

LIBERTY

PROTECTING CIVIL LIBERTIES
PROMOTING HUMAN RIGHTS

Liberty's evidence to HM Government's Youth Crime Action Plan 2008

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About Liberty

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

Liberty Policy

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent, funded research.

Liberty's policy papers are available at

<http://www.liberty-human-rights.org.uk/publications/1-policy-papers/index.shtml>

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Introduction

1. Liberty is pleased to have the opportunity to respond to the cross department consultation on the Youth Crime Action Plan. Much of the language used in this consultation is vague and unspecific giving insufficient information for meaningful comment to be made. Additionally, many of the proposals relate to powers that have already been introduced in legislation making it difficult to comment on desirability when these powers have already been enacted in law. The consultation also covers many areas upon which we have no particular comment to make.

2. Before addressing the proposals for which we have substantive comment we have a more general observation about the tone of this consultation and the context in which it is brought forward. Liberty has concerns over the growing demonization of young people both in certain quarters of the media as well as in wider public discourse. Indeed the UN Committee on the Rights of Child which reported on UK compliance earlier this month noted their concern at the “*general climate of intolerance and negative public attitudes towards children, especially adolescents, which appears to exist in the UK, including in the media*”¹. This consultation does little to address or at least acknowledge this trend. In fact certain terminology and wording belies a worrying attitude towards young people’s use of public spaces². Similarly the pitch of the consultation seems to further reinforce an “us” and “them” approach to youngsters divorcing “young people” from a benign and passive “public” or “community”. Liberty believes that this approach reinforces divisions between generations and does little to further the twin aims of addressing youth crime and victimhood.

Dealing with unacceptable behaviour (Chapter 1)

Ensuring that police are using all their existing powers

3. The consultation proposes immediate steps to ensure that the police are using “all their existing powers to maximum effect”. Among the powers specified are Acceptable

¹ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

² At one point the consultation states that “the public will see fewer young people on the streets unsupervised causing problems for others”.

Behaviour Contracts, Anti-Social Behaviour Orders and dispersal powers. The consultation highlights the perceived effectiveness of Anti-Social Behaviour Orders in particular, stating “*when applied vigorously [ASBOs] can be very effective in reducing crime and anti-social behaviour*”. Liberty’s concerns over the use of ASBOs are well documented. We believe they mix criminal and civil law, set people up to breach them, are increasingly counterproductive and used as a panacea for all ills. Our concerns over s. 30 Anti Social Behaviour Act dispersal powers are similar in that there is no need for any individual to be suspected of involvement in criminal activity before being subjected to a dispersal order. Breach of an order (such as by returning to the area) is a criminal offence. Similar to an ASBO the behaviour leading to breach does not have to be criminal.

4. When the Crime and Disorder Act 1998 was passed the ASBO was intended to be a targeted response to a specific problem. It would be used to address difficulties faced by individuals in using traditional civil law remedies such as an injunction to prevent anti-social behaviour. Instead the state would take action on the individual’s behalf through the ASBO. Since then the civil order with breach a criminal offence has been the answer to nearly every problem of crime or disorder. There has been a constant and persistent blurring of what constitutes criminal activity and a continued move away from the courts as the mechanism for imposing preventative and punitive sanction. The most recent examples of this type of order include the Serious Crime Prevention Order and the Violent Offender Order³.

5. ASBOs and other non prosecution alternatives are more effective if targeted, such as being used as a ‘last chance saloon’ to avoid a criminal record. The problem with over use and over reliance on these orders is that, rather than providing an alternative to prosecution, they become a fast track to criminality. The study on ASBOs carried out by the Youth Justice Board published in November 2006 found that ‘*nearly half of the young people whose case files were reviewed, and the vast majority of young people who were the subjects of in-depth interviews, had been returned to court for failure to comply with their order. The majority had ‘breached’ their ASBO on more than one occasion.*’⁴ Ever increasing extension of and reliance on non criminal orders is likely to exacerbate the

³ Created in the Serious Crime Act 2007 and the Criminal Justice and Immigration Act 2008 respectively

⁴ <http://www.yjb.gov.uk/publications/Resources/Downloads/ASBO%20Summary.pdf>

many concerns highlighted in the Youth Justice Board report. Indeed it is worth noting that the UN Committee on the Rights of the Child earlier this month called for a review of ASBOs with a view to abolishing their application to children⁵.

