Lowering the Standard: a review of Behavioural Control Orders in England and Wales

A Report by JUSTICE

Chair of the Committee
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EXECUTIVE SUMMARY

The term 'Behavioural Control Orders' refers to a group of legal Orders that are imposed upon an individual via a civil court process or by an executive authority. They aim to address particular behaviours deemed to be objectionable. Sometimes the behaviours targeted constitute crimes in their own right; at other times the Orders are designed to tackle behaviour that falls below the criminal threshold. They do so by imposing restrictive conditions or requirements upon the person subject to them. These include conditions prohibiting association, being present within a particular geographical area, accessing the internet and can include electronic monitoring. Although Orders are imposed via a civil process and usually upon civil standards of evidence, breaching a condition within an Order is a criminal offence.

There are an increasing number of Behavioural Control Orders ("Orders") on the statute books of England and Wales, and their scope and availability appear to be ever-widening. Originally created to fill a gap present within the criminal law, e.g., the difficulty of prosecuting individual instances of football hooliganism, they have rapidly expanded to new areas and now cover behaviour which is, in and of itself, a criminal offence – punishable via the criminal law. For example, Orders now exist to address anti-social behaviour, protests, drug use, knife possession, gang-crime, stalking, and sexual offending, among other matters.

Some Orders can differ in terms of who they protect (a specific individual, the public at large, or even a particular place); who may seek or impose an Order; whether an Order can be made on complaint, on conviction, or both; whether they can be imposed on children, or on adults only; the types of conditions and requirements that they can impose; what outcome the Order is intended to achieve and, accordingly, the legal test to be applied (including the standard of proof). The reasons for the variations is unclear and, in any event, has caused confusion across the country. This, in turn, has resulted in inconsistency in the ways in which Orders are used, and the protections afforded to victims.

Surprisingly, despite their proliferation and the serious subject matter which they address, Behavioural Control Orders have never been the subject of any systematic, government-led review. It is not clear how the effectiveness of Orders should be measured, nor what 'success' should look like. Very little attention has been paid to whether the Behavioural Control Order 'model', works. The Working Party has sought to shed light on this question by examining the extent to which Orders are effective for victims, fair, accessible, proportionate, and rights compliant.

Overarching Concerns

Notwithstanding the variations between Orders, the Working Party identified a number of common, overarching concerns. Orders are often conceived of as a solution to complex social problems. They seek to prevent harms, protect vulnerable individuals, and offer rehabilitation to those accused of committing unwanted conduct. Whilst the policy papers accompanying their introduction stress that they are not intended to be punitive, their duration, the breadth of conditions they impose and the punishment for breach means that in practice, they are often perceived and experienced as such. Moreover, rather than diverting individuals out of the criminal justice system, the Working Party heard criticisms that Orders draw people, especially children, further intro the criminal justice system (owing to the possibility of criminal sanctions for breach).

The bar for what conduct may be prohibited by an Order is very low in practice. For example, some Orders have been imposed on individuals as a result of them "*closing the door too loudly"* and impose conditions which prohibit "*sitting on a pavement*" or "*wearing a bikini in the garden"*. Arguably, such prohibitions are reflective of a loss of perspective on what degree of behaviour should properly be controlled by the State, and thereafter criminalised. At the same time, it risks diverting attention away from those really responsible for causing harm. On the other hand, some forms of Order can be said to criminalise individuals 'by the back door', by overlapping with existing criminal offences. Procedures for obtaining Orders generally do not require the rigour that proving a criminal charge does, with the tests to be applied often much broader than the wording of a statutory offence. Although proceedings for breach (as a separate offence) are brought before a criminal court, the conduct amounting to a breach may in fact be much less serious than the nature of the Order implies.

Despite this, most contributors agreed that in certain circumstances, and when used appropriately, Orders could be useful tools in protecting victims from harm. This is especially true where used to protect a particular person, in the context of harms generally constituted by escalating or cumulative conduct. For example, Orders such as Stalking Protection Orders are effective, provided enforcement bodies apply for them. And Non-Molestation Orders can provide relief to victims of domestic abuse, as long as breaches are followed up and provided that victims are applying for them – not because the police have failed to help them - but because it is their preference to take action themselves. Nonetheless, more planning and consultation is required at the legislative phase, to ensure Orders are capable of achieving their aims, and enforcement bodies are set up to use them effectively. Little is currently done to assess how Orders will work in practice, and the views of interested parties, including experts and victims, and organisations working with offenders, are not meaningfully considered, nor their concerns adequately addressed.

A consequence of this is that Orders can be performative in nature. The Working Party heard criticisms that Orders often reflect a "*knee-jerk reaction*" to high-profile issues, treating the symptom rather than the cause. It is doubtful whether a legal Order alone, can ever have a significant impact on reducing harm without the State taking responsibility for tackling the causes: inequality, poverty, inadequate housing, education and an under-resourced mental health service. Even where Orders have been found to be effective in providing relief to victims – as with Stalking Protection Orders, Non-Molestation Orders and Sexual Harm Prevention Orders - the failure to make resources available for training, enforcement and data sharing – mean that they are often deemed "*a missed opportunity"* and are not used widely enough. Moreover, whilst Behavioural Control Orders are meant to provide access to interventions, programmes and positive diversions – a lack of resources and available services often mean that this cannot take place. Without proper accreditation, there is also a risk that certain types of 'perpetrator programme' or diversionary schemes can cause further harm.

Moreover, there is no clear mechanism for measuring the effectiveness of Order, nor any clear guidance on what criteria their effectiveness should be measured against. Relevant factors could include the ability of Orders to provide protection, prevention and rehabilitation, as well as prevent recidivism. However, without adequate collected and published data, it is impossible to tell whether Orders are achieving these outcomes. The lack of data on the use of Orders not only makes it difficult to measure their effectiveness; it also means that discriminatory practices go unnoticed and unaddressed.

A major concern relates to the disproportionate impact Orders can have on groups who are marginalised by way of socio-economic circumstances, age, gender, race and/or health. Behavioural Control Orders are regularly enforced against those experiencing homelessness. There have also been significant concerns that Knife Crime Protection Orders, for example, may be over-used in relation to young Black men and boys. Conversely, the failure to use Orders to address gendered crimes, like domestic abuse and stalking, speaks to a broader failure to uphold the rights of women and girls. Discrimination may also be indirect: those already experiencing disadvantage may struggle to engage with Order processes and to obtain assistance. As orders are civil in nature, applications for them are made through the civil courts which lacks a Liaison and Diversion service. The Working Party is concerned that this disproportionately impacts on individuals experiencing mental ill health, learning disabilities and/or are neurodiverse. Moreover, the appropriateness of imposing Orders on children remains in doubt. Multi-agency safeguarding approaches must be the starting point.

Ultimately, what is required is a government-led review of the existing array of Behavioural Control Orders, giving consideration to each of the issues identified by the Working Party so that Orders may be rationalised, reformed, and improved across the board. Most importantly, such a review must work with a range of stakeholders, beyond enforcement bodies, to understand whether the Orders work and how they can be improved to remove discriminatory impacts whilst ensuring protection for victims. In the meantime, the Working Party recommends that more immediate steps be taken to improve Behavioural Control Orders, present and future.

Re-envisaging the Process for Imposing Orders

In terms of any new Orders which may be considered, the Working Party is of the view that a robust evidence base must be developed from the outset. That evidence should explain why a new Order is required, what harm it will address, and why it will work. Consideration should also be given from the beginning to the possible human rights implications of any new Order, with adequate time provided for human rights compliance to be considered at the legislative stage. Moreover, detailed thought should be given to how Orders are to be funded: to provide for training, enforcement, and the provision of services to ensure they meet their rehabilitative objective. Crucially, before legislation for a new Order is developed, public consultations should take place which ensure the views of key stakeholders, including those representing victims and those representing recipients, are meaningfully considered. The same applies where existing Orders are to be amended or updated to expand their scope or availability. Finally, at the stage where legislation in relation to a new Order has been developed, it is recommended that a pilot be undertaken to allow for the identification of disproportionate or unforeseen impacts.

There are also a number of steps which should be taken in respect of Orders already in existence. For instance, post-legislative scrutiny should be introduced to assist determination of whether Orders are working as intended and to remedy any problems identified. Such scrutiny should involve the voices of victims and recipients, as well as legal representatives and enforcement bodies. Applications for Orders in particular cases need to be given careful thought. Where there is no immediate risk of harm to an individual, the person responsible for seeking the Order should consider what alternatives exist outside the criminal justice system. Where an Order is sought, consultation should take place with relevant experts and agencies including Youth Offending Teams, Children's Services and Adult Social Care – the views of such agencies should be made available to the court. There should be a serious examination of whether the legislative test can be met and, accordingly, whether the particular Order is appropriate and proportionate to the ends pursued. In the Working Party's view, the legislative tests for certain orders should be narrowed and clarified.

Appeal processes are presently inconsistent and poorly understood. In some cases, informal reconsideration or review mechanisms may be an appropriate first step, while legal aid provision needs to be extended to cover more formal appeal processes. Where an Order has been imposed, it should be subject to ongoing monitoring to ensure that any breaches are acted upon quickly, and lack of comprehension or difficulties with compliance can be identified and addressed. This feedback can also feed into broader data collection efforts.

There is presently a good deal of confusion around the procedures for obtaining Orders. The Working Party considers that this should be addressed through the development of procedural and statutory guidance. Such rules should be kept under review and developed in consultation with stakeholders. Finally, training should be improved across the board. Training about Behavioural Control Orders is lacking within enforcement bodies, among the judiciary and magistrates, and across the legal profession. In particular, there is a need for greater understanding about vulnerabilities and the identification of complex needs, which can make imposition of an Order inappropriate or render compliance with it more difficult for particular individuals.

In brief, Behavioural Control Orders can be a useful tool to protect, prevent, rehabilitate, and deter. However, much more information is required to know whether they are achieving their potential, from the point of view of both victims and recipients. And much more funding and support requires to be made available to ensure that obstacles to their success e.g., poor training and a lack of available resources and services, are overcome.

We call upon the Government to both take the current recommendations forward and to conduct an in-depth multi-disciplinary review of all existing Orders, to ensure that they are achieving the positive effects intended and no others.

I. INTRODUCTION

1.1 The past two decades have seen a rapid proliferation of civil Behaviour Control Orders ("**Orders**") [1] appearing on the statute books in England and Wales. [2] Such Orders seek to control the recipient's behaviour by imposing conditions to prevent them from engaging in conduct that the State considers is in some way detrimental to public life or individual safety.

1.2 Behavioural Control Orders proceed in stages whereby:

a) objectionable behaviour is identified; [3]
b) conditions are imposed upon a person, business or sometimes a place, either in response to them engaging in that behaviour, or in anticipation that they will do so; [4]
c) if those conditions are breached, the person subject to the Order is punished. [5]

1.3 Such Orders take a variety of forms and now exist in significant numbers. Research published in 2019 identified over 33 types of Order that fitted under the umbrella term, "*behaviour order*". [6] In exploring the development of behaviour Orders over time, the author of that work helpfully categorised behaviour Orders according to three distinct *forms*:

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[1] This is not a universally accepted term. Terms such as "preventive Orders", "protective Orders", "ancillary Orders", "two step prohibition Orders", "hybrid Orders" are all used frequently and interchangeably by other commentators in relation to the types of Orders to which this report refers.

[2] R. Kelly, 'Behaviour Orders: preventive and/or punitive measures?' , (2019).

[3] J. Hendry, 'The Usual Suspects: Knife Crime Prevention Orders and the 'Difficult' Regulatory Subject', *British Journal of Criminology, (2022).* There is substantial variation between the types of conduct targeted by Orders: it may be criminal in and of itself, e.g., Knife Crime Prevention Orders, or it may be behaviour that is otherwise undesirable or "detrimental to the quality of life", e.g., Public Spaces Protection Orders.

[4] As discussed later in this report, it is not always necessary for the recipient of the Order to have previously engaged in the specific type of conduct that the Order seeks to prevent. For example, conditions are imposed via Public Spaces Protection Orders in anticipation that someone entering the space, might engage in such activity in the future, and therefore the conditions are designed to prevent it happening in the first place. For Orders such as Football Banning Orders however, conditions are imposed on a recipient in response to that individual having been identified as already committing some form of unwanted conduct relating to football.

[5] See A.P, Simester, and A.V. Hirsch, 'Regulating Offensive Conduct through Two-Step Prohibitions', *Incivilities: Regulating Offensive Behaviour,* (2006), p.175.

[6] See n.4.

a) Civil behaviour Orders – granted under civil evidential rules and breach is civil contempt of court. [7]
b) Hybrid behaviour Orders – granted under civil evidential rules and breach is a criminal offence. [8]
c) Executive behaviour Orders – imposed by a state body with little or no judicial oversight and breach is a criminal offence. [9]

1.4 This report is concerned with **Behaviour Control Orders** that fall within category b) and c) above. [10] The reasons for this are threefold:

a) Behaviour Control Orders that are "*hybrid*" in nature – that is, being civil in form but criminal in consequence – is the model that *most* behaviour orders currently take;
b) Behaviour Control Orders that are imposed without any judicial oversight (that is, category c) Orders) are amongst the *most frequently imposed*;
c) By blending elements of the civil and criminal law, including rules of evidence and procedure, these two types of Order create a separate, yet ill-defined, grey area within the justice system, the impact of which merits greater exploration.

1.5 Initially viewed as a novel means to target unique problems (for example, football 'hooliganism' in the 1980s, [11] anti-social behaviour in the late 1990s, [12] and terrorism financing post-9/11), [13] Orders have spread across the justice system. Whilst England and Wales are not alone in relying upon Orders, the breadth of areas covered by the Orders is wider than that of our international

[7] Examples include Gang Injunctions and Anti-Social Behaviour Injunctions.

[8] Examples include Knife Crime Protection Orders and Stalking Protection Orders.

[9] Examples include Community Protection Notices and Public Spaces Protection Orders.

[10] Nonetheless much of what is covered in this report may also be relevant, by extension, to the types of Orders classified under a) as Civil Behaviour Orders.

[11] Football Spectators Act 1989, ss.14A-s14B; see also Crown Prosecution Service, 'Football Related Offences and Football Banning Orders', (2022).

[12] Anti-Social Behaviour Orders, Crime and Disorder Act 1998, s. 1.

[13] Terrorism Prevention and Investigation Measures Act 2011, Schedule 1.

counterparts.[14] Orders now exist in the context of community nuisance,[15] serious and violent offending,[16] gender-based violence,[17] and sexual misconduct,[18] amongst other areas.[19]

1.6 This momentum for introducing new Orders shows no signs of slowing. A Pilot for Serious Violence Reduction Orders ("**SVROs**") commenced in April 2023, and a Pilot for Domestic Abuse Protection Orders ("**DAPOs**")[20] is due to start in 2024. What is more, the Public Order Act 2023 has introduced Serious Disruption Prevention Orders ("**SDPOs**"),[21] colloquially known as "*Protest Banning Orders*".[22] Moreover, a series of government consultations were undertaken in April 2022 and May 2023, looking at the Vagrancy Act 1824 and anti-social behaviour.[23] These hint that a new form of Order may be introduced

[14] Research conducted on behalf of the Working Party identified the presence of Orders that have a similar form to that of the Behavioural Control Order in Belgium, Germany, Japan, Singapore, the US and the UAE. However, from the research conducted, it appeared that the scope of Orders in those jurisdictions appear to be more limited– mainly focusing on domestic abuse, stalking and harassment. Demetriou, however, has highlighted the proliferation of prevention-led interventions in Australia (see, S Demetriou '*Indirect criminalisation: the true limits of criminal punishment*' P. 24).

[15] Dispersal Orders, Public Spaces Protection Order and Community Protection Notices.

[16] Serious Violence Reduction Orders and Knife Crime Prevention Orders.

[17] Stalking Protection Orders, Female Genital Mutilation Protection Orders, Forced Marriage Protection Orders.

[18] Sexual Risk Orders and Sexual Harm Prevention Orders.

[19] See A. Ashworth, and R. Kelly, 'Behaviour Orders and Ancillary Orders', (2021).

[20] Introduced by way of the Domestic Abuse Act 2021, Part 3 and designed to replace the existing civil injunctions (Domestic Violence Protection Notices and Domestic Violence Protection Orders). The Domestic Abuse Protection Order will also replace Non-Molestation Orders in all cases relating to domestic abuse pertaining to an intimate partner or family member. See also Home Office, 'Domestic Abuse Protection Notices/Orders Factsheet', (updated July 2022).

[21] Serious Disruption Prevention Orders, Public Order Act 2023, ss.20-29.

[22] Whilst not relating to a SDPO, it is notable, or at least of some historical importance, that provisions within the Public Order Act 2023, setting out new offences relating to protest, entered into force on 3 May 2023 – 3 days before HRH King Charles III' Coronation. Several individuals were arrested for protesting at the event, under the new Public Order Act offences. None of them were subsequently charged. What is more, the "accidental" arrest of a "non-protestor" who was spectating at the event, shows the rigour by which the new anti-protest offences are policed.

[23] See Department for Levelling Up, Housing and Communities, 'Review of the Vagrancy Act: Consultation on Effective Replacement', (April 2022) and Department for Levelling Up, Housing and Communities and Home Office 'Anti-Social Behaviour Action Plan' (2023).

to prohibit begging.[24] The Labour Party, too, have offered up a new "*Respect Order*" to deal with public disorder, to be introduced should they win at the next General Election.[25]

1.7 Orders are often used to fulfil what appear to be well-intentioned policy aims, e.g., to **prevent** harmful behaviour and, where relevant, to offer victims[26] timely relief and **protection** from that conduct. In some cases, they also offer the hope of **rehabilitation** for the recipient by including requirements that the recipient attend therapeutic or educational programmes.[27] Arguably, they are also **punitive** in their impact. For example, they impose conditions and requirements on an individual which can impact their daily activity and in certain cases, the Orders can be in place for upwards of 10 years. They have also attracted criticism for bypassing the procedures and evidential standards of the criminal law whilst still attracting criminal sanctions, including imprisonment, if the conditions contained in them are breached.[28] Even where an Order is imposed in connection with criminal offending, the punishment for breach can sometimes be greater than that applicable to the offence.[29]

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[24] Begging is already frequently referred to as a "trigger" for imposing and enforcing Public Spaces Protection Orders, as well as Community Protection Notices, as identified by data obtained by the Working Party in response to Freedom of Information Requests sent by it in 2023.

[25] See, Labour, 'Keir Starmer unveils mission to halve serious violent crime and raise confidence in the police and criminal justice system to its highest levels'.

[26] Not all breaches of Hybrid Orders will have victims per se. Some Hybrid Orders, such as Public Spaces Protection Orders and Dispersal Orders, attach to an area to protect the community at large. These Orders do not try to prevent harmful behaviour against a particular individual or group but instead prevent harmful behaviour for the benefit of the community.

[27] See, for example, Home Office, 'More Effective Responses to Anti-Social Behaviour', (2011) in the context of anti-social behaviour; *House of Lords,* 'Stalking Protection Bill The Explanatory Notes on the Stalking Protection Bill' (2018)*;* and in the context of knife crime prevention orders, see, HC Deb 6 February 2019, vol 796, cols 373GC-376GC.

