



**Include Youth response to Measures to tackle Anti-Social
Behaviour in Northern Ireland Consultation Document**

March 2004

Introduction

Include Youth promotes best practice with young people at risk of social exclusion. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities which attempt to influence public policy and public awareness locally and nationally.

Amongst the young people at risk with whom, and on whose behalf Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who have had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

General Comments

Include Youth welcomes the opportunity to respond to the consultation document proposing Measures for Tackling Anti-social Behaviour in Northern Ireland. We strongly anticipate that the measures proposed will have a significant impact upon the young people with and on whose behalf we work. Whilst the document does not state explicitly that these proposals will be directed towards children and young people, it is our strong assertion, that this will indeed be the case, in particular young males. In the background section the document explains that “ASBOs were introduced to meet a gap in dealing with persistent unruly behaviour, mainly by juveniles, and can be used against any person aged 10 or over.” [1] If one looks at the experience of England and Wales, upon which this consultation document draws very heavily, it becomes clear that 74% of those who have become the subject of an ASBO have been under the age of 21, and of those 93% were male. [2] This reality has developed contrary to the Home Office Guidance which accompanied the Crime and Disorder Act 1998, which stated that ‘ASBOs will be used mainly against adults’. [3] The Guidance further states that they would only be used against children in exceptional circumstances, and those cases in which children were caught up in the anti-social behaviour of adults. This commitment to direct the use of ASBOs against adults is also illustrated by the fact that while the UK government discussed all other aspects of the CDA which would impact upon children, in its report to the UN Committee on the Rights of the Child 2002, it did not even mention ASBOs. In view of this, the focus of our response will address how we anticipate that the current proposals will impact upon children and young people.

In formulating our response, Include Youth has consulted widely with young people through our Young Voices project and with professionals from across Northern Ireland working directly with challenging and vulnerable young people, particularly our Practitioners Forum. The views of practitioners are included in this document, but the Young Voices group have made a separate response. We have also met widely with other interested groups, such as PSNI, Community Safety Unit, a number of community safety partnership representatives, NIHE, a number of District Councils, and political representatives.

Meaningful consultation ?

Include Youth are extremely concerned that the outcome of this consultation would appear to have been pre-judged, given the Minister's comments at a House of Commons Debate on 10 March 2004, when he stated in response to comments from the Right Honourable Mr. Nigel Dodds M.P. M.L.A.:

...communities across Northern Ireland have resoundingly said yes, and we have put detailed provisions out for consultation. Furthermore, I have shortened the consultation period precisely so that we can implement the measures as soon as possible. There is a crying need for them, and we know from experience in England that they work. We want to introduce them as soon as possible. We have been taking action, so I do not think that we can be accused of dragging our feet. [4]

Later in the same debate in response to comments made by the Right Honourable Mr. Jeffrey Donaldson M.P. M.L.A. the Minister stated:

Will the hon. Gentleman at least give us credit for having compressed the consultation period, precisely so that we can introduce legislation and get it through before the summer? [5]

Based on such public statements, we would question whether government views this consultation process as little more than a paper-exercise.

ANTI-SOCIAL BEHAVIOUR ORDERS

Who are the young people who will receive ABSOs?

A recent Home Office review of ASBOs found that in 60% of cases (where information was available), there was some mitigating factor involved in the offender's anti-social behaviour. [6]

These included drug abuse (18%); temporary / permanent school exclusion (17%); alcohol abuse (17%); eviction (13%); learning disabilities (9%). [7] These findings were supported by Hunter and Nixon, who found that more than two-thirds of defendants being threatened with eviction from social housing, were described by housing officers as having ‘particular vulnerabilities or special needs’. [8]

We strongly anticipate that ASBOs and ABCs, if introduced in this jurisdiction will impact upon children and young people with a similar range of complex needs. We believe that many of the children who would be targeted by ASBOs and ABCs, will already be known to a range of agencies and service providers, for example, social services (family and childcare, child protection, leaving and aftercare, children with a disability); education (education welfare services, EOTAS providers); Youth Justice Agency Community Services Directorate; and PSNI, as well as a number of voluntary and community sector service providers. We believe that government needs to dedicate resources into providing effective services and support for young people and their families who are in trouble. We further believe that children who are currently engaged with services, may become resentful, mistrusting and disengaged if they become the subject of an ASBO which will render them and other interventions ineffective.