6. For these reasons, Liberty would urge extreme caution before putting additional pressure on police to use all discretionary powers at their disposal. Police powers legislation has, over recent years, become increasingly broad and discretion based. While the use of professional discretion has always been a necessary part of day to day police work, broadly defined discretionary powers are not a boon for police. In fact they can place huge and onerous pressures on police who are required to use their coercive powers in accordance with human rights principles of necessity and proportionality. Community policing and policing the young in particular involves sensitive operational judgments. The importance of good policing relations with the young cannot be underplayed and heavy-handed or overuse of policing powers does not sit easily with this objective. The consultation goes some way to recognizing the problems of disengagement and mistrust citing an ACPO & youth training project in Norfolk where *“before the session young people were skeptical of the police with 70% saying that the police didn’t understand the things that matter to young people”*⁶. This is perhaps a telling verdict on the scant regard to policing engagement inherent in over-broad legislation. Additional Government pressure to make use of all powers available at all times sends a confusing and unfair message to police who are often better placed to judge the use of their powers on a case-by-case basis.

7. The consultation also proposes engaging young people with street-based teams of youth workers and ex-gang members. Liberty welcomes practical and realistic proposals to engage with young people engaged or at risk of engaging in criminal activity. We are however concerned at the vague additional proposal that *“where there is a failure to comply, street-teams will be able to employ increasingly tough punishments”*. It appears from the consultation that a street-based approach to policing has been piloted in the Camden Borough of London with a focus on early intervention in conflicts between young people principally through mediation and encouraging productive activities. It is not clear from the pilot example what “compliance” refers to. It is also unclear what

⁵ <http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>

⁶ Page 45 of the consultation document

powers “street-teams” will have, who will authorise any such powers and what accountability structures (if any) will govern their work. If no new legislation is anticipated we imagine that that the Community Safety Accreditation Schemes (CSAS) will be used. CSAS were introduced in the Police Reform Act 2002. They allow civilians to be given powers traditionally reserved for the police. Council officers, private security guards, NHS trusts and housing associations and others can be accredited by authorisation of a Chief Constable. So far 1,400 people nationwide have been given these powers. We are deeply concerned by the continued growth of a system that allows the exercise of summary powers (such as the imposition of on the spot fines) by people who lack the training to deal with potentially confrontational situations. Handing out summary punishments can inflame a volatile situation, particularly if alcohol is involved. We are also concerned by the lack of proper accountability, particularly when accreditation is given to those in the private sector. If someone wishes to make a complaint about a police officer or PCSO they can go to the police station and ultimately have recourse to the Independent Police Complaints Authority (IPCC) if necessary. It is not clear how ‘street teams’ might be accountable

8. While Liberty supports efforts to divert young people away from the criminal justice system we are extremely wary of any further moves towards summary justice style powers or the extension of powers to those that are unaccountable and untrained. We would certainly need more detail on what exactly is being proposed before we were able to comment any further.

Expand Operation StaySafe

9. The consultation indicates that the Government intends to “expand Operation StaySafe” whereby police use existing powers to remove young people from the street in the evening. While the consultation is non-specific, referring only to “child protection powers” the Merseyside police website states that the police are using powers under the Children Act 1989⁷. Section 46 of the Children Act allows for the “*removal and accommodation of children by police in cases of emergency*”. The Act provides that such powers may be exercised “*where a constable has reasonable cause to believe that a child would otherwise be likely to suffer significant harm*”. Liberty has grave concerns

⁷ <http://www.merseyside.police.uk/html/news/news/april/kh02-04b-staysafe.html>

over the use of this power as part of routine policing operations. It is clear from the Act that the power was never intended for use solely by virtue of a young person being in a public place during the evening. Indeed section 46 states clearly that the power is limited to use in “cases of emergency”.