[28] The desire to bypass the criminal process is intentional. This is evidenced by *Birmingham City Council v Shafi* [2008] EWCA Civ 1186, in which the council had attempted to impose a civil injunction, rather than an ASBO, to tackle an incident of gang related behaviour. The decision to impose a civil injunction, rather than an ABSO, followed the case of *R (McCann) v Manchester Crown Court [2002] UKHL 39, [2003] 1 AC 787,* which raised the burden of proof to implement an ASBO to the criminal standard. The Court of Appeal in *Shafi [2008]* held that the council could not apply for a civil injunction, where they could also apply for an ASBO. Gang Injunctions were subsequently introduced in response to *Shafi [2008]* and the ASBO replaced with new Behaviour Control Orders, decided on a civil standard of proof, under the Anti-Social Behaviour, Crime and Policing Act 2014.

[29] The author cites the case of *R v Duncan* (unreported), Preston Magistrates' Court, September 18, 2012,

1.8 **Regardless of whether the "*end goal*" of an Order is prevention, protection or punishment,** [30] **the stakes are high.** For victims, Orders promise robust and reliable protection which, in certain contexts (e.g., domestic abuse or stalking cases), can be the difference between life and death. [31] Policy documents accompanying Orders frequently refer to their ability to act as *"real deterrents"* to those responsible. [32] They are often credited as giving enforcement bodies "*the freedom to do what they know will make a difference*" (emphasis added). [33] Therefore, victims rely on Orders to provide not only immediate assistance but often to guarantee their ongoing safety and security.

1.9 For recipients, the imposition of an Order can constitute a significant interference with their lives, often without any finding of criminal wrongdoing. They must comply with the conditions imposed by the Order or face criminal punishment which can range from a fine to imprisonment. Conditions attached to Orders routinely include restrictions on movement and travel, association, accessing internet-enabled devices, owning certain possessions, and can even restrict taking part in otherwise mundane activities, like feeding birds. In certain cases, recipients of Orders are subject to notification requirements [34] and in at least one instance, a recipient has been required to "*check-in*" with the police, 24 hours before engaging in sexual relations with intimate partners. [35]

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in which the defendant was sentenced to five months in jail for breaching a FBO that had been imposed for drinking alcohol in sight of a football pitch contrary to the Sporting Events (Control of Alcohol etc) Act 1985 s.2(1)(a). The maximum sentence provided for by the legislation is three months imprisonment (s.8(b)). We were also made aware of a case from 2023 whereby an individual experiencing mental ill health and subject to an Anti-Social Behaviour Injunction ("ASBIs") was subject to 18 months imprisonment for dialling 999 – a condition prohibited the Injunction, despite s.127(2) of the Communications Act 2003, stating that the equivalent crime attracted a maximum sentence of 6 months and/or an unlimited fine. See, R. Epstein, 'Punishing Mental Illness', (March 2023). Whilst ASBIs do not fall within the definition of Behavioural Control Orders, there are significant synergies between them.

[30] Home Office, 'More Effective Responses to Anti-Social Behaviour' (2011) which discusses all three aspects, (see n.27).

[31] S. Das 'Anti-stalking Orders 'fail to protect women from danger''(The Guardian), (12 March 2022).

[32] See, Home Office 'More Effective Responses to Anti-Social Behaviour' (see n.27). Home Office, 'Anti-social Behaviour, Crime and Policing Bill, Fact sheet: Overview of the Bill,' (2011). In the Scottish context, see Scottish Government, 'Guide to the Antisocial Behaviour etc. (Scotland) Act 2004', (2004).

[33] Home Office, 'Putting Victims First- More Effective Responses to Anti-Social Behaviour' (2012).

[34] See for example. Football Banning Orders, Football Spectators Act, s. 14E(2A) and Sexual Harm Prevention Orders, Sexual Offences Act, s. 103G.

[35] F. Perraudin, 'Man who has to inform police before sex has 24-hour notice period lifted', (2016); S Norgard, 'What Are Sexual Risk Orders And How Do They Impact Human Rights?, (2019).

Notwithstanding the above distinction between victim and recipient, our Working Party also heard from victims of anti-social behaviour who have become wrongly subject to Orders, due to nefarious and poorly-investigated complaints being made against them by anti-social neighbours – an issue explored later on in this report.

1.10 Despite the public interest issues associated with Orders and the increasing reliance on them, there has been no acknowledgement or explanation for their increased use.[36] This is in spite of questions being raised, even amongst enforcement bodies, about their effectiveness and the appropriateness of expanding their availability to different contexts.[37] Concerns that systemic issues are inhibiting the ability of Orders to provide robust protection to victims, are often left unaddressed.[38]

1.11 We are not aware of any substantive Government-led research assessing the effectiveness of the Behavioural Control Order 'model' in protecting the public[39] and preventing crime, as opposed to other measures, either.[40] Whilst some Orders have been introduced via pilot schemes, this is not true of all. Even where trials have been conducted, the Working Party was advised that they experienced difficulty in defining what constitutes "*success*", in the absence of

[36] There are conflicting views as to whether the increase in the creation of Behavioural Control Orders amounts to an intentional shift away from the civil/criminal model. See, R. Kelly, 'Behaviour Orders: preventive and/or punitive measures?', (2019) pp. 4-5 (see n.2).

[37] Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, 'Getting the balance right? An inspection of how effectively the police deal with protests', (2021), (see n.37) pp. 137-139. The report discusses a National Police Chiefs' Council round table on protest, held on 6 June 2019. In response to a proposal that there should be a new protest banning Order based on football banning Orders, one operational officer could not see the value in the proposal, stating that "*this is a very different context to football*".

[38] See for example, Domestic Abuse Bill (Fifth Sitting) 10 June 2020, cols 166-170.

[39] We are, however, aware of a number of reviews conducted by the Home Office in relation to specific Orders. For example: Home Office, 'Review of Stalking Protection Orders', (2023); Home Office 'Review of civil orders to prevent sexual harm' (April 2019).

[40] We are also aware of a small research study in Merseyside that looked at whether gang members who were subject to gang injunctions had committed fewer crimes and suffered fewer crimes. The report found that individual offending had dropped in the 3 years after the gang injunctions; however, it is important to note that this report focused on only 36 gang members from four different gangs in the Merseyside area. See: R. Carr, M. Slowther and J. Parkinson 'Do Gang Injunctions Reduce Violent Crime? Four Tests in Merseyside, UK', (2017).

any national guidance against which to assess the new Orders.[41] Without a comprehensive appraisal of how Orders are functioning, it is not possible to confirm that they are actually meeting the needs of victims.

1.12 Much of the evidence available suggests that problems exist; inhibiting their success. From a victim's perspective, and particularly in the context of domestic abuse, and stalking, the Working Party has heard that Orders, whilst mostly welcomed, often amount to a missed opportunity: they are applied inconsistently, are not imposed in situations that warrant them, and do not necessarily constitute a *"rapid response"*.[42] Similar concerns have been made of Sexual Risk Orders (**"SRO")** and Sexual Harm Prevention Orders **("SHPO")** in the context of their use to prevent child sex tourism and sexual exploitation by organised networks.[43] One practitioner we spoke with felt strongly that victims of domestic abuse were better served by Non-Molestation Orders **("NMO")** when breaches of them were treated as civil contempt, with a power of arrest attached.[44]

1.13 From the point of view of those subject to Orders, recipients often felt that they were being set up to fail.[45] Many did not understand the reasons why an Order had been imposed, especially those who had not been convicted of any previous wrongdoing.[46] Others were left unable to comply with the conditions imposed on them for reasons beyond their control.[47] All Orders are founded upon the

[41] See L, Kelly et al. 'Evaluation of the Pilot of Domestic Violence Protection Orders', (2013), p. 19.

[42] See, interim findings of a review conducted by Cheshire Police, referred to by the Home Office, 'Review of Stalking Protection Orders' (see n.39).

[43] See, The Independent Inquiry into Child Sexual Abuse, 'Children Outside the United Kingdom' (January 2020), p.111.

[44] This was the position prior to breaches being criminalised in the 2004 Domestic Violence (Crime and Victims) Act which was implemented in July 2007.

[45] This was particularly true of recipients who had underlying substance use disorders or mental health problems that could not be addressed via the imposition of a Behaviour Control Order in and of itself, and whose illness usually made compliance with the conditions in the Orders difficult, if not impossible – particularly where the Orders imposed restrictions on drinking alcohol.

[46] For example, one participant in a study described receiving a CPW as "*a big shock*", having been issued the warning on the basis of one previous conversation with a Police Community Support Officer; see: V. Heap, A. Black, Z. Rodgers, 'Preventive justice: exploring the coercive power of Community Protection Notices to tackle anti-social behaviour', (2022), p.314.

[47] For example, one person experiencing street homelessness described being constantly required to

theory that the threat of criminalisation leads to modified behaviour. However, there is a growing body of research that questions that proposition, at least in certain contexts.

The Working Party

1.14 It is against this backdrop, and in consultation with Professor Jennifer Hendry of the University of Leeds who was conducting parallel research, that the Working Party was formed. The scope of work was approved by the JUSTICE Council in November 2021. The Working Party was then constituted, with members being drawn from a wide group of stakeholders, including practitioners, academics, police forces, local authorities, and charity and campaign groups with an interest in this area. Investigative work commenced shortly thereafter, continuing throughout 2022 and being completed in 2023. Given the breadth of issues covered by this project, consultation with individuals and organisations external to the Working Party played a central role in shaping discussions.

1.15 The Working Party was primarily interested in understanding whether the Behaioural Control Order model 'works', in the sense of being effective for victims, fair, accessible, proportionate, and rights-compliant. We also wanted to better understand the problems, and the extent to which they applied across the board.

As part of our analysis, the Working Party paid particular attention to:

a) *The purpose of different Orders*, including their underlying policy aim, and whether the Order itself, or standard conditions imposed by the Order, are an effective and proportionate means of achieving the intended policy outcome.
b) *The procedural stages involved in issuing and enforcing Orders*, including the investigations undertaken and the safeguards available at each stage. The Working Party was keen to understand how inconsistent practices could be rationalised.
c) *The ability of individuals to understand the consequences of being issued with an Order* and the ease with which they can access advice and support. This includes the effect Orders have on persons with protected

"*move on*", leaving him feeling helpless and uncertain about what he was supposed to do to be able to comply with the directions; see: V.Heap, A. Black and C. Devany, 'Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness', (Sheffield Hallam University, Helena Kennedy Centre).

characteristics.

d) *The efficiency and effectiveness of the appeal system,* including the ability of recipients and victims to participate in the process.

1.16 Underpinning this approach was a desire to investigate concerns that Orders had discriminatory impacts upon specific groups within society who are marginalised by way of socio-economic circumstances, age, gender, race and/or health.

Methodology

1.17 During its lifespan, the Working Party gathered evidence from a wide range of sources and stakeholders. Evidence was collected via direct meetings/interviews with relevant parties, and by hosting and attending subject-specific roundtables and events on issues such as knife crime, gendered and sexual violence and anti-social behaviour. The Working Party placed significant importance on ascertaining what it is like to be: a) a victim of the types of behaviour targeted by the Orders, and b) a person who becomes a recipient of one. This meant listening to the voices of victims (either directly or via victim advocacy groups) and recipients (either directly or via their legal representatives or support workers).

1.18 Desk research was also conducted, and the Working Party is grateful to members and contributors whose fieldwork, academic research, and in-gathered data have been shared with us, and subsequently relied upon in this report. Freedom of Information (**"FOI"**) requests were also submitted throughout the course of the Working Party's operation.

1.19 Due to the volume of Orders in existence, the Working Party agreed that a pragmatic approach was to pay closer attention to a small sample group of Orders, namely: Community Protection Notices, Public Spaces Protection Orders; Knife Crime Prevention Orders; Domestic Abuse Protection Orders; Stalking Protection Orders; and Sexual Risk Orders

1.20 As these Orders will be referred to throughout this report, a brief description of each Order is set out at Annex 1.

1.21 This approach did not preclude reference being made to other Orders. Indeed, much Working Party time was spent discussing how the above Orders differed from or were similar to other Orders. This report also makes reference to Dispersal Orders, Criminal Behaviour Orders, Serious Violence Reduction Orders, Non-Molestation Orders, Sexual Harm Prevention Orders and Serious

Disruption Prevention Orders, amongst others. This is reflected in Part II.

1.22 We also looked at equivalent Orders in other countries, covering both civil and common law jurisdictions, including Belgium, Germany, Singapore, Japan, the United Arab Emirates, Australia and the United States.

Limitations

1.23 In reviewing the function and effectiveness of the Order regime in England and Wales, the Working Party was interested in high-level, systemic issues that cut across all Orders. The wide scope of our mandate meant that there are many areas which remain under-explored and deserve further attention going forward. We recognise that the problems set out in this report are not necessarily exhaustive, nor are the solutions. This is especially true in the context of specific Orders, which require specialist input to help resolve issues identified therein. Furthermore, more investigation is required to understand what, if any, unique difficulties arise with other Orders not referred to in this report.

1.24 The varied circumstances in which the sample Orders apply also presented challenges. Whilst all Orders seek to prevent some form of future event, the behaviours targeted and the potential harms involved differed greatly between the sample Orders, which target conduct ranging from anti-social behaviour to sexual offending. As well as understanding the status of each Order within the wider regime, each Order must also be understood within its own historical context, including the developments that gave rise to its creation.

1.25 The Working Party wishes to emphasise that in producing this report, it does not intend to assess the general policy approaches to tackling issues such as anti-social behaviour, knife crime, sexual offending etc, nor question the need for a criminal justice response to many of the areas covered. To do so would be beyond the scope of this review. Instead, we are interested in the role that Orders play within that approach. It is not the intention of the Working Party to substitute the opinions of subject-matter experts working within those areas with that of its own, but rather to amplify the problems they encounter with Orders in practice. For that reason, the Working Party has mostly refrained from making specific recommendations about individual Orders, including whether any Order should be revoked.

1.26 This does not diminish the strength of feeling amongst individual Working Party members or contributors about certain Orders. Instead, it reflects the overall purpose of the Working Party – to make practical recommendations

aimed at improving the function and effectiveness of the Order regime as a whole. Some recommendations draw upon those made elsewhere and many are influenced by examples of best practice from enforcement bodies, shared with us. It is also possible that the recommendations contained herein may be applicable, by implication and analogy, to other types of behaviour order. [48]

1.27 Furthermore, given the wide scope of this review and Working Party capacity, it has not been possible to conduct an in-depth review of Orders in other parts of the United Kingdom. Nonetheless, the Working Party has identified Orders in Scotland and Northern Ireland that are equivalent, or similar to, a number of the sample Orders listed above. We are grateful for the assistance of contributors in both jurisdictions for assisting us with this research. The impact of this report, if any, in Scotland and Northern Ireland will be reviewed beyond the lifespan of the Working Party.

Terminology

1.28 The phrase 'Behavioural Control Order' has been selected by the Working Party as an 'imperfect' means of describing a tool that often evades concrete definition. [49] We note the use of the phrases "*civil preventative order*" [50] and "*civil preventive measures*" [51] elsewhere in the literature. However, given the lively debate as to whether Orders are, in fact, preventative or punitive in nature, [52] we have avoided these terms. Orders have also been referred to as "*hybrid orders*", [53] "*two step prohibitions*" [54] or even "*ancillary orders*". [55]

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[48] For example, we note certain synergies between the findings of this report and those of the Civil Justice Council in its work on Anti-Social Behaviour Injunctions (see: Civil Justice Council, 'Anti-social Behaviour and the Civil Courts' (2020).

[49] A. Ashworth and R. Kelly, "*Sentencing and Criminal Justice*, who point out that *"not all of the terms and methods of subcategorization have been used for the same purposes and some terms have been overtaken by more recent legislative developments"*. (see n.19).

[50] For example, R. Kelly, 'Behaviour Orders: preventive and/or punitive measures?', (2019), (see n.2).

[51] S Demetriou '*Indirect criminalisation: the true limits of criminal punishment*' (2023).

[52] *See n.2.*

[53] For example, J. Hendry, & C. King, 'Expediency, Legitimacy, and the Rule of Law: A Systems Perspective on Civil/Criminal Procedural Hybrids', (*Criminal law and philosophy), (2019).*

[54] For example, See A.P, Simester, and A.V. Hirsch, 'Regulating Offensive Conduct through Two-Step Prohibitions', *Incivilities: Regulating Offensive Behaviour,* (2006), (see n.5).

[55] For example, Youth Justice Board, 'Case management guidance: ancillary orders', (2022).

1.29 This report highlights the experiences of those who find themselves subject to an Order, as well as those who seek protection from them. We have refrained from using the word 'perpetrator' in this report, except where specified in statute or required for referencing an external source. The decision to avoid this term reflects a debate that is central to the discussion of Orders, namely, whether someone who is found, upon civil rules of evidence, to have behaved in a certain manner (not necessarily amounting to a criminal offence), [56] should be subject to punitive conditions and thereafter criminalised. Instead, the word 'recipient' is used. However, this should not be understood as questioning, or undermining the experiences of victims, or the authenticity of their complaints.

1.30 For those who seek protection via Orders, the word 'victim' has been used. We acknowledge that not everyone will identify with this label. However, this term has been adopted following consultation with organisations supporting those who have been impacted by behaviours relating to anti-social behaviour, knife crime, domestic abuse, and sexual offending.

1.31 A substantial part of this report examines the disproportionate impact that Orders have on certain groups within society. This includes people who are experiencing vulnerability by reason of their circumstances, economic situation, or physical or mental disability. Some definitions used to describe those with invisible disabilities, such as 'mental ill-health', do not suitably reflect the broad range of experiences that the term encompasses. [57] Nor is there one clear definition of 'neurodiversity' - we use it to refer to a range of neurocognitive differences including autism, attention deficit hyperactivity disorder, and dyslexia. [58] Recognising the range of conditions that fall within these umbrella terms, we have identified the specific neurodevelopmental conditions at issue, where possible. Furthermore, the words 'addict' and 'addiction' are not used in this report, save where required by external references. Instead, 'substance use disorder' is preferred.

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[56] We note that some Orders are imposed on conviction; however, even then the conviction that leads to the Order can be unrelated to the behaviour targeted by the Order.

[57] S. 1(2) of the Mental Health Act 1983 uses the term "*mental disorder*", meaning "*any disorder or disability of the mind"*. S. 2(1) of the Mental Capacity Act 2005 looks at activities rather than conditions, stating that "*a person lacks capacity in relation to a matter if at the material time he is unable to make a decision for himself in relation to the matter because of an impairment of, or a disturbance in the functioning of, the mind or brain*".

[58] R. Chapman , 'Neurodiversity Theory and Its Discontents: Autism, Schizophrenia, and the Social Model of Disability', (2019), p.371.

1.32 Racism and discrimination remain a systemic societal issue. We recognise the disproportionate representation of racialised people at every stage of the justice system. This appears to be equally true of the regime for Orders. The term 'racialised' refers to people who face racism and are subject to the process of racialisation – the social and ideological process through which races are constructed as real, different and unequal in ways that matter to economic, political and social life. Recognising the variety of experiences and outcomes that occur within different racialised communities, we have sought to identify groups to which we refer, where possible. For example, the term 'Black' describes people of African and African Caribbean background. We include mixed-race African and African Caribbean people within this group to acknowledge the way they are racialised as Black within state institutions and wider society.

