Keeping it in the family

Francis McGlone looks at the Government's plans for children and parents.

The roots of criminal behaviour are planted in childhood, Jack Straw warned in a discussion document on parenting published in November 1996. 'We have to accept that having a child is not a totally private act, but one that has significance for the whole community, if that child grows up into a pattern of anti-social behaviour', he said. Curfew orders on children under 10, and a new parental responsibility order available to the courts requiring parents to attend counselling and guidance sessions, were among the measures he called for.

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These proposals are now making their way through Parliament in the Crime and Disorder Bill. The question is will they work?

Research certainly suggests that there is a link between poor parenting and youth crime. For example, a Home Office study of self reported offending among 14-25 years olds found that the two most important predictors of youth offending are truancy and low parental supervision, both of which are related strongly to the quality of relationship with parents.

However, other research lists poor parental supervision as just one of a number of risk factors for juvenile delinquency. Others include low income and poor housing; living in deteriorated inner city areas; a high degree of impulsiveness and hyperactivity; low intelligence and low school attainment; and parental conflict and broken homes. Moreover, most of these risk factors coincide and are interrelated, and this makes it even more difficult to explain the development of youth offending. Therefore, a combination of interventions may be more effective than a single method.

Very little is known about the effectiveness of measures such as curfews and parenting orders. To date, no programmes in the UK which address the risk factors associated with criminality, such as parenting education, have been rigorously and independently evaluated. Therefore it is not possible to conclude that a preventative initiative during a child's early years will lead to a reduced level of delinquency later, although certain projects are seen as 'promising'.

One programme which has been extensively evaluated is the work of the Oregon Social Learning Centre with 'uncontrollable children' in the United States. This shows that parenting training is likely to prove most effective with children under 10. But there are problems. These include, the difficulty of attracting and maintaining the interests of the parents and ensuring that the teaching materials are culturally appropriate.

Doubters and critics

The new parenting order and child curfews have come in for particular criticism by groups representing children and the legal profession. The National Association for the Care and Resettlement of Offenders believes that curfews are a 'very sweeping response' to the problem of young people roaming the streets. The Howard League for Penal Reform has questioned how the police are going to find out which children are under 10. 'Are children going to carry ID cards, with the police leaping over fences as they chase them?'

The National Association of Probation Officers (NAPO) believe that the numbers of parents who wilfully neglect their children is very small and is usually a symptom of deeper problems than deliberate neglect. For those parents who have severe difficulty in parenting, they doubt whether a parenting order is the appropriate type of assistance. Their experience is that those parents who want help will ask for it, that those who do not cannot be coerced, but that more would request help and support with parenting if they felt that this could be provided without blame and that the resources were genuinely available.

Experts generally agree that parenting classes can help to improve parenting, and may have an important role to play in reducing youth offending. However, they need to be delivered on a voluntary basis, and not made compulsory as the Government is proposing. Indeed, parenting education is least likely to work well with uncooperative parents and may actually increase tensions in families already under stress thus precipitating family breakdown and children being excluded from the family. There is also the risk that it will impact disproportionately on poor parents and may lead to abusive treatment of the child.

Coercion and responsibility

Many of the Bill's proposals, in particular the aim to improve the delivery of youth justice have been widely welcomed. It is instructive that the clauses relating to reinforcing responsibility among parents and early intervention with children have been more widely criticised. This is because intervention here is necessarily

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more problematic. It also cannot succeed by coercion, and without the recognition of the infrastructure of support which families need to function well. If the proposed legislation is to work, delivering safer communities and less offending and disorder, our society must simultaneously tackle the socio-economic disadvantage and hopelessness in which many young offenders and their families live out their lives.

The Government has said that other action it is taking will also help to tackle the causes of crime and criminality amongst young people. This includes the welfare to work programme which guarantees every young person out of work for more than six months the opportunity to work or train, action to raise educational standards, and proposals (included in the Crime and Disorder Bill) for a new drug treatment and testing order.

