

## ROTHERHAM BOROUGH COUNCIL – REPORT TO MEMBERS

1.	<b>Meeting:-</b>	<b>Democratic Renewal/Sustainable Communities Scrutiny Panels</b>
2.	<b>Date:-</b>	<b>21<sup>st</sup> April 2011</b>
3.	<b>Title:-</b>	<b>Home Office Consultation re: More Effective Responses to Anti-Social behaviour</b>
4.	<b>Directorate:-</b>	<b>Neighbourhoods and Adult Services</b>

### 5. Summary

The Government is holding a consultation on reforming Anti-Social Behaviour (ASB) legislation, consolidating and simplifying various tools and powers, including the removing of Anti-Social Behaviour Orders (ASBO's) in England and Wales and replacing them with a range of measures to combat ASB.

The document was published by the Home Office on Monday 7<sup>th</sup> February 2011 and the consultation period ends on 3<sup>rd</sup> May 2011.

It has been agreed that there will be a corporate response from the Council to these proposals and to that end local consultation has taken place to identify areas of concern and support to be fed back to the Home Office.

In line with new corporate reporting protocols on Government consultations this consultation is assessed as being "service specific" and, therefore, requires Cabinet Member and associated Scrutiny Panel consideration. Accordingly, the report has been considered at the Cabinet Member for Safe and Attractive Neighbourhoods delegated powers meeting on the 18<sup>th</sup> April 2011 and any variation to decision will be provided direct to the Scrutiny Panel meeting. The detail of the consultation has been previously circulated to members of the Democratic & Renewal Scrutiny Panel and comments received have been referred to the Cabinet Member for Safe and Attractive Neighbourhoods to inform the drafted consultation response.

### 6. Recommendations

**It is recommended that the Democratic Renewal/Sustainable Communities Scrutiny Panels consider the detail of the report and the associated corporate response to the Government consultation**

## 7. Proposals and Details

Anti-social behaviour despite local success in Rotherham in reducing the level of complaint (8% percentage drop (1,071 less reporting of incidents) continues to be an area that both individuals and local communities have concern. This is recognised within the recent analysis presented in the Safer Rotherham Partnership's Joint Strategic Intelligence Assessment and which has resulted in ASB being prioritised by the SRP as an area which will get focused attention by both the Joint Action Group and local Neighbourhood Action Groups and Safer Neighbourhood Teams.

In dealing with ASB in Rotherham we have ensured that we have combined key strategic elements so that we are addressing both local and Borough wide concerns. These activities, including preventative work, community communication, and rehabilitation have been under-pinned by collaborative and effective use of the range of enforcement tools and powers.

The Coalition Government have announced plans to reform the enforcement & broader response "toolkit" available for tackling anti-social behaviour. The Home Secretary's announcement in July last year that she intended to abolish Anti-Social Behaviour Orders (ASBO's) attracted a lot of media attention. This consultation makes it clear that ASBO's may go, but they will be replaced with other tools, some of which do not look very different from those tools and powers that exist now. However, the consultation does signal an intention to simplify and streamline these along with a commitment to increasing flexibility at the local level and reducing central prescription.

Local consultation on these proposals has taken place centered around the existing multi agency partnership which sits as the current ASBO panel in Rotherham and includes amongst others, Community Safety Unit, South Yorkshire Police, RMBC Anti Social Behaviour Unit, Legal Services, Youth Offending Team, Family intervention team, Neighbourhood Crime and Justice Manager and in addition 2010 Rotherham Ltd and Public Protection management.

The consultation document suggests, amongst other things, that ASBO's and "other court orders introduced to deal with anti-social individuals" be abolished and replaced with the following tools which are discussed in further detail in Appendix 1.

- **Criminal Behaviour Order;** Issued by the courts after conviction. The order would ban an individual from certain activities or places and require them to address their behaviour.
- **Crime Prevention Injunction;** Designed to nip bad behaviour in the bud before it escalates.
- **Community Protection Orders;** Place-specific orders, bringing together a number of existing measures.
- **Police "direction" powers;** Provides the ability to direct any individual causing or likely to cause crime or disorder away from a particular place and to confiscate related items.
- **Informal tools and out-of-court disposals;**

- **Informal Tools;** Informal tools such as warning letters and Acceptable Behaviour Agreements
  - **Restorative Justice**
  - **Out-of-court Disposals;** Out-of-court disposals, such as cautions, conditional cautions and penalty notices for disorder (PNDs)
- **Community Trigger;** A proposal “to give people more power to shape the way the police and other agencies respond to the issues that matter in their area

A comparison between the existing raft of existing ASB Tools and Powers and the above new enforcement direction are presented in summary at Appendix 2.