1.33 Finally, the report has made use of abbreviations, to describe terms that feature frequently in this report. This includes certain Orders that are frequently referred to, as well as some of the civil tools that preceded them. The terms are referred to in full the first time they are mentioned in each chapter. Thereafter, the following abbreviations are used:

Anti-Social Behaviour Orders (**"ASBO"**)
Anti-Social Behaviour Injunction (**"ASBI"**)
Community Protection Notices (**"CPN"**)
Community Protection Warning ("**CPW")**
Dispersal Orders (**"DO"**)
Domestic Abuse Protection Orders (**"DAPO"**
Domestic Violence Protection Orders (**"DVPN"**)
Exclusion Order ("**EO**")
Female Genital Mutilation Protection Order (**"FGMPO"**)
Football Banning Order (**"FBO"**)
Forced Marriage Protection Order (**"FMPO"**)
Knife Crime Prevention Order ("**KCPO"**)
Non-Molestation Orders (**"NMO")**
Public Spaces Protection Orders (**"PSPO"**)
Serious Crime Prevention Order (**"SCPO**")
Serious Disruption Prevention Order ("**SDPO"**)
Serious Violence Reduction Order (**"SVRO"**)
Sexual Harm Prevention Order ("**SHPO"**)
Sexual Risk Order (**"SRO"**)
Stalking Protection Order (**"SPO"**)

II. BACKGROUND

Where Do Behavioural Control Orders Come From?

2.1 The earliest example of Orders explored by the Working Party is the Exclusion Order ("**EO**") [59] which was later expanded to become, what is now known as, the Football Banning Order (**"FBO"**). [60] Designed in response to increasing incidents of "*football hooliganism*" [61] in the 1970s and 1980s, it was felt that EOs would not only prevent violence and disorder by known troublemakers, but that they would act as a deterrent for other would-be "*football thugs*". [62] They were considered a novel way to deal with a discrete issue: the apparent difficulty of tackling public nuisance via a strict application of either the civil or criminal law.

2.2 The Anti-Social Behaviour Order (**"ASBO"**), introduced a decade later by the Crime and Disorder Act 1998, followed a similar rationale. However, unlike the early iterations of FBOs, ASBOs did not rely upon an individual being convicted of an offence to be imposed. At the time, anti-social behaviour was perceived as an acute social problem [63] – one that the criminal law was ill-suited to resolve. [64] Neighbours were reluctant to testify directly against *"perpetrators"* in their community [65] and, whilst individual incidents of anti-social behaviour were deemed too minor to prosecute, the cumulative effect of such conduct had severe impacts on local areas. It was argued that a new

[59] Public Order Act 1986, s.30.

[60] The Football Spectators Act 1989, s. 15 introduced the Restriction Order, which was followed by the Banning Order (introduced by the Football (Offences and Disorder) Act 1989) before being amalgamated into, what is now known as, the Football Banning Order by the Football Disorder Act 2000. Football Banning Orders were later introduced in Scotland by the Police, Public Order and Criminal Justice (Scotland) Act 2006.

[61] E. Dunning, P. Murphy, and J. Williams, *The Roots of Football Hooliganism (1988)*; C. Stott and G. Pearson *Football Hooliganism: Policing and the War on the English Disease*, Pennant (2007).

[62] For example, the 1985 Heysel Stadium Disaster involving Liverpool and Juventus football fans, which led to the death of 39 people, is described as being a "*catalyst*" moment, as was a further incident during the 1988 European Championships in Germany. See also, J. Bowman, 'Football thug banned from matches after punching man on Anlaby Road', *(2023).*

[63] The Labour Party, '*A Quiet Life: tough action on criminal neighbours'* (1995).

[64] See A.P, Simester, and A.V. Hirsch, 'Regulating Offensive Conduct through Two-Step Prohibitions', *Incivilities: Regulating Offensive Behaviour,* (2006), (see n.5).

[65] For example, P. Wilson, 'Force chief tackles trouble makers', (2009)*;* see also, R Kelly, 'Behaviour Orders: Preventive and/or Punitive Measures?' (2019) (see n.2).

method of regulation was required – one that could circumvent the criminal rules on hearsay whilst still maintaining the robust sanctions of the criminal law. [66]

2.3 Whilst the FBO (in its present form) was explicitly referred to in discussions during the creation of the new Serious Disruption Prevention Order (**"SDPO"**), [67] it is the (now repealed) ASBO that is regarded as creating the template for modern Orders. A review of historic policy documents suggests that the expansion of the 'ASBO model' to other areas is a matter of design and not coincidence. [68]

2.4 Intentional or otherwise, these once "*unique*" [69] and "*novel*"[78] tools now extend to all corners of the law and cover all manners of behaviour. The timeline below reflects some of the developments with Orders over the previous two decades: [70]

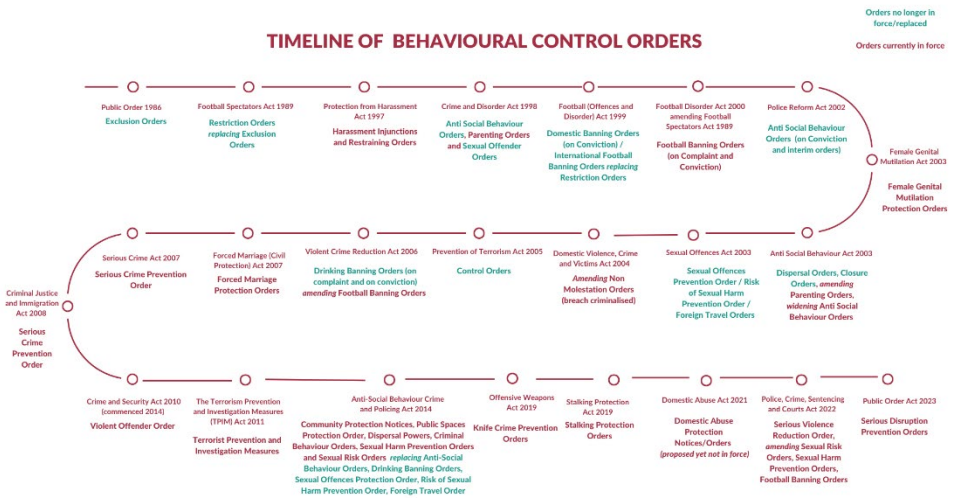
[66] R (*McCann) v Manchester Crown Court* [2002] UKHL 39, [18]; see C. King and J.Hendry, 'Civil Recovery of Criminal Property', (2023), p.2.

[67] See His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, 'Getting the balance right? An inspection of how effectively the police deal with protests', (2021) (see n.37).

[68] See T. Blair 'Speech on the launch of the RESPECT Action Plan', (2006). In his Criminal Justice Action Plan speech of 10 January 2006, then Prime Minister Tony Blair explained: "*The scale, organisation, nature of modern crime makes the traditional processes simply too cumbersome, too remote from reality to be effective… in a modern, culturally and socially diverse, globalised society and economy at the beginning of the 21st century [where] the old civic and family bonds have been loosened. Today I focus on ASB. Shortly we will do the same on serious and organised crime. But the principle is the same. To get on top of 21st century crime, we need to accept that what works in practice is a measure of summary power with right of appeal. Anything else is [just] theory*" [emphasis added].

[69] R. Kelly, 'Behaviour Orders: preventive and/or punitive measures?', (2019), (see n.2).

[70] The timeline is not reflective of all Orders, nor all legislative amendments to all Orders.



Varieties of Behavioural Control Order

2.5 Whilst ASBOs have been described as the "*archetypal*" [71] and "*talisman*[ic]" Order, [72] it is difficult to say with certainty what the true nature or key features of an Order are, beyond the definition provided above. [73] This is due to the way in which they have developed over time, which has led to substantial variations in both the substance and procedure of Orders. [74]

2.6 The reason for the deviations between types of Order is unclear. Some contributors to the Working Party have suggested that it is because the legislation for 'new' Orders often includes wording that has been 'cut and pasted' from the legislation for previous Orders, and/or borrowed from the criminal law, without consideration for consistency across the piece. Regardless, the differences between Orders can be difficult to navigate, and create confusion on the part of enforcement bodies. The following section sets out some of the ways in which Orders can vary.

[71] H. Amnison, 'Book Review: Preventive Justice', *Criminology & Criminal Justice*', (2006) , p. 622.

[72] A. Ashworth and L. Zedner, '*Preventive Justice*, Oxford University Press', (2014), p.89.

[73] See, para. 1.1: "*Such Orders seek to control the recipient's behaviour by imposing conditions upon them to prevent them from engaging in conduct that the State considers is in some way detrimental to public life or individual safety.*"

[74] R. Kelly, 'Behaviour Orders: Preventive and/or Punitive Measures?', (2019), (see n.2).

The relationship between 'recipient' and 'victim'

2.7 Some Orders are imposed on recipients for the purpose of protecting a specific victim. The relationship between the recipient and victim may be of a private nature, e.g., where Domestic Abuse Protection Orders ("**DAPO**") and Non-Molestation Orders ("**NMO**") are imposed to prevent harm from a former intimate partner or family member. [75] Stalking Protection Orders ("**SPO**"), too, are designed to be imposed where a specific individual is at risk of harm from a specific person. [76]

2.8 Conversely, FBOs and Knife Crime Prevention Orders ("**KCPO**") are imposed due to concerns that the recipient poses a threat to the public at large, rather than to a specific individual. [77] Orders such as Community Protection Notices ("**CPN**") fall somewhere in between – they may be imposed following complaints of anti-social behaviour from persons known to the recipient, but they can also be imposed where the conduct is not necessarily targeted at one specific victim, but instead affects a number of individuals or the community as a whole. [78]

2.9 The distinction between Orders designed to regulate relationships between known individuals (e.g., DAPOs and SPOs), and those that do not depend on a specific victim being identified (e.g. KCPOs and FBOs), has led to suggestions that the former are better suited to the "*protective*" label than the latter. [79]

2.10 Public Spaces Protection Orders ("**PSPO**") and Dispersal Orders ("**DO**"), on the other hand, are spatial. They are imposed in relation to specific geographical areas and can be enforced against any person who enters that space. [80] In that sense, they regulate the general public's relationship, not with a particular person or group of people, but with a particular space.

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[75] In respect of Domestic Abuse Protection Orders, Domestic Abuse Act 2021, ss. 27-56; in respect of Non-Molestation Orders, Family Law Act 1996, ss. 42-49.

[76] Stalking Protection Act, 2019, s. 1(1).

[77] In respect of FBOs, Football Spectators Act 1989, s. 14B(4); in respect of KCPOs, Offensive Weapons Act 2019, ss. 14(6)(a) and 19(4)(a).

[78] For example, where CPNs are imposed on those experiencing homelessness.

[79] However, the debate on whether Orders are protective, or preventive is a multi-faceted one and extends beyond such considerations. For example, see R Kelly, 'Behaviour Orders: Preventive and/or Punitive Measures?', (2019) (see n.2).

[80] Anti-social Behaviour, Crime, and Policing Act 2014, s.59.

Who can apply for, or impose, Behavioural Control Orders

2.11 Some Orders can only be imposed in the criminal courts following an individual being convicted of an offence. That is to say, they are only available *on conviction.* In that case, it is the Crown Prosecution Service (the **"CPS**") that applies to the Court to impose them.

2.12 Others are available *on complaint* – no criminal conviction is required but instead, the enforcement body (and/or the civil court) [81] must be satisfied that the individual behaved in a manner prohibited by the source legislation. [82] Orders such as NMOs, DAPOs and Forced Marriage Protection Orders (**"FMPO")** can be applied for by the person seeking protection through them. DAPOs will also be capable of being applied for by third parties with leave of court. Others are applied for by the local authority, without any judicial oversight, such as PSPOs and CPNs, whilst the Police are able to apply for a large number of Orders, including DAPOs and CPNs, but also SPOs and KCPOs.

2.13 There is also a tendency for new Orders to be broader than those which they post-date or replace. [83]

[81] In the context of CPNs, PSPOs and DOs – there is no judicial oversight. Orders are imposed without court involvement, for example by a police officer or the local council.

[82] The position is further muddied with Orders such as the SDPO. These Orders are predicated on the recipient having received a criminal conviction or breached an injunction, yet five years may pass between the conviction or breach, and the imposition of the Order.

[83] Whilst ASBOs could only include negative conditions, they were replaced by ASBIs and CBOs, both of which can impose both positive and negative conditions to prevent the recipient from engaging in anti-social behaviour. Sexual Risk Orders were recently amended by section 75 of the Police Crime Sentencing and Courts Act 2022 to allow the courts to impose positive requirements. Closure Orders under the 2003 Anti-Social Behaviour Act were originally introduced to restrict access to premises used for the use, production, and supply of Class A drugs; however, Closure Orders can now be used where premises are only associated with disorderly behaviour or serious nuisance - there is no need for criminal behaviour under s.80 of the 2014 Act.

The age of recipients

2.14 Different age limits apply for different Orders, as indicated by the sample below:

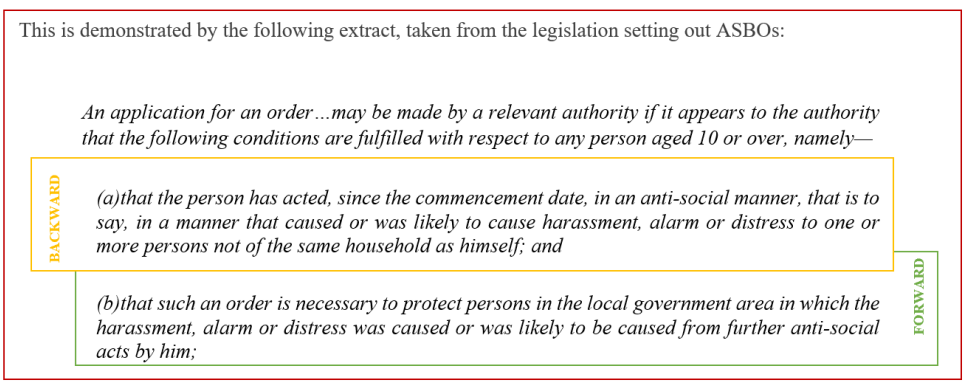
Age Limit	Order
10 and over	Public Spaces Protection Order
	Stalking Protection Order
	Sexual Risk Order
	Sexual Harm Prevention Order
10 or over	Criminal Behaviour Order
12 and over	Knife Crime Prevention Order
	Football Banning Order
16 and over	Community Protection Notice
18 and over	Serious Disruption Prevention Order
	Domestic Abuse Protection Order
18 or over	Serious Violence Reduction Order

2.15 Where Orders are to be imposed upon individuals under the age of 18, additional protections are meant to apply. For example, in the context of Criminal Behaviour Orders (**"CBO"**), youth offending teams must be consulted (although enforcement bodies are not bound to comply with the opinions

expressed). [84] In the context of CPNs and PSPOs, which are imposed without judicial oversight, the process is less defined. Whilst we are aware of good practice, whereby enforcement bodies have consulted with local child services, it is not clear that this process informs every enforcement decision. [85]

The behaviour triggering the imposition of a Behavioural Control Order and the outcome to be achieved

2.16 The imposition of an Order is normally conditional upon both: a) a 'trigger event', and b) the role that the Order will play in achieving some outcome e.g., preventing some unwanted occurrence. For this reason, Orders are often described as having both backward and forward-looking elements. [86]



2.17 Again, there is significant variation across the Order regime in terms of what constitutes a trigger event and what outcome is to be prevented.

[84] Home Office, 'Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers. Statutory guidance for frontline professionals' (2023), p.41.

[85] For example, the Anti-social Behaviour, Crime and Policing Act 2014 Statutory Guidance (*ibid*), in relation to the consultation requirement for PSPOs, does not specifically reference child services as a body to consult, but instead "*community representatives*" generally. Similarly, although CPNs can be issued to individuals from 16, the Guidance makes no reference to children's services. By contrast, the Scottish Government (note 36 above), 'Guide to the Antisocial Behaviour etc. (Scotland) Act 2004' requires each local authority to publish a strategy for dealing with anti-social behaviour, and to consult the principal reporter to the children's panel when so doing.

[86] Again, we note that the forward and backward element has been categorised differently by experts; see, for example, A. Ashworth and R. Kelly '*Sentencing and Criminal Justice*', (see n.19).

The trigger event

2.18 The following Table provides some examples of the types of 'triggers' for different Orders.

Order	Trigger event	Examples
Domestic Abuse Protection Order	perpetrator has been abusive towards a person aged 16 or over to whom the perpetrator is personally connected (abusive behaviour includes physical or sexual aubse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse, pyschological, emotional or other abuse)	distributing a naked photograph of ex-partner, and threatening to post it on Facebook (from DVPO)
Football Banning Order (on complaint)	individual has at any time caused or contributed to any violence or disorder	running onto a football pitch; tragedy chanting
Football Banning Order (on conviction)	offender has been convicted of a relevant offence (set out in a schedule and includes public order offences)	being drunk whilst entering the football ground
Knife Crime Prevention Order (on complaint)	individual has on at least two occasions, had a bladed article with them in a public place, on school premises or on further education premises without good reason or lawful authority	suspected of knife carrying on more than one occasion (from the Guidance)
Knife Crime Prevention Order (on conviction)	defendant convicted of an offence involving violence or where a bladed article was used by the defendant or any other person in the commission of the offence or the defendant or another person who committed the offence had a bladed article with them when offence committed	being in possession of a bladed article in a public place
Community Protection Notice	unreasonable conduct that is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality	wearing a bikini in the garden
Public Spaces Protection Order	activities carried on or likely to be carried on in a public place that have a detrimental effect on the quality of life of those in the locality which is of a persistent or continuing nature which is or likely to make the activities unreasonable	leaving possessions on pavement whilst rough sleeping
Criminal Behaviour Order	offender has engaged in behaviour that has caused or was likely to cause harassment, alarm or distress to any person	breaching a PSPO or CPN
Serious Disruption Prevention Order	on at least two occasions in the last five years, individual has been convicted of a protest-related offence or found in contempt of court for breaching a protest injunction in relation to a different protest	committing an offence "directly related to protest"
Sexual Harm Prevention Order (on complaint and conviction)	Person has been convicted, cautioned, reprimanded of an offence listed in Schedule 3 or 5, or is found not guilty of such an offence by reason of insanity or is experiencing a disability and has been charged in respect of such an offence	associating with underage girls
Sexual Risk Order	the defendant has done an act of a sexual nature of which there is reasonable cause to believe that it is necessary for an order to be made	acquittal for rape
Stalking Protection Order	the defendant has carried out acts associated with stalking and the defendant poses a risk associated with stalking to another person	unwanted contact via text messages and physically following the victim

2.19 The legislation underlying some Orders specifies the types of behaviour that they are seeking to prevent,[87] whilst others provide more sweeping

[87] See, for example, KCPOs made on application - Offensive Weapons Act 2019, s. 14(3) requires that:

descriptions.[88] Some Orders target activity which, by itself, would not constitute a criminal offence. Other Orders, however, cover behaviour which would otherwise be triable in a criminal court.

The outcome to be achieved / behaviours to be prevented

2.20 The Table below demonstrates the ways that the forward-looking element of Orders can differ. Sometimes the test for Orders explicitly state that they are imposed to "protect" a person. In other cases: to "prevent" a harm, or "reduce" the likelihood of it occurring.