Nevertheless, many of the proposals contained in the Bill relating to young people and their parents feel as if they have been designed for public consumption, with the emphasis on the "tough" rather than the "causes" of Tony Blair's famous slogan. If the other risk factors for youth offending, like unemployment, are not dealt with convincingly, the risk is that all that we will be left with are coercion and increasingly with alienated numbers of young people and their families. ■

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Clause 1 - The hybrid law from hell?

John Gardner, Andrew von Hirsch, A.T.H. Smith, Rod Morgan, Andrew Ashworth and Martin Wasik look critically at the proposals for an anti-social behaviour order.

Clause 1 of the Crime and Disorder Bill is designed to provide a new juridical treatment for a widespread and destructive social problem. In the press, clause 1 was trailed from the outset mainly as a measure to deal with 'noisy neighbours'. But that trivialises the problem which the Government has within its sights.

The Government is plainly right to think that in some residential areas, people are not so much disturbed as destroyed, not so much irritated as abused, and not so much kept awake as kept under siege, by those with whom they must share a street or a stairwell or a shopping precinct.

Why cannot such tyrannical, abusive and intimidatory behaviour be kept in check by the existing law? It is not that the behaviour is lawful; on the contrary, for much of it the culprits are already criminally or civilly liable. The answer is that it is very difficult to make use of the existing remedies in such cases thanks to the close residential proximity of offenders and victims and the self-protective tactics of offenders. Criminal investigations need informants, criminal prosecutions need witnesses, and the criminal process as a whole depends on co-operation and social solidarity as well as a modicum of respect from suspects and offenders. The civil law, meanwhile, depends on the resources, both financial and personal, of those to whom it offers remedies, and while its processes grind on it grants few protections to those who dare to invoke it. The behaviour of many of the so-called 'neighbours from hell' is such as to make resort to these traditional juridical solutions very difficult. Victims and other witnesses are understandably frightened of co-operating with the authorities in a context in which even calling the police for self-protection is treated as 'grassing', and frequently leads to further and worse forms of abuse. Pointing out the civil remedies to such victims, meanwhile, has a positively Marie Antoinette feel about it. In these cases, to put it simply, the victims are often enough trapped beyond the protection of the existing law.

"Clause 1 is, however, couched in beguiling terms. It involves a marriage of civil and criminal proceedings, in an attempt to get round the difficulties of both by combining a little of each."

Short cuts

The obvious solution would be to put a bit of money and effort into improving the depressing social conditions which form the backdrop to this predicament. More and better trained community police, better witness protection schemes, more investment in decaying housing and local infrastructure, and a better-resourced and organised legal aid system might together offer a great deal of hope. But a government on a tight spending leash looks for cheap short cuts, and that is exactly what clause 1 of the Bill is. It is a short cut, moreover, which contravenes the basic principles of the rule of law, and which contravenes the Government's own professed commitment to human rights and civil liberties. It is ironic, to say the least that the Crime and Disorder Bill is sponsored by the same Ministry as the Government's much-trumpeted Human Rights Bill, several key provisions of which it violates.

Clause 1 is, however, couched in beguiling terms. It involves a marriage of civil and criminal proceedings, in an attempt to get round the difficulties of both by combining a little of each. The proceedings begin with an application, made by the police after

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consultation with the local authority (or vice versa), against a named individual, for a new kind of order called an anti-social behaviour order or 'ASBO'. Granted in the Magistrates' Court, the order is formally civil, and is granted on the civil burden of proof and with only civil procedural and evidential protections for the defendant. But its consequences can be quite extraordinary. Unlike an ordinary civil injunction - with which the Government has repeatedly but quite misleadingly compared it - the ASBO does not stop at prohibiting repetition of the wrong which triggered its issue. On the contrary, the Bill authorises the inclusion in an ASBO of any prohibitions which are regarded as necessary to protect the community from further anti-social behaviour by the defendant. These could include curfews or other restrictions on movement, and such restrictions could add up to effective eviction of defendants from their homes (irrespective of ownership) or debarring of defendants from continuing with their jobs. The order must last for a minimum of two years. Non-compliance with its terms is a criminal offence which can be tried either way, and on indictment it carries a huge maximum sentence of five years imprisonment. Moreover, in an unprecedented fetter upon the sentencing discretion of an English criminal court, grant of a conditional discharge for such an offence is explicitly ruled out in the Bill.