10. Operational curfews (whether under anti-social behaviour legislation or the misuse of powers granted for child protection) necessarily involve an assumption that young people out in the evening are at risk or causing trouble. The removal of young people from public places, purely on account of them being in the public place, unfairly discriminates against the young. Given, in particular, the myriad of other criminal law powers and sanctions the police have at their disposal to deal with criminal activity, we believe that operational curfews for the under 18s fail the tests of necessity and proportionality.

11. Liberty is concerned that use of the Children Act for routine policing operations may have been introduced as a result of our successful challenge to s 30 of Anti-Social Behaviour Act (ASBA) 2003. In 2005 we took on the case of “W” a 15 year old boy from Richmond who sought to challenge the curfew powers brought in under section 30. In particular we challenged the power of the police to forcibly remove unaccompanied 16 year olds within the “dispersal zone”. The Court of Appeal agreed with our challenge and ruled that police only have the power to use force to remove children who are involved in or at risk from *actual* or *immediately anticipated* harm. This decision imposed a restriction on the circumstances in which the police can use force under the ASBA. In our view this is a necessary and proportionate restriction which should not be undermined by the misuse of powers intended for child protection.

Intervening Early (Chapter 2)

12. Chapter 2 covers early intervention. The consultation is written in quite general and non specific terms making it difficult to comment in detail. It is difficult to argue with the principle that early intervention for individuals and families can help prevent youth crime. Without greater clarity it is sometimes difficult to ascertain the extent to which what is on offer is voluntary or coercive.

13. Paragraph 2.7 refers to the need for a robust integrated approach to information sharing. There is no further detail. Liberty has frequently expressed concerns about public sector data sharing regimes excessively impacting on individual privacy. They can ultimately prove counter-productive with information overload resulting in relevant data being overlooked. Data sharing has been the subject of several recent reports, including the *Data Sharing Review* by Thomas and Walport⁸. The Review identified a range of concerns about data sharing, covering not only the practicalities such as of data loss, but also the mindset that exists in the public sector. It stated *'There has been growing concern...that the Government's default position is to endorse the sharing of personal information for a given programme before considering whether it is in fact necessary to do so'*⁹. We would suggest that there has been a tendency in youth justice policy to treat information sharing as inherently beneficial. Human rights and data protection principles of necessity, legitimate purpose and proportionality have been somewhat overlooked as a consequence. The Thomas & Walport review argues that a much more sophisticated approach to public sector data sharing is needed. We hope the youth justice proposals reflect this.

14. In paragraph 2.7 the consultation refers to 'Family Intervention Projects' which provide intensive support to families in the greatest difficulty with 'non negotiable elements if families refuse to engage'. There is no expansion on what the 'non-negotiable elements' might entail. It is not clear whether these are intended to be based on existing powers such as, for example, free standing Parenting Orders or whether new legislation is planned.

15. Paragraph 2.16 proposes extending powers to allow pupils to be searched for weapons. We did not take issue with the principle of allowing designated staff with reasonable suspicion to search pupils for weapons when the power was introduced in the Violent Crime Reduction Act 2006 (VCRA). Schools should be able to take appropriate action to keep pupils safe from harm. If a teacher suspects a pupil has a weapon it is reasonable to permit school staff limited powers to search. When the VCRA was being debated in Parliament we argued that the power should only be exercisable in situations where it was not practicable for a police constable to come to the school (this