Order	Outcome to be achieved
Community Protection Notice	From Guidance: To stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life
Criminal Behaviour Order	From Legislation: To help in preventing the offender from engaging in such behaviour
Domestic Abuse Protection Order	From Legislation: Necessary and proportionate to protect a person (to whom the [recipient] has been abusive and whom the [recipient] is personally connected) from domestic abuse or the risk of domestic abuse by [the recipient]
Football Banning Order (on conviction)	No specific outcome mentioned
Football Banning Order (on complaint)	From Legislation: To help prevent violence or disorder at or in connection with any regulated football matches
Knife Crime Prevention Order (on complaint)	From Legislation: Necessary to protect the public generally, or particular persons including the defendant from risk of physical or psychological harm involving a bladed article or to prevent the defendant from committing an offence involving a bladed article
Knife Crime Prevention Order (on conviction)	From Legislation: Necessary to protect the public generally, or particular persons including the defendant from risk of physical or psychological harm involving a bladed article or to prevent the defendant from committing an offence involving a bladed article
Public Spaces Protection Order	From Guidance: To stop individuals or groups committing anti-social behaviour in a public space
Serious Disruption Prevention Order	From Legislation: Necessary to: a) prevent individual committing a protest-related offence or breaching a protest injunction or carrying out protest-related activities that cause, or are likely to cause, 'serious disruption' to two or more individuals or an organisation; or to prevent individual from helping someone else to do so; or to protect two or more people or an organisation from the risk of 'serious disruption'.
Sexual Harm Prevention Order (on conviction)	From Legislation: Necessary to protect the public or any particular members of the public from sexual harm from the defendant, or to protect children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.
Sexual Risk Order	From Legislation: Necessary to protect the public or any particular members of the public from harm, or protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from harm from the defendant outside the UK
Stalking Protection Order	From Legislation: Necessary to protect another person from risks associated with stalking

The Standard of Proof for imposing a Behavioural Control Order

2.22 The standard of proof to apply to both the backward and forward-looking elements of Orders is sometimes set out in the source legislation, [89] but this is not universal. [90] What constitutes the appropriate standard of proof when applying these orders has also been the subject of judicial debate. In *McCann,* the House of Lords held that whilst an ASBO did not amount to a criminal charge, the "*seriousness of matters involved*" necessitated the use of the criminal standard of proof to determine whether the backward-looking element of the test for imposing an ASBO had been satisfied. [91]

2.23 Notwithstanding this, and the similarity of many Orders to ASBOs, the process for their imposition remains subject, at least in part, to the civil procedural and evidential rules. [92] Not only does this mean that hearsay evidence is usually admissible, [93] but the standard of proof required to establish the conditions necessary for imposition of an Order is normally the lower, civil standard (e.g., "*on the balance of probabilities"*). The Government recently reduced the standard of proof for imposing Sexual Risk Orders (**"SRO"**), despite the severe consequences of them for the recipient, [94] and despite concerns over the

[89] See, for example, s. 14(3), Offensive Weapons Act 2019, relating to Knife Crime Prevention Orders and ss. 103A(3)(b) and 122A(6)(a) of the Sexual Offences Act 2003, relating to Sexual Harm Prevention Orders and Sexual Risk Orders.

[90] For example, in the context of Female Genital Mutilation Protection Orders and Football Banning Orders, respectively, Schedule 2, Part 1, 1(1) of the Female Genital Mutilation Act 2003 and s. 14B(4) of the Football Spectators Act 1989 are silent as to the standard of proof.

[91] [2002] UKHL 39, [37]. The judgement focused on the difference between prevention and punishment, stating that "*An anti-social behaviour order may well restrict the freedom of the defendant to do what he wants and go where he pleases. But these restrictions are imposed for preventive reasons, not as punishment*." [76]. See also Advisory Opinion at Annex 2 of this report, whereby it determines that the conditions imposed by some Orders merit an uplift in the standard of proof to be applied.

[92] The standard of proof for Terrorism Prevention and Investigation Measures ("TPIM") has been reduced from "*on the balance of probabilities*" to "*reasonably believes*" in Order to make a TPIM easier to satisfy; see 'The Counter-Terrorism and Sentencing Bill Changes to TPIM Standard of Proof and Time Limit Fact Sheet' and Counter-Terrorism and Sentencing Act 2021, s. 34. In the case of *on conviction* Orders, the rules to be applied to impose an Order are a blend of criminal and civil procedural rules.

[93] Civil Evidence Act 1995, s.1(1). Hearsay is defined by s114(1) of the Criminal Justice Act 2003, as: *"a statement made in oral evidence that is evidence of any matter stated".* Put more simply, hearsay is evidence that originates from someone who is not in court as a witness themselves. A prime example is when a witness, who is in court, states*: "Mr. X told me he saw the accused doing Y".* A discussion around the admissibility of hearsay took place in *McCann* [2002] UKHL 39.

[94] See, for example, *Commissioner of Police of the Metropolis v Robert Ebanks* [2012] EWHC 2368

inappropriateness of a civil standard applying to such Orders. [95]

2.24 SPOs, however, use a mixed test which incorporates both the civil and criminal standards. Again, it is not clear why this approach has been taken. Because there is no judicial oversight involved in their imposition; the standard to be applied to impose a CPN is not defined. Breaches can be prosecuted via the criminal courts, although the enforcement body can choose to offer the recipient the opportunity to discharge their liability by paying a Fixed Penalty Notice ("**FPN**") of up to £100. [96] Whilst the guidance suggests that enforcement bodies, *"will have collected evidence to place beyond reasonable doubt"* that the behaviour leading to a CPN has occurred, this is not mandated, and no specific standard is required to be met. [97]

The conditions imposed by Behavioural Control Orders

2.25 Some Orders restrict the activity of recipients by way of negative conditions, whilst others impose positive requirements and notification requirements. Over time, there has been an increase in the emphasis placed on positive requirements, with older Orders being updated to include them. [98]

(Admin), in which the court referenced the "*disastrous impact on a person's reputation*" that a Risk of Sexual Harm Order (the predecessor to Sexual Risk Orders) could have, "*notwithstanding that the person might never have been convicted or even cautioned for a sexually related offence, or indeed any offence"*.

[95] See, for example, comments made by Huppert, J. (2013, October 14), *Anti-social Behaviour, Crime and Policing Bill* [Hansard]. (Column 480), and Buckland R. (2013, October 14) *Anti-social Behaviour, Crime and Policing Bill* [Hansard]. (Column 479), expressing the inappropriateness of imposing an SRO on the basis of anything other than a criminal standard of proof.

[96] Anti-Social Behaviour Crime and Policing Act 2014, ss 48 – 52; See also, the Centre for Crime and Justice Studies, 'Anti-social behaviour powers and young adults: Practitioners' accounts' (2018) which provides some breakdown on the rate of prosecution versus issuing of FPNs. Data obtained via FOI requests evidenced breaches being dealt with by both prosecution and FPNs.

[97] Home Office 'Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers. Statutory guidance for frontline professionals' (2023).

[98] Recently a number of Orders have been amended to allow positive requirements to be imposed, as is the case with Sexual Risk Orders and Sexual Harm Prevention Orders. However, it is worth noting that this is simply a 'reframing' of the legislation. Previously, positive requirements were simply set out as negative conditions. For an example, see the case of *R. v MEM* [2016] EWCA Crim 1290, [14], in the context of Sexual Harm Prevention Orders.

ORDER	POSITIVE REQUIREMENT	NEGATIVE REQUIREMENT	BOTH	NOTIFICATION REQUIREMENTS
Community Protection Notices			X	
Criminal Behaviour Order			X	
Domestic Abuse Protection Order			X	X
Female Genital Mutilation Protection Order			X	
Football Banning Order			X	X
Forced Marriage Protection Order			X	
Harassment Injunction		X		
Knife Crime Prevention Orders			X	X
Labour Market Enforcement Order			X	
Letting Banning Order		X		
Non-Molestation Order		X		
Restraining Order		X		
Parenting Order	X			
Public Spaces Protection Order			X	
Serious Crime Prevention Order			X	
Serious Disruption Prevention Order				X
Serious Violence Reduction Order				X
Sexual Harm Prevention Order			X	X
Sexual Risk Order			X	X
Slavery and Trafficking Prevention Order		X		X
Stalking Protection Order				X
Terrorism Prevention and Investigation Measures			X	X
Violent Offender Order		X		X

2.26 Negative requirements can include restrictions on association, being present in a geographical area, accessing internet devices, owning certain possessions or wearing certain items of clothing, amongst others. Positive conditions can include requirements to attend particular programmes, courses and also, in some cases, electronic monitoring. The following graphic represents real life

examples of conditions included in different Orders. In all cases, the enforcement bodies have discretion as to which conditions or requirements to include in the applications for Orders. There is great inconsistency and variation in the types of conditions and requirements imposed across the regime, including the way they are worded in applications.

The effect of breaching a Behavioural Control Order

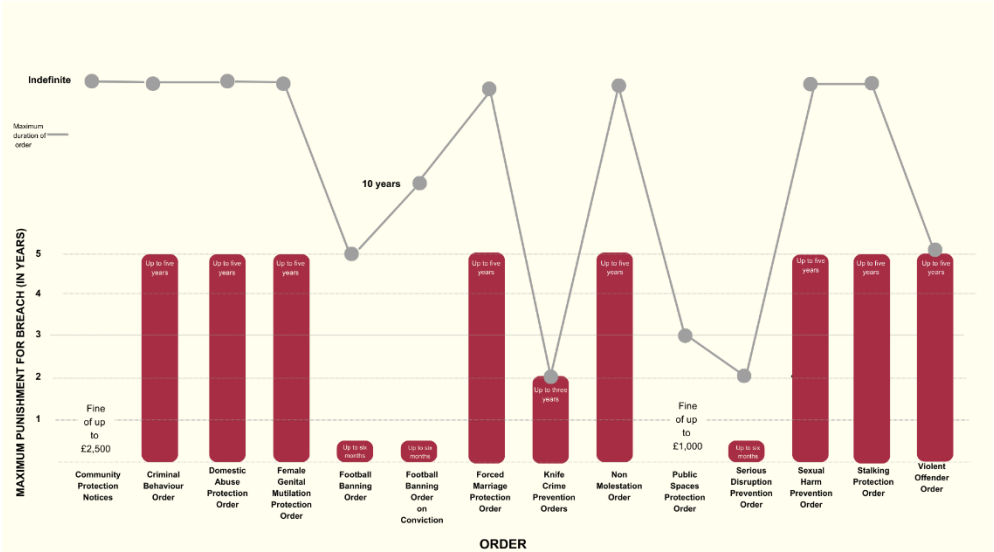
2.27 Breaching an Order amounts to a criminal offence. The disposals for breach can also vary in substance, from a fine (sometimes capped,[99] sometimes unlimited),[100] to imprisonment for periods ranging from 6 months to five years. Breaching certain Orders may also trigger wider, context-specific implications.[101]

[99] For example, FPNs can be issued in respect of breaches of PSPOs and CPNs, capped at £100 (although the Government is currently consulting on increasing the upper limit to £500 for both). Where breaches are prosecuted at the magistrates' court, the fine for an individual for breaching a PSPO is £1,000; breach of a CPN is £2,500.

[100] For example, Serious Violence Reduction Orders (Sentencing Act 2020, s. 342G (2)).

[101] For example, remedies for breach of a CPN can include seizure of property, pursuant to a warrant

2.28 As demonstrated by the following Table, the maximum duration of Orders also varies. When considered together, the duration of the Orders, along with the punishment for breach, demonstrates their punitive impact.[102]



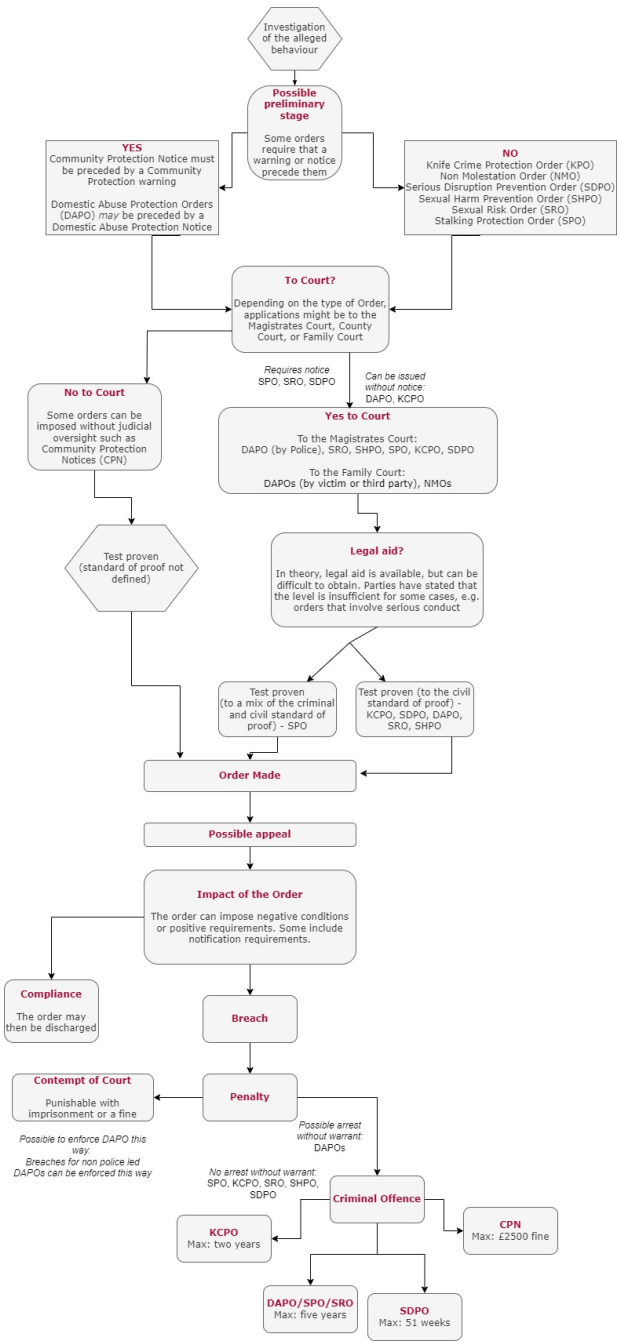
The process for Imposing a Behavioural Control Order

2.29 The process for obtaining an Order is set out in general terms below. For the sake of brevity, the diagrams do not reflect the process for all Orders but are intended to be indicative only.

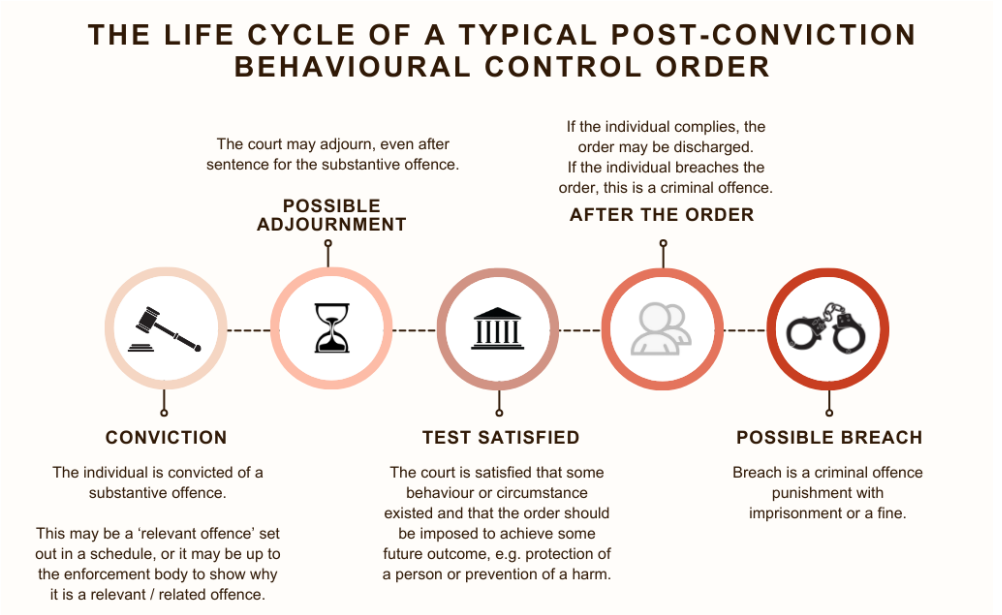
from the court under s.51 of the 2014 Act. In addition, the imposition of a CBO provides mandatory grounds for eviction, although eviction can only take place following a further court process. For another example, see the Serious Crime Act 2007, s. 26, in respect of SCPOs, which provides that a court, when faced with breach of an SCPO, "*may order the forfeiture of anything in* [the recipient's] *possession at the time of the offence which the court considers to have been involved in the offence*".

[102] For example, remedies for breach of a CPN can include seizure of property, pursuant to a warrant from the court under s.51 of the 2014 Act. In addition, the imposition of a CBO provides mandatory grounds for eviction, although eviction can only take place following a further court process. For another example, see the Serious Crime Act 2007, s. 26, in respect of SCPOs, which provides that a court, when faced with breach of an SCPO, "*may order the forfeiture of anything in* [the recipient's] *possession at the time of the offence which the court considers to have been involved in the offence*".

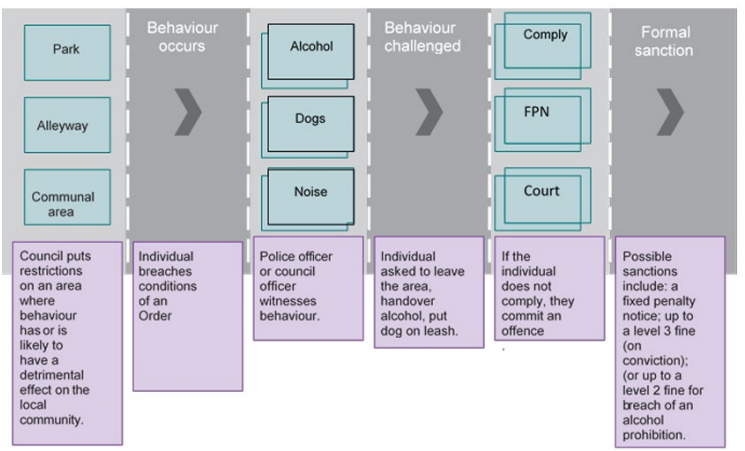
On Complaint Orders



On Conviction Orders



"Executive Orders" –Process for Public Spaces Protection Orders [103]



[103] Table copied from Anti-social Behaviour, Crime and Policing Act 2014: 'Anti-social behaviour powers Statutory guidance for frontline professionals', (March 2023) p.64.

III. OVERARCHING CONCERNS

Complaints that Orders are Performative rather than Pragmatic

3.1 The existence of Orders within the justice system of England and Wales is not without controversy. Their use has evoked objections both on matters of principle, and in terms of how they operate in practice.

3.2 One of the enduring criticisms made of Orders – from their inception in 1998 to the present day – is that they over-promise and under-deliver. On the one hand, critics argue that their preoccupation with treating the 'symptoms' of crime, rather than its causes, means that they are incapable of achieving the sustainable reductions in harm and offending that they promise. [104] Others warn that expanding police powers to reduce crime is not the "*magic bullet"* that it is often advertised as. [105] In other words, Orders on their own are not capable of preventing the creation of future victims and in some cases, they are letting current victims down. Practical barriers continue to compromise their ability to provide immediate relief to victims at risk of serious harm, leading some enforcement bodies to claim that Orders had been "miss-sold". [106] Calls from enforcement bodies and frontline organisations for improved training, funding for enforcement, funding to support positive requirements and greater support for victims do not appear to have been successful. [107]

3.3 In this sense, Orders are often criticised for being merely performative or

[104] For example, in the context of Knife Crime Prevention Orders, critics explained that: "i*ncreasing the power, scope and scale of policing and the justice system are inappropriate responses to the complex social issues that impact our communities*." S. Purdy-Moore and N. Youssef 'Reimagining justice', The Runnymede Trust (May 2023).

