



Standing Committee for Youth Justice

CRIME AND SECURITY BILL
House of Commons Committee Stage
February 2010

Gang –related violence

AMENDMENTS

Tom Brake
Mr Mark Oaten

Page 65, line 19, leave out Clause 31

Page 65, line 23, leave out Clause 32

Page 66, line 1, leave out Clause 33

Page 66, line 14, leave out Clause 34.

Page 66, line 20, leave out Clause 35.

Page 66, line 24, leave out Clause 36.

Purpose: To prevent injunctions to prevent gang-related violence being applied to under 18s.

BRIEFING

Clauses 31-36 extend the use of injunctions for gang related violence introduced under section 34 of the Policing and Crime Act 2009, to young people aged fourteen and over. We are not convinced that extending these injunctions to young people is necessary as there are already a profuse number of civil and criminal justice measures that can be employed to tackle criminal behaviour among young people and safeguarding legislation that can be used to protect them.¹

Nor do we believe they can be effective in addressing the root causes of problematic behaviour. Many young people involved in gangs often have limited choice in joining them and are perhaps not aware of the implications of being involved. For girls in particular, membership in gangs may be exploitative in nature, and a welfare response rather than a punitive one is required.² There is a need for constructive work around the issue of young people's involvement in gangs but this feels

¹ Section 47 of the Children Act 1989 requires that a local authority, where it has reasonable cause to suspect that a child who lives, or is found, in their area is suffering, or is likely to suffer, significant harm, the authority shall make, or cause to be made, such enquiries as they consider necessary to enable them to decide whether they should take any action to safeguard or promote the child's welfare.

² Catch 22 and Analytica (2009) *Girls involvement in violent offending and gang activity*

like an over-the-top, knee-jerk reaction to the problem and **we therefore oppose the new provisions to extend the application of injunctions for gang-related violence to those aged 14 and over.**

A measure of last resort?

The Home Office proposes to issue guidance setting out the policy intention that the injunction is used as a tool of last resort. This was echoed by Cllr Jim Battle, Deputy Leader of Manchester City Council in his oral evidence to the Public Bill Committee:

"I can assure you—I have said it before—that these would be incredibly rare: as rare as hen's teeth. They will be used extremely rarely, because we believe that we have other strategies at our disposal and other ways of addressing this. I think we have demonstrated that. The number of gang incidents has declined rapidly. But we have used other tools. We regard this as the final tool. I disagree with Miss Ireland. The tools are not there to be used except as the very last resort, because if they were used in any other way they would become invalid and would be incredibly difficult to administer.

*We are looking at the point at which a young man sets off and the police are aware and they have to intervene. They have not got the powers at the moment and I think they need them."*³

However there is no definition of 'last resort' in the proposed legislation and the list of objectives for these new provisions, listed by the Home Office in the Impact Assessment appear to give a much broader scope for interpretation of 'last resort' than that envisaged by Cllr Battle. It states:

'This injunction will serve the purpose of:

- *Preventing acts of serious violence from occurring*
- *Breaking down gang culture and preventing younger gang members' behaviour from escalating*
- *Providing an opportunity for local agencies to engage with gang-members and develop effective strategies for them to exit the gang*⁴

We fear that unless a much tighter definition of 'last resort' is given injunctions will be used differentially across the country and potentially in much higher numbers than are currently projected by the Home Office (the Impact Assessment anticipates that there will be approximately 80 injunctions in the first full year of operation). This is especially concerning given the varying quality of intelligence about gang activity; while in some areas it is very good, we do not believe this to be the same across the country.

We would suggest that in order to clarify what is meant by 'last resort' and to ensure that injunctions can only be used in this way a requirement should be added to the legislation to require that before making an injunction the court should be satisfied that criminal prosecution is not possible and that alternative measures by police/the local authority would not adequately address the relevant risk before granting the injunction.