There is a wealth of experience, expertise and good practice, which has developed in recent years in working with vulnerable and at risk children and children in need as defined by the Children (NI) Order 1995, most notably through Children’s Services Planning. Include Youth is concerned that the consultation document makes no reference to such existing strategies and models of good practice.

Would ASBOs be an effective measure for dealing with anti-social behaviour in Northern Ireland?

Include Youth, as an organisation concerned with promoting the rights and best interests of children and young people at risk, is all too aware of the impact that problematic behaviour can have for communities living in Northern Ireland, and that tackling it is of critical importance. Young people who take part in troublesome behaviour must be enabled to accept responsibility and recognise the impact that their actions have on others.

However, while statistics reveal that it is young people who are most likely to be victims of crime, particularly violent crime, [9] the consultation document appears to propose a policy which will punish children and young people, blaming them for ‘all the ills’ of society. The experience in

England and Wales, coupled with the media attention which accompanied the launch of the consultation document in January 2004, leave us in little doubt that this measure has the potential to demonise and further exclude vulnerable children and young people who already find themselves of the margins of society and the communities in which they live. This we believe will do little to change their behaviour.

Evidence suggests that being tough on children and young people is not an effective solution to the root causes of conflict in communities. Instead we posit developing and focusing resources on positive and effective approaches to ensuring safer and more cohesive communities and providing opportunities for children and young people.

Furthermore, as an organisation committed to promoting the best interests of all children and young people, we advocate for policies, strategies and services which are designed to prevent young people from offending and are crucially based on empirical evidence of what works. We understand that in relation to evidence, evaluations of what works in reducing anti-social behaviour are scarce. It is therefore difficult to make informed judgements about what works and what does not work to reduce anti-social behaviour.

We have outlined below a number of substantive concerns with regards to the content of the consultation document.

Definition

We believe that the definition outlined in the document, which follows that laid down in the Crime and Disorder Act 1998, is unhelpful because it fails to establish a common definition of what anti-social behaviour actually is. This lack of clarity is open to immense discretion in interpretation because it describes the *consequences* of certain behaviour rather than the behaviour itself. We believe that a clear definition is essential, not only for core partners who would administer the Orders, but also for members of the general public, not to mention those children and young people and their families who may potentially become the subject of an ASBO or ABC. The use of the term without any clear definition to its limits gives rise to concerns about the arbitrary application of sanctions. Furthermore, absence of the agreed nature of what constitutes ‘anti-social behaviour’ will lead to problems in monitoring and evaluating the process and measuring outcomes.

Finally, we are deeply concerned about the wisdom in enshrining in legislation terminology which has developed a singularly sinister meaning in the context of Northern Ireland, and has resulted in the shooting of 13 and assault of 25 young people under the age of 18 in the past year. [10]

Children's Rights implications

Include Youth is disappointed at the lack of a human rights analysis in the consultation document and is concerned that a number of the provisions proposed will have serious human rights implications. It is our assertion that some of the measures outlined, if enacted, will undermine the rights of children and their parents and families, as established in both domestic and international legislation. In particular we strongly assert that the proposals contained in the consultation document could be in contravention of the Children (NI) Order 1995 and the Human Rights Act 1998. In addition, the proposals would appear to be outwith government's commitments as signatories to a number of international treaties and conventions, for example, the United Nations Convention on the Rights of the Child, the UN Guidelines for the Prevention of Juvenile Delinquency (Riyadh) (1990), and the UN Standard Minimum Rules for the Administration of Juvenile Justice (Beijing) (1985).

We are further concerned at the absence of reference to the on-going work to develop and deliver a cross-cutting ten-year Strategy for Children and Young People in Northern Ireland. The current proposals in our view conflict with what the entire focus of the Strategy will be.

Voice of the child

We are concerned that these measures appear to have been proposed without having taken due regard of the opinions of those who stand to be most adversely affected by the provisions – that is children and young people – which we believe will leave the government falling short of its responsibilities under the UNCRC, in particular Article 12. Include Youth had to specifically request a copy of the Children and Young People's version of the consultation paper, which in our view proved to be little more than an executive summary that was not in fact young person friendly.

Furthermore, we understand that the provisions were introduced in England and Wales after consultation on the CDA which led the public to believe that the measures would not impact upon children and young people. We anticipate therefore that the measure did not receive scrutiny from children and young people at that stage either.

