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BRIEFING

Crime and Disorder Anti-Social Behaviour 2002/2004

1. Context

1.1 The Crime and Disorder Act 1998 provided the catalyst for closer liaison between the City Council and the Police and led to the development during 1999 of the Council's first Crime and Disorder Strategy. The Legal Services Office has been actively involved with subsequent policy implementation.

1.2 This briefing note summarises the work undertaken by the Litigation Division of the Legal Services Office in respect of crime and disorder in Birmingham. A restructure of the Division to establish a new Housing Team took place in 2000 followed by an agreement with Housing Services to outplace a solicitor/barrister within each of the seven housing areas. An inter-agency ASBO Co-ordinating Group was formed which has assisted to overcome a significant number of initial technical and procedural difficulties with regard to obtaining Anti-Social Behaviour Orders and indeed the Council has now obtained 30 ASBOs.

1.3 Closer liaison with the Community Safety Partnership Team within the Chief Executive's Office was also established and the number of injunctions and ASBOs obtained since 2001 has steadily increased. Records show that while the use of legal proceedings by the Housing Department was very low indeed prior to 2000, the number of housing legal actions has doubled annually since then reaching over 100 in 2003.

1.4 More recently, legal development work in respect of crime and disorder outside of housing estates and within the wider Birmingham Community has broken new ground, which does not fall clearly within the function of any individual Council Department. Funding has therefore not been available through the usual mechanism of Service Agreements between Legal Services and Council Departments. Accordingly a first funding application was made to the Community Safety Partnership for 2002/3. This was successful and provided an opportunity for the new Crime and Disorder Reduction Strategy 2002/05 to secure some rapid and visible gains by engaging with a set of persistent and high profile issues, outlined in this briefing note.

2. New Legal Work

2.1 Traditionally it is the Crown/police who institute proceedings in the criminal courts for breaches of the criminal law in liaison with the Crown Prosecution Service. While local authorities also have significant responsibilities for law enforcement in the criminal courts, for example trading standards and health and safety, this does not usually extend to prosecutions in respect of public order offences and offences against the person.

2.2 Although local authorities have specific functions and powers, which may properly involve action in the civil courts,

so far as anti-social behaviour is concerned, law enforcement has usually been limited to court injunctions against Council tenants whose inappropriate behaviour constitutes a breach of the tenancy agreement and, since 2000, the use of anti-social behaviour orders in respect of conduct causing alarm and distress.

2.3 New legal work which has been pioneered from 2002 involves the use of civil injunction proceedings in a wider range of situations. The use of the civil courts has certain advantages in appropriate circumstances. The standard of proof required in the civil courts is "on the balance of probability"; evidence from victims or members of the community may be avoided, and 'hearsay' evidence may be admissible; civil orders may be more effective in controlling anti-social behaviour; and the court process and timetable are more under the control of the claimant local authority.

2.4 Powers exist to undertake this legal work by virtue of s222 Local Government Act 1972 and s2 Local Government Act 2000.

3. Liaison with the Police and Partners

3.1 The possibility of councils taking successful civil proceedings to tackle crime and disorder is greatly enhanced through partnership working with the police. Local authorities will often be faced with insufficient witness evidence coupled with problems of perpetrator identification. Legal remedies in this area of law are also not widely used and therefore relatively untested.

3.2 The Community Safety Partnership in Birmingham (Health Authority, Police, Probation, Voluntary Sector and City Council) is the statutory Crime and Disorder Reduction Partnership which has opened up new possibilities for collaboration. Civil proceedings become possible in partnership with the police,

since they invariably have both the available evidence and the ability to identify perpetrators.

3.3 Legal actions over the last two years involves the Legal Services Office issuing civil legal proceedings in the name of the City Council, preparing the case for trial, with evidence and witness support from the police and council officers where appropriate. Victims and the local community have been consulted at all stages.

3.4 Inter-agency partnership working has proved to be of paramount importance in seeking to address the underlying causes of crime and disorder and implementing longer-term prevention measures. Civil legal action can facilitate work designed to deflect perpetrators from their anti-social behaviour.

4. Types of Disorder

(a) Anti-Social Behaviour in Housing Estates

4.1 Legal work with Housing Services has continued and current joint initiatives include the development of a more detailed Service Agreement as well as new joint protocols and method statements for legal work associated with anti-social behaviour. The Housing Department has given greater priority to this issue with the creation of a new Anti-Social Behaviour Unit designed to operate cross-tenure and the Legal Services Office will provide full legal assistance. It is likely that the number of civil legal actions will rise from a very low base level in 2000 to c300 in 2004.

