



## **PUTTING OUR COMMUNITIES FIRST – CONSULTATION RESPONSE**

### **General Comments**

SACRO is a national community safety organisation with over 30 years experience of working in the criminal justice and youth justice systems and in the field of community conflict and dispute resolution. We provide services in 28 Scottish local authority areas.

We are the foremost organisation in Scotland in the development of Restorative Justice and Community Mediation, and are funded by the Scottish Executive to provide national consultancy and training services in both these areas of work.

In dealing with anti-social behaviour, SACRO considers it essential to focus on providing a range of interventions able to target problems effectively and in a way that is proportional to the nature of the behaviour. It is crucial that we distinguish between low-level nuisance and activities that are criminal in their intent, as the appropriate remedies for one will frequently be ineffective or counter-productive for the other.

There is no doubt that some communities experience levels of behaviour by a minority of residents that are highly destructive – such behaviour should not be tolerated. The examples given in “Putting Our Communities First”, however - harassment and intimidating behaviour, behaviour that creates alarm or fear, noisy neighbours, drunken and abusive behaviour, vandalism, graffiti and deliberate damage, parking and abandonment of vehicles, and dumping rubbish and litter (p8) - are already able to be dealt with by the police through existing criminal law. If strategic priorities or resourcing issues hinder efficient use of existing powers, how confident can we be that new powers are either necessary or able to be implemented more effectively?

The consultation document’s recognition of the necessity of community involvement is to be welcomed. Most Scottish communities have a relatively low incidence of serious anti-social behaviour, and it is important that policies are not driven exclusively by the urgent needs of the minority of communities experiencing severe difficulties. We believe that positive action is necessary to ensure that communities which are relatively free of serious problems remain so: there is a crucial role here for preventative measures such as Community Mediation and Restorative Justice. The proposed increased emphasis upon punitive measures for generally low-level offending may lead to responses which are disproportionate and may have knock-on effects elsewhere.

Measures for under 16's should be kept within the Children's Hearing System as a continuum of interventions that can assist children and families to co-operate with service providers and effect change in behaviour. Panel members will use their own judgement and be flexible in the use of these sanctions – perhaps more so than in court. The "whole picture" may be assessed more fully through a Hearing. In the proposals there is considerable focus upon punishment and enforcement with too little attention paid to the resources needed to provide appropriate support for effecting change – again, a reason for going through a Hearing to enquire why a measure has failed.

### **Anti-social Behaviour Strategies**

We welcome the recognition that anti-social behaviour is an issue that can only be addressed adequately through a co-ordinated response by a number of different agencies. The requirement, under the Criminal Justice (Scotland) Act for local authorities and chief constables to publish joint strategies is a significant step in the right direction.

The consultation document raises the issue of whether Registered Social Landlords and other relevant agencies should also have a formal duty to participate in such strategies – we consider this to be essential. The measures proposed in "Putting Our Communities First" will potentially have a significant impact on Social Work Departments, Civil and Criminal Courts, Procurators Fiscal, Childrens' Panels, Environmental Service Departments, and Community Safety Departments, as well as the Police and Social Landlords. The success or otherwise of several of the proposed measures will turn on efficient co-ordination of response, and it is therefore essential that joint strategies are built upon jointly-agreed and realistic roles for a wide range of agencies. We would like to see clear proposals of how this can be achieved.

### **Community Reparation Orders (CROs)**

These are currently being used in England without evidence of very much success, as there is apparently an element of resentment at being 'ordered' to make amends. Reparation is an excellent way of dealing with some offences but our experience tells us that more positive outcomes are achieved for victims and for offenders if the young person does this willingly and voluntarily agrees to make amends.

The tasks available to be carried out as part of a Reparation Order may be extremely limited and may not therefore address the perceived public desire for visible retribution. Tasks such as removing graffiti require specialised equipment and specialised training to operate that equipment. Many of the chemicals used by the specialist operators are corrosive and highly dangerous. The tasks when used as part of a restorative process are symbolic rather than retributive. The young person recognises the harm they have caused and completes a task to signify this recognition and begin their reintegration. Care must be taken to ensure that the tasks do not stigmatise the young person and increase the likelihood of social exclusion. The aim is to reduce re-offending but young people who have no investment in themselves, their future or their community as a consequence of their difficulties compounded by social exclusion are more likely to continue to offend. Using reparative tasks in the wrong way and/or in the wrong place may have the opposite effect to that desired by the Executive.