In addition, if one considers the Home Office Research, it becomes clear that the voices of young people have not been elicited in this research.

Include Youth considers the current proposals to introduce ASBOs and ABCs are a significant attack on the rights of children and young people. As a minimum requirement, we submit that government has a responsibility to properly consult with children and young people, to comply with its commitment to Article 12 UNCRC. In addition, failure to properly consult directly with this group will in our view leave the government in breach of its duty under Section 75 of the Northern Ireland Act 1998.

Civil action with criminal sanction

Include Youth considers that the proposals give rise to a number of potential breaches of Article 6 of the European Convention on Human Rights – right to a fair trial. In particular we are concerned by the proposal to make ASBOs a civil disposal with a criminal sanction.

We believe that many of the types of behaviour caught under the terms of ASBOs, which were highlighted in the Home Office Research Study, for example, assault, criminal damage, arson, shoplifting [11] are actually crimes and currently dealt with in criminal law. Why then the need to introduce a new order dealing with such ‘crimes’ through the civil court? Surely if people are committing crimes then the proper place to deal with them is in the criminal court.

We are concerned that the proposals are simply criminalizing children and young people by the back door. We consider that proving such ‘crimes’ as arson, criminal damage etc in the civil court, on the balance of probabilities – a lower burden of proof than that which would be required to get a conviction for the same crimes in the criminal court - is deeply flawed.

Hearsay

Furthermore, the provision to permit the admissibility of hearsay evidence in applications for ASBOs in our view gives rise to major concern from a children’s rights perspective, not least because it is lauded as one of the ‘advantages’ of the scheme in the consultation paper. We believe that this proposal is in clear contravention of Article 6 of the ECHR, the UNCRC, and the Children (NI) Order 1995. This provision leaves the already vulnerable child in a potentially very precarious position, as one view of events can be put to the magistrate in a manner which leaves it virtually beyond dispute. The child’s legal representative will not be afforded the basic right to cross-examine the person or persons from whom the allegation of anti-social behaviour has emanated.

We believe that such a situation does not uphold the child's right to due process, and the evidence presented is one step removed from the proceedings

Moreover, Include Youth is concerned that this provision will be open to abuse – for example, spurious or malicious complaints; long-running disputes between families / neighbours could spill into the courts. These provisions are also capable of giving rise to serious problems in a racial context. If a white landlord does not like his Afro-Caribbean tenants playing reggae music, should he be able to seek an ASBO? Crucially current provisions will leave decisions about the reliability of such 'evidence' to be made by administrative officers, which cannot be tested through the proper judicial process, as witnesses will not be obliged to give direct evidence.

We are further concerned with the proposal to permit 'expert witnesses' to provide this hearsay evidence to the court. Who will these 'experts' be? We have seen recently the disastrous consequences for families when experts get it wrong, as evidenced by the Court of Appeal's recent decision in the Angela Canning case to quash her conviction for the murder of two of her children on the grounds that it was unsafe due to discredited evidence given by so-called 'expert' Professor Sir Roy Meadow. [12]

Breach

Include Youth's concerns with regard to the erosion of due process are heightened by the fact that breach of the civil orders constitutes a criminal offence, which carries with it a maximum sentence of 5 years imprisonment. We believe that this is an unduly harsh and punitive proposal – using a hammer to crack a nut – as these proposals are intended to deal with persistent low-level anti-social behaviour. Having discussed this provision with a range of practitioners the overwhelming view is that young people will breach these orders. Indeed, a number of practitioners have raised the point that so aggressive and punitive are the measures, that some young people may collect ASBOs and Breaches as badges of honour. These young people need to be engaged to deal with the range of complex issues which leads them to take part in problematic behaviour. This is borne out by what we know of the experience in England – the Home Office Research revealed that over one third of ASBOs were breached within nine months of the order being made. [13]

Custody

Perhaps what is most alarming is that over half of those taken to courting England and Wales for having breached an ASBO received a custodial sentence – and half of these were young people. [14] The average length of sentence for juveniles was 139 days, and the longest sentence was six

months. [15] Clearly we are deeply concerned by the prospect of placing a child as young as 10 years of age in custody for six months for breach of a civil order, the substance of which was granted to thwart behaviour which may have been criminal, but which would not have been proved beyond a reasonable doubt, had it come before a Youth Court in the first instance. Include Youth strongly assert that this provision contravenes the UNCRC, in particular article 3, the Best Interests principle and the article 37(b) provision that custody shall be applied only as a measure of last resort. We believe that these proposals will needlessly fast-track vulnerable children into the criminal justice system, and in particular into custody, for low level problematic behaviour.