(b) Crime and disorder in the wider Community

4.2 Since 2002 Legal Services has considered remedial action in respect of street prostitution, domestic violence, noise, racial incidents, and street crime in order to offer greater protection for local

communities and assist the development of flourishing neighbourhoods. The possibility of civil legal proceedings for all main types of anti-social behaviour is now being explored and developed in conjunction with the police and voluntary sector organisations. Partnership activity will assist to ameliorate the immediate adverse effects upon local communities and facilitate the development of longer-term solutions for specific types of crime and disorder. The following issues have received particular attention from the Legal Services Office:

Street Prostitution

4.3 In December 2001 the City Council set up an inter-agency Partnership Action Group chaired by Penny Smith (Assistant Director/Resources) reporting to the Member level Street Prostitution Panel. The Partnership Group has met monthly and implemented a wide range of measures designed to address the adverse effects of street prostitution upon local communities generally and within the North Edgbaston / Ladywood area of the city in particular.

4.4 A Legal Proceedings Chart detailing legal action against kerb crawlers, pimps and street prostitutes has been developed in collaboration with the Police, Probation Service and Birmingham Magistrates Court. This was submitted to the Home Secretary with recommendations for changes to the law in relation to the sentencing of kerb crawlers.

Kerb Crawlers

4.5 In 2002 kerb crawling became an arrestable offence and this has had a significant effect. The experience of the police in Birmingham is that those men arrested and brought before the Court have not re-offended. However, the penalty of a relatively small fine is not believed to have sufficient deterrent effect to prevent others from kerb crawling and hence the approach to the Home

Secretary to propose enhanced sentencing penalties.

4.6 New powers enabling the Courts to withdraw driving licences are contained in 2003 legislation. Kerb Crawlers therefore now run the risk of being banned from driving.

Pimps

4.7 The likelihood of successful criminal proceedings against pimps is often not high having regard to evidential difficulties faced by the police. The possibility of civil proceedings is therefore being explored.

4.8 While it may not be immediately or demonstrably obvious that pimps are causing a public nuisance it is believed that they are the prime cause of the problem of street prostitution. If the unlawful activities of pimps could be prevented then it is believed that many street prostitutes might exit from this activity and, as a consequence, the alarm and distress caused to local residents would thereby be greatly reduced.

4.9 Residential premises are also being identified where used regularly by men for the purposes of pimping or the supply of drugs. Due to evidential difficulties the police are often not able to take criminal proceedings but local residents remain concerned about their safety. Warning letters jointly signed by the Council and police are sent to the landlord and/or tenant of the premises indicating that civil proceedings will be taken unless steps are taken to remedy the situation.

Street Prostitutes

4.10 Successful legal action in the civil court has been taken against 20 street workers operating in the North Edgbaston/Ladywood area of the city. Appropriate warning letters were issued and every effort made to involve all partners including the Health Service and

organisations active in the voluntary sector. Street workers may themselves be seen as 'victims' and action has been taken, and will continue, to help them avoid legal proceedings by inviting their voluntary referral to appropriate agencies.

4.11 The terms of the court orders were groundbreaking in that they forbid the women permanently from soliciting for the purposes of prostitution and for one year from entering the local area in question.

4.12 The court orders appear to have been largely obeyed although five women were taken back to court for breaching the order. The women were committed to prison but this was suspended on terms that they must obey the original Order. This was very much a last chance for the women concerned and the Health Service project made renewed efforts to work with the women and take them off the street.

4.13 Only two street workers have subsequently re-breached and were committed to prison for 28 days. The partnership will continue to work with the women to ensure that appropriate support is available upon release.

4.14 The number of street workers in the area has reduced from 50 each day some years ago to less than 5 today.

Domestic Violence

4.15 Ongoing discussions with the Police (Command Unit F2) have also opened up the possibility of much closer co-operation with legal enforcement action in respect of domestic violence. This has been explored further with the City Council (Equalities Unit, Community Safety Partnership Team, Neighbourhood Advice and Benefits, and Social Services) as well as the voluntary sector (Women's Aid and Family Service Unit) with agreement in principle that the initiative should be explored and tested. An inter-agency Partnership Group was established towards the end of 2002 to consider appropriate cases for civil action. Both the

police and the voluntary sector organisations have expressed particular interest in this development as it raises the possibility of effective action in a number of difficult cases where criminal prosecution has proved impossible.

