



*Tieslietu ministrija*

Project No.JUST/2010/KPEN/AG/1546 “Possibilities of solution of topical problems of restorative justice in the European Union”

**Conference „Commensurability of human rights and conception of coercive preventive measures”**

March 27 2013,Riga

# **Application of coercive preventive measures in the United Kingdom**

*Mark Tempest (Barrister, Field Court  
Chambers London)*

# CLASSIFICATION OF COERCIVE MEASURES

Coercive preventive measures in England and Wales comprehend two strands: -

**Public law measures** – divided into: -

- **Application orders** - an official body applies to the court for an order affecting named persons
- **Direction orders** – an officer or official body exercises a control power over behaviour without recourse to the courts

**Private law measures**

- an individual applies to the court for an order against (a) particular person(s)

Since 1998, public law measures have been the focus of policymaking.

# Focus on public law measures

- Why was a CPM policy seen as necessary?
- What did the legislators do?
- Has the policy been effective?
- What are its perceived shortcomings?
- How is CPM policy going to change in the future?

# History - court orders and dispositions

- Statutory measures date back to 1361 Justices of the Peace Act
- "breach of the king's peace" not an offence, but-
- Power of all citizens (including therefore constables) to arrest
- Power of Justice of the Peace (magistrates ) to "bind over" someone to keep the peace
- "Sus" law - section 4 Vagrancy Act 1824. Offence to act in a way that causes suspicion that suspect is going to commit an arrestable (serious) offence. Power to stop, search and arrest.

# History - public order and control of behaviour

- Traditional UK policing model is policing by consent.
- See Robert Peel's principles of policing  
“to recognise always that the power of the police to fulfil their functions and duties is dependent on public approval of their existence, actions and behaviour and on their ability to secure and maintain public respect.”

# ***1. WHY WAS A CPM POLICY SEEN AS NECESSARY***

- Social and legal obsolescence of traditional forms of control
- “Consent” model no longer real
- Discipline model out of touch with rights culture: eg Sus law abolished in 1981
- Increased social tension primarily between ethnic minority youth and police
- Also between local authorities and police

# Urban Anomie?

- Objective material does not support serious increase in ASB in 90/00
- But perception that ASB increasing
- Toleration of aberrant behaviour decreasing?
- NACRO and others note lack of ASB definition



# National ASB policy

- ASB Took an important place in Labour party election-winning manifesto in 1997
  - “We will tackle the unacceptable level of anti-social behaviour and crime on our streets. Our 'zero tolerance' approach will ensure that petty criminality among young offenders is seriously addressed.”
- Same manifesto proposed incorporating the ECHR into domestic law (achieved through the Human Rights Act 1998)
- Judicialisation of policy implementation – coercive measures implemented by “application orders” made by judges

## ***2 WHAT DID THE LEGISLATORS DO?-***

- Crime and Disorder Act 1998: ASBOs
- Anti Social Behaviour Act 2003: ASBIs and other measures

# 1998 Crime and Disorder Act

## Introduced the Anti Social Behaviour Order

- Imposed by criminal courts, but not a criminal sanction
- Orders are prohibitory only – “not to do...”
- Breach of the Order is an offence punishable by an unlimited fine and up to 5 years imprisonment (other disposals eg community work, suspended sentence etc available)
- In order to make an ASBO, the court must be *sure* that
  - The defendant has behaved anti-socially in the last 6 months by causing harassment alarm or distress to others
  - An order is *necessary* to prevent further ASB

# 2003 Anti-Social Behaviour Act

introduced two measures specific to public housing

- Anti-Social Behaviour Injunction
- Demoted tenancy

# Anti-Social Behaviour Injunction

- Order made by civil court. Breach is a “contempt of court” and punishable by a fine, civil imprisonment or sequestration (confiscation).
- Prohibits the defendant from anti-social conduct (conduct capable of causing nuisance or annoyance)
- Prohibited conduct must be specified in the Order
- Must be conduct directly or indirectly relating to or affecting the housing management functions of a relevant landlord.
- Only social and municipal landlords may apply
- Common law principles apply
  - Civil standard of proof of allegations
  - Court has a discretion on whether to make an order and what order to make
  - Judge will consider reasonableness and proportionality