No discharge

The unavailability of a power to conditionally discharge is to our minds significant. The underlying thought is that, in a sense, the defendant has already *had* a conditional discharge. The ASBO itself sent her home with some conditions to abide by, and now here she is back before the court. Surely the time is now ripe for some serious sentencing? This is one of several features of the proposed regime which leads us to regard the initial ASBO proceedings, although formally civil, as criminal in substance. The severe preventative measures which the ASBO may include compound this sense, as does the fact that the proceedings are launched by the police or the local authority acting in its public capacity rather than its capacity as landlord or creditor, as does the harsh maximum penalty for violation of an ASBO which suggests that the defendant is already being regarded, in substance, as a recidivist. None of these factors by itself suffices to give the initial ASBO proceedings a criminal cast, but together they most certainly do.

If our judgement on this point is right, then the immediate consequence is that the special procedural and evidential protections normally applicable to criminal proceedings should be made similarly applicable to proceedings for the issue of an ASBO. In particular, if the proceedings are indeed criminal in substance in spite of their formal classification as civil, then according to a succession of rulings by the European Court of Human Rights the proceedings will need to be evaluated according to the special safeguards for criminal trial and conviction in Articles 6(2), 6(3) and 7 of the European Convention on Human Rights, all of which are now to form part of English law under the Human Rights Bill. These safeguards are completely absent from the ASBO application procedure laid down in clause 1 of the Bill.

Civil or criminal?

To comply with Article 6(2) of the Convention in an adversarial trial system it would in our judgment be necessary for the onus of proving the initial anti-social behaviour to be the criminal law's 'beyond reasonable doubt' standard rather than the civil 'balance of probabilities' standard now envisaged. Moreover, we cannot see how it can be acceptable under Article 6(3) for such orders ever to be granted in the absence of the defendant, or for criminal legal aid to be unavailable. Most of all, the definition of 'anti-social behaviour' would need to be tightened up considerably to comply with the tough 'legality' principle under Article 7 of the Convention. For in the Bill as it stands behaviour is defined as anti-social, and so can trigger the issue of an ASBO, so long as it causes or is likely to cause harassment, alarm or distress to no fewer than two people not of the same household as the defendant.

Two features of the definition stand out. First, there need be no actual victim: an hypothetical victim suffices. Secondly, even where there is a victim there is no protection for the defendant against the squeamishness, oversensitivity or intolerance of her neighbours. Some people are very distressed by, for example, public displays of homosexual affection. Such people may be bigoted, but there is nothing in the legislation to stop the distress of a couple of bigots from triggering an order. This leaves the ASBO with a remarkably wide potential coverage, bad enough if the order were of a genuinely civil nature but doubly disturbing if, as we believe, the order is a criminal disposal in substance. And this is to say nothing of the fact that any curfew or house arrest provisions included in an ASBO would be in clear breach of Article 5(1) of the European Convention if an ASBO does not formally amount to a criminal conviction. Article 5(1) provides a closed list of circumstances in which the liberty of the subject may be curtailed, a list which does not include the mere prevention of anti-social behaviour.

A tool of intolerance?

The Government replies that it trusts the courts not to allow the ASBO to become a tool of intolerance, and presumably not to use repressive measures within an ASBO. But the fact that the outcome of an application is expected to be tailored on a discretionary basis to stop intolerance or repression taking hold corroborates rather than weakens our procedural objections under the European Convention. For the fact that the order is discretionary compounds the provision's failure to adhere to the legality principle in Article 7 of the Convention. The definition of anti-social behaviour should therefore be narrowed to at least the extent that it should mirror the criminal offence under section 5 of the Public Order Act 1986, section 5, from which the words 'harassment, alarm or distress' are borrowed. That crime is itself con-

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ceivably challengeable under Article 7, but at least it has the virtue of setting an extra threshold for liability: the mere fact that someone was harassed, alarmed or distressed is insufficient for the purposes of a section 5 charge unless the behaviour was 'threatening, abusive or insulting'. There is a legal debate about how objective a standard is introduced by these words. But they do undoubtedly make it harder for the squeamish, oversensitive and intolerant to insist on protection from anything which offends them. What is more, the section 5 offence has the important redeeming feature that it requires that the behaviour alleged to be criminal must be *intentionally* or *knowingly* threatening, abusive or insulting. The same protections should apply for the purposes of ASBO proceedings. The court should be able to deny an intolerant ASBO application on legal grounds rather than merely in the exercise of a discretion.

