

PART 3 – RESPONDENT INFORMATION FORM

THE ANTISOCIAL BEHAVIOUR ETC. (SCOTLAND) ACT 2004 CONSULTATION DOCUMENT – JUNE 2014

Please Note this form must be returned with your response to ensure that we handle your response appropriately

1. Name/Organisation

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Barnardo's Scotland

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3. Permissions - I am responding as...

Individual

/ Group/Organisation

Please tick as appropriate

(a) Do you agree to your response being made available to the public (in Scottish Government library and/or on the Scottish Government web site)?

Please tick as appropriate Yes No

(b) Where confidentiality is not requested, we will make your responses available to the public on the following basis

Please tick ONE of the following boxes

Yes, make my response, name and address all available

Yes, make my response and name available, but not my address

Yes, make my response available, but not my name and address

(c) The name and address of your organisation *will be* made available to the public (in the Scottish Government library and/or on the Scottish Government web site).

Are you content for your *response* to be made available?

Please tick as appropriate Yes No

(d) We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Please tick as appropriate Yes No

Introduction

Barnardo's Scotland is Scotland's largest children's charity, running over 120 services across Scotland and working with over 20,000 children and families every year. We work with some of the most vulnerable and disadvantaged children and families in Scotland; we do a wide range of work within the justice sector, both inside and outside the prison estate. We provide targeted and tailored support to young people leaving custody as well as young people displaying challenging behaviours, often as a consequence of other underlying vulnerabilities.

Our response to this consultation is therefore based on our experience of working with children and young people across Scotland who often have complex needs and vulnerabilities. With this in mind, Barnardo's Scotland welcomes the decision to review the Antisocial Behaviour etc. (Scotland) Act 2004 and we have responded to the relevant questions below.

We have also included an additional section at the end of the document, highlighting our concern with the use of ASBOs for children under 16. For this reason we have responded to the questions based on the procedures and legislation which currently exist, however **our overarching recommendation is that the Scottish Government reviews the use of ASBOs for children aged 12-15 and reviews the UN Committee on the Rights of the Child's recommendation, "that the State party conduct an independent review of ASBOs, with a view to abolishing their application to children."**¹

CONSULTATION QUESTIONS

Antisocial Behaviour Orders - Standard of proof

Q1. Should the legislation be clearer that the standard of proof required when considering an application for an ASBO is 'balance of probabilities' rather than 'beyond reasonable doubt'?

Agree Partially agree Disagree

Please provide reasons for your answer:

To our knowledge, ASBOs for children in Scotland have not been used very widely. The reasons for this are unclear, it may be because they are not needed, or it may be because there remains confusion around the standard of proof needed for an application, or it may be that the multi-agency groups responsible for considering each case are more inclined to use the less punitive measures more commonly associated with the Children's Hearing System.

¹ Committee on the Rights of the Child (2008). *Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/CO/4)*. No 80

Whatever the reason, we believe that there is still an overarching issue with the use of ASBOs for children, especially those as young as 12. The consultation document states that ASBOs are intended to tackle both behaviour **which is likely to escalate to the criminal level**, and patterns of behaviour which cumulatively cause considerable alarm or distress to the community'.² We are concerned about the principle of issuing ASBOs to children for behaviour which is *likely to escalate to criminality*, evidence shows that any contact with the justice system, whether the order handed down is criminal or civil, can increase the likelihood of a young person offending.

Applying an ASBO to a child on the 'balance of probabilities' which could potentially lead to a criminal sanction for breach, before any criminal behaviour has occurred, could be seen as presumptuous with the potential to become a self-fulfilling prophecy. In addition, it is unlikely to address the underlying problems of the young person's negative behaviour.

Therefore, we would not wish to see ASBOs applied *to children* on the 'balance of probabilities', nor the number of ASBOs applied to children increased.

Antisocial Behaviour Orders - Variation of Interim ASBOs

Q2. Should it be possible to vary an interim ASBO if the behaviour of the person who is the subject of the ASBO changes?