SACRO would suggest an alternative approach linked to a more inclusive focus on 'Community Improvement' and based on community development principles. We suggest that a campaign and resources are made available to encourage and enable youth organisations to develop voluntary initiatives, aimed at involving young people in creating and improving community facilities and the local environment, including damage caused by crime and vandalism. Such initiatives should also provide opportunities for young people who have themselves committed crime to become involved on the basis of voluntary reparation agreements. We would suggest that the fullest possible range of representative youth organisations should be consulted about proposals and prospects for developing community reparation within such a wider community improvement model. We have already discussed this idea with the Chief Executive of YouthLink who has expressed the view that this concept is helpful in offering relevant open opportunities for young people which benefit the community and which can involve young people from within the criminal justice system with minimal risk of stigmatisation, and that it accords with the principles of the National Youth Work Strategy proposed in the Scottish Executive Partnership Agreement.

SACRO has considerable experience in working with young people who have offended and who have agreed voluntarily to participate in such tasks, as an alternative to measures based on orders and we have found this approach successful in the vast majority of cases. Such an approach has a number of advantages; it provides for greater 'ownership' of local facilities by young people; it minimises 'labelling' of young people who offend and promotes social inclusion; it will be more effective in promoting positive attitude change amongst young people and in achieving practical community benefits.

### **Protection for Victims and Witnesses of Anti-social Behaviour**

It is very important that witnesses are protected in the way described and are supported through the justice process. It would be better if in the first instance this happened through a restorative rather than an adversarial process, (though it is recognised that the court may need to become involved where those allegedly causing the problem are resistant to mediation).

Use of wardens as professional witnesses may compromise their role within communities and could negate other positive work being carried out. However, consideration should be given to where failure to include a warden as a professional witness could contribute to a greater harm being caused.

### **Acceptable Behaviour Contracts (ABCs)**

A contract is a voluntary agreement made between two or more persons. Seen in these terms the use of Acceptable Behaviour Contracts is a useful concept. Used in a restorative manner, (resembling the agreements/contracts already made in SACRO's mediation/youth justice services) as a means of resolving conflict and addressing offending behaviour, they provide a written agreement, understood and committed to by all parties.

Since all parties negotiate the terms of the contract each has an investment in funding a workable solution to which all can commit. Timeframes can be set to review and renegotiate the terms as progress is made. This creates the potential to build success for the young person, to acknowledge this success and the progress they have made at each review and to include reward for positive behaviour.

Rewarding positive behaviour has been evidenced to be more effective than over sanctioning failure. It is also important to consider where the contribution of others sits within the contract, as it is likely to be a false assumption that only the young person's behaviour needs to change to ensure a successful outcome.

Where a young person has recognised that their behaviour causes difficulties to others and has agreed to voluntarily engage with others in the negotiation of a contract, repeated or serious breaches would suggest the need to provide additional resources to support the young person in their desire to comply.

The danger of linking ABCs with ASBOs is that young people, who are impulsive and may have difficulty controlling their behaviour without support, could quickly find themselves with a criminal conviction which could affect future employment prospects which could in turn lead to future offending into adulthood.

The voluntary nature of these contracts would also preclude their use as a condition of a supervision requirement.

### **Anti-social Behaviour Orders (ASBOs) for Under-16s**

The paper seems to put a lot of faith in these, despite their small volume and inconsistent use by only some councils since their introduction – as acknowledged on page 60. It is questionable whether the threat of an ASBO would act as a deterrent for the most chaotic persistent young offenders. Young people with experience of the hearings system are aware that secure accommodation can be used as an option by the Children's Panel, yet continue to offend.

Of equal concern to the use of Courts for such orders, is the lack of clarity on how we are to establish the 'guilt' of the young person accused of pursuing "a course of conduct that has caused or is likely to cause harm" (page 25, para 4, line 4). Any Court would surely need to establish that there was sufficient evidence to meet the criminal standard of proof prior to proceedings being taken. The application for the order should not only describe the nature of the anti-social behaviour, but evidence the same.

It is very unclear as to when it is intended ASBO's would be applied for from court. Minor offences that may receive this high tariff can potentially escalate if the young person is not equipped to effect a change in their behaviour. Should an ASBO be made in relation to a person aged under 16, it would be vitally important to ensure that appropriate resources are also put in place to provide the required levels of support to ensure compliance with the order, including elements designed to identify and address contributory factors to the behaviour. For this reason we would suggest that the imposition of an ASBO should also result in the young person being referred to the Children's Reporter for consideration of what measures are required to assist with compliance. This would allow the Panel to assess the ability of a young person to meet the requirement specified in the ASBO and to ensure that appropriate support is made available to the young person and their family. A Breach should also be referred to the Reporter for a Hearing to consider why the Breach has occurred, who was at fault and what, if anything, can be done to meet the ASBO requirement to avoid unnecessary escalation in court disposals.