4.16 The current proposals involve the Legal Services Office issuing legal proceedings following police or community sector intervention. Proceedings will be considered in the name of the City Council. The Legal Services Office will prepare the case for trial, with evidence and witness support from the police and/or community sector organisations. Women affected will need to be consulted and assisted at all stages, but it is hoped that the need for them to give direct evidence can be avoided.

4.17 Inter-agency partnership working is of paramount importance to support the women and children affected and to consider the underlying causes of domestic violence and implement longer-term prevention measures. Legal action is but one method to ameliorate the consequences of domestic violence and the proposals put forward are designed to assist implementation of the Council's Gender Equality Strategy. The Partnership has taken great care to ensure that issues of confidentiality, data protection and the safety of women affected and children of the family are fully considered.

4.18 Accordingly, while the first meeting of the Partnership was held in late 2002 and it has met monthly thereafter, much of 2003 has been spent identifying key principles and processes. The first test cases have now been agreed and warning letters sent to the perpetrators. If these warnings are not heeded then the first court hearings are likely to take place in Spring 2004.

Street Crime

4.19 Further discussion with the Police (Command Unit F1) has led to proposed civil proceedings against aggressive and

'walking' begging in the City Centre. This appeared to be on the increase and is the cause of distress to a significant number of citizens and visitors including young people many of whom are also alarmed by this behaviour. Criminal prosecution leads only to a small fine and ASBO applications are often not considered immediately appropriate because of evidential difficulties.

4.20 Once again, partnership working has been important in order to address the causes of begging, often drug related, and to implement longer-term prevention measures.

4.21 Warning letters were issued during December 2002 to some 20 aggressive beggars in the City Centre and the overall situation improved during the first part of 2003. Following further review, the number of persistent beggars has fallen to six. Further warning letters have been issued and proceedings are likely in Spring 2004. The partnership is seeking to ensure that appropriate support is available to assist all those receiving warning letters or subjected to court action.

Youth Gangs

4.22 The Legal Services Office is also working with the Youth Offending Service and the police to develop legal responses to crime and disorder and gang culture among young people in Birmingham. The first test cases are being identified in Aston Ward and will be prepared for legal action over the coming months.

Racial Incidents

4.23 During 2004 other legal developments will be pioneered in respect of racial incidents. The partnership currently considering civil legal action is the Racially Aggravated Violence & Harassment Theme Group established under the Crime and Disorder Reduction Strategy. Two cases have now been

identified and warning letters are being issued to the perpetrators.

Premises attracting crime

4.24 A recent test case involved action against the controller of commercial premises (nightclub) where various serious crimes had taken place either on the premises or in the vicinity, including murders (one of which was an execution) woundings by firearms and stabbings, rapes and serious sexual assaults, robberies and assaults.

4.25 An interim injunction was obtained which prevented the controller from continuing to use the premises as an entertainment venue or from selling food or alcohol. The defendant breached the order, (another shooting took place) and was taken back to court where he received a custodial sentence for his contempt.

4.26 The premises are now closed and there has been a significant reduction in crime in the area. The local community have been very supportive of the work taken by the partnership.

5. Local Strategic Partnerships

5.1 Finally, action at Constituency and Ward level (Local Strategic Partnerships) is increasing largely through the Council's devolution and localisation agenda. High priority for many Ward Development Plans are issues of community safety and crime reduction.

5.2 Legal Services is seeking to engage with these developments in order to offer advice and assistance that will enable crime and disorder to be firmly addressed within the emerging Council mechanisms and support systems in partnership with the police and other relevant agencies. Criminal or civil legal enforcement action will be taken where appropriate.

6. Conclusion

6.1 Civil legal proceedings must not be seen as an alternative to prosecution where crimes have been committed. The Police and other enforcement agencies, including the City Council, will continue to institute criminal proceedings where this is appropriate and practically possible.

6.2 Nevertheless, a range of circumstances do lead to practical difficulties in mounting criminal prosecutions. In these circumstances civil proceedings will be considered and the examples given in this briefing paper may be seen as a pilot project operating during 2002/2004 under the umbrella of the Birmingham Community Safety Partnership (the statutory Crime and Disorder Reduction Partnership).

6.3 Given the degree of success to date, the Cabinet of the City Council and the West Midlands Police have now approved the establishment of a public-public partnership between the Legal Services Office of the City Council and the West Midlands Police Legal Department to act as a legal resource at strategic, constituency and neighbourhood levels for the Community Safety Partnership.

6.4 The City Council and indeed all local authorities, in partnership, face a significant challenge to reduce anti-social behaviour in our communities. There is a major new role for Legal Services to support and drive this process forward.

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