the transition from the existing toolkit to the new tools and powers. Local authorities (and the police) currently have a range of orders in force including Anti-Social Behaviour Orders (ASBO) and Designated Public Place Orders across parts or all of their authority areas. It is not clear from the consultation what will happen to these orders if the original legislation behind them is repealed. Will they continue in effect or will replacement orders have to be sought, and if so by whom? Related to this is the issue of what orders councils and other bodies should seek and for how long between the consultation ending and new powers coming into effect. The Home Office needs to provide greater detail on how the transition from the existing toolkit and powers to the new toolkit and powers will take place.
9. In the LGA's view the best way of reducing ASB is to prevent it happening at all. Councils have previously invested in a range of preventative measures, for example diverting young people away from anti-social behaviour, as well as investing in street cleaning and other

services that keep areas clean and green and tackle signal crime problems such as abandoned vehicles. With the reductions in budgets faced by all councils and other public services, early intervention to reduce ASB will be much more difficult to finance, and further consideration should be given to this preventative work alongside changes in the tools and powers available to tackle ASB.

Criminal Behaviour Orders

10. In many ways a Criminal Behaviour Order seems very similar to the ASBO that is currently available on conviction, and on that basis the changes proposed appear to improve the tool. The detail in some areas needs to be expanded to allow proper comparison with the existing provisions. For example it is not clear whether the prohibitions that could be attached to the Order as wide ranging as those that can be attached to an ASBO.
11. We welcome the fact that the positive requirements that can already be imposed on an offender to take action to address their behaviour will be incorporated into the Order. Where used appropriately, positive requirements can have a significant impact on reducing ASB. However providing positive support for adults will not be easy. Services in this area are less well developed than they are for young people, and cuts in public spending will mean there will be even less provision of these services in the future. Consideration will have to be given to how these positive requirements could be funded, and if it is expected that local authorities will have a role in delivering these services, then the Home Office will need to engage with local government to ensure that further burdens are not placed on councils.

Crime Prevention Injunction

12. The intention behind the injunction of creating a genuine civil order that allows local partners to deal with the cumulative impact of some sorts of behaviour is welcome. If it is to work as a tool that can be quickly obtained to protect victims and communities it will have to be a genuinely civil court order obtained on the 'balance of probabilities' rather than having to be proved 'beyond reasonable doubt'. To that end it would probably be a more useful tool if the test used by the court to decide on whether to impose an injunction is lowered from the definition in the Crime and Disorder Act to that in place for Anti-Social Behaviour Injunctions of 'conduct causing or likely to cause nuisance or annoyance to a person not of the same household as himself'.
13. The key issue in deciding how effective the injunctions are as a tool in tackling ASB will depend on the sanctions for breach of the injunction. The fact that any breach of the injunction, where there is no power of arrest, is dealt with as contempt of court, would mean an application is made to the court with the defendant being given notice of the hearing. Offenders already try and delay hearings when an ASBO is being sought, and there is the strong risk that legal procedures will be used in these instances to delay the breach being taken to court. In addition the requirement that a breach of the injunction has to be proved 'beyond reasonable doubt' means that councils, and others, enforcing the injunctions will have to go to considerable expense and effort to prove they have been breached. This will have an impact on how effective offenders view the injunction and their usefulness to practitioners as a tool.
14. Furthermore, there is not enough detail about what the nature of the

risk of harm to an individual or community would have to be before a power of arrest was attached to the injunction. This should not be set at such a low level that it applies to behaviour which does not count as ASB in most people's minds, but should not be set so high that a considerable amount of ASB does not qualify for a power of arrest to be attached to the injunction. It would also seem that as the injunction would be a purely civil matter, even if heard in the Magistrates' Courts, that the police would have no role in enforcing them, as they currently do with all ASBOs because breach is a criminal offence. As a result of these issues the LGA has considerable concerns that the injunctions will ultimately prove to be less useful tools than ASBOs in tackling ASB.

Community Protection Order

15. Rationalising the range of place-related ASB tools and powers to make it easier for practitioners to use is sensible. The LGA therefore supports the proposed bringing together a range of existing powers into one tool. However the reason for the division between the two levels is not clear and there appears to be an inconsistency in approach on enforcement. Failure to comply with a Level 1 order (which covers littering and graffiti) a criminal offence, when breach of the crime prevention injunction will not have any criminal sanctions, and it is again unclear what the rationale for this difference is.

Direction Power

16. Again rationalising the range of powers available for dispersing people causing ASB is sensible. However the current powers are exercised by the police in consultation with the local authority or in some cases councils have responsibility for making the orders, and the proposals would hand these to the police alone. It is also unclear how local authority staff would fit within the framework proposed, as the proposals refer to only police constables and Police Community Support Officers, when council wardens and enforcement teams are already involved in asking people to dispose of alcohol, and some council staff enjoy these powers under the community safety accreditation scheme.

17. An additional concern on the LGA's part is that the use of dispersal powers can be highly controversial, which is why the current powers are dependent on consultation requirements and the agreement of the local authority. The changes would mean that the police alone would be able to make decisions about dispersal without consultation or providing the local authority or the community with the option of expressing their views on the proposal. While this is understandable in terms of trying to increase the speed with which the powers can be used, it may lead to greater tensions with some communities or sections of communities if they are not involved in the decision to make an order.

Community Trigger

18. The problems that some vulnerable victims of ASB face set out in the section on the proposed community trigger are serious and need to be addressed, but the LGA is not convinced that a community trigger is the best means of addressing them. Vulnerable victims suffering from targeted ASB are less likely than others to be able to activate the Community Trigger in the first place. It is much more likely to be used well organised and vocal individuals and groups who generally are good at raising their concerns and issues.

19. In the LGA's view the Community Trigger mainly creates a new complaints system that will then sit alongside existing complaints

procedures, and the Community Call for Action processes. Given the range of ASB related complaints that the police and local authorities already receive (include noise nuisance related complaints for example) it is possible that the trigger could be activated a number of times, diverting the limited resources councils and the police have away from tackling ASB.

20. The government is encouraging the development of ASB casework management approaches amongst the police and partners. In the LGA's view the results from this work is much more likely to create the multi-agency working and exchange of information to ensure that targeted and sustained ASB against vulnerable victims is identified early and dealt with. There are a range of complaints mechanisms already in place by which residents can raise issues, and these provide a means for raising the complaints without creating a new system.
21. The LGA also takes the view that the role of the police and crime commissioner in holding the community safety partnership to account for its response is unnecessary. Community safety partnerships are already held to account under the Police and Justice Act 2006 through crime and disorder overview and scrutiny committees, and these committees provide an adequate means for holding the partnership to account without giving the police and crime commissioner an overlapping role in partnership accountability.

ASB in social housing

22. One particular issue that the consultation has mentioned but not developed substantive proposals on is the issue of ASB committed by social housing tenants. The consultation makes reference to making breach of the new orders grounds for eviction, and the government's stated intention of speeding up the eviction of social housing tenants by making breach of ASB orders a mandatory ground for possession. No further detail is provided on these proposals however. Similarly we understand the Ministry of Justice has proposals to ensure that community impact statements can be utilised in housing possession cases where the tenants have been involved in ASB, but have not more information on the proposals.
23. In the LGA's view more needs to be done to ensure that the small minority of social housing tenants involved in ASB understand that if they persist in making the lives of their victims and the communities they live in miserable then they are at significant risk of losing their home. We would therefore be keen to work with the Home Office in giving further consideration to what can be done to address ASB by social housing tenants.