Standard of proof

The standard of proof required before the court can grant an injunction under s. 34 of the Policing and Crime Act 2009 is a matter of serious concern. S. 34(2) states that the court may grant an injunction if it *'is satisfied on the balance of probability the respondent has engaged in, or has encouraged or assisted, gang related violence'*. This is a lower standard of proof than now exists for ASBOs following the House of Lords judgement in the case of *R (McCann)-v-Manchester Crown*

³ Hansard, House of Commons, Crime and Security Public Bill Committee, Tuesday 26 January 2010, Column 27

⁴ Home Office, (Nov 09) Impact Assessment of Amending Gang Injunctions to enable their use for 14-17 year olds – a pilot scheme

Court, allowing an injunction for gang related violence to be made on evidence proved on the balance of probabilities where an ASBO could not be.

We believe it is inappropriate to use the lower, civil standard of proof in relation to allegations of serious criminal conduct; allegations of fraud, for example in the civil courts, and of anti-social behaviour in ASBO applications, have to be proved to a much higher standard. Use of a low standard of proof could be too open to error/misuse: for example, it could result in groups of friends being targeted rather than criminal 'gangs'.

Contents of an Injunction

The list of prohibitions and requirements that can be covered by an injunction is very extensive and includes severe limitations on association and freedom of movement that have serious human rights implications. For example, the list of conditions included in s. 35 (3) (b) of the Policing and Crime Act 2009 allows a respondent to be required to 'be at a particular place between particular times on particular days'. Subsection 35 (4) notes that this may not be for more than 8 hours.

We know from our experience of working with young people who have been given anti-social behaviour orders (ASBOs) that they find it very difficult to adhere to a long list of prohibitions (as is possible under subsection 35 (2)) and they find non-association clauses particularly difficult (subsection 35 (2) (b)).

It is important that the prohibitions and requirements are appropriate to the individual young person. Although the Bill includes a requirement for the applicant to consult with the youth offending team before an application is made, it is not clear what the process for this consultation will be and whether or not there will be a requirement for the YOT to carry out a full assessment of the young person's needs through ASSET.

Breach of an Injunction

Our strongest criticisms of these proposals are reserved for the provisions on breach contained in clause 36. These create two new orders that can be made by the county or High Court; a Supervision Order, and a Detention Order which allows a young person to be detained in youth detention accommodation for up to three months. The creation of a new 'community sentence' in the Supervision Order so soon after the introduction of the Youth Rehabilitation Order (YRO), which is intended to streamline community sentences for juveniles, and a three month custodial 'sentence' in the Detention Order when it is widely recognised that such short sentences are not effective in changing behaviour, seems perverse. The Detention Order will require the secure estate to provide a separate regime for these children, distinct from that for children detained by the criminal courts.

We particularly question the appropriateness of a Detention Order in cases in which an injunction is made for the purposes of *protecting* the respondent from gang-related violence as provided for by section 34 (3) (b) of the Policing and Crime Act 2009.

Further, it is entirely unacceptable for either of these 'sentences' for a child/young person to be imposed in the civil High Court or county court, rather than in the specialist youth court. We believe that these Orders are in effect criminal sentences and that therefore the full protections of the youth justice sentencing process should be applied. For example, there is no proposal that any form of pre-sentence report should be provided before the court imposes one of these Orders, nor a requirement that the judge should give reasons for sentencing to custody as they would be required to do in the criminal court.

Despite the safeguards included with the purpose of ensuring that the Detention Order will only be made in the most serious cases of breach, we fear that its creation will inevitably lead to an increase

in the use of custody. **Punishing young people for breach of a civil injunction with a custodial sentence is in contravention of article 40 of the UNCRC which requires that custody is only used as a last resort for children and which reflects the government's stated policy.**

The Standing Committee for Youth Justice (SCYJ) is a membership body which:

- Provides a forum for organisations, primarily in the non-statutory sector, working to promote the welfare of children who become engaged in the youth justice system; and
- Advocates a child-focussed youth justice system that promotes the integration of such children into society and thus serves the best interests of the children themselves and the community at large.

Members are: Action for Children, Association of YOT Managers, Barnardo's, Catch22, The Children's Society, Children's Rights Alliance for England, Council for Disabled Children, The Howard League for Penal Reform, Just for Kids Law, JUSTICE, Nacro, National Youth Agency (NYA), National Association for Youth Justice (NAYJ), NCB, TACT, The Prince's Trust, Prison Reform Trust, Sainsbury Centre for Mental Health, Secure Accommodation Network, SOVA and VOICE.

The contents of this briefing do not necessarily reflect the views of all member organisations