[105] For example, in their open letter published in the times opposing KCPOs, House of Lords, Prison Reform Trust, the Standing Committee for Youth Justice, along with a coalition of many other organisations working children and young people, stated that are *"easy but ineffective punitive option, letting down the people the government says it wants to help"*. See also, in the context of approaches to tackling knife crime, including the use of stop and search, see Please see, Home Affairs Committee, 'Oral evidence: The Macpherson Report: twenty-one years on', (2020), p. 24.

[106] For example, see Home Office, 'Reviewing of Stalking Protection Orders', (see n.39), which shares interim findings of a review of Stalking Protection Orders, where it was stated: "*The perception is that SPOs have been mis-sold, police were told they would provide early intervention and rapid protection for victims. SPOs are not a rapid response and there is a missing immediacy for a rapid response with interim orders."*

[107] There were issues identified consistently across all Orders reviewed.

reactionary - employed as a means to be seen to be doing something in response to issues attracting significant public attention. For example, Pearson set out the series of international incidents leading to the introduction and expansion of Football Banning Orders (**"FBO").** [108] Davidson argues that the predecessors to the Sexual Harm Prevention Orders (**"SHPO"**) were introduced in response to concerns that the public had lost faith in the State's ability to handle child sexual abuse, following a series of high-profile investigations. [109] Kelly explains that the parliamentary debate on Stalking Protection Orders (**"SPOs")** in 2015 referenced multiple recent cases where victims of stalking had been let down. [110] As stated by Hendry, it is not a coincidence that the pilot for Knife Crime Prevention Orders (**"KCPO")**was launched within months of the Office of National Statistics publishing statistics showing the highest rates of knife crime in a decade. [111] Contributors to the Working Party also explained that the creation of the Serious Disruption Prevention Order (**"SDPO"**) was a reaction to a series of high-profile demonstrations, such as the Sarah Everard vigil, the Black Lives Matter protests, and Extinction Rebellion and Just Stop Oil activists – all of which, the Working Party heard, were politically contentious. [112]

3.4 Responding to critical issues of public safety by introducing new laws is not unreasonable. Indeed, it is often essential. However, the Working Party heard that successive Governments have created Orders with very little evidence to demonstrate their effectiveness at tackling the relevant problem, and without the concerns raised by subject matter experts being adequately addressed. [113] In

[108] C. Stott and G. Pearson '*Football Hooliganism: Policing and the War on the English Disease*', (see n.61).

[109] J. Davidson, *Child Sexual Abuse: Media Representations and Government Reactions*, Routledge-Cavendish (2008).

[110] R. Kelly, 'The Problematic Development of the Stalking Protection Order' (2020).

[111] J. Hendry 'The Usual Suspects': Knife Crime Prevention Orders and the 'Difficult' Regulatory Subject', (2022), (see n.3) p.380.

[112] Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, 'Getting the balance right? An inspection of how effectively the police deal with protests', (2021), (see n.37).

[113] See, for example, Rights of Women, 'Response to Government Consultation on proposed Pilot Practice Direction (PD) on Domestic Abuse Protection Orders (DAPOs)' (2023), which called upon the Government to take a *"considered and evidence-based approach*" that took account of the complexities involved; see also R. Kelly, 'The Problematic Development of the Stalking Protection Order' (2020) (see n.111); and S. Purdy-Moore and N. Youssef 'Reimagining justice, The Runnymede Trust (May 2023)

addition, once passed, a number of contributors we spoke to felt that the Government had *"passed the buck*" onto enforcement bodies to make the Orders work, regardless of whether they were actually capable of achieving positive change. [114]

3.5 The variations and overlap in the substance and form of Orders explained in Part II create confusion for enforcement bodies about when to use an Order and which Order to use. [115] Gaps in the statutory guidance and legislation leave too much open to interpretation and individual discretion, meaning that Orders are imposed inconsistently and the number applied for differs greatly region by region. [116] A lack of investment in training and resources exacerbates the problem. This has led to agreement, amongst those who are in favour of Orders, and those who are not, that they are missing the mark. Comments made during the Parliamentary debates on SDPOs emphasise that such "*machismo laws*" may invoke positive headlines in the media but are often ineffective or "*over the top*" in their impact. [117]

3.6 The practical ramifications of these problems are explored in more detail below.

Blurring the Criminal and Civil Law

3.7 Most Orders are accompanied by statements suggesting that their introduction will nip problem behaviour in the bud and divert people *away* from the criminal justice system. [118] Critics, on the other hand, claim that Orders make it easier to draw individuals *into* the system – at the cost of procedural fairness. They argue that the Order model does so in two ways:

a) By using Orders to criminalise behaviour that is *"classified by the legislature as non-criminal"*. [119]

(see n.105); Goodfellow, 'Rethinking 'Justice' for Young People', The Open University, 'Youth Violence Commission Final Report', p.71.

[114] These concerns were mostly raised in the context of Orders relating to anti-social behaviour, where contributors explained that the system had become de-centralise, although it also reflects wider opinions that once introduced, there is not enough monitoring of Orders by the Home Office.

[115] See Home Office, 'Reviewing of Stalking Protection Orders', (2023), (see n.107).

[116] Ibid.

[117] Public Order Bill Deb 18 October 2022, col 581.

[118] See for example, Home Office, 'Knife Crime Prevention Orders: Guidance', (2019), p.4.

[119] S Demetriou '*Indirect criminalisation: the true limits of criminal punishment*' (2023).

b) By imposing Orders upon those suspected of carrying out criminal activity, rather than pursuing a criminal investigation, thereby avoiding the evidential hurdles and safeguards of the criminal process and those afforded by Article 6 of the European Convention on Human Rights (**"ECHR") (**the right to a fair trial**)**. [120]

Criminalisation Creep

3.8 Several contributors explained that whilst Orders can be useful in preventing harm in relevant contexts, e.g., where there is an immediate or serious risk to personal safety and/or where there was escalating harm caused by cumulative conduct, there were insufficient safeguards to prevent Orders from being used to target behaviour that is not harmful. These complaints were most frequently made in respect of Public Spaces Protection Orders ("**PSPO**"), Community Protection Notices **("CPN")**, FBOs and SDPOs. For example, via their website, the Manifesto Club have collected countless case studies showing the arbitrary use of CPNs and PSPOs to criminalise activities such as "*closing the door too loudly*", "*flying model aircraft*", "*sitting on a pavement*" and even "*crying too loudly*". [121]

3.9 Similar complaints were also made in respect of FBOs. Several organisations, [122] academics, [123] and practitioners have referred to the heavy-handed way in which 5-year FBOs have been imposed disproportionately upon fans who have been "*in the wrong place at the wrong time*", or in response to them engaging in otherwise "*innocuous behaviour*", [124] such as *"throwing a*

[120] See, for example, Liberty, 'written submissions on the Domestic Abuse Bill'.

[121] For example, The Manifesto Club, 'Victims of arbitrary power: CPN Case Studies',(2023); The Manifesto Club; 'CPNs and PSPOs: the use of 'busybody' powers', (2020); The Manifesto Club; 'CPNs: The Crime of Crying in Your Own Home', (2016).

[122] See, for example, Football Supporters' Association, 'Watching football is not a crime!', (2008).

[123] See, C. Scott and G. Pearson, 'Football Banning Orders, Proportionality, and Public Order Policing', (2006). The authors highlight that the approach of "*imposing FBOs upon fans who are merely suspected of being involved in football-related disorder is succeeding in identifying fans who are not hooligans*". As explained by the authors, the courts are permitted to take into account issues such as arrest, deportation, and ejection from football grounds when deciding to impose an Order. This is in spite of "*substantial evidence that innocent fans have consistently fallen foul of mass arrests and deportations*," as well as evidence that ejections from grounds are typically used for non-violent, contractual breaches of ground regulations - like smoking in a non-smoking area.

[124] J. Riach, 'Stop targeting football fans with 'draconian laws', says campaign group', *The Guardian*. Others have questioned whether a pitch invasion, amounting to 20 seconds, is so harmful a conduct that

fancy dress costume", "drinking alcohol on trains to a football match" and *"swearing or lightly pushing someone without causing harm"*. [125] SDPOs have been criticised for their potential to criminalise peaceful, non-violent protest. [126]

3.10 According to the Manifesto Club, the use of Orders to police behaviour that is unwanted and annoying, but falls far below the criminal threshold, "*indicates a loss of perspective on the question of what is, and what is not, meriting the state's powers of coercion and criminal sanction*". [127] For others, including those that represent victims, the use of Orders in this manner, belies the true nature of the harms experienced by victims of anti-social behaviour, and dilutes the serious nature of it. It also diverts resources away from responding to more serious allegations of harm in the community.

3.11 Whilst some contributors felt that Orders were deliberately designed to tackle innocuous behaviours, more felt that the broad-framing of the legislation had accidentally led to 'mission-creep', whereby Orders were being imposed in a wider range of contexts than initially intended. None of the enforcement bodies we spoke with condoned the use of Orders in this way. Instead, they explained that the broad statutory tests, and the failure of statutory guidance to set out clearly when Orders should be used, contributed to this practice. For example, CPNs and PSPOs can be imposed and/or enforced whenever an individual's actions are having "*a detrimental effect…on the quality of life of those in the locality*". [128]

3.12 The broad nature of the test necessarily entails subjective assessments of "*whose quality of life*" should be preserved and prioritised within a community and can inevitably lead to them being used to target any behaviour (and by extension, person) that was disagreeable to "*the virtuous majority*". [129] For that

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it should merit the imposition of a prohibitive 5-year Order; see, for example, Football Supporters' Association, 'Football Banning Orders: still a necessary tool?', (2018).

[125] Queen Mary University of London, Legal Advice Centre. 'Football Banning Orders: the unknown dangers', (2020).

[126] See Advisory Opinion at Annex 2 for broader discussion on implications of SDPOs on protest-rights and freedom of expression. In the context of the expansion of Orders in recent years, the Working Party notes comments made in 2016, that "*if political protesters were subjected to such practices [as football fans] there would be outrage, yet somehow they are seen as OK for football fans*."

[127] The Manifesto Club 'CPNs: The anarchy of arbitrary power,' (2017).

[128] 2014 Act, s. 43(1)(a), in the context of CPNs, and s. 59(2)(a), in the context of PSPOs.

[129] J. Hendry ''The Usual Suspects': Knife Crime Prevention Orders and the 'Difficult' Regulatory

reason, a number of contributors felt that the test for CPNs and PSPOs should be restricted to confine their application to a narrow set of defined behaviours.

3.13 Others pushed back on this view. They explained that the nature of anti-social behaviour evaded an over-prescriptive definition of the behaviour that can constitute it. The Working Party heard that the statutory tests must be reasonably flexible to facilitate the broad and evolving types of behaviour that can be included under the umbrella of anti-social behaviour. Experts on stalking expressed similar views in relation to the definition of stalking. Indeed, there is inadequate understanding on part of enforcement bodies that stalking is often constituted via a pattern of what appears to be innocuous behaviour.

3.14 Nonetheless, there was agreement that "*mission creep"* was taking place in some contexts. Problems with ASBOs being imposed in similarly inappropriate ways are well documented. [130] Contributors agreed that gaps within statutory guidance, insufficient training and insufficient opportunities for joined-up working between enforcement bodies, as well as infrequent monitoring, all contributed to the Orders being used in inconsistent manners and in circumstances not originally intended. Furthermore, we heard suggestions that pressure from central Government to use Orders could have a detrimental impact on the quality of decision-making regarding their enforcement. This was particularly the case where the imposition or enforcement of Orders was target-driven and where enforcement bodies were held to account if the volume of Orders in their area was perceived to be too low. Contributors we spoke to explained that this could lead to perverse outcomes.

3.15 Furthermore, several contributors suggested that the discretion afforded to enforcement bodies to decide when to use them, and what conditions to impose, meant that Orders reflected "*personalised penal codes*" [131] or led to "*ad hominem criminalisation*". [132] In other words, the imposition of an Order leads to recipients becoming subject to a system of regulation set out in an Order that

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Subject', (2022), (see n.3).

[130] See for example, Select Committee on Home Affairs, Napo, 'Anti Social Behaviour Orders – analysis of the first 6 years', (2005) which highlighted numerous examples of Orders being used to prohibit behaviours including, "being sarcastic", "riding a bicycle", "stating the word "grass", "showing tattoos", "allowing farm animals to be noisy" amongst others.

[131] A. Gil-Robles, 'Report by Mr. Alvaro Gil-Robles, Commissioner for Human Rights, On His Visit to the United Kingdom, ' (2004).

[132] A. Green, and J. Hendry, '*Ad Hominem* Criminalisation and the Rule of Law: The Egalitarian Case against Knife Crime Prevention Orders', *(2021).*

applies only to them, and not to society as a whole. [133] An individual living in one area of the country could become subject to an Order, whilst someone living in a different part and behaving in the same manner, would not. Not only is this problematic for recipients, but it leads to a postcode lottery for victims.

Crossover with Existing Crimes

3.16 On the other hand, many Orders target behaviour that could, to some extent at least, be captured by existing offences.

The Table below sets out some examples, taken from an array of Orders, that reflect the overlap between Orders and existing offences:

Order	Potential Offences Identified	Examples
Sexual Risk Orders	Offences under Sexual Offences Act 2003, Child Abduction Act 1984, Children Act 1989	communication in a sexual way with a child under 16 for the purpose of obtaining sexual gratification; exposure
Stalking Protection Orders	Offences under the Harassment Act; the Offences Against the Person Act 1861, Criminal Justice Act 1988; Criminal Justice and Public Order Act 1994; Public Order Act 1986	Behaviour amounting to stalking; a course of conduct that amounts to harassment or causes another to feat, on at least two occasions, that violence will be used against him
Knife Crime Prevention Orders	Offences under the Prevention of Crime Act 1953; Criminal Justice Act 1988; Offensive Weapons Act 2019; Offensive Weapons Act 1959	Possession of an offensive weapon in a public place
Domestic Abuse Protection Orders	Offences under the Protection from Harassment Act 1997; Criminal Justice Act 1988; Offences Against the Person Act 1861; Serious Crime Act 2015; Theft Act 1968; Sexual Offences Act 2003; Public Order Act 1986	Grievous Bodily Harm; controlling or coercive behaviour that has a serious effect on a personally connected victim
Public Spaces Protection Orders	Offences under the Criminal Justice Act 1967; Licensing Act 1872; Misuse of Drugs Act 1971; Psychoactive Substances Act 2016; Public Order Act 1986; Protection from Harassment Act 1997; Environmental Protection Act 1990; Clean Neighbourhood and Environment Act 2005; Sexual Offences Act 2003; Criminal Justice Act 1988; Criminal Damage Act 1971; Fireworks Act 2003; Road Traffic Regulation Act 1984	The use of threatening, abusive or insulting behaviour; drunk and disorderly behaviour in a public space
Serious Disruption Prevention Order	Criminal Justice and Public Order Act 2023; Public Order Act 2023; Highways Act 1980; Football (Offences) Act 1991; Football Spectators Act 1986; Police Reform and Social Responsibility Act 2011	Wilful obstruction of the highway; Aggravated trespass; Protest at a football pitch;

[133] Ibid, *suggests* that such Orders *"differentiate between the status of (i) particular individuals or groups and (ii) society at large, in such a way as to instrumentalise the treatment of the former for the benefit of the latter."*

3.17 Several contributors questioned why an Order was necessary if a crime already existed. [134] A number expressed concern that the cross-over could lead to cases whereby Orders were being used to achieve prosecution *"by the back door*", in circumstances where the police did not have evidence to pursue a criminal prosecution and/or where individuals had been acquitted following criminal proceedings. [135] The Working Party was told that the lack of safeguards present within the civil law, compared to the criminal law, made it easy to use orders in this way, notwithstanding the serious consequences of breaching an Order once imposed. [136] For example, the admission of hearsay evidence, *res gestae* evidence, [137] the lower standard of proof applicable in many proceedings, and the possibility of certain Orders being made in the absence of the recipient, all made Orders easier to obtain, at least in theory, than pursuing a conviction via a criminal investigation. [138] Whilst some highlighted the dangers of this, others felt that the cross-over with existing crimes naturally reflected the practical rationale that underpinned early Orders such as ASBOs. In particular, the need to make it easier to protect victims in circumstances where the cumulative nature of the harm was difficult to prosecute via the criminal courts and/or in cases where the victim is too frightened to attend court. [139]

3.18 Either way, contributors agreed that the 'doubling up' of the criminal law with Orders could cause confusion amongst enforcement bodies about which approach they should follow. They highlighted the ambiguity of legislation and

[134] Notably, these concerns didn't appear to arise in the context of stalking or domestic abuse. Some raised them in response to Sexual Risk Orders but not Sexual Harm Prevention Orders.

[135] For example, Sexual Risk Orders are not reliant on a conviction and are often imposed after an acquittal; see also, CPS, 'Football Related Offences and Football Banning Orders: Legal Guidance', (2022), (see n.11), which states that "[i]*f there is insufficient evidence to prosecute a football-related offence or if the defendant is acquitted, it may still be possible to apply for an order on complaint*".

[136] See also Civil Justice Council 'Anti-social Behaviour and the Civil Courts', (2020), (see n.48) which highlighted the lack of provision for the NHS Liaison and Diversion Service in the civil courts.

[137] Evidence amounts to res gestae when "the statement was made by a person so emotionally overpowered by an event that the possibility of concoction or distortion can be disregarded."

[138] See S Demetriou, '*Indirect criminalisation: the true limits of criminal punishment*', in which the author explains the history of the ASBO. Demetriou states that *"these measures were deliberately designed to extend the net of social control whilst prioritising expediency over due process values which are increasingly seen as an obstacle to the prevention of crime and should therefore be circumvented*". p.61.

[139] One contributor suggested that more focus should be put on addressing the needs of victims so that they could engage with court proceedings safely.

guidance in setting out how Orders should be used and how they interact with other Orders and offences. In the context of SPOs, an academic review of consultation documents and parliamentary debates found a failure to specify what gap they are intended to fill and how they should interact with the criminal prosecutions for existing stalking and harassment offences.[140] At least one contributor questioned whether the breadth of the definition caused confusion leading enforcement bodies not to recognise when to use the Order.

3.19 Finally, the Working Party observed that the statutory tests for Orders were often far broader than that of the equivalent criminal offence.[141] For example, Sexual Risk Orders (**"SRO"**) can be applied for where an individual has been found, upon a civil standard of proof,[142] to have carried out an "*act of a sexual nature*".[143] Acts "*of a sexual nature*" are not defined in either the legislation, or the accompanying guidance.[144] The latter states that:

> "*this term intentionally covers a broad range of behaviour. Such behaviour may, in other circumstances and contexts, have innocent intentions. It also covers acts that may not in themselves be sexual but have a sexual motive and/or are intended to allow the perpetrator to move on to sexual abuse".*[145]

3.20 A number of practitioners explained that leaving the definition open-ended was problematic. Whilst official reviews found that SROs were being under-used to tackle child exploitation by organised networks,[146] and child sex tourism,[147]

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[140] See R. Kelly, 'The Problematic Development of the Stalking Protection Order', (2020), (see n.111).