In addition to the consultation on the changes in enforcement etc powers the consultation paper also provides an insight to government policy direction in relation to;

- **Changes to the recording of ASB;** The current 14 categories reduced to 3 ('environmental', 'nuisance' and 'personal').
- **Focus on identifying vulnerable victims;** To enable appropriate response to reduce the risk of harm.
- **Commitment to introduce a cost effective national '101' number** as a single route of reporting non-emergency incidents.
- **Enabling communities to get involved;** supporting projects such as 'Volunteer Street Patrols' and a 'Community Safety Accreditation Scheme'

## 8. Finance

At this stage the financial implications for RMBC are unknown. Should the proposals become reality there is a risk costs could increase in respect of obtaining the various orders through the courts should the numbers applied for increase substantially due to the ease and speed of the new process. It is accepted that any increase in costs will have to be absorbed by the Council and Partners within existing budgets.

Also the need to have positive activities and services available for those subject to the various orders could have financial implications for Local Authorities and other agencies.

## 9. Risks and Uncertainties

The new legislation will naturally raise issues around understanding and practical application of the new tools and powers by both RMBC staff and partner agencies allied to publicity informing our communities of the changes, together with the following:

- Failure to effectively tackle ASB is likely to have a detrimental effect on the reputation of the Council and that of our partners. It is essential that delivery matches expectations of our communities.
- The speed of transition to the new arrangements will be an issue depending upon the level of partnership agreement required to realise new policies and procedures and to have a agreed consistent approach.
- It is believed by practitioners that it is essential to maintain our joint Police/ASBU enforcement 'team' capability and approach. Current indication is that the Police Officer secondments for 2011/12 are not assured.

## 10. Policy and Performance Agenda Implications

The ASB Strategy impacts on all agendas around the Community Strategy's SAFE theme and is both a national and Safer Rotherham Partnership priority. There is clear linkage with the objectives of the Corporate Plan;

- *helping to create safe and healthy communities, and*
- *ensuring people feel safe where they live, particularly that Anti-Social behaviour and crime is reduced and people from different backgrounds get on well together.*

Tackling Anti Social Behaviour is a key priority for the coming year as set out in the RMBC Corporate Plan along with the Safer Rotherham Partnership and South Yorkshire Police and agreed in the Joint Strategic Intelligence Assessment (JSIA) for Rotherham. In addition following the outcome of the consultation the following actions are likely to be required:

- The existing anti-social behaviour strategy and policy documents will require some updating.
- The Statutory Policy & Procedures of the Council with respect to its housing management function will require amendment
- The existing joint RMBC/South Yorkshire Police 'ASBO' protocol will need to be replaced with a new protocol in line with the new legislation.
- Also there is likely to be some impact on staff demand and time particularly by legal services, the anti-social behaviour unit team and Community Safety Unit.

## 11. Background Papers and Consultation

More Effective Responses to Anti-Social Behaviour - Home Office, Consultation

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## **Proposed Response to the ASB Tools & Powers Consultation.**

### **1. Criminal Behaviour Orders**

Issued by the courts after conviction. The order would ban an individual from certain activities or places and require them to address their behaviour.

It is envisaged that this will be a civil order available on conviction for any offence (This will replace the ASBO on conviction). It would be additional to the court's sentence and available in all criminal courts for anyone over the age of criminal responsibility (10 years of age).

It will allow the court to impose a range of prohibitions or positive requirements, with the aim of preventing future anti-social behaviour allied to addressing any underlying causes of their behaviour.

The prosecutor would apply for this normally, though courts could impose one at their discretion. Breach of the order would be a criminal offence with a maximum sentence of 5 years in custody.

#### **Response:**

***In general terms there is little change in this proposal to the existing arrangements. It is felt it would be useful to ensure that there is a minimum term of 2 years and no maximum term for adults and no minimum term for juveniles and a maximum term of 2 years. There should be an inbuilt review process at the half way point or 12 months whichever is the longer.***

***There are potentially financial implications for the Local Authority in providing a response to court requirements for positive activity such as youth services/ sporting activity/ Family Intervention Teams and so on.***

### **2. Crime Prevention Injunctions**

Designed to nip bad behaviour in the bud before it escalates. The injunction would carry a civil burden of proof (on the 'balance of probabilities' rather than 'beyond reasonable doubt'), making it quicker and easier to obtain than previous tools.

The aim is to create a purely civil court order that agencies can secure quickly to stop an individual's anti-social behaviour and protect victims and communities. It could also include both prohibitions and positive requirements (This will replace the ASBO, ASBO injunction, Intervention Orders and Individual Support Orders).

