

## **More Effective Responses to Anti-Social Behaviour Response from the Sentencing Council**

### **Introduction**

The Sentencing Council for England and Wales welcomes the opportunity to respond to the Home Office's consultation paper on *More Effective Responses to Anti-Social Behaviour*.

The Sentencing Council is an independent body. It is made up of 8 judicial members (comprising representatives of all ranks of the judiciary) and 6 non judicial members who are experts in different aspects of criminal justice. The Council has agreed that it will:

- promote a clear, fair and consistent approach to sentencing;
- produce analysis and research on sentencing; and
- work to improve public confidence in sentencing.

The Council was established by Part 4 of the Coroners and Justice Act 2009 and came into being in April 2010. The Council fulfils the following functions in line with the Act:

- prepares sentencing guidelines;
- publishes the resource implications in respect of the guidelines it drafts and issues;
- monitors the operation and effect of its sentencing guidelines;
- assesses the impact of policy and legislative proposals, where it is asked to do so by the Lord Chancellor;
- promotes awareness of sentencing and sentencing practice; and
- publishes an annual report that includes the effect of sentencing and non sentencing practices.<sup>1</sup>

The Council is therefore responding to those topics within the consultation paper that relate to its remit and functions. When responding to the consultation paper, the Council has had regard to the following principles:

- that there should be a clear, fair and consistent approach to sentencing;
- that the impact of sentencing on victims of offences should be considered;
- that public confidence in sentencing and the broader criminal justice system should be promoted;
- that sentencing should support the delivery of an efficient and effective criminal justice system;
- that the role of legislation is to set the parameters for sentencing and that the role of guidelines is to provide a framework within which the court can approach sentencing in a consistent manner.

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<sup>1</sup> For the purposes of this response, the most relevant non sentencing practice is breaches of orders.

## **General comments**

The Council agrees with the consultation paper's assertion that the current framework of powers to deal with anti-social behaviour is overly complex, and has grown up in a piecemeal fashion. This complexity can make the framework confusing for the courts, practitioners and the public.

As a result, the Council welcomes the proposal of consolidating existing powers into a smaller number of new powers.

The Council notes the proposal to add positive requirements to the current prohibitive requirements. For offenders sentenced to a short custodial sentence, fine or discharge, the positive requirements might provide a useful addition to existing court powers. However in some cases, the addition of positive requirements may not in practice add to courts' powers. For example, for offenders sentenced to a suspended sentence or a community order (or their equivalents for young offenders), it is difficult to envisage what added value the Criminal Behaviour Order's positive requirements might have. Both sentences already give courts the power to set positive requirements to address the causes of offending behaviour.

Simplifying and consolidating the current range of court powers brings with it the need to ensure simpler but proportionate breach arrangements and the Council is pleased to see that breach arrangements are raised in the consultation document. This is particularly the case with the proposal for a Crime Prevention Injunction, which will consolidate four current powers that are based on very different thresholds of behaviour, and which involve very different types of requirement. The Council believes that, rather than trying to import maximum penalties and breach arrangements from existing powers into the new powers, it is important to consider these arrangements from first principles. Otherwise there is a risk that the proposals may perpetuate the current picture on breach of ASBOs, rather than achieve their aim of streamlining the process and tackling the underlying causes of anti-social behaviour.

The consultation asks for views in relation to both Community Behaviour Order and Crime Prevention Injunctions on whether there should be a maximum and/or minimum term for requirements to last. In the interest of maximising discretion while ensuring proportionality, and in line with the Council's view that legislation should be used to set broad parameters, the appropriate solution may be for legislation to set a maximum length of term with a more detailed framework set out in guidance.

The Council has a statutory responsibility to prepare sentencing guidelines; publish resource implications for those guidelines it drafts; and to monitor the operation and effect of those guidelines. The Council's predecessor (the Sentencing Guidelines Council) published a guideline on breach of an ASBO, which would need to be revised if the consultation paper's proposals to introduce a Community Behaviour Order and Crime Prevention Injunction go ahead. Should the result of the consultation, and the resulting legislation, be that the Home Office decides to introduce the two new orders the Council is happy to consider what guidelines might be appropriate in relation to breach. The Council would be pleased to discuss with the Home Office what support it can provide as the proposals go forward.

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