We would strongly urge that particular attention be given to ensure that guidelines in relation to existing ASBO's, to the effect that the court should ensure that all other measures, especially mediation, have been explored before issuing an ASBO are made similarly applicable in respect of ASBO's for under 16's. Equally important is that the Executive ensure that resources and services are in place to ensure that mediation services can be adequately provided. SACRO has considerable experience of providing community mediation services in cases relating to anti-social behaviour, including at 'pre-ASBO' stages, and from that experience, it is our conviction that such services provide one of the most useful means of resolving such cases. Estimates require to be made of the anticipated numbers of ASBO's for under-16's which are likely to be applied for in all parts of Scotland and the necessary action taken to ensure that suitable and sufficient mediation services are available in all areas to deal with all cases. We would suggest that mediation should be attempted in all cases as implied in existing ASBO guidelines.

### **Greater use of Reparation in the Children's Hearings System**

While it is understood that Hearings have the power to attach any type of condition to a supervision order, including participation in Restorative Justice schemes, there are potential pitfalls in RJ being made a condition of a supervision requirement, which would require adequate safeguards to avoid.

At its most successful, Restorative Justice requires direct contact between the victim and offender. A great deal of preparation is done to ensure that a) the victim's needs can be addressed by the young person, b) the young person is remorseful for his or her actions, c) the young person recognises that harm can be done to others and wishes to make amends for what has happened. A young person cannot be compelled to demonstrate genuine remorse if they do not feel this, and in cases such as this, it is necessary to deal with the young person's attitudes to their offending and the reasons for these, before any effective RJ intervention can be achieved.

A full assessment of the suitability of a restorative intervention would therefore be required, preferably prior to a condition being made. Alternatively, the 'condition' should be that the case is assessed for suitability for Restorative Justice. In the event of non-participation by the victim, any community based reparation should a) be a worthwhile task leading to a sense of achievement for the young person on completion, b) provide a learning opportunity for the young person, c) be relevant to the offence committed and/or d) enable the young person to link the reparation work with the opportunity to move on.

SACRO already provides effective reparation services in many areas of Scotland for young people referred by the Children's Reporter as a diversion from a Hearing. These operate on a voluntary basis and, if successful, the young person should not appear before a Hearing on offence grounds. In so doing, no conviction is incurred. This is likely to be the most effective and beneficial use of reparation for most children and we would suggest that the main emphasis should be on extending the options available for reparation rather than to bring reparative conditions into the Hearing System.

## **Electronic Monitoring of Under-16s**

Electronic Monitoring is a form of restricting liberty. It may act as a deterrent for some young people as one effective deterrent is the likelihood of being caught. The use of electronic monitoring as a response to anti-social behaviour, however, may well be excessive (and therefore counterproductive), especially where it is triggered by Breach of earlier measures.

Electronic Monitoring will not meet the needs of the young person and will often set them up to fail. It is an abrogation of responsibility by the local authority and the young person's carers. Those going to secure accommodation often go there for their own safety or for that of others. They need intensive support and supervision in addition to containment. It is unlikely that many young people requiring secure accommodation would be able to adhere to the requirements laid out in the Restriction of Liberty Order.

A breach of electronic monitoring should not be grounds for a secure placement as the needs of the young person will be quite different. If electronic monitoring is to be brought in it should operate through the Children's Hearing with clear guidance on its use. Breaches should be assessed with respect to the cause of the Breach and the identification of responsibility for that breach.

There is evidence (*Tackling The Tag :The Electronic Monitoring of Offenders, Dick Whitfield, Waterside Press,1997*) that the breach rate is likely to be high if the order is for anything other than a very short period. So, if sanction for breach is to be secure accommodation, then it will need to be used very sparingly indeed. That is difficult to ensure. Also, they should not be made without the support order mentioned.

There is a danger of young people being 'labelled' and the issues regarding their behaviour not being addressed. This may result in alienating some young people even more. We also believe that there is a risk that some young people who exhibit the most anti-social attitudes and behaviours may see a tag as a badge of honour.

Tagging alone will not change the way the young person thinks about offending. Resources would be required to ensure that cognitive behavioural-based programmes are available and delivered to support the young person in their transition.