Agree Partially agree Disagree

Please provide reasons for your answer:

² Scottish Government (2014) 'Antisocial behaviour etc. (Scotland) Act 2004 Consultation Document' Pg 5

Evidence shows that young people's involvement in crime and anti-social behaviour can be closely linked to peer groups, home environment, experience of education and quite significantly linked to major life events and transitions.³ For these reasons, during the course of an ASBO a young person may well have addressed and improved their behaviour in response to any number of external or internal factors. ASBOs may affect the behaviour of young people, whether positively or negatively.

We agree with the suggestion in the consultation document that a change could be made to the process, to allow for an amendment to be made without having to go through a full application process. We believe that the ability to vary and amend the terms of an interim ASBO would allow greater flexibility to respond to changes in behaviour by the individual concerned. If the application of an ASBO for a young person is meant as a deterrent and a challenge to their antisocial behaviour, they should be given the chance to change their behaviour, therefore either rendering the order no longer necessary or at least resulting in a change in the terms of the order.

Antisocial Behaviour Orders - Service of Orders

Q3. Should the service of both interim and full ASBOs be capable of being made by Sheriff Officers as an alternative to recorded delivery?

Agree Partially agree Disagree

Please provide reasons for your answer:

We welcome the proposal to allow for alternative methods of delivery for interim and full ASBOs. On a practical level, we agree that it would ensure the definite delivery of the order. However, and more importantly, the hand delivery of the order by Sheriff Officers could help to provide an explanation of the order which would comply with the United Nations Convention on the Rights of the Child (UNCRC) Articles 12 & 13, which state that children should be allowed to request information and have a say in decisions which affect them. We note that the Children and Young People (Scotland) Act 2014, Part 1, requires Ministers to take appropriate steps to achieve better or further effect of the UNCRC.

In this regard we agree with the response from Together (Scottish Alliance for Children's Rights) which highlights that Sheriff Officers should work with parents to explain to the young person in question what an ASBO is, what it means, and what it requires of them. This may require Sheriff Officers to undergo some form of

³ McAra, L. & McVie, S. (2010) 'Key messages from the Edinburgh Study of Youth Transitions and Crime' <http://crj.sagepub.com/content/10/2/179.full.pdf+html>

training in order to deliver information and guidance in a child-friendly way and in a manner which the young person can understand.

This may also be an opportunity to look at other methods of delivering ASBOs to children and young people. The role of the Named Person and the Lead Professional should be considered, as well as the process for creating a Single Child's Plan, as laid out in the Children and Young People (Scotland) Act 2014. The Named Person and Lead Professional should already have a role in a young person's life and there is scope to consider what role they could play in helping to explain and communicate the ASBO to the young person.

Antisocial Behaviour Orders - Private Landlords

Q4. Should private landlords be able to receive information about police calls and actions in relation to antisocial behaviour by their tenants?

Agree Partially agree Disagree

Please provide reasons for your answer:

Q5. Should limits be put on the type of information which private landlords may receive?

Agree Partially agree Disagree

Please provide reasons for your answer:

Q6. Should any other controls be in place to ensure that information received by private landlords is not misused?

Agree Partially agree Disagree

Please provide reasons for your answer:

Closure Order Powers – Local Authorities

Q7. Should closure order powers be extended to Local Authorities?

Agree Partially agree Disagree

Please provide reasons for your answer:

We believe that closure order powers should be extended to Local Authorities in order to help address child protection issues. As set out in the consultation document, this would provide police with additional assistance if their own resources are stretched. The use of a civil order to put a stop to the antisocial behaviour often associated with what the consultation describes as 'drug dens', 'party flats', and other places where exploitation and abuse of children and young people can often take place, such as noise pollution, underage drinking and drug taking would be an additional tool to support and advance the criminal sanctions which should ultimately be used to prosecute those who perpetrate such serious crimes.

We have a number of services in Scotland which work to support the victims of child sexual exploitation (CSE) and abuse. Recent reports, police investigations and our direct work on the ground have shown that locations such as private premises, Bed & Breakfasts, taxi ranks and takeaways have been used in the exploitation and abuse of children in Scotland. Situations young people find themselves in can involve being taken to 'party flats' or B & B's, and being forced into drinking, drug taking and sexual activity with strangers. We therefore believe that an extension of closure powers to Local Authorities could provide an additional tool to help tackle and prevent these crimes, alongside the existing criminal sanctions which should ultimately be used to stop such serious crimes

Q8. Should a local authority power to issue closure orders be subject to consultation or other requirements?