Naming and shaming

Another serious concern which Include Youth harbours in respect of these proposals, relates to the plan to remove reporting restrictions for children and young people who have become the subject of an ASBO. This is in clear breach of Articles 6,8 and possibly 2 of the ECHR, and of the UNCRC, in particular Articles 2,3,16,19 and 40. It also runs contrary to the paramouncy principle enshrined in the Children (NI) Order 1995. The experience in England has demonstrated that children neither charged with nor convicted of any criminal offence, have been named and shamed ruthlessly, with front pages of local newspapers given over to naming and photographing children under headlines such as 'THUG AT 13' and 'GET OUT AND STAY OUT'. [16] The Home Office research also spoke of 'over enthusiasm' from the local press, citing by way of example one local publication which started a 'SHOP A YOB' campaign. [17] However, it is interesting that the only reason proffered against such action by the researcher was that it could create expectations in communities which would be potentially problematic for partnerships to manage! There is no mention of the rights of the people who would potentially become the targets of such a campaign, nor any credence given to what in reality was a call to vigilantism.

It is quite simply staggering to us that at a time when restrictions are being imposed on the taking of pictures at school plays by family members on the grounds of child protection, that government through this naming and shaming proposal, will be placing some of the most vulnerable children in our society directly in the line of fire. This leads Include Youth to ask the question: does government place a premium on the protection of some children and not on others? Are only 'good' children worthy of protection from child abuse?

To what extent would the concept need to be modified so that it could be operated effectively in Northern Ireland?

We are deeply concerned that these proposals are being suggested without any proper regard having been made to the ‘particular circumstances’ of Northern Ireland. Specifically, the proposals do not appear to take cognisance of the fact that Northern Ireland is emerging from over 30 years of conflict, which has seen deep human suffering, social, economic and cultural disadvantage, and civil and political upheaval. Children and young people and indeed the wider population have been deeply wounded by living in a segregated society. We have outlined below a number of specific issues which we believe would need to be resolved before the introduction of these proposals.

Paramilitaries

It has long been recognised that there is both a formal and informal justice system operating in Northern Ireland. In this jurisdiction quite often young people who engage in what is described as anti-social behaviour, can become the victim of paramilitary threat and / or attack. In the context of Northern Ireland, Include Youth would sound a note of extreme caution in relation to the provision to remove reporting restrictions, which in our view raises huge issues in respect of children’s rights and of child protection in particular. As we have outlined above that 38 children are known to have been injured as a direct result of paramilitary attack in the past year. The youngest victim reported was 14 years old. [18] And there has been recent widespread speculation that living with the threat or aftermath of paramilitary attack has in no small part contributed to the rising number of suicides among young people, particularly in North and West Belfast. We believe that the proposal to name and shame children and young people is both foolhardy and extremely dangerous.

One of the questions posed by practitioners, was whether ASBOs could be applied for in respect of those who create the real havoc for others – namely paramilitaries who harass and intimidate the children and young people at risk with whom these practitioners work day in day out. Practitioners expressed the view that current proposals are going to demonise vulnerable and troubled children and young people who actually require positive support, engagement and opportunities, whilst those who are ‘really’ engaging in ‘anti-social behaviour’ would not be targeted at all.

Moreover, one legacy of the conflict is that there are still some communities within Northern Ireland which do not accept current policing arrangements. Include Youth’s experience gained through delivery of training to Community Beat Officers in all 26 District Command Units within the Police Service of Northern Ireland, is that there are a number of ‘no-go’ areas across the province – in both loyalist and republican communities. We are concerned as to what will happen with regard to the application of ASBOs in such areas, especially as PSNI are mooted as being the core partner in delivering the orders. Will ASBOs be sought in areas which are ‘policed’ by

paramilitaries? How will they be enforced? Indeed, in terms of enforcement, when one looks at the emphasis in England and Wales on communities ‘policing’ ASBOs, we become very concerned. Traditionally some sections of Northern Ireland society have dealt very harshly with individuals who were seen to have ‘touted’ to authorities. We believe that the proposals could lead us down a very murky path.