## **Extending Restriction of Liberty Orders (RLOs) to Under-16s**

Again, resources would be required to ensure appropriate support programmes were in place to challenge the young person's thought processes.

On periods of restriction for RLO's we must take into account the very different perceptions young people have with regard to time. 12 months feels like a lifetime for most young people.

There is the added potential breach of the European Convention on the rights of the child.

## **Parenting Orders**

SACRO's Restorative Justice Services currently require the participation of the parent when addressing the offending behaviour of a child. Indeed, in many cases a Restorative Justice Conference will include questions from the victim to the parent on what measures the parent has taken or intends to take to lessen the likelihood of the child committing a similar offence in the future.

Parenting Orders must be used with great caution and with the provision of appropriate support. Parents should rightly be held to account for what they do or do not do in relation to their parental responsibilities. We do not believe, however, that they should be held to account for the actions of their children. There is a real danger that parents will perceive that responsibility for the child's action has been transferred to themselves, rather than highlighting responsibility for their own actions. This, in turn, may cause tension in the family and potentially increase child protection concerns. It may undermine the position of the child at home and increase the number of accommodated children. Full consideration must be given to the needs of the child and to the circumstances of the family, including the supports being offered and levels of co-operation.

Prior to any parenting order being made, an assessment should be carried out to establish the level of support required by the parent. The recognition of the need to act to address the child's behaviour may well lead to voluntary participation in counselling or guidance sessions to receive help and support – with a greater chance of success. Resources would be required to ensure such pre-Parenting Order assessments were carried out. Parents should not need to wait until a Parenting Order is made before being given the opportunity to access support and guidance. If a Parenting Order is felt necessary, local authorities need to be resourced to an extent that they are able to deliver the Services demanded by the order.

Parenting Orders should only be considered where voluntary measures have failed, and the only grounds for such orders should be the welfare of the child – as such, they should go through the Children's Hearing. Compulsion should be made through a Hearing as a decision to direct the Reporter to make an application to court. No other mechanism for Parenting Orders should be permitted. Breach of a Parenting Order should, in the first instance, come back to a Hearing. Only if the Hearing is satisfied that the Breach was intentional and avoidable, should the Breach be referred to the Sheriff.

The welfare of the child should remain paramount in all cases and parents must not become detached from the Hearing System through external court impositions that have not been agreed before a Panel. A new Ground for Referral to a Hearing could be introduced – to consider the need for a Parenting Order in the best interest of a child. However, Parenting Orders should emerge from a child's progress through the Hearing System and new grounds may not be necessary.

Children learn from the adults that are closest to them i.e. parents, carers, older siblings, and if the parenting skills are not there it is difficult for them to understand what they are doing wrong. Some parents may not think there is a problem with the way they are raising their family and this could prevent them from changing. Good citizenship and parenting would be more effective if introduced in the very early years and primary education could be a starting point for a lot of children. This we understand would put a lot more pressure on the education system but if it was introduced along with other learning i.e reading, writing etc it would have a more positive effect on children.

### **Local Authority Accountability**

Audit Scotland reported an estimated number of children for which supervision requirements had not been implemented. There is (or should be) a need for Local Authorities to provide information on National Youth Justice Standards and Time Intervals. Where a supervision requirement has not been implemented it is likely to be a reflection of resources available at that time. Insisting on implementation is likely to "rob Peter to pay Paul" and will not necessarily address the underlying cause of non-implementation. Local Authorities are accountable. The issue is whether a Hearing can insist that a supervision requirement is implemented as the Court can insist on a prison sentence,- this effectively allows the Hearing to override the local authority in prioritising an individual case above others. Only in exceptional circumstances should this be necessary and clear guidance should be provided to panel members. The Sheriff will have discretion in his decision as to whether any conditions attached to the supervision requirement were reasonable.

### **Graffiti**

There is evidence that there was a reduction in the use of glue as a solvent to sniff when the sale of this was restricted to those over the age of 16. However the restriction of the sale of spray paint to those over the age of sixteen may not be as effective. Stores actually took glue off the shelves and substituted them with cards which were taken and exchanged for goods at the checkout. Will the same solution be available in the case of paint ? It is likely to be problematic as the range of colours and types is much more extensive than those of the glues.