⁸ <http://www.justice.gov.uk/docs/data-sharing-review-report.pdf>

⁹ Ibid at paragraph 1.11

was not incorporated into the Act). We would accept the same rationale allowing search could be applied to a reasonable suspicion that a pupil is carrying drugs (again subject to it not being possible for a police constable to attend). We would, however, question further extension to the possession of alcohol and 'other inappropriate items'. A distinction can be drawn between items where the possession is itself inherently unlawful (such as weapons or proscribed drugs) and items which are not themselves unlawful but where possession might be restricted due to age (such as alcohol). We imagine there are many items proscribed by schools where pupils might expect sanction as a consequence of being found in possession. However, this does not make it legitimate or proportionate to allow forced searches. The power to search a person without consent has traditionally been reserved for policing agencies. This is because forced search is inherently invasive. The exercise of search powers by those not employed in crime detection and prevention capacities should only be granted in exceptional circumstances. Unfortunately legislative practice often means that powers passed in limited and justified situations become a template for extended and general use. Allowing searches for 'inappropriate items' risks the creation a general search power for teachers. This could fundamentally change the nature of relationships between teachers and pupils with disproportionate and invasive powers available to school staff as a matter of course.

Supporting Young Victims (Chapter 3)

16. Liberty is pleased that the consultation considers, in particular, young victims of crime. Indeed young people are more likely than adults to be the victims of crime and this can have a devastating effect on individuals, families and communities.

17. The rights of victims of crime are of clear public importance and should be robustly defended. Indeed, we have, over the years, campaigned for greater rights for victims - in 2003 calling for a Commissioner for Victims as well as statutory rights to receive information¹⁰. We were happy to see these proposals implemented in the Domestic Violence, Crime & Victims Act 2004 and we further welcomed the Code of Practice for

¹⁰ "The Rights of Crime Victims: A Manifesto for the Better Treatment of Victims in the Criminal Justice System" (Civil Liberties Trust, 2003)

Victims of Crime. Indeed human rights law requires states to investigate and prosecute serious crime and we have always considered that in a properly balanced criminal justice system there need not (and should not) be any conflict between the rights of complainants to appropriate support and the fair trial rights of defendants.

Sentencing and Custody (Chapter 4)

18. The present consultation proposes various policy initiatives aimed at providing more support for young victims in particular. These include: building on best practice for providing services for victims of crime; improving pre-trial support for young witnesses; providing young people and parents with information about the dangers of crime and improving relationships between young people and the police. Liberty welcomes these approaches and has no further comment on many of the proposals.

19. Paragraph 4.3 of the consultation makes a crucial point. It states that '*we must tackle perceptions that the youth justice system is too lenient*'. It also points out that when members of the public are given the full facts of cases they tend to suggest less severe sentences than those received. We entirely agree that public mistrust and misunderstanding of the sentencing system, both for adults and the young, is problematic. For the sentencing of young people in particular, the necessary emphasis on rehabilitation and avoidance of custody means that public perceptions of 'being soft on crime' are a continuing concern. There is, of course, no easy solution to these perception problems. However part of the problem, certainly when a custodial sentence is inevitable, arises from a lack of clarity in the sentencing process. When a custodial sentence is passed, the language used rarely reflects the actual period to be spent in custody. Sentences of youth custody, though relatively uncommon, often involve significant publicity. If the language of sentencing reflected the likely custodial period it would help improve public confidence in sentencing policy.

20. The consultation identifies greater public involvement in community sentencing. It suggests, for example, that the public might be able to identify appropriate community sentence projects. Within the scope of appropriate activity for community sentence work we agree this might be a useful way of ensuring positive outcomes from community

sentencing. We would, however, be concerned to see *'local people having more opportunity to see...action being taken to tackle youth offending'* if the action involves gimmicks such as brightly coloured boiler suits. As the consultation does not specifically mention these we will only comment that public shaming of those subject to community sentences is neither necessary nor proportionate.

21. We are concerned to see the suggestion at paragraph 4.19 that judges and magistrates are to be encouraged to use their discretion to remove reporting restrictions. The purpose of this is, *'to improve the transparency of the youth justice system.'* Article 40(2)(b)(vii) of the United Nations Convention on the Rights of the Child (UNCRC) states that defendants under the age of 18 should have the right to privacy at all stages of criminal proceedings. Any reversal of this presumption should have a strong public policy basis. We do not accept that a vaguely expressed desire to improve transparency can provide justification for removing the presumption of reporting restrictions or for failing to comply with the UNCRC.

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