In our view failure to take proper cognisance of such serious matters, illustrates that the proposals amount to little more than a transplanting of ideas from England, with little thought given to the complex and particular circumstances of Northern Ireland.

Different Administrative Structures

Furthermore, Northern Ireland does not have the same administrative structures as exist in England – most notably the Local Authority structure, drawing together education, social services, housing, environmental health providers and youth offending teams. Moreover this jurisdiction has nothing like the scale of problems which our counterparts in England and Wales endure. We wonder about the efficacy of establishing a new bureaucratic administrative system to deal with the relatively small numbers who could easily be dealt with by current service providers and enforcement mechanisms.

Suitability of the proposed partners

By comparison, Northern Ireland has eleven separate government departments, four health and social services boards, eleven health and social services trusts, five education and library boards, 26 District Councils, the boundaries of which are not contemporaneous. It appears to Include Youth that the three core partners mooted in the proposals, have at least in part been selected due to the potential for administrative ease in delivering ASBOs, rather than an empirical study establishing that these bodies are best placed to deliver and enforce mechanisms designed to tackle anti-social behaviour. The absence of Education and Social Services providers beggars belief, and in our view points to a lack of understanding of the complexities concerning why children and young people engage in problematic behaviour, and a refusal to engage with the ‘What Works’ evidence-based approach to dealing with such issues. In addition, what will be the role of the Youth Justice Agency or of the newly formed Community Safety Partnerships?

As earlier mentioned, much work has been carried out in the past four years in developing inter-agency and inter-sectoral partnerships across the Health and Social Services Board areas through the Children’s Services Planning model, in order to improve services for children. A key benefit to

this approach is the existence of thematic inter-agency sub-groups in each of the Boards CSPs, including one which focuses on Children who are in Conflict with the Law.

Include Youth believe that the proposals under discussion fly in the face of the significant changes in the youth justice system in Northern Ireland which have only recently begun to take effect in the last year, following the extensive research and consultation exercise undertaken by the Review of the Criminal Justice System. The Review recommended far-reaching changes to the criminal justice system in Northern Ireland. These changes include a major rationalisation of the juvenile justice estate, including the long-awaited closure of Lisnevin Juvenile Justice Centre; the creation of a Youth Justice Agency of Northern Ireland, established in April 2003; and through the enactment of the Justice (NI) Act 2002, the introduction of a range of new restorative and diversionary measures for dealing with young people who offend, including Youth Conferencing. A further key recommendation of the Criminal Justice Review was the development of a regional Community Safety Strategy, launched in March 2003.

It is clear that many of these well-researched and reasoned changes are only just beginning to take effect in Northern Ireland. For example, Youth Conferencing has just begun in its Pilot phase in December 2003; and 23 out of the proposed 26 Community Safety Partnerships have been set up, and are progressed at different stages of development. In addition, the PSNI's Youth Diversion Scheme, which introduced a restorative cautioning approach to dealing with young people in trouble, has only been in existence since September 2003. Include Youth believes very strongly that these measures, which have been adopted to deal with the particular circumstances of Northern Ireland, must be given a chance to 'bed down', and must be properly evaluated to measure success.

We believe that the Community Safety model, which draws together the three 'core' agencies proposed, together with other community, voluntary and statutory sector representatives could be best placed to deliver effective solutions. The problem is that we don't yet know. However, in our discussions with key stakeholders, we have become aware of a number of very positive and imaginative community-based initiatives which have arisen in direct response to community concerns about perceived 'youths causing annoyance' and / or 'anti-social behaviour'. Much of this work is inter-generational, which we believe is a crucial component in tackling the perceptions that fuel people's very real fear of crime. We are concerned that the availability of ASBOs could stifle such creativity, as it would provide a seemingly 'easy' answer for adults struggling to deal with the perceived 'problem' of young people in their communities.

These community-owned, inclusive initiatives take time, resources, energy, commitment, capacity-building and a certain amount of courage and foresight on the part of those involved. Therefore, once again we believe that it is too soon to introduce the ASBO / ABC initiative, in the absence of evaluated evidence of how the Community Safety Partnerships are effectively combating the problem.