To secure a Crime Prevention Injunction, the applicant authority would have to prove to the court 'on the balance of probabilities' that an individual was engaging, had engaged or was likely to engage in anti-social behaviour to one or more persons not of the same household. Hearsay evidence would be permitted, as would the use of professional witnesses. The injunction would include prohibitions on the individual's future behaviour and could also include positive requirements to ensure the individual addressed underlying problems.

**Response:**

***There are substantial similarities with this and the existing ASBO and this is where the Local Authority is able to make an application along with the Police and Registered Social Landlords.***

***It is recommended that the test used by the court should be similar to the one currently used for injunctions, being 'conduct causing or likely to cause a nuisance or annoyance to a person not of the same household as him/herself'.***

***The proposal to include 'likely to engage in anti-social behaviour' needs some clarification to be clear that the injunction can be used as a preventative measure before harm is actually caused. This would be a welcome option.***

***It is felt that District Judges are more experienced at dealing with these types of cases and the experience in Rotherham has been superior in the County Court and this is the recommended venue for adult cases.***

***Alternatively it is felt that the youth court is the appropriate venue for the under 18s.***

***The provision of positive requirements is welcomed but raises concerns around funding of appropriate schemes/projects available in localities and how these would be policed. It would be useful to identify some examples of recommended positive activity.***

***The argument put forward by the Government that ASBO's have failed is not accepted by practitioners in Rotherham. It is felt that overall the experience in Rotherham has been a positive one and that our ASBO process, which relies heavily on the use of 'Acceptable Behaviour Contracts' has proved over a number of years to be a positive and successful way of addressing the behaviour of young people in particular through a mixture of diversionary and more formal activity.***

***This is supported by our statistics, which for example show that over the last the 12 months we have, as a partnership, issued 94 'ABC's' which subsequently resulted in the application for just 3 ASBO's. This is positive evidence in our view that this approach works.***

### **3. Community Protection Orders**

Place-specific orders, bringing together a number of existing measures. There will be one for local authorities to stop persistent environmental anti-social behaviour like graffiti, neighbour noise or dog fouling, and another for police and local authorities to deal with more serious disorder and criminality in a specific place, such as closing a property used for drug dealing.

It is therefore proposed that the Community Protection Order will have two levels of severity:

**Level 1** – Would be a notice issued by a practitioner in cases of environmental anti-social behaviour requiring the offender to desist from their behaviour and/or make good. (Clearing up litter for example). It is suggested these could also be used as an alternative to noise abatement notices in some cases.

**Level 2** – Local Authority or Police would use this power to tackle significant/persistent anti-social behaviour in a particular place. It could involve imposing restrictions on the use of that space, for example having to keep dogs on a lead.

It would require sufficient evidence of anti-social behaviour being provided to a 'Local Authority/Police Officer of a particular rank. (For example Police Superintendent or Local Authority equivalent).

This could lead in more serious cases to evidence being presented to a Magistrates Court to obtain an order to close premises regardless of tenure. (This would replace a number of orders such as 'dog control orders', 'gating orders', 'premises closure order', 'crack house closure order' and 'designated public place order'.)

#### **Response:**

***This proposal is seen as being a useful tool for the Local Authority and Police and should replace a number of existing orders, making the process easier and quicker to use and making it possible to provide a timely response to address relevant problems in our communities.***

***It is suggested in the proposals that the 'CPO' would be considered in the first instance rather than use of a fixed penalty notice ( FPN) . A breach of the 'CPO' is a criminal offence which could be dealt with by a 'FPN' or process to Court.***

***Existing statutory nuisance legislation set out in the Environmental Protection Act 1990 remains unchanged which leaves some element of duplication.***

***The inclusion of the ability to close premises 'regardless of tenure' in the legislation is particularly welcomed.***

#### **4. Police "direction" powers**

Provides the ability to direct any individual causing or likely to cause crime or disorder away from a particular place and to confiscate related items.

- The Anti-Social Behaviour Act 2003 gave the police in England and Wales new powers to disperse groups of two or more people from areas where there is persistent ASB
- The 2003 Act also introduced the power to take home any young person under 16 who is out on the streets in a dispersal zone between 9pm and 6am and not accompanied by an adult
- The Violent Crime Reduction Act 2006 gave a uniformed constable the power to direct an individual aged 16 or over to leave an area – and not return for up to 48 hours - if they believe their presence is likely to contribute to alcohol-related crime and disorder
- Designated Public Places Orders give the police the power to confiscate alcohol in designated areas

A person asked to leave an area under one of these powers has not committed an offence, but refusal to comply is a criminal offence.