[141] The Sexual Offences Act 2003 s. 78, defines an activity as "*sexual*" if "*a reasonable person would consider that: (a) whatever its circumstances or any person's purpose in relation to it, it is because of its nature sexual, or (b) because of its nature it may be sexual and because of its circumstances or the purpose of any person in relation to it (or both) it is sexual*".

[142] This is a recent change. Previously, the standard of proof required for SROs was held to be the criminal standard, although the statute was silent as to the standard required. The Police, Crime, Sentencing and Courts Act 2022, s. 174 has amended the Sexual Offences Act 2003 to include explicit reference to "*on the balance of probabilities*".

[143] Sexual Offences Act 2003, s. 122A (2).

[144] Some have suggested that the definition of "sexual" should align with the definition under 2003 Sexual Offences Act.

[145] Home Office, 'Guidance on Part 2 of the Sexual Offences Act 2003', 2023, (see n.146), p. 55.

[146]The Independent Inquiry into Child Sexual Abuse 'Child sexual exploitation by organised networks', (February 2022), p.111.

[147] The National Archives 'Review of civil orders used to prevent sexual harm', (April 2019); The

some contributors expressed concern that the newly reduced standard of proof coupled with the wide test meant that SROs would cause 'fishing exercises' with applications being sought on the 'off-chance' that they would be granted. At least one contributor felt that the broad definition might make legal advisors to the police adopt more cautious approaches to applying for them, than if more defined circumstances were alluded to in the legislation. [148] Either way, broad tests create problems for legal certainty and clarity of the law. [149] It is also more likely to lead to inconsistent enforcement across the country.

3.21 Finally, some questioned the ability of magistrates' courts to identify appropriate circumstances when SROs should be imposed. As one expert put it: "*Not used to hearing the details of serious allegations of a sexual nature, it takes experienced and confident Magistrates and robust opposition to refuse such applications from the police*." [150] On the other hand, some felt that judges were likely to adopt an overly cautious approach. Again, we await to see whether the reduction in the standard of proof for SROs will lead to substantial increases in their use. We note that in Scotland, applications for the equivalent Orders must be heard by a legally qualified judge in the Sheriff Court. [151]

Orders relating to Stalking and Domestic Abuse

3.22 On a general point, the criticisms relating to the use of Orders to target either 'innocuous behaviour' and/or existing offences, rarely arose, if at all, in Working Party conversations concerning SPOs, Non-Molestation Orders (**"NMO")** and the proposed Domestic Abuse Protection Order ("**DAPO")**.

3.23 Indeed, where Orders were created and/or relied upon a) to protect a particular person from immediate or serious harm, b) in the context of crimes that are constituted via a course of conduct and where escalation was a common factor in their commission e.g., grooming, they generally attracted less criticism on

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Independent Inquiry into Child Sexual Abuse, 'Children Outside the United Kingdom', (January 2020), (see n.43) p.24.

[148] Ibid, p.6.

[149] For further discussion, see Advisory Opinion at Annex 2 to this report.

[150] Bindmans, 'Sexual Risk Orders', (February 2021); The Sentencing Council 'Either-way sexual offences- new to the MCSG', includes a list of offences usually dealt with by a Crown Court. In addition, SHPOs can only be imposed by a High Court; given this, it seems irrational that a magistrates' court can impose an Sexual Risk Order, which has even fewer procedural safeguards, and can potentially lead to unfair results by virtue of the fact that the recipient is not required to have been found guilty of an offence.

[151] See Abusive Behaviour and Sexual Harm (Scotland) Act 2016, Chapter 4, s27.

matters of principle. This was on the basis that in those circumstances, the thresholds for proportionality, necessity and prevention were much more easily demonstrated by reference to the risk of grievous harm and/or homicide. Whilst crimes such as domestic abuse and stalking were most frequently referred to in this context, the Working Party were reminded of several tragic incidents involving victims of anti-social behaviour. This should not be lost sight of. The majority of contributors felt that in these circumstances, Orders *could* play a useful role provided that their remit was clearly defined, procedural safeguards were recognised and addressed by Parliament at the time they were introduced, that resources were made available to support them and, that Orders did not replace prosecutions. [152]

3.24 Nonetheless, their role within the justice system, even in these context, did attract some scepticism. For example, one contributor, felt strongly that victims of domestic abuse were better served by NMOs when breaches were dealt with by way of contempt of court as was the case prior to 2007. [153] They provided several reasons evidencing why this was the case. [154] In particular, they expressed concern that the criminalisation of breaches of NMOs (and by extension, the proposed DAPOs) forced victims to be party to criminal proceedings which may have a direct impact on their health, safety and wellbeing – particularly owing to concerns that those subject to the Orders may attempt to exact revenge. Several contributors and Working Party members expressed concern that proposals for DAPOs allowed them to be applied for against the victim's wishes and without victim's having a say. [155] Furthermore, the Working Party is aware of concerns raised prior to the introduction of SPOs, that they might replace criminal prosecutions, with several experts explaining that the *"real issue"* is the lack of criminal investigations and prosecutions for

[152] Several contributors emphasised their preference for Orders to be "interim" in nature; to provide immediate relief over a short timeframe whilst other routes to redress, including criminal prosecution were explored.

[153] The Domestic Violence (Crime and Victims) Act 2004, implemented in 2007, amended the Family Law Act 1996 to make breach of a Non-Molestation Order, a criminal offence.

[154] In particular, they explained that in their original injunctive form, Non-Molestation Orders allowed a broad range of parties to apply for them and mandated the Family Courts to attach powers of arrest. They explained that victims were empowered, knowing that if they reported a further threat of violence, or actual violence, police were required to immediately arrest and return the respondent recipient before a judge the next day for contempt proceedings.

[155] This compounded problems whereby victim's often felt that their voice went unheard.

stalking and domestic abuse. [156]

3.25 Nevertheless, the majority of domestic abuse and stalking experts considered that the use of Orders in these contexts was a positive step forward, [157] and had the *potential* to provide robust relief for victims. The Working Party were advised of successful outcomes using Orders to tackle such crimes, both in the UK and abroad. [158] Nonetheless, contributors felt strongly that the Orders in and of themselves, were not a complete solution. They referred to the failure of previous Orders and protective measures to address stalking and domestic abuse. [159] For example, we were advised of problems arising from changes to bail, [160] the failure to follow up on breaches of other Orders such as NMOs, Forced Marriage Protection Orders ("**FMPOs**"), Restraining Orders ("**ROs**") [161] and civil injunctions such as Domestic Violence Protection Orders (**"DVPO")** which DAPOs are due to replace. [162] They also emphasised the need

[156] A. Travis, 'Amber Rudd to introduce asbo-style bans for stalkers', (December 2016); Early findings arising out of a review of SPOs by Cheshire Police suggest that so far this has not been the case, stating that "*there is a preference for prosecution rather than putting forward a Stalking Protection Orde*r", see: the Home Office 'Review of Stalking Protection Orders' (see n.39).

[157] See, for example, The Suzy Lamplugh Trust 'Stalking Protection Orders'.

[158] For example, the Working Party was advised that Orders were regularly used in the United States and Australia to prevent domestic abuse, and had been for several years prior to breaches of Orders being criminalised in the United Kingdom.

[159] See comments by the Paladin Service, 'National Stalking Advocacy Service Response to the Home Office Consultation on New Protective Orders' , (2016) , that *"a piece of paper on its own will not protect a victim from a fixated and obsessive stalker. We know this from our cases. Restraining orders are continuously breached by stalkers and breached multiple times and not enforced."*

[160] In particular, we were advised of problems arising out of changes to pre-charge bail legislation in April 2017, which led to "a dramatic fall in the use of bail in rape, domestic abuse and harassment and stalking cases, and a corresponding increase in use of 'released under investigation'", see the Centre for Women's Justice Super-Complaint ' Police failure to use protective measures in cases involving violence against women and girls' (19 March 2019).

[161] End Violence Against Women, 'Police super-complaint investigation highlights police failures to protect victims of violence against women and girls', (August 2021).

[162] Domestic Violence Protection Orders (DVPO) do not fall within the definition of "Behavioural Control Order" adopted by the Working Party. However Domestic Abuse Protection Orders, which do, are set to replace them. Statistics show that Domestic Violence Protection Orders were only imposed in 1% of domestic abuse cases for year ending 2018; More recently, statistics show that in year ending 2022, 269,855 arrests were made for domestic abuse, 10,849 DVPOs were applied for and only 10,167 granted, according to data collected by His Majesty's Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) and published by Office for National Statistics, 'Domestic Abuse and the Criminal Justice System', 2022.

for earlier interventions [163] and more support for victims throughout the criminal justice process, especially for women with unsettled asylum or immigration status.

The Impact on Human Rights

3.26 Amongst the most common complaints made about Orders concerns their interaction with the rights protected by the ECHR. Their impact on human rights has been expressly acknowledged by the Home Office in relation to several Orders including KCPOs, [164] SDPOs [165] and on conviction FBOs. [166] The impact of Orders on human rights is explored in detail in an Advisory Opinion obtained by the Working Party and attached at Annex 2 of this report. A summary of the rights potentially engaged by Orders is provided here.

3.27 Despite the differences between Orders, the concerns usually revolve around the following issues:

a) That the serious nature of Orders – including the punitive conditions that they impose and the criminal conviction that arises from breach – means that the way certain Orders operate in practice could amount to a criminal charge. [167] Despite this, **many of the protections enshrined in Article 6 ECHR (the right to a fair trial) are excluded** due to the categorisation

[163] This includes a "welfare policy which doesn't stigmatise women or minimise the impact of abuse. It means schools delivering high quality Relationships and Sex Education which is accompanied by better school policies and training in detecting and responding to abuse. And, it means asylum and immigration systems which do not deter women from seeking protection" See, End Violence Against Women, 'Conservatives Response to the End Violence Against Women Coalition', p.2.

[164] Home Office, 'Offensive Weapons Bill, European Convention on Human Rights, Supplemental Memorandum by the Home Office, 2019.

[165] Home Office, 'Public Order Bill: European Convention on Human Rights memorandum', 2023; Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, 'Getting the balance right? An inspection of how effectively the police deal with protests', (2021), (see n.37).

[166] Home Office, Ministry of Justice and Department for Environment, Food and Rural Affairs, 'Police, Crime, Sentencing and Courts Bill, European Convention on Human Rights, Supplementary Memorandum', 2022.

[167] See *Engels and others v the Netherlands* 1976, app no. 5100/71 and others, ("unreported" 3 June 1976) in which the European Court of Human Rights held that the nature and degree of severity of the possible penalty, as well as the categorisation of the offence in domestic law, were relevant to determining whether a charge comes within the "*criminal sphere*", even if not considered criminal in domestic law.

of an Order as a 'civil measure', and not a criminal charge. [168]

b) That the restrictive conditions and requirements imposed by Orders, and the likelihood that a recipient will be incarcerated for breaching them, has an **impact upon a recipient's right to liberty and security under Article 5 ECHR.**

c) That the imposition of **restrictive conditions and requirements will impact upon a recipient's right to private and family life in the context of Article 8 ECHR**. [169] This is particularly true of Orders that impose notification requirements or electronic tagging. [170]

d) That restrictions and requirements that prohibit the recipient from being at a particular place or from associating with particular people, that limit the use of social media, and that require the person to report to a particular place at a particular time, may **interfere with a person's rights to freedom of expression and freedom of assembly under Article 10 and 11.** [171]

3.28 Of course, **the commission of harm also impacts on the human rights of victims**, **especially Article 5 and 8 but also the right to life under Article 2 ECHR.** Orders, can clearly raise questions concerning the State's duty to protect the life of victims. They also clearly raise obligations under the United Nation Convention on the Convention on the Elimination of All Forms of Discrimination Against Women ("**CEDAW").** The use of SROs and SHPOs to prevent child exploitation of children and child sex tourism, clearly engage with the United Kingdom's obligations under the United Nations Convention on the Rights of the Child ("**UNCRC**"). This is particularly relevant amidst

[168] There have been a series of court cases concerning Orders and their interaction with Article 6. This includes R(*McCann & Others) v Crown Court at Manchester* [2002] UKHL 39 and more recently, *Jones v Birmingham CC and Secretary of State for the Home Department* [2023] UKSC 27.

[169] This is particularly true in the context of Orders that require recipients to wear electronic tags and/or adhere to curfews.

[170] See, for example, Serious Disruption Prevention Orders (Public Order Act 2023, s. 24 re: notification requirements); Sexual Risk Orders (Sexual Offences Act 2003) and Criminal Behaviour Orders (Anti social Behaviour Orders.

[171] The creation of SDPOs was recognised by senior police officers and the Home Office as exerting "*a severe restriction on a person's rights to protest*", see Her Majesty's Inspectorate of Constabulary and Fire & Rescue Services, 'Getting the balance right? An inspection of how effectively the police deal with protests', (2021), (see n.37).Similar criticisms were levied in response to FBOs being extended to cover tragedy chanting, see M. Hume, 'English football's new blasphemy laws', (Spiked), (August 2023); . We also note, for example, a CBO imposed on drill artist 'Digga D' restricting "*what he could mention in his lyrics"* and requiring him to "*submit those lyrics to the police within 24 hours of releasing them"* (C. Thapar, ''[illegible], *The Guardian*)., *The Guardian*).

widespread reports that various Orders are being underused or are not fit for purpose, [172] leaving vulnerable victims at risk of serious harm. [173]

3.29 Notwithstanding concerns that the existence, use (or under-use) of Orders gives rise to human rights concerns, we note the Government's insistence that Orders do comply with human rights. In particular, the Government claims that Orders are imposed in circumstances where it is proportionate to do so, where they are necessary to achieve the legitimate purpose of preventing harm, and where sufficient procedural safeguards exist to ensure fairness. [174] Policy papers accompanying Orders frequently emphasise that the purpose of Orders is not to punish, but to deter. [175]

Risk of discriminatory practices

3.30 Notwithstanding such statements, the Working Party repeatedly heard that certain groups or populations were likely to be worse impacted by the enforcement, or lack thereof, of Orders. Many contributors expressed concerns that racialised people and those experiencing homelessness were disproportionately likely to become subject to an Order than other members of society. Indeed, some felt that Orders often reflected fears about 'problem people', rather than 'problem behaviour'. [176]

3.31 The Working Party also heard complaints that children and those experiencing mental ill-health, invisible disabilities, or substance use disorders were considerably more likely to face difficulties understanding, complying with, and challenging Orders. On the other hand, the failure to apply and enforce breaches of Orders, in the context of stalking and abuse, left significant numbers of women and girls at risk of grave harm. Finally, the Working Party heard suggestions that those worst impacted by Orders, including victims, were likely to be suffering from multiple disadvantages, which further compounded

[172] The Independent Inquiry into Child Sexual Abuse, 'Children Outside the United Kingdom', (January 2020), (see, n.43), part B.3.

[173] See, for example, Suzy Lamplugh Trust, 'Stalking Protection Orders: Three Years On'; and S. Das 'Anti-stalking Orders 'fail to protect women from danger'' (The Guardian), (12 March 2022), (see n.31).

[174] Home Office, 'Offensive Weapons Bill, European Convention on Human Rights, Supplemental Memorandum', 2019.

[175] For example, Home Office, 'More Effective Responses to Anti-Social Behaviour' (February 2011) (see n.27).

[176] J.Hendry, 'The Usual Suspects': Knife Crime Prevention Orders and the 'Difficult' Regulatory Subject,' (2022), (see n.3).

their experiences of and engagements with the criminal justice system, and representatives of it. [177]

3.32 Examples of the disproportionate impacts that Orders can have are set out below. The examples are not exhaustive and instead represent a sample of the concerns shared with the Working Party. **Nor should they necessarily be understood as reflecting deliberate and/or malicious intent on the part of enforcement bodies to use (or fail to use) the Orders in this way.** Indeed, many of the concerns expressed below were also raised by enforcement bodies we spoke to, all of whom endorsed the introduction of further measures (e.g., training, more resources, and improved data) to mitigate against disproportionate impacts and ensure that Orders were imposed in appropriate circumstances.

3.33 Nonetheless, the examples below effectively demonstrate why Orders should be monitored closely – not just by enforcement bodies but by central Government. A lot of the concerns demonstrated here are not new; many of them have been raised in respect of DVPOs [178] and ASBOs [179], as well as during the parliamentary debates and public consultation prior to new Orders being introduced. [180] However, they do emphasise **the urgent need for more robust training and safeguards to be put in place across the Order regime to ensure that, in their pursuit of preventing harm, Orders are not themselves**

[177] The term multiple disadvantages refers to those people who face multiple and intersecting disadvantages, relating to race, poverty, homelessness, increased contact with the criminal justice system, mental ill health, trauma, domestic abuse, and problematic substance use. For example, see Prison Reform Trust, 'Bromley Briefings Prison Factfile, Winter 2022', (2022).

[178] See, for example, Rights of Women and RESPECT, 'Joint briefing on Domestic Abuse Protection Orders (DAPOs)' 2019, which points to the fact that DVPOs were used "*in only 1% of all domestic abuse crimes*", p.2.

[179] Studies have demonstrated the discriminatory impact that ASBOs had on children, young people, individuals from economically disadvantaged backgrounds, and neurodivergent persons, including those with Autism. For example, see, P. Squires 'The Politics of Anti-Social Behaviour', *British Politics, (2008), pp.* 300-323; see also the British Institute for Brain Injured Children ("BIBIC") (2007), 'BIBIC research on ASBOs and young people with learning difficulties and mental health problems', referenced in House of Commons Committee of Public Accounts, 'Tackling Anti-Social Behaviour, Forty-fourth Report of Session 2006-07', (July 2007). See also case studies provided by the Select Committee on Home Affairs Memorandum submitted by Napo 'Anti-Social Behaviour Orders – Analysis of the first six years' (2005).

[180] R. Kelly, 'The Problematic Development of the Stalking Protection Order', (2020) (see n.111).

perpetuating it. [181]

Impact on Black and Racialised People

3.34 The Working Party was made aware of concerns that KCPOs, and SVROs were disproportionately affecting Black and racialised people. The Working Party was directed to recent cases, [182] research studies, [183] and discussions in Parliament which highlighted the disproportionate impact that such Orders could have on this population. [184]

3.35 Experts on stalking and domestic abuse also identified a racial dimension within approaches to domestic abuse, whereby specialist services for Black women (as well as male victims and disabled victims) remain under-resourced. [185] The position for women with unsettled asylum or immigration status and who lack a "safe mechanism" to report domestic abuse and other gendered crime, is even worse. [186]Most felt that Black women would continue to be disadvantaged, notwithstanding the introduction of DAPOs, unless specific measures were introduced to better support Black female survivors of domestic abuse. In particular, we amplify urgent calls from domestic abuse charities, that victims with unsettled asylum and immigration status should be provided with "safe

[181] Similar recommendations have been made elsewhere. For example, the Youth Justice Board states that "*Diversity should be a consideration in all consultations on civil orders and care should be taken to prevent disproportionate use or criminalisation of over-represented groups*" (Youth Justice Board (see n. 59 above), 'Case management guidance: ancillary orders').

[182] See for example, the case of Ernest Theophile, who successfully appealed an Anti-Social Behaviour Injunction that prohibited him from playing dominoes. He appealed on the basis that the enforcement body had failed to take into account the public sector equality duty by failing to consider that the majority of those affected by the injunction shared a protected characteristic of race. The case is relevant to Orders because there is significant cross-over between the types of behaviour that can trigger a PSPO or CPN, and an ASBI.