Enforcement

With regard to enforcement of ASBOs, once again the document has singularly failed to take cognisance of the particular circumstances of Northern Ireland, specifically in relation to the close knit and highly segregated nature of many communities living in this jurisdiction. This raises a number of concerns in relation the current proposals. If children and young people become the subject of an ASBO and are excluded from the area in which they live under the terms of the order, where will they go? What impact will this have on the wider family, in particular other siblings? We believe that such restrictions will place already vulnerable families under even further strain; will increase their sense of isolation, as they will be displaced among people they do not know – children who have not been subject to an order could lose contact with friends, school, health or other service providers. The range of agencies who perhaps will have already engaged with the young person and his/her family could no longer be available due to the family having moved to different trust, board areas.

Are specific safeguards required for Northern Ireland?

Much of the foregoing has illustrated that fact that Include Youth believe these proposals to be fraught with danger in the Northern Ireland context. Some basic safeguards would include maintaining strict reporting restrictions on any person who has become the subject of an ASBO, particularly children and young people. This would mean that communities would not be tasked with ‘enforcing’ the Orders. We believe that communities have an important role to play in tackling anti-social behaviour in their locale – but we believe the focus should shift from a blindly blaming enforcement role, to one which involves core agencies educating and keeping members of the public informed about developments. In addition, we believe that if communities fully ‘buy into’ the Community Safety Partnership structures, this could provide a very positive vehicle for local people to become involved in tackling anti-social behaviour.

Provisions must mitigate against what we believe will be an increase in exclusion and marginalisation of children and families who are already in crisis, taking particular account of the close-knit and highly segregated nature of many communities in this jurisdiction.

Should courts in Northern Ireland be empowered to impose an ASBO alongside a sentence for conviction?

Include Youth have serious concerns with the proposal to empower a criminal court to impose an ASBO alongside a sentence for conviction. We do not believe that this is a measure which should be implemented, for a number of reasons.

In the first instance we disagree entirely with the assertion in the consultation document that ‘using ASBOs in these circumstances would avoid the accusation that ASBOs are being used as a means of taking punitive action where there is insufficient evidence to secure a prosecution’. [19] Include Youth are strongly of the view that if a conviction has been properly obtained, then there are appropriate disposals open to the magistrate to deal with the offender. We believe that it is in contravention of the young person’s Right to a Fair trial under Article 6 ECHR, to at this stage present information which has not been tested before the court as evidence upon which to apply for a further disposal, that may in fact be more restrictive than the criminal disposal.

Furthermore, we are very concerned to learn of the following examples of how this provision has been implemented in England:

1. A district judge imposed an ASBO on a young person in addition to an 18 months detention order. Breach of the ASBO carried a further period in detention of up to 5 years.
2. A young person was served with a 10 year ASBO in addition to an 18 months detention and training order. In this case the ASBO was sought after sentencing and while the young person was detained in custody. The terms of the ASBO were not restricted to his home area but extended throughout England and Wales. [20]

As one commentator has put it, ASBOs used alongside sentencing are a form of ‘release under licence’. [21]

Our additional concerns relate to the proposition that conviction related ASBOs would ‘fill a potential gap’ in relation to youth conferencing. [22] We believe that this proposal, far from being the ‘advantage’ described in the consultation document actually raises substantial human rights concerns. In particular Include Youth submits that this proposal further undermines young people’s Article 6 right to a fair trial under Youth Conferencing, in particular with regard to informed consent. We believe that the threat of an ASBO for someone who does not agree to engage with the

youth conferencing process upon a finding of guilt, utterly negates the requirement that participants at a Youth Conference consent to participate in the process.

Given that Youth Conferencing is in its infancy in Northern Ireland, we are concerned about the wisdom of introducing this punitive measure into what is fundamentally a restorative process. Once again, Include Youth believes that introduction of such a measure at this time illustrates a clear absence of strategic thinking driving this consultation exercise. Surely it would be wise to wait until the Youth Conferencing Pilot, begun just over three months ago in Greater Belfast and Fermanagh has been completed and fully evaluated.

Would the NIHE be an appropriate ASBO partner for the PSNI? Would District Councils be appropriate ASBO partners for the PSNI? Which other authorities or bodies might be suitable partners?

At this stage in our response, we hope that it has become very clear that Include Youth does not believe that introduction of the measures to tackle anti-social behaviour proposed in the consultation document is warranted. That said we would like to make a number of comments in relation to the partnership model proposed in the document.

As we have stated elsewhere in this paper, we believe that the proposed partners for delivering ASBOs have been mooted more out of administrative ease rather than a desire to deal effectively with the complexities surrounding the issue of tackling anti-social behaviour. They are evidence of the manner in which the current proposal has been ‘parachuted’ into this jurisdiction from England and Wales.