Balancing human rights

These and a variety of other amendments to clause 1 need to be moved, and by the time this is published,will have been moved, in the name of protecting fundamental human rights. Of course the Government and its supporters may say, and indeed have said in the first debates on clause 1 in the House of Lords, that the human rights of defendants in ASBO proceedings need to be balanced against the human rights of those tyrannised and abused by such defendants. But this proposed balancing act represents a fundamental misconception which shows that the Government itself has not even begun to grasp the significance of its own Human Rights Bill. The European Convention on Human Rights makes no provision for a balancing act regarding any human rights. It protects all of us against the State but not, or at least not generally, against each other. True, and obviously, our rights against the State are in some cases subject to exceptions allowing for various measures 'according to law and necessary in a democratic society' to protect people from each other. But even if we thought this measure meets this standard, that would make no difference to our argument. For the human rights threatened by Clause 1 carry no exceptions at all in the European Convention. The rights in Articles 5, 6 and 7 of the Convention are *absolute*. There are no ifs and buts. If the Government cannot pursue its objectives in accordance with them, then let us be clear that *it cannot lawfully pursue them at all.*

It strikes us as strange that a government which purports to be interested in tackling social exclusion at the same time promotes a legislative measure destined to create a whole new breed of outcasts. These are people not formally convicted of any crime and yet languishing under house arrest or curfew, not even formally suspected of any crime and yet under repeated police investigation, and possibly ending up in prison - *for up to five years, remember* - for infringing the terms of an ASBO by playing football in the street, leaving rubbish in their garden, or going out for a pint of milk at night. Leaving aside our objections of principle, Clause 1 of the Crime and Disorder Bill will strengthen hostility towards the law, compound the alienation which breeds discord among neighbours, and thereby become an embarrassment to the Government. And that is always assuming that it does not first end up as an embarrassing test case under the Human Rights Act 1998. ■

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When Robert Oliver was released in October last year, after serving the full term of his sentence for the murder of Jason Swift, he could not be the subject of any statutory control. However, his high public profile as a dangerous sexual offender ensured that his movements were followed and he was hounded from several towns

Sexual offenders and the community

Caroline Keenan reviews the conference held jointly by ISTD and Sussex Police at the Law Society on March 12th 1998.

by both press and public until he reached Brighton. At this point the police, probation service and social services involved decided not simply to ask him to leave, as they felt that this would increase the likelihood that he would 'disappear' and become an unrecognised threat in the community. Having made this decision, all the agencies faced enormous practical and financial problems. After this experience they wished to share the knowledge and skills they had developed. The conference 'Practical Issues When Dealing with Sex Offenders in the Community' was organised by ISTD and the Sussex Constabulary to do this.

A hidden problem

It is only in the past fifteen years in this country that we have begun to accept both the level of damage that sexual abuse can cause and how hidden the problem can be. Inspector Terry Oates headed the investigation of historical sexual

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Stewart Borrett

abuse in children's homes in Cheshire. As he illustrated so clearly, even after a person has been recognised as being sexually interested in children they have been free to move to other areas of the country where they have not been recognised as a danger to children and have continued to offend.

The danger has been the subject of much public interest and legislative reform, particularly in the last few years, and efforts have been made to create mechanisms for monitoring those who have been convicted of a sexual offence following their release. The Sex Offenders Act 1997 now requires sexual offenders to register their address following their release. In cases where the police believe that the offender poses a particular risk they may, under the guidance issued under the act, notify the community of the offender's presence. ISTD's conference was thus a timely opportunity to examine the effectiveness of the mechanisms in place to protect children from sexual assault and the practical problems in their implementation.