[183] See, for example, a 2018 Study by the Centre for Crime and Justice Studies showing the disproportionate prosecution of Black children and young adults for breach of Dispersal Powers (Centre for Crime and Justice Studies, Anti-social behaviour powers and young adults: The data', (2018), p. 12.

[184] For example, Lord Ramsbotham D, (note 30 above) Offensive Weapons Bill. (Column 379G).

[185] This was recognised by Jess Phillips during the Parliamentary debates concerning the Domestic Abuse Bill. She is quoted as saying: *"Specialist services for black women or disabled victims and male victims are no better served than they were," said Phillips. "**They will have new tools**, but the funding decline in the specialised sector during years of austerity won't be abated by the bill"* [emphasis added]; A. Topping, 'Migrant women deliberately left out of UK abuse bill, say campaigners' *The Guardian, (July 2020).*

[186] See Rights of Women 'Transforming the Response to Domestic Abuse', (May 2018), p.12 and p.29.

routes" to report domestic abuse to police, without fear of immigration enforcement. [187]

3.36 The most serious concerns were levied in respect of KCPOs and the harmful impact that the Government's current approach to "*tackling knife crime*" has on Black children and young adults — an issue explicitly acknowledged during the Parliamentary debates and in the Impact Assessment accompanying KCPOs. [188] In particular, the participants at our Roundtable on KCPOs and SVROs, as well as academics, have emphasised that current policy interventions around knife-crime are "*heavily gendered*" and "*heavily racialised*". [189]

3.37 The Working Party understands that this is reinforced by the use of harmful rhetoric by the media [190] and policymakers, [191] which repeatedly identifies young Black men and boys as major culprits of knife crime, despite evidence showing this to be false. [192] Indeed, the preoccupation with gendered and

[187] See, for example, Step Up Migrant Women which explains that *"92% of migrant women have reported threats of deportation from the perpetrator."*

[188] Home Office, 'Offensive Weapons Act 2019: Impact Assessment' 2020, pp. 46-47.

[189] E. Cooke and S. Walklate, 'Gendered objects and gendered spaces: The invisibilities of 'knife' crime', *Current sociology, (2020), p.64.*

[190] Terms such as "Knife Crime Youth" and "Drill Music Gangs" are regularly referred to in the media; for example, H. Horton 'Drill music gang bragged about moped stabbings on YouTube, court hears' *The Telegraph, (June 2018).*

[191] For example, we note Tony Blair's speech on youth violence in 2007 where he called on the Black community to "*mobilise in denunciation of gang culture",* saying: *"We won't stop this by pretending it isn't young black kids doing it"* (T. Blair, 'Speech by the Prime Minister, the Right Honorable Tony Blair MP at Cardiff City Hall, the Callaghan Memorial Lecture, Wednesday 11 April 2007' 2007. pp. 10-11). This is despite a review of 32 London borough just four years earlier, which found that "*when relevant social and economic factors were taken into account race and ethnicity had no significance on youth crime."* Similarly populist rhetoric was used by David Cameron in 2007 when he stated that 'hip hop' was partly responsible for youth violence: an argument which has now been recycled in relation to 'drill music'. A significant amount of literature now exists that debunks the theory that 'drill music', a music genre whose artists are predominantly Black male young adults, causes knife crime and serious violence; for one example, see JUSTICE, 'Tackling Racial Injustice: Children and the Youth Justice System' (2021). However, the case of drill artist, Rhys Herbert, demonstrates the way that Orders – this time a CBO – can entrench these racialised tropes; see, C. Thapar, 'Digga D on rap stardom and police restrictions', (June 2023).

[192] Williams, E. 'Policing the Crisis in the 21st Century; the making of "knife crime youths" in Britain. *Crime Law Soc Change* (2023), p.4 which states that *"there is no statistical justification for the framing of 'knife crime' as a youth phenomenon and yet the construction of knife crime youths has been largely unchallenged and increasingly racialised in public discourse".*

racialised stereotypes fails to take into account the high levels of knife crime committed not 'on the street', but behind closed doors against female victims of domestic abuse. [193] Far from focussing on "*reality*", participants at our knife crime roundtable considered that the KCPOs simply reflected the latest in a series of measures aimed at vilifying young Black men and boys.

3.38 The Working Party was also advised that KCPOs and SVROs must be understood in light of the over-representation of Black and racialised people in the criminal justice system generally. [194] Others referenced the relevance of the Casey Review, which identified systemic racism on the part of the Metropolitan Police, including their use of stop and search powers to target Black children and young adults. [195] This is of concern in the present context as, whilst KCPOs do not provide for increased stop and search powers, SVROs do. [196] Overall, contributors felt that Orders, specifically the SVRO and KCPO, would worsen the over-policing of Black communities and make it easier to fast-track individuals from those communities into the criminal justice system. [197]

3.39 Data obtained by StopWatch via Freedom of Information **("FOI")** requests shows that the majority of KCPOs issued during the pilot were imposed on Black men and boys. As of 21 February 2023, 64.5% of those who received a KCPO, as part of the KCPO Pilot, were Black [198] and 51% were Black children and young people below the age of 25. [199] This is particularly concerning given the statistics set out in the KCPO Impact Assessment, which explain that:

"*when looking at ethnicity, 70 per cent of offenders convicted and cautioned*

[193] *See n.189.*

[194] House of Commons Library, 'Ethnicity and the criminal justice system: What does recent data say on over-representation?', (published October 2020).

[195] Baroness L. Casey, 'An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service' (2023). pp. 286-329.

[196] Police, Crime, Sentencing and Courts Act 2022. We are aware of research being conducted by StopWatch UK regarding civil orders, including Serious Violence Reduction Orders, and stop and search. See, StopWatch, 'SVROs – Everything you need to know', 2023

[197] For example, see, Liberty. 'Six Ways to Stop Spiralling Racial Disproportionality in UK Policing', (July 2020) ; J. Hendry, 'The Usual Suspects': Knife Crime Prevention Orders and the 'Difficult' Regulatory Subject', (2022), (see n.3).

[198] Data obtained via StopWatch as part of their research into the use of Serious Violence Reduction Orders, 'Knife Crime Prevention Orders pilot scheme extension Freedom of Information request' (January 2023).

[199] *ibid.*

for any knife and offensive weapon offence (this includes both possession and threatening offences) were White, 18 per cent were Black and 7 per cent were Asian". [200]

3.40 Whilst it is not clear how the figures involved in the Pilot relate to the broader statistics concerning prosecution for knife-crime offences over the same period, it is clear that they are at odds with the general demographic of knife crime offenders nationally, as set out in the KCPO Impact Assessment. That being said, the Working Party were directed to data presented by the London Assembly stating that despite making up only 13% of London's total population, Black Londoners account for 45% of London's knife murder victims, 61% of knife murder perpetrators and 53% of knife crime perpetrators. [201] The Working Party was not able to scrutinise this data further owing to a lack of source. Some contributors were sceptical about the reliability of the data in the context of the Casey report which found the over-policing of Black men and boys generally and the over-representation of Black men and boys in the criminal justice system. [202] It is presumed that the publication of the KCPO Evaluation in due course may shed further light on the types of offences that triggered the KCPO, as well as the general trends pertaining to knife-crime over the period.

3.41 **Nonetheless, the Working Party recommends that until such time as the review referred to at 3.143 takes place, and/or, measures are introduced to monitor and prevent discriminatory impacts of the Orders, the Home Office should not extend the use of KCPOs beyond the duration of the Pilot. Should the SVRO Pilot identify similarly disproportionate impacts on Black children and adults, we consider that SVROs, too, should not be extended beyond the Pilot.**

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[200] Home Office ,'Offensive Weapons Act 2019: Impact Assessment', (see n.197) p. 46; that sets out the following information: *Based off all offenders convicted and cautioned for any knife and offensive weapon offence (this includes both possession and threatening offences). All offenders used. 1,291 of 19,307 (7%) are Asian, 3,468 or 19,307 (18%) are Black, 13,580 of 19,307 (70%) are White, and 968 of 19,307 (5%) are Other or Unknown.*

[201] The London Assembly, 'Calls for commission on knife crime in the black community', (10 February 2022).

[202] Baroness L. Casey, 'An independent review into the standards of behaviour and internal culture of the Metropolitan Police Service', (2023), (see n.204) and The Lammy Review. 'An independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System.' (2017).

3.42 This is based on the statistics available and the widespread objections to KCPOs from voluntary organisations, public bodies and agencies working to reduce knife crime, youth offending, and racism.

Impact on Those Experiencing Mental Ill-Health or Substance Use Disorders

3.43 The disproportionate impact that ASBOs had on those living with a mental health problem has been documented previously. In particular, we note the findings of the 2009 Bradley Report, which highlighted that:

> ***"The behaviour that prompts the issue of an ASBO can often be indicative of a mental health problem*** *and, in addition****, the conditions of an ASBO can be difficult to keep for people with mental health or learning disability problems****. Participants in the review have told me that neighbourhood policing teams are being encouraged to use ASBOs…, and they can have the perverse effect of accelerating vulnerable people into the criminal justice system, rather than to appropriate services, if they are not complied with"*[203] [emphasis added].

3.44 Poor record-keeping and the lack of data capture were also dealt with in the report. In particular, it highlighted the absence of any national requirement for enforcement bodies to maintain records of the number of people they engaged with that were experiencing mental health challenges.[200]

3.45 Despite 24 years having passed since the ASBO was introduced, and 10 years since it was abolished,[201] the concerns raised in the Bradley Report remain relevant, not just in the context of anti-social behaviour, but in relation to Orders more generally.

3.46 Gaps in data capture prevail. Enforcement bodies do not routinely collect information concerning a recipient's mental health. Even where they do, it is inconsistent and does not necessarily paint an accurate picture. It is therefore not possible to determine the prevalence of mental ill-health or substance use disorders amongst recipients of Orders. Nonetheless, the Working Party was made aware of several case studies, from organisations and those with lived experience, which evidence the use of Orders against this population. By way of example, anecdotal evidence provided to the Working Party suggested that PSPOs restricting the consumption of alcohol were disproportionately enforced

[203] Ibid, p.37.

against those experiencing homelessness, or those suspected of having a substance use disorder, compared to other populations. [204]

3.47 A series of studies undertaken in recent years also help to provide some indication as to the particular impact that Orders have on those experiencing mental ill-health and substance use disorders. A study undertaken in 2018 by the Centre for Crime and Justice Studies in relation to children and young adults and their interaction with CPNs, PSPOs and DOs found that "[s]*ubstance addiction and poor mental health were the factors most often cited to be associated with non-compliance*". [205] A report by Sheffield Hallam into the experiences of those experiencing street homelessness within PSPO areas, provided multiple examples of individuals being unfairly treated due to their substance use disorders – even verbally or physically abused by enforcement bodies. [206]

3.48 The Working Party was also directed to a number of current research projects which identified harmful and disproportionate impacts upon this population via the enforcement of anti-social behaviour injunctions **("ASBIs").** [207] In particular, a report by the Civil Justice Council in 2020 found that *"mental health issues are at play in a significant proportion of cases concerning anti-social behaviour"*. [208] However, the findings of the report have ramifications for Orders beyond those contained in the 2014 Act. The report exposed the inability of the civil courts to adequately identify, address, and generally meet the needs of those experiencing mental ill-health, substance use disorders, learning difficulties, and associated vulnerabilities.

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[204] The most substantial evidence comes from BIBIC's 2005 survey of Anti-social Behaviour Orders and Youth Offender Teams, which found that over a third of under-17s who were given ASBOs had a diagnosable mental health disorder (the study aggregated mental ill health and ADHD, learning disabilities and autism) and 6% of them had a mental age of less than 10 years. The survey only accounted for those who had diagnosis. see BIBIC 'BIBIC research on ASBOs and young people with learning difficulties and mental health problems', (see n.179).

[205] Centre for Crime and Justice Studies, 'Anti-social behaviour powers and young adults', (18 July 2018), p.12.

[206] V.Heap, A. Black and C.Devany, 'Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness', (Sheffield Hallam University, Helena Kennedy Centre) (see n.47).

[207] R. Epstein, 'The rich get treatment – the poor go to prison: imprisonment for contempt of court', (December 2022).

[208] Civil Justice Council, 'Anti-social Behaviour and the Civil Courts', (2020) (see n.48).

3.49 The report concluded that the absence of the NHS Liaison and Diversion service ("**L&D Service**") within the civil courts meant that opportunities to divert those experiencing mental ill-health and associated vulnerabilities away from the court system and into support services were missed. Moreover, the absence of the L&D Service further meant that the courts rarely had access to accurate or comprehensive information about a recipient's mental health, including the impact that it might have on the ability of a recipient to comply with an injunction, in circumstances where enforcement bodies rarely provided such information. Better support was available within the criminal courts in this regard. The irony of this finding is not lost on the Working Party: the fact that recipients are worse off through being drawn into the criminal justice system by way of having an Order imposed upon them, yet at the same time are denied the protections afforded by the criminal justice system – protections which could have led to the Order not being imposed in the first place.

3.50 The ability of the courts to adequately assess the impact that an Order might have on a recipient's mental health or substance use disorder (and vice-versa) is therefore limited. Contributors to the Working Party suggested that whether such factors were given adequate attention in the court often depended on the enforcement body, the individual judge, and the recipient's legal representative – assuming they were able to access one. [209] This is extremely worrying. The Working Party also acknowledges that the situation is likely to be worse for recipients of CPNs and PSPOs, owing to the fact that they are imposed without independent judicial oversight. Whilst CPNs and PSPOs can be appealed to a court, the circumstances to do so are limited and laborious. Indeed, the Working Party was made aware of one case whereby an individual with Bipolar Disorder was issued a CPW on the basis of an unfounded complaint by her neighbour. The stress of the CPW led the individual to have a Bipolar relapse. The enforcement body responded by issuing a CPN and then an FPN for breach. [210]

3.51 The enforcement of Orders upon those with serious mental ill-health gives rise to significant alarm. It punishes people for behaviours outside their control and which they are unlikely to be able to change via the imposition of an Order. [211]

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[209] JUSTICE, 'Understanding Courts', (2019).

[210] The Manifesto Club 'Case study 3: Council prosecutes woman for bipolar episode'.

[211] V. Heap, A. Black and C.Devany, 'Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness', (Sheffield Hallam University, Helena Kennedy Centre), (see n.47), p.101. As Toby, a person experiencing street

The focus on criminalisation risks denying them opportunities to access the support that may help to reduce the harmful behaviours and lead to sustainable outcomes for victims.

Impact on Neurodiverse Persons and those with Learning Disabilities

3.52 Similar concerns were also raised in respect of Orders being imposed on neurodiverse persons and those with learning disabilities. Again, it is not possible to quantify the full extent of the issue, as neither the police [212] nor local authorities [213] are required to collect data on neurodiversity. Instead, it is typically bundled in with data relating to mental health.

3.53 Nonetheless, the Working Party was directed to a report by HM Inspectorate of Prisons and Probation which found that, in the context of the criminal justice system generally, people experience specific disadvantage because of their neurodivergence. Examples of disadvantages include: 1) the police misinterpreting behaviours associated with some types of neurodivergence, leading to the unnecessary escalation of force; 2) neurodivergence not being considered as part of mitigating circumstances; 3) a lack of understanding of the court process as a result of neurodivergence; and 4) a lack of understanding of licence conditions owing to neurodivergence, potentially leading to a breach. [214]

3.54 Accounts provided to the Working Party by practitioners, those with lived experiences, and charities supporting those with criminal records indicated that such findings were also relevant in the context of Orders. In particular, the Working Party heard that neurodivergent persons were more likely to become subject to Orders, owing to the behaviours associated with their neurodiversity or disability being mislabelled or misunderstood. This was particularly true in

homelessness, who was interviewed for the report, explains, addictions are not something that can be deterred with a policing presence: "*What it is, it's trying to scare us to move us on or trying to scare us to stop us doing something but you won't stop people from doing what they're doing if they've got addictions. People with addictions need more help*".

[212] The Working Party were advised that it is not a standalone item within the national dataset and therefore is not required to be collected across Police forces.

[213] FOI responses received from local authorities also appear to suggest that information is not recorded specifically on this issue. See also, Criminal Justice Joint Inspection, 'Neurodiversity in the Criminal Justice System: a Review of the Evidence', (2021).

[214] *Ibid.*

the context of anti-social behaviour,[215] but also across the criminal justice system generally.[216]One individual we spoke to explained the repeated failures from enforcement bodies to take into account the impact her son's ADHD and mental ill-health had on his behaviour, via their enforcement decisions. In particular, she explained how he was repeatedly criminalised, leading to worse outcomes and an escalation in his behaviour, despite enforcement bodies acknowledging that he was experiencing extremely poor ill-health.

3.55 Not only that, but they were more likely to experience difficulties complying with Orders as a direct result of their neurodiversity or learning disability. This meant that they were more likely to be criminalised for breach. This is in spite of case law setting out that Orders should not be imposed where an individual is unable to comply with an Order by reason of disability or mental ill-health, as criminalisation for a breach would be inevitable. This was the case in *Humphreys* which determined that an application for a CBO was not capable of satisfying the second branch of the statutory test, owing to the fact the recipient had Attention Deficit Hyperactive Disorders ("**ADHD**"), meaning that it was highly likely that the Order would be breached.[217]

3.56 Practitioners provided examples where clients with learning difficulties were subject to conditions in their Orders which risked isolating them from support groups and positive influences. One practitioner we spoke to provided an example whereby their client was subject to a condition in an Order that prohibited them from associating with anyone experiencing similar vulnerabilities, including learning disabilities. In practice, this meant cutting

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[215] See, for example, M. Bright, 'Charity pleads for tolerance as autistic youngsters face Asbos', *The Guardian, (May 2005).*

[216] The Revolving Door Forum also highlighted this, explaining that it is often "*upon first contact with the criminal justice system, through the police, that neurodivergence is mis-interpreted as aggression, indifference, or intoxication"* (Revolving Doors, 'Exploring the links between neurodiversity and the revolving door of crisis and crime', (September 2022)); see also W. Retz et al, *Neuroscience & Biobehavioural Reviews* 'Attention-Deficit/Hyperactivity Disorder (ADHD), antisociality and delinquent behaviour over the lifespan' (2020) which shows a link between adhd and anti-social behaviour.

[217] *Humphreys v Crown Prosecution Service* [2019] EWHC 2794 (Admin), at [24] where Mr Justice Stuart-Smith stated: "*When deciding whether making the proposed CBO will help in preventing the offender from engaging in such behaviour, a finding of fact that the offender is incapable of understanding or complying with the terms of the Order, so that the only effect of the Order will be to criminalise the behaviour over which he has no control, will indicate that the Order is not helpful and will not satisfy the second condition that* [such an order was necessary to protect persons in any place in England and Wales from further antisocial acts by the [defendant]]".

the recipient off from his peer group and preventing him forming new friendships and relationships.