Include Youth is of the view that there are currently enough provisions at disposal of NIHE to deal with anti-social behaviour. In addition, the Housing Executive’s powers have recently been significantly enhanced with the commencement of the Housing (NI) Order 2003, which contains sweeping powers for social landlords to evict and exclude some people (including families with children) in housing need from entitlement to accommodation. Evidence shows that eviction does not put an end to the problem of anti-social behaviour...it just moves it on. Before introducing yet another punitive measure, we would ask the question: why aren’t existing powers working? In addition, we are less than convinced that NIHE have the experience necessary to become effectively engaged with those who in the main will become the targets of ASBOS – i.e. children. Whilst we appreciate the challenges faced by social landlords in dealing with this very real problem, we

believe that the current proposals to be administered by NIHE, will simply displace anti-social behaviour rather than tackling the underlying causative factors.

Furthermore, we are concerned as to whether District Councils are best placed to become a core partner in the implementation of ASBOs. As the consultation document itself points out, Northern Ireland's District Councils do not have the same extent of powers as their local authority counterparts in England and Wales. Once again, powers already exist to enable the Councils to deal with those areas where they have statutory responsibility – noise pollution, entertainment licensing and enforcement of by-laws. We are not convinced that giving District Councils the power to administer ASBOs will effectively lead to a reduction in levels of anti-social behaviour.

We believe that neither ASBOs in themselves, nor the current partnership arrangements being proposed to implement the orders, will effectively deal with the problem of anti-social behaviour. Indeed, we would go further and suggest that the current proposals may actually undo much of the good work which is taking place in many parts of Northern Ireland.

Parenting Orders

Whilst the consultation document does not specifically mention parenting Orders in the proposals for Northern Ireland, they do feature elsewhere in the document, and therefore, we have included our comments on this matter.

We have deep concerns with any measure which compels parents to participate in programmes, and has sanctions for non-compliance. We believe that such a proposal serves to punish parents who are clearly struggling, and very likely have been doing so for some time. Moreover, Parenting Orders fail to grasp the complexities involved in supporting parents to engage positively with and take responsibility for their children. We advocate strongly for a family support model of early identification and intervention for families who are experiencing difficulties. Evidence shows that positive support, offering a range of measures to help deal with the problems experienced by the children and wider family, including parenting programmes, works to reduce the risk factors associated with youth offending. We do not believe that labelling parents - who may themselves have had a negative parenting experience – as 'bad', will work. Parents may not in our view, meaningfully engage with the process. These parents may very well be struggling to cope with managing the behaviour of their challenging children. What they require is meaningful support, and skills to deal with their children in a constructive way.

What this proposal may do is result in parents ‘blaming’ their children for their having been made the subject of a Parenting Order, which could lead to a criminal conviction. This on top of the media and community branding the child, who has become the subject of an ASBO a ‘Thug’. Rather than supporting the parents, child and family generally, what these Parenting Orders do is to heap further pressures on people who are already in a very vulnerable situation.

In relation to the breach of a Parenting Order leading to a criminal conviction, we are concerned as to what this will mean for the children of the family? Is evidence available on numbers of breaches, conviction rates, and disposals granted? We are at a loss to know what policies and procedures would or could be put in place to ensure that children were not adversely affected by the breach of an adult? For example, are we going to see a rise in the numbers of children being taken into care?

Section 75

We are most surprised to read in the consultation document that following an initial screening, it is considered that the proposals are not likely to have an adverse differential impact on any of the groups. We are strongly of the view that this policy proposal will very definitely have a differential impact which is negative across a number of groups – undoubtedly age and gender; and potentially religious and political opinion. We have already demonstrated that these measures have a greater impact on children and young people than any other group in England and Wales. This would indicate that there is a potential likely impact of the same kind happening in this jurisdiction. We doubt the accuracy of the initial screening process and would be very interested to learn of the qualitative and quantitative data used to support these findings. In view of this, we believe that a full Equality Impact Assessment is required to determine the extent of this adverse impact, in order to enable the Northern Ireland Office to identify mitigating policies, in accordance with its duty under Section 75 of the Northern Ireland Act 1998. Failure to conduct a full EQIA we strongly assert will leave the NIO in breach of its Equality Scheme, and we therefore expect that publication of the draft Order in Council will not go ahead until this has been carried out.