The Oliver case

The day started with a discussion by **DCI George Smith** of the Sussex Constabulary, **Penny Buller**, Chief Probation Office for East Sussex and **Allan Bowman**, Director of Social Services for Brighton and Hove, on the experience of working together on the case of Robert Oliver. No agency had a duty to work with him, since he was a free man. However, all believed that he was very dangerous and would re-offend. They felt their only solution was to keep track of him. The most important element in achieving this was to ensure that agencies knew where he was living and the police kept him under surveillance at unsustainable expense.

He initially stayed in a hostel, but following the intense press coverage of his presence in Brighton, the hostel asked him to leave. At this point the agencies had three problems. Their greatest concern was that if Oliver remained homeless he would disappear and what little control they might have over his movements would be lost. Although they could not force him to live in a particular place their greatest asset was the fact that Oliver feared for his own safety to such a degree that he was prepared to accept housing arranged by a state agency, if he would be protected there.

However, once his consent had been obtained it became virtually impossible to find anywhere where he could be housed. Charities were approached, but felt that housing such a dangerous sex offender would rebound negatively upon them. Neighbourhoods which had tolerated the presence of sex offenders in the charity's treatment programmes would not tolerate Oliver's residence. Furthermore, they would begin to fear that all those being treated by the charity were as dangerous as Oliver and the charity would have to cease all its work as a result. Oliver was housed for four months in a police station, until a place could be found for him.

The costs of the exercise

The resource implications of dealing with this one offender were enormous. All the agencies involved spoke of the time and money taken up in keeping to their decision to keep Robert Oliver in Brighton. For example, Penny Buller spent days dealing with press enquiries about the case, in addition to the inter-agency meetings on the case. However, all parties spoke of their belief in the usefulness of working together and of how the practice of working together on this case had improved communications and the sharing of skills in other cases.

The register

All the speakers argued that many sexual offenders will never be convicted of an offence and that the sexual offenders register does not at present reflect this. **Ray Wyre,** Principal adviser to the Lucy Faithfull Foundation, argued for a more comprehensive list which included findings in a civil court and dismissal for professional misconduct. There is no doubt that children could have been saved from abuse in the past had knowledge been shared and greater attention paid to the previous behaviour of abusers. However, as **Terry Oates** concluded none of the people who were convicted for terrible crimes against children in Cheshire would have been on any register. He concluded that we must be vigilant. We have to acknowledge that the children are usually abused by someone they know. We must given them mechanisms to talk confidentially about abuse and listen to them when they do speak. Vigilance cannot be interpreted as vigilantism.

Protecting children

Again and again during the conference I was struck by how little public reaction to 'paedophiles' has helped in achieving the goal of protecting children. As the agencies in Sussex acknowledged, protecting children from danger is not simply a question of driving convicted sexual offenders from an area. **Ray Wyre** argued that marginalising sexual offenders in society makes them more likely to re-offend. He also argued very powerfully for a re-examination of the purpose of community notification of sexual offenders. Community notification, he felt, cannot itself prevent offenders from re-offending, since they will simply move to another area where they are not known. He went on to argue that 'if someone is so dangerous that we need to tell the local community, we need something else to tackle the problem'. He raised many questions about sentencing for dangerousness rather than for the offence committed, and reform of the Mental Health Act so that a person could be sectioned because of sexual deviancy.

The conference formed a good starting point to a national discussion about dealing with sex offenders and raised many questions which, in the short time available, there was little opportunity to address. We have to look beyond the current furore to the practical and legislative problems raised in trying to manage all dangerous offenders in a community and work towards manageable national strategies. ■

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"I felt the conference was a great success. It enabled practitioners from many disciplines to hear the experience of a team who had been brought together at short notice and had found that they were able to achieve results. All recognised they could face the same problem at any moment.

I am less sanguine about the future. There has been so much emphasis on the danger posed by strangers that the far greater peril to which children are exposed in the home is being ignored. Children (and their parents) who are on the lookout for obvious assailants may miss the less obvious ones. Education is the key."

Paul Whitehouse, Chief Constable, Sussex Police