Do we know how much paint is bought by those under 16? Are we sure that it is those under the age of 16 who do most spraypainted graffiti? Was the reduction in glue sniffing due to the removal of this substance from the shelves or was it because cannabis became more available or other solvents more popular? Were those who were sniffing glue buying it or stealing it and was it the removal from open view, which was effective rather than its restriction of sale? Again is this achievable with spray paint ?

### **Noise Nuisance**

Recent surveys have highlighted the contribution of reduced noise insulation in houses to the increase in noise nuisance. We would suggest that building regulations should require far better insulation.

## **Anti-social Behaviour and Housing**

Children's behaviour should not be used as grounds for eviction. Failure in Parenting Orders could be used but it should be made clear that this is a consequence of the Parents' actions (or inactions) rather than those of their children.

### **Fixed Penalty Notices for Anti-social Behaviour**

Fixed penalty notices should not be applied to anyone under the age of 16.

The proposals to extend the use of fixed penalty notices, particularly in relation to noise nuisance are unlikely to be effective. There are existing police powers both specifically to seize noise-producing equipment and generally to deal with disturbances. The proposal to give Environmental Health officers and/or Community Wardens powers to issue notices is unlikely to result in more efficient noise control, as in many cases a police escort would in any case be required to be in attendance.

There is a further problem with extending the use of fixed penalty notices. These are currently predominantly used for motoring offences, where in the main there is little argument over whether an offence has been committed. This is unlikely to be the case with more subjective areas such as nuisance and noise, and it can be anticipated that a considerable number of appeals would arise from the issue of notices. Unless standards of proof are to be lowered considerably, in itself a cause for concern, there is likely to be significantly greater strain placed on an already overburdened Civil Court system.

### **Dispersal of Groups**

We are concerned that the proposals' definition seems to include "groups of young people hanging around"... this is what young people do, is normal and should be acceptable and not demonised or criminalised. So, pages 59 –60 need close attention. It is not hanging around that is wrong, it is intimidation, harassment, etc. Young people should not be unnecessarily alienated by actions designed to allay unfounded fears of the older generation. Therefore, police should use existing powers to disperse troublesome groups, responding to specific complaints about specific groups...not criterion (b) on page 60, which seems to say that if you are young and in a group in an area where there is an ASB problem, you can be told to shift. That would be infringing civil liberties.

This proposed measure is ill conceived and likely to breach the Convention on Human Rights. Alarm or distress due to the presence of two young people in any locality is no reason for police moving those young people on. This is far too subjective and may reflect people's own perceptions, with no misconduct or anti-social behaviour by young people themselves. The moving on of all young people from areas where a minority may cause persistent or significant problems is completely unjustified. The police have sufficient powers already.

Mediation between the young people and those who are being affected is a more positive way forward. SACRO has considerable positive experience of this approach. The young people may not be aware of the distress they are causing and may be prepared to engage in alternative leisure activities or make reassurances of their intentions if concerns are raised in a reasonable manner. This does not detract from Article 15 of UNCRC which gives them the right of association and is dependent upon alternative resources being available to young people to allow them to do what young people do. Young people have the right to be young people.

It seems important to note in this respect the likely impact of the loss of parks, playing fields and other public recreational space over recent years. It is estimated for example that nearly 50% of open grass football pitches in Edinburgh have disappeared over the past 30 years. It could be argued that this policy has contributed to lifestyle clashes between young people and adults as much as or more than an increase in anti-social behaviour by young people.

We also note and agree with the views expressed in the Scottish Executive's recently published report on community well-being, *"Building Community Well-Being: An Exploration of Themes and Issues"* (Scottish Executive, April 2003) that:

*"The well-being of young people was considered by project participants to be pivotal to communities' capacity to thrive. Specific difficulties to overcome include the following:*

- *the association in people's minds between young people and anti-social or criminal behaviour. Young people can respond to this by fulfilling worst expectations*
- *the lack of a focal point in communities for interaction, leads some young people to 'hang around' in public areas, reinforcing associations with trouble making".* (p5, Summary Report).

### **Making Anti-social Behaviour Orders More Effective**

For children under 16, ASBO's should be dealt with through the Hearing System – as discussed above. There is contradiction in this Section regarding the role of Hearings and the Reporter in the use of ASBO's for young people.

### **Licensed Premises – Police Powers**

Police should have consistent powers across licensed premises, off-licenses and registered clubs. This will enable an increased focus on under-aged drinking.

### **Closure Notices**

Properties from which drug dealing and other criminal activity is known to take place could be closed down but transactions are likely to move elsewhere. This may not address the problem but simply treat the symptom and move the problem elsewhere.