It is proposed to combine the most effective elements of these various powers into a single, simpler Police power to direct people away from an area where they are committing or are likely to commit anti-social behaviour.

The Direction power would enable a constable or PCSO to require a person aged 10 or over to leave a specific area, and not return for up to 48 hours. The tests for the issuing officer would be:

- that the individual has committed crime, disorder or anti-social behaviour or is likely to cause or contribute to the occurrence or continuance of crime, disorder or anti-social behaviour in that area
- that giving the direction was necessary to remove or reduce the likelihood of that individual committing crime, disorder or anti-social behaviour in that area

The power could also include **optional** secondary requirements, such as requiring the individual to surrender items (such as alcoholic drinks) contributing to their anti-social behaviour.

The area the individual was required to leave would be defined by the officer issuing the direction. In some cases (e.g. regarding well-known ASB hotspots), this could mean giving the perpetrator a map with the designated area clearly marked, as some police forces do already.

The power could also include the ability to return home unaccompanied young people under the age of 16, subject to appropriate safeguards.

This power would be available to Police Officers and PCSO's only.

#### **Response:**

***The fact that existing orders will be combined and made simpler to use is welcomed. There are some concerns that young people in particular could be disproportionately subject to this action.***

***There is also concern that a single Police Officer or PCSO could initiate this power and it is felt that it would be beneficial to have some safeguards built into the process which could include:***

- ***The requirement to have the authority of a Police Inspector or above to initiate the power.***
- ***To liaise with the landowner as soon as possible, (NOT for the purpose of initiating the power) for example the Local Authority or Parish Council regarding problems on playing fields. This will ensure the landowners are made aware of the issue and involve them in action to reduce/prevent further problems in the future.***
- ***It would be beneficial to include the option for 'secondary requirements' and to have the ability to take children under 16 home as proposed.***

#### **5. Informal tools and out-of-court disposals**

Informal tools and out-of-court disposals are an important part of the professionals' toolkit for dealing with anti-social behaviour, offering a proportionate response to first-time or low-



level incidents. One of our objectives in reforming the approach to anti-social behaviour is to make this kind of early intervention more effective, so that fewer people – young people in particular – go onto more serious offending.

### **Informal Tools**

Informal tools such as warning letters and Acceptable Behaviour Agreements (known as Acceptable behaviour contracts in Rotherham) are often used to deal with low-level anti-social behaviour, with one intervention frequently enough to stop the behaviour recurring. ABAs can be used by any agency with perpetrators of all ages and backgrounds and their flexibility enables them to be tailored to the individual circumstances. At the moment, they tend to consist of an agreement between the perpetrator and a practitioner, but some local areas are exploring ways of engaging the community and making them more restorative.

### **Restorative Justice**

The Home Office is working with the Ministry of Justice to make the informal and out-of-court tools for dealing with anti-social behaviour more rehabilitative and restorative. That includes ensuring that community and restorative solutions can be used to address community issues. This will ensure that any disincentives for police officers to use restorative justice methods to deal with community incidents which would be best addressed outside the formal criminal justice system are removed - giving victims a more immediate and proportionate response, as well as saving time and money.

### **Out-of-court Disposals**

Out-of-court disposals, such as cautions, conditional cautions and penalty notices for disorder (PNDs), are intended for dealing with low-level, often first-time offending, where prosecution would not be in the public interest.

The MOJ is examining the use of out-of-court-disposals and has published a Green Paper (Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders) containing a number of proposals for consultation which are relevant to the ASB review.

In relation to adult out-of-court disposals, the Green Paper proposes amending the PND scheme to allow suspects to pay to attend appropriate educational courses as an alternative simply to paying a financial penalty. This will help individuals to understand the harm caused by their conduct and reduce the likelihood of further offending. It also seeks views on simplifying the out-of-court disposals framework by bringing police powers to use simple and conditional cautions in line with their powers to charge suspects.

In relation to under 18s, the consultation proposes ending the current system of automatic escalation of out-of-court disposals for young people and returning discretion to front-line professionals as there are concerns that this has had the effect of escalating young people into court and custody more quickly than would otherwise be the case.

The Home Office are working with the Ministry of Justice (MOJ) to ensure that out-of-court disposals for young people include swift, restorative sanctions with real consequences for non-compliance, as well as encouraging parents to take more responsibility for their children's behaviour.