ACCEPTABLE BEHAVIOUR CONTRACTS

Would ABCs be an effective means of dealing with anti-social behaviour in Northern Ireland?

The proposals to introduce ABCs speak of ‘engaging with’ young people and ‘steering them away’ from anti-social and criminal activities. Include Youth is a strong advocate for diversionary measures which will enhance protective factors and reduce the risk factors associated with young people engaging in trouble-making behaviour.

However, we are concerned that nowhere in the document does it state that a child's informed consent to participate in the ABC process is required. We believe that this is an essential requirement, for a number of reasons. Firstly, evidence suggests that children and families who are supported to engage with the process and services on offer are much more likely to see positive outcomes. Secondly, children and their families need to be fully aware that non-compliance with an ABC may carry sanctions, and that while they are not legally enforceable, breach of the contract may be used as evidence in an application for an ASBO. What will happen in the case of children or families who are hardest to reach, and who do not chose to engage with the ABC process? Will they be fast-tracked down the ASBO route, or will time be taken and strenuous efforts made by skilled and experienced staff to engage with these very vulnerable people?

By way of informing this debate, we would point to the many examples of good practice which currently exists in Northern Ireland in the field of engaging marginalized and disaffected children and young people. As earlier stated, good practice would show that inter-agency co-operation is essential, which should include the range of service providers who are, or should be, engaged with what is most likely a child at risk and family in trouble. Moreover, the work of engaging challenging and vulnerable young people requires highly skilled, experienced and persistent staff, that understand the complexities involved in why children become involved in risk-taking activities.

On this point we are concerned with the partners mentioned in respect of ABCs – that is police, housing authorities, schools and environmental health. Given our comments on the challenges and skills involved in engaging marginalized children and young people, we are not convinced that agencies such as housing authorities and environmental health have the necessary experience or understanding to successfully undertake this role.

We are also concerned that government is proposing to introduce an initiative upon which, by its own admission, 'there is relatively little by way of public research'. [23] This contradicts government's commitment to the 'What Works' agenda, most recently evidenced by the NIO Conference of the same title in March 2004.

What steps could be taken to strengthen the operation of ABCs or to make sure that they operate effectively?

It is difficult to give a definitive answer to this question, not least because the consultation document does not provide clear aims and objectives of ABCs. Notwithstanding, Include Youth believes that any diversionary programme such as the one proposed, must have all of the

appropriate agencies, outlined above, working in partnership. It is essential that these partnerships be given time and resources to develop and work effectively, which requires cross-departmental commitment and support for the process. It is also important that these proposals do not serve to simply duplicate existing partnership arrangements but rather consolidate and improve current provision on a multi-agency strategic basis.

Is the possible 'sanction' of an ASBO necessary for the proper working of a system of ABCs?

Include Youth does not believe that the threat of sanction by way of ASBO is necessary, indeed we believe that it could prove detrimental if the aim is to reduce levels of young people engaging in problematic behaviour. As earlier stated, we believe that it is essential that children and their families voluntarily engage with services.

We are further concerned that this provision does not have any legislative base, but that breach of the contract could result in a child of ten receiving a custodial sentence for a later breach of an ASBO.

Conclusion

In conclusion, Include Youth remains deeply concerned by the proposals contained in the consultation document. We believe that they represent a significant attack on the rights of children and young people who will become the target of ASBOs. In addition, we do not believe that they will actually be effective in reducing levels of anti-social behaviour, because the measures, particularly ASBOs make no attempt to understand or address the complex causative factors underlying young people's engaging in problematic behaviour. At best the provisions will simply displace the very real problems onto someone else's back door.

Include Youth believes that a strategic and comprehensive multi-agency and inter-sectoral approach is required, which attempts to address problems through a family support model. It is essential that partner agencies engage with children and their families who are experiencing difficulties to provide, positive support and opportunities, which evidence shows reduce risk factors and enhance protective factors associated with young people engaging in risk-taking behaviours. The evidence tells us that we collectively have to work with young people and their families not against them. Why is this evidence being ignored?

References

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- [19] Measures to Tackle Anti-Social Behaviour in Northern Ireland, p. 12
- [20] Haydon and Scraton, p. 23
- [21] *ibid*, p. 23
- [22] Measures to Tackle Anti-Social Behaviour in Northern Ireland, p. 12
- [23] *ibid*, p. 8