# Demoted tenancy

- Where municipal/social landlord considers that a tenant has been guilty of conduct causing nuisance or annoyance relating to landlord's housing management function, it may serve a notice on the tenant
- Landlord may apply to civil court for a demotion order any time in the 12 months after the notice
- If the court finds to the civil standard that the tenant has engaged in conduct causing such nuisance or annoyance, it may make a demotion order.
- Demotion order removes security of tenure for one year.
- During that period-
  - Any further ASB may lead to eviction notice after internal review
  - If the notice is formally valid, court must order eviction.
  - But NB *Pinnock* – court must consider proportionality of eviciton

# Other Powers in ASB Act 2003

Two main “application” powers: -

- Closure Order - where drugs are being used unlawfully at premises, the court can order that no-one except the usual residents may go there.
- Drink Banning Order – by a criminal court after conviction for an offence. Civil order that prevents the subject buying or consuming alcohol in public. It may relate to specific premises.

# Other 2003 Powers

Two most relevant “direction powers” are

- Dispersal Order – where a senior police officer reasonably believes that
  - members of the public have been intimidated, harassed, alarmed or distressed by the presence or behaviour of groups of two or more people in a particular area;
  - ASB is a significant and persistent problem in that area,  
Then s/he may give officers special powers to require groups likely to cause intimidation, alarm or distress to leave the area.
- Designated public place order (introduced by Police and Criminal Justice Act 2003) –
  - Municipality may designate areas within its locality as “alcohol free” where it is satisfied the area is suffering from alcohol-related crime and disorder.
  - Failure to comply with a direction relating to consumption of alcohol is an offence punishable with a fine



### ***3. EFFECTIVENESS OF CPM POLICY***

- Over 20,000 ASBOs
- 56.5% breached at least once
- 43% breached more than once: average 4x
- Numbers of ASBOs diminishing but perception of ASB increasing?

# ***4. PERCEIVED SHORTCOMINGS***

- **Complexity.** 19 ASB powers when only 6 required
- **Top down .** little room for discretion at a local or courtroom level
- **ASBO is a “blunt tool” .** Diversionary strategies may be more effective, as in the housing context. ASB driven by alcohol abuse and mental health difficulties not dealt with by ASBOs
- **Lack of focus on victims.** They are excluded from decision-making by the present system

## ***5. PROPOSALS FOR CHANGE***

- Focus on victims
- Trials of informal resolution measures
- Simpler and more flexible set of powers.

# Focus on Victims

- A simpler reporting and information sharing system for ASB
- Improve risk assessment and the identification of vulnerable or repeat victims
- Community Trigger

# New Powers

- Crime Prevention Injunction
  - Principally replacing ASBO on application and ASBI
- Crime Prevention Order
  - Principally replacing post conviction ASBO
- Police Directions Power
  - General direction power

# ***COMMENTARY – HUMAN RIGHTS ISSUES***

- “Application orders” will often involve an interference with qualified ECHR rights
- Interference must be proportionate
- But all Application orders are made by courts that must consider proportionality when order made
- Thus the system appears to be ECHR compliant
- But note 2005 comments of HR commissioner

# ***PRIVATE LAW AND LESSONS FOR THE FUTURE?***

- Family Law Act
  - Non-molestation orders
  - Ouster ordersBoth successful
- Protection from Harassment Act
  - Unclear provisions
  - Unclear objects

# Conclusion

- New CPM policy may risk over-influence by individual complainants.
- But emphasis on informal resolution may better engage the responsibility of all parties to find solutions to ASB at community level
- A return to (self-) policing by consent?