Agree Partially agree Disagree

Please provide reasons for your answer:

If closure order powers are extended to Local Authorities then the same consulting duties should apply. The consultation document states that 'sheriff's must take reasonable steps to find out the identity of the person (or people) who lives in, has responsibility for or has an interest in the premises' (page 8). An additional requirement must be that the welfare of any children or young people residing in the establishment are taken into account and made paramount. The sheriff must currently 'consider the vulnerability of anyone in the household who has not been involved in antisocial behaviour', we would like to see any guidance around the extension of closure orders include specific reference to any vulnerable children who may be resident in a

property.

We would also like to highlight the current Scottish Government guidance around Getting It Right For Every Child, and the role of the Named Person and the Lead Professional. The principles of GIRFEC are based around the wellbeing needs of each individual child and these should be taken into account within consulting duties.

Antisocial Behaviour Fixed Penalty Notices

Q9. Should 'drunk in a public place in charge of a child' be removed from the list of Fixed Penalty Notice offences?

Agree Partially agree Disagree

Please provide reasons for your answer:

We agree with the recommendation in the consultation document that this constitutes a severe offence, not a minor problem to be dealt with using an on the spot with a fine. There may well be very serious child protection concerns and the welfare of the child in question must be paramount. Should the procedure relating to this offence be changed there needs to be very clear guidance on the reporting duties of police, and the thresholds for whether or not there is a child protection issue need to be acknowledged.

We also agree that there may be underlying problems behind this specific offence which might need to be dealt with by a much wider number of agencies, such as social work and health. The offender may need help to access wider networks of support such as drug and alcohol rehabilitation, mental health care or parenting support, but overall the best interests of the child concerned must be paramount.

Q10. Should 'malicious mischief' be removed from the list of Fixed Penalty Notice offences?

Agree Partially agree Disagree

Please provide reasons for your answer:

In practice we are unsure as to how this fixed penalty notice would be applied, there may well be a lack of clarity about what the offence means and what behaviour constitutes an offence of 'malicious mischief'.

Q11. Should there be any other changes to the system of ASB Fixed Penalty Notices?

Agree Partially agree Disagree

Please provide reasons for your answer:

Finally, if there are any other issues that you wish to raise regarding antisocial behaviour in Scotland, not covered by this consultation document, please use your Respondent Information Form to share these with us.

Other issues

Barnardo's Scotland supports the view of Together (Scottish Alliance for Children's Rights) that the Scottish Government should consider conducting a wider review of the use of ASBOs in Scotland. Any update to the legislation should take into account the impact on children and young people, whether they are personally involved in anti-social behaviour as perpetrators or victims, or they are the dependents of adults who are engaged in anti-social behaviour.

We remain concerned about the viability and effectiveness of using ASBOs for children and young people, especially the provisions extending the use of ASBOs to 12-15 year olds through the 2004 Act.

As Mike Pringle MSP noted in the Stage 1 debate of the Act in 2004,

*'The root causes of antisocial behaviour are complex and varied. They include family problems, parental criminality, poor parental control and supervision, lack of parental care and consideration and problems at school, such as non-attendance and lack of motivation'*⁴

Our services work on a day to day basis with children and families who are struggling to cope with multiple adversities, and these families often require intensive support. Whilst we understand and appreciate the original policy intention behind using ASBOs as a deterrent for children and young people who persistently engage in antisocial behaviour, we would highlight that this may not be particularly effective in practice, and there may be other ways in which to deal with problematic behaviours.

However, the use of ASBOs for children aged 12-15 appears to be low across Scotland. In the period from their introduction in 2004 to 2007, only 6 orders had been granted against children, out of 96 cases being considered.⁵ This is to be welcomed, and may well be down to the seemingly strict provisions in the Act which require a case conference to be held and the Children's Reporter to be consulted before a local

⁴http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4499&mode=html#job_33042

⁵ ibid (Pg 2)

authority can apply for an order. However, since 2006, data has not been collected by the Scottish Government on the number of ASBOs granted to young people, so it is not possible to get an accurate reflection of the current situation.