**Response:**

***These proposals are welcomed. It is believed by practitioners that it is often the informal activity which is most successful in addressing behaviour. We have already highlighted our success with the Acceptable Behaviour Contracts in Rotherham and along with the restorative justice activity we would see this approach continuing.***

***We welcome the proposals regarding the PND scheme and in particular the means of dealing with those under 18 years.***

## **6. Community Trigger**

The consultation paper also canvasses the idea of a “Community Trigger” a proposal “to give people more power to shape the way the police and other agencies respond to the issues that matter in their area, particularly those who have experienced sustained, targeted anti-social behaviour”. This would involve the creation of a new duty on Community Safety Partnerships (CSP) to deal with persistent anti-social behaviour suffered by victims or communities. The duty would be triggered by certain criteria. The proposed criteria being that five individuals, from five different households in the same neighbourhood, had complained about the same issue, and no action had been taken; or that the behaviour in question had been reported to the authorities by an individual a minimum of three times and no action had been taken. It is suggested a CSP would be able to reject the complaint if they deemed it to be malicious.

**Response:**

***Overall this is seen as a positive move which gives power to the victim and a means of obtaining assistance where there has been little or no response from agencies.***

***There is clearly a risk of this tool being misused by some people in an attempt to obtain additional resources to address their problem or being malicious. (Though it is proposed that a community safety partnership could reject a complaint in certain circumstances)***

The following actions of wider reform are also included in the consultation document:

## **7. Focussing the Police and Partners on what matters to the public:**

- From 1<sup>st</sup> April 2011 the Police are introducing a simpler system of recording incidents of anti-social behaviour. This will see fourteen categories reduced to three- ‘environmental’, ‘nuisance’ and ‘personal’. This should help identify the appropriate response based on the risk of harm to the victim.
- The Government is committed to looking at a cost effective way of introducing a national ‘101’ number as a single route of reporting non-emergency incidents.
- Police data on anti-social behaviour incidents will be published quarterly alongside official crime statistics.

- A national pilot is presently taking place involving eight Police Forces looking at improving the handling of calls from the public about anti-social behaviour and protecting repeat and vulnerable victims.

**Response:**

***All of these actions are universally welcomed and are seen by those dealing with anti-social behaviour as positive moves which will help to improve the quality of service provided to our communities.***

***The introduction of the national '101' number is seen as being particularly important for our communities as a recognised single contact number to report ASB.***

***It is hoped that the national pilot looking at improving handling of calls from the public and protecting repeat and vulnerable victims recognises that Local Authorities play a part in this process in taking calls about ASB and that a shared ASB recording and case management system with the Police would be of great benefit to all concerned.***

**Enabling communities to get involved:**

The Government is also supporting projects such as 'Volunteer Street Patrols' where members of the public provide a visible presence on the streets and a 'Community Safety Accreditation Scheme', which recognises the role of Neighbourhood Wardens, Park Rangers, Security Guards and so on, providing them with training which could lead onto being given limited powers to tackle anti-social behaviour.

**Response:**

***There is a cautious welcome to these proposals, various accreditation schemes already exist, but there are obvious risks in both cases in relation to safety and vigilante aspects. There would certainly need to be an identified 'management' process for these activities to ensure accountability, training and performance issues.***

**TABLE OF COMPARISON BETWEEN THE EXISTING SYSTEM AND THE PROPOSED CHANGES:**

<b>Existing system</b>	<b>Proposed changes</b>
ASBO on conviction	‘Criminal Behaviour Order’ - available on conviction for any criminal offence, and including both prohibitions and support to stop future behaviour likely to lead to further anti-social behaviour or criminal offences. ‘Crime Prevention Injunction’ - a purely civil order with a civil burden of proof, making it much quicker and easier to obtain. The injunction would also have prohibitions and support attached, and a range of civil sanctions for breach.
ASBO	
Interim ASBO	
ASB Injunction	
Individual Support Order (ISO)	
Intervention Order	
Crack House Closure Order	Community Protection Order (Level 2) – a local authority/ police power to restrict use of a place or apply to the courts to close a property linked with persistent anti-social behaviour.
Premises Closure Order	
Brothel Closure Order	
Designated Public Place Order	
Special Interim Management Orders	
Gating Order	
Dog Control Order	
Litter Clearing Notice	Community Protection Order (Level 1) – a notice issued by a practitioner to stop persistent anti-social behaviour that is affecting quality of life in an area or neighbourhood, with a financial penalty for non-compliance, or other sanctions where relevant e.g. the seizure of noise-making equipment.
Noise Abatement Notice	
Graffiti/Defacement Removal Notice	
Direction to Leave	Police ‘Direction’ power – a power to direct any individual causing or likely to cause crime or disorder away from a particular place, and to confiscate related items
Dispersal Order	