Patrick Harvie MSP stated during the passage of the original Bill:

'There is no focus [in the bill] on the causes of antisocial behaviour, no commitment to the welfare principles of the children's hearings system and no respect for the organisations that work to change behaviour' ⁶

The Children's Hearings System is the cornerstone to our youth justice system in Scotland. It is built on principles of inclusion, participation and respect and the notion that offending and welfare should be dealt with in the same way. The Children's Hearings System aims to work collaboratively with partners in order to decide the most appropriate course of action to deal with the child or young person who has been referred. This uniquely Scottish system accepts that children under the age of 16 should not be routinely dealt with through the adult justice system, the continued existence of ASBOs for 12-15 year olds goes against these very principles.

The original provisions were designed to work as a deterrent to young people, young people who had a "lack of respect for authority, or thought they couldn't be touched". ⁷ There is a wealth of criminological evidence which shows that punitive responses to this perceived bad behaviour do not work. In England and Wales the use of ASBOs for 'disruptive teens' has not always had the desired effect, the orders were often seen as a novelty and a 'badge of honour', but, more dangerously, holding the potential to criminalise children. The Edinburgh Study of Youth Transitions and Crime has shown that any contact with the criminal justice system is likely to draw the 'usual suspects' into a cycle where they become more and more deeply involved with the system.⁸ We would argue that responses to persistent antisocial behaviour by children should be no more punitive and severe than responses to offending behaviour by children. It does not seem appropriate then that a child who offends remains in the Hearing System, but a child who persistently engages in antisocial behaviour may end up with a criminal sanction from the Sheriff Court through breach of an ASBO.

As Elaine Smith MSP pointed out through her amendment during the stage 2 debate on the original Bill *'Court-based action to try to tackle antisocial behaviour in children is likely to create more persistent offenders among children and could draw them into a future life of crime'* ⁹

⁶http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4499&mode=html#iob_33042

⁷ ibid

⁸ <http://crj.sagepub.com/content/10/2/179.full.pdf+html>

⁹http://www.scottish.parliament.uk/parliamentarybusiness/28862.aspx?r=4499&mode=html#iob_33042

We believe that this consultation provides a platform to look again at the use of ASBOs for 12-15 year olds and review their use and effectiveness over the last decade. Mary Mulligan MSP, who was at the time Deputy Minister for Communities, stated that ASBOs should be used for young people *'only when appropriate and that they are effective in changing damaging behaviour and are also about concentrating the mind of the young person involved on engaging with those who can offer them support to change their behaviour'*¹⁰.

We would question whether there is any evidence of an ASBO being effective, as a standalone measure, at changing the damaging behaviour of a young person. Evidence shows that personal, positive relationships and one to one support, based around the GIRFEC wellbeing principles and asset based approaches, are most effective at reducing levels of antisocial behaviour and offending in young people. In addition, a punitive sanction, such as an ASBO, is highly unlikely to encourage a young person to engage with support mechanisms.

Conclusion:

It has been noted that the current Scottish Government have taken a more "compassionate approach to juvenile justice" than previous administrations,¹¹ especially with the introduction of the whole systems approach, and this is to be commended. However, we believe that the extension of ASBOs to 12-15 year olds in the 2004 Act is now out of step with the ethos and aspirations of the current Scottish Government to make Scotland the best place in the world to grow up. Many MSPs in the Stage 2 debate described the extension of ASBOs to 12-15 year olds as 'another tool in the box'. We believe it is now time to reassess whether this tool is still fit for purpose, or indeed if it is necessary at all.

We would urge the Scottish Government to reassess the use of ASBOs for children with a view to instead, utilising fully the mechanisms in the Children's Hearings System to deal with their antisocial behaviour, whilst taking cognisance of the UN Committee on the Rights of the Child, who recommend "that the State party conduct an independent review of ASBOs, with a view to abolishing their application to children".¹²

¹⁰ *ibid*

¹¹ McAra, L. (2014) 'Apex Scotland, Annual lecture'

¹² *Committee on the Rights of the Child (2008). Concluding Observations: United Kingdom of Great Britain and Northern Ireland (CRC/C/GBR/ CO/4). No 80*