3.57 In light of the concerns raised at relating to the impact of Orders on those experiencing mental ill-health and those with learning disabilities and/or neurodiverse people, **the Working Party repeats the recommendation made by the Civil Justice Council that the Home Office, Ministry of Justice, HMCTS, and the Liaison and Diversion service meet as a matter of urgency to consider: 1) how the Liaison and Diversion service should liaise and work with local enforcement bodies and agencies; and 2) how the civil courts and criminal courts, exercising a civil jurisdiction, can gain assistance from/cross-refer to the Liaison and Diversion Service.** [218]

Impact on Children and Young Adults

3.58 Many contributors expressed unease about the current use of Orders on children. They explained that Orders are more likely to draw children into the criminal justice system and risk damaging trust between children and enforcement bodies. Furthermore, the conditions imposed by Orders – particularly those that restrict social interactions and the ability of an individual to associate with their peer groups – are likely to have a disproportionately harmful effect on children and potentially push them further from support. [219] Whilst apparently rare, the Working Party was made aware of at least one instance where a child was subject to electronic monitoring upon breach of a CBO. [220] The Working Party also heard that children were considerably more likely to breach Orders, owing to difficulties in understanding the conditions imposed by them, being ambivalent about the consequences, or simply

[218] Civil Justice Council, 'Anti Social Behaviour in the Civil Courts' (2020), (see n.48) p.136.

[219] A. Orben, L. Tomova and S. Blakemore, (2020). 'The effects of social deprivation on adolescent development and mental health', *The Lancet Child and Adolescent Health*; see also concerns raised by The Children's Society, Children's Rights Alliance and Just for Kids regarding KCPOs and other Orders (The Children's Society, 'Written evidence submitted by The Children's Society (BYC013)' (2019); Children's Rights Alliance for England, 'State of Children's Rights in England 2018, Policing and Criminal Justice' (2018), p.16; Just for Kids Law 'Government urged to scrap "flawed and disproportionate" Knife Crime Prevention Orders', (February 2019).

[220] See V. Finan, 'Boy, 15, becomes first child in the UK to be fitted with a GPS tag after threatening a 14-year-old girl with a replica firearm and brandishing a gun in the street' *Daily Mail;* and Youth Justice Legal Centre 'Recent case highlights the dangers and disproportionate manner in which CBOs can be imposed'.

forgetting.[221] This means breaches of Orders by children are almost inevitable. Indeed, a report by the Prison Reform Trust found that 68% of all ASBOs issued to children since 2000 had been breached, leading the authors of the report to state that "*children are in effect being set up to fail*".[222] A number of contributors shared experiences relating to more recent Orders that supported this claim.

3.59 These concerns have led youth justice experts to repeatedly call for approaches that divert children from the criminal justice system, as is the case in other jurisdictions.[223] The Edinburgh Study of Youth Transitions and Crime concluded that the best approach to reducing re-offending by young people is a policy of "*maximum diversion*".[224] This study also found that the more interactions a young person has with the criminal justice system, the more likely they are to re-offend in the future.[225] For that reason, experts across the justice system, suggested that Orders should not be imposed upon children unless alternative non-legal measures had first been explored and, where appropriate, exhausted.

3.60 A review of statutory guidance appears to reflect this. The Guidance for SHPOs,[226] PSPOs and CBOs[227] all suggest that they only be imposed upon

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[221] S. Blakemore, and S. Choudhury, *Journal of Child Psychology and Psychiatry* 'Development of the adolescent brain: implications for executive function and social cognition', (February 2006).

[222] Prison Reform Trust, '*Prison Reform Trust consultation submission, More effective responses to anti-social behaviour*' (2011), p.3; the report explained that insufficient training to deal with children and the restrictive requirements (such as non-association) as well as the lack of support attached to them (with only one in four ASBOs issued in 2009 having an Individual Support Order attached) is what led to high breach rates.

[223] See, for example, the Scottish approach (Scottish Government, Antisocial Behaviour etc. (Scotland) Act 2004: Guidance on Antisocial Behaviour Orders, (2004), which recommends that "[a]*uthorities will want to consider a range of options such as mediation, support services, voluntary agreements and diversion projects before deciding to pursue legal action*".

[224] L. McAra, and S. McVie, *Criminology & Criminal Justice*, 'Youth crime and justice: Key messages from the Edinburgh Study of Youth Transitions and Crime'*,(2010)*.

[225] *ibid*.

[226] Home Office 'Guidance on Part 2 of the Sexual Offences Act 2003', (see n.146), p.45. The Guidance states that an application for a Sexual Harm Prevention Order should only be considered exceptionally, and consultation should take place with the social services department and the relevant Youth Offending Team.

[227] Home Office 'Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers. Statutory guidance for frontline professionals' (2023), (see n.98), p.27.

children in exceptional circumstances.[228] Despite this, contributors to the Working Party expressed doubt as to whether practice reflected what was written on paper. Some pointed to historic studies demonstrating that, although Parliament also expressed similar intentions at the time ASBOs were introduced,[229] they were imposed upon children and young adults in high numbers,[230] with many of them being incarcerated as a result.[231]

3.61 Others referred to more recent examples from their own practice. We were directed to case studies showing that PSPOs are often used to regulate children's behaviour, including preventing them from playing ball games, banning them from congregating in groups of two or more in town centres, and/or subjecting them to curfews.[232] This means that children are more likely to find themselves fined or criminalised, for carrying out activities which many consider 'normal' for that age group.

3.62 The Working Party was also reminded that conviction for breaching a CPN or PSPO, could invite the imposition of a CBO – which has considerably more serious consequences in terms of punishment for breach. Conversations with practitioners also suggested that applications for CBOs are routinely made in respect of young people, despite a court ruling that CBOs are intended to tackle the most serious and persistent offenders and "*are not lightly to be imposed*".[233]

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[228] This seems to reflect Article 37 of the UN Convention on the Rights of the Child which states that "*the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time*". Despite this, Squires explains that 81 children had been given custodial sentences, following their breach of ASBOs, between June 2000 and December 2002. P. Squires, 'The Politics of Anti-Social Behaviour' (2008), (see n.179) p.317.

[229] P. Squires, 'The Politics of Anti-Social Behaviour' (2008), (see n.179), p.311. Squires describes how the original Home Office guidance on ASBOs, from 1998, suggested that "*orders were not intended for young people aged under 16*", and that the Home Office spokesmen explained that the use of ASBOs against young people was "*unlikely to be appropriate*".

[230] *Ibid*, p. 311 and p.317. Squires explains that, by 2005, over 40% of ASBOs in England and Wales had been issued in respect of persons aged under 18.

[231] See N. Morris and B. Russell, *The Independent,* 'More than 1,000 children jailed for breaching Asbos', *(August 2008),* which demonstrates that over 1,000 children were incarcerated for an average term of 6 months, over a 6 year period.

[232] See examples given in The Manifesto Club, J.Appleton, 'PSPOs – Rise and Rise of the "Busybodies' Charter', (2017).

[233] *R v Kamran Khan* [2018] EWCA Crim 1472, at [20]. We note training provided by practitioners at Doughty Street, which explained the range of evidence that can be relied upon to impose a CBO,

3.63 Contributors and members also expressed dismay at what appears to be a general decline in the use of 'non-legal measures', such as acceptable behaviour agreements,[234] despite them achieving high-resolution rates when used appropriately, and despite the statutory guidance for Orders under the 2014 Act suggesting that they should be prioritised over the imposition of an Order.

3.64 However, of all the discussions concerning the impact of Orders on children, the issue that elicited the most calls for concern relates to the introduction of KCPOs to explicitly target children. We note comments made by Victoria Atkins MP, in her role as Parliamentary Under-Secretary of State for the Home Department, whereby she stated that, via the KCPO, the Government:

> "*wanted to give the police the power, through the Bill, to seek an Order from the court, on a civil standard of proof, so that the state can wrap its arms around children if schools and local police officers think they are at risk of carrying knives frequently*".[235] [emphasis added]

3.65 This marks a clear departure from the recommendations made by youth justice experts that children be diverted away from the criminal justice system via **non-legal** measures.[236] It also risks over-exaggerating the role that young children play in relation to knife crime, as previously explained, worsening the existing racial disparity in Young Offender Institution populations. Experts have recommended that the police automatically consider the possession of a knife by a child as a safeguarding concern rather than as an indicator of potential violence. The starting point should be to consider whether it is because the child is vulnerable and/or being exploited; thereafter a multi-agency safeguarding approach should be adopted instead of a criminal justice response.[237]

3.66 Unfortunately, data emerging from the KCPO Pilot shows that, as of 21

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including evidence of a playground fight, shoplifting sweets, and a young person being in possession of cannabis. Please see, Doughty Street Chambers 'Criminal Behaviour Orders', (4 February 2021).

[234] Acceptable behaviour agreements are written agreements between a person, a parent or guardian, local council, the police and, where appropriate, schools and registered social landlords.

[235] HC Deb 4 February 2019, vol 654, cols 20-30.

[236] "Instead of criminalising our children there should be wider investment in pastoral systems, welfare and mental health support," Dr S. Begum, Runnymede Trust, 'Over-policed and under-protected: the road to safer schools' (published 2023).

[237] JUSTICE, *Tackling Racial Injustice: Children and the Youth Justice System,* 2021., p.34. See also, R. Dean, 'Knife ASBOs won't cut crime- but they will harm vulnerable young people', *The Guardian, (February 2019)*.

February 2023, out of 138 KCPOs imposed, 52 were against under-18s, whilst 46 were applied to young adults between the ages of 18 and 21. The youngest recipient was aged 13. As mentioned earlier, the majority of these were imposed on young Black men and boys. [238]

3.67 Finally, we are cognisant that measures have been taken by the Government to build safeguards into the framework for Orders to protect children. In particular, we welcome the requirement that the local Youth Offending Team ("**YOT**") be consulted by the prosecution before applying for a CBO or KCPO to be imposed on a child (under 18). [239] However, we are concerned that the protection afforded by this measure is diluted by the fact that enforcement bodies are only required to take the views of the YOT into consideration. This would be strengthened if they were required to set out the reasons for diverting from the opinions of YOT in their enforcement decisions, where applicable. Further, it is not clear that the views of the YOT must be shared with the court; the Guidance on KCPOs describes this as being "*expected*" as a matter of "*good practice*" only. [240] If the purpose of the consultation is to encourage reasoned decision-making, this is undermined by creating a potential difference between the information available to the applicant for the Order and the court. The same concerns arise with respect to CBOs. [241]

3.68 **Until such time as the Government conduct a review of Orders, we urge it to abandon its proposals to reduce the age limit at which CPNs can be enforced against children, and/or any proposals to create new Orders that can be imposed upon children. Orders should only be imposed on children following consultation with youth justice experts and child services, and only after other 'non-legal' interventions have been explored. Enforcement bodies should be prepared to evidence how they have considered and reflected issues arising from those consultations, in their enforcement decisions.**

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[238] The data currently available does not set out the offences for which recipients of Knife Crime Prevention Orders had been convicted.

[239] For example, where the application is made in respect of a child, the Youth Offending Team must be consulted (For Knife Crime Prevention Orders, see Offensive Weapons Act 2019, ss. 15. and 20) and any relevant social worker should also contribute their knowledge of the child and the child's circumstances to the court.

[240] Home Office 'Knife Crime Prevention Orders Framework Guidance' (July 2021), p.10.

[241] The Crown Prosecution Service, 'Criminal Behaviour Orders: Legal Guidance', (2020).

Impact on those Experiencing Homelessness and Multiple Social Disadvantage

3.69 The Working Party was directed both to case studies and to academic research showing that PSPOs, CPNs, DOs and CBOs disproportionately impact those experiencing street homelessness.[242] These disproportionate impacts arose either as a result of Orders being used to target this population, or due to the difficulty that those experiencing street homelessness face when trying to comply with conditions, pay fines, or obtain access to legal advice and support to challenge Orders imposed upon them.[243]

3.70 Street homelessness, in and of itself, should not be construed as harmful or having a "*detrimental effect on the quality of life*".[244] Many of the contributors we spoke to, including bodies that represented victims of anti-social behaviour, explained that the preoccupation with targeting this population, in the absence of them causing any harm, actually detracts from the 'real culprits' of anti-social behaviour – most of whom do not fit this demographic. They also explained that this practice risked misrepresenting the crucial role that Orders such as CPNs play in protecting victims from serious harm – when they are imposed in appropriate circumstances.

3.71 In fact, people experiencing street homelessness are far more likely to be victims of crime and anti-social behaviour than to be responsible for it. A study demonstrated that, in a 12-month period, 77% of those experiencing street homelessness had been victims of some form of violence or anti-social behaviour, and three in ten had reported being deliberately hit or kicked.[245] Those responsible for such acts are more likely to be members of the public,

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[242] The Working Party were advised of similar accounts of Anti Social Behaviour Injunctions being imposed on this population. See, R. Epstein, 'Go Directly to Jail for Begging, Shouting and Rough Sleeping', 2022.

[243] Heap, A. Black and C.Devany, 'Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness', (2022), (see n.47); Heap, A. Black and C.Devany, *People, Place and Policy*, 'Understanding how Community Protection Notices are used to manage anti-social behaviour attributed to people experiencing street homelessness', (2023).

[244] For example, a 2017 survey carried out by Crisis, to determine the drivers of enforcement measures such as PSPOs, found that three quarters of local authorities reported rough sleeping, in and of itself, as a problem in part of their local authority; see, Crisis, 'An examination of the scale and impact of enforcement interventions on street homeless people in England and Wales', (2017), p.12.

[245] M. Whiteford, 'New Labour, Street Homelessness and Social Exclusion: A Defaulted Promissory Note?', (published online 2012). J. Harding and A. Irving, 'Anti-Social Behaviour among Homeless People: Assumptions or Reality?' (2014).

who are unknown to the victims. [246]

3.72 Furthermore, as noted by the UN Special Rapporteur on the right to housing, "[i]*nequality is the most consistently identified cause of homelessness*". [247] Moreover, individuals experiencing street homelessness are also far more likely to be suffering from multiple disadvantage. [248] Far from criminalising those experiencing street homelessness, the State should be supporting them through the provision of appropriate, non-criminal services. Enforcement bodies that we spoke with unanimously agreed on this front. However, they also explained that years of cuts to local government funding meant that there was often a lack of appropriate services to which to direct such individuals. Where inappropriate enforcement practices were taking place, enforcement bodies felt that this was often as a result of poor training and/or pressure from central Government to use the Orders.

3.73 In 2017, the statutory guidance was updated to expressly state that PSPOs should not be used to target those experiencing street homelessness in the absence of any harm. [249] Despite this, the practice continued. A legal challenge brought by Sarah Ward in 2018, against Bournemouth, Christchurch, and Poole Council, demonstrates the ways in which many enforcement bodies continued to use the Orders under the 2014 Act to *indirectly* discriminate against this population. [250]

3.74 Furthermore, research shows that PSPOs and CPNs continue to be used (along with DOs) against the homeless population, at least to some extent. In a survey carried out by Sheffield Hallam University, 83 % of respondents said that their local PSPO included prohibitions relating to street homelessness. [251] Similarly,

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[246] Ibid.

[247] L. Farha, *The Guardian*, 'We can't talk about inequality without talking about homelessness', *(2016).*

[248] Many people experiencing street homelessness do so following release from prison, which further demonstrates the cyclical nature of social disadvantage, and the gaps within the criminal justice and social systems that entrench inequality. Please see Crisis, 'Prison leavers'.

[249] The 2014 Act Statutory Guidance was amended in 2017 to state that PSPOs "*should not be used to target people based solely on the fact that someone is homeless or rough sleeping*", and that "*particular care should be taken to consider how use of [CPNs] might impact on more vulnerable members of society".*

[250] See, Liberty, 'Legal Case: Sarah Ward v Bournemouth Christchurch and Poole'.

[251] Heap, A. Black and C. Devany, 'Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness', (2022), (see n.47) p 130.

an FOI request sent to 56 local authorities found that 17.2% were using PSPOs to tackle rough sleeping, with 52% planning to use them in the future. [252] Many PSPOs include conditions prohibiting behaviours such as leaving bedding material on the street, or remaining in a temporary structure overnight, which, although they do not target homelessness *per se*, necessarily target the homeless community. [253]

3.75 Participants in Sheffield Hallam's study described the effects such prohibitions have on them. In particular, emphasis was placed on the fact that 'annoyance' or 'nuisance' did not appear to be relevant to enforcement decisions in relation to PSPOs, with participants reporting being removed from public parks and empty car parks, even when they were sleeping. [254] One participant explained that he had been subjected to physical violence whilst asleep:

> "*Harry: It's only when you get your head down, get to kip, start snoring, bang, that's it, they start kicking you.*
> *Interviewer: So, if you're sleeping, they'll kick you?*
> *Harry: They kick you, they rough you up, yeah.*
> *Interviewer: What do you mean 'rough you up'? I know they kick you, what else would they do?*
> *Harry: They'll pick you up, like get up, get up, get up. I'm like 'what the fuck', I'm fucking asleep… do you know what I mean? Leave me. Get up, get up, shaking you, waking you up. I'm like, 'fucking hell'. I'll go to my other spot then.* [255]

3.76 Examples of CPNs provided to the Working Party evidenced conditions being imposed relating to a recipient "*sitting on the ground*", "*leaving personal possessions on the pavement*", and prohibiting them from being "*in proximity to shop fronts*". On the last point, the Working Party was made aware that the safest place for many people experiencing homelessness, especially lone

[252] *Ibid*, p.8.

[253] FOI data obtained from local councils in 2023 found that at least nine councils were using Public Spaces Protection Orders to prohibit rough sleeping or to prohibit persons from erecting temporary structures designed or intended to prevent shelter. Some covered the whole council area. The Working Party were also advised that prohibitions on public urination and the lack of public toilets also meant that those experiencing homelessness were considerably more likely to breach PSPOs which included those conditions.

[254] Heap, A. Black and C. Devany, 'Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness', (2022), (see n.47) pp. 64-69.

[255] Ibid.

women, is in well-lit areas – like shop fronts. To move people away from public view, short of any harm being caused by their presence there, is to risk endangering them.

3.77 Orders can also affect the ability of people experiencing street homelessness to access crucial services. For example, one individual described how a DO affected his ability to manage his addictions, as the centre where he collected his methadone was within the restricted area. [256] Another explained that he felt unable to challenge requests to move on, from concern that he would receive a DO that would prevent him from being able to access food:

> "*They have never mentioned the reasons why they're moving me on. It's just like I don't tend to argue things. It just makes thing worse, or they will ban you from town for 48 hours, which means there is no way of getting food or nothing.*" [257]

3.78 This described practice stands in stark contrast to statements made, in the context of the repeal of the Vagrancy Act 1824, that the UK no longer "*see*[s] *it as a criminal offence for someone to find themselves sleeping rough on the streets*" [258] or that *"the criminalisation of the homeless* [no longer shames] *our country*". [259]

3.79 The disconnect is also concerning in light of new proposals, put forward as part of the ASB Action Plan, to further expand the use of CPNs and PSPOs by giving the police the power to enforce PSPOs and reducing the age limit for imposing CPNs on children. [260] The Plan also proposes vague "*powers*" that will allow "*the police and local authorities to address rough sleeping and other street activity where it is causing a public nuisance…*" and to "*prohibit begging where it is causing a public nuisance…*". [261] The Plan does not specify how these powers will sit with those already available to police and local authorities. It is also of note that on the same day as the ASB Action Plan was introduced, the wording in the 2017 statutory guidance relating to not using PSPOs against those experiencing homelessness was removed. No acknowledgment or

[256] *Ibid*, p.85.
[257] *ibid.* p.86

[258] HC Deb 28 February 2022, vol 709, col 839.

[259] Ibid, col 841.

[260] His Majesty's Government, 'Anti-Social Behaviour Action Plan' 2023, pp. 24-25.

[261] *ibid*. p.28.

explanation for doing so has been provided. [262]

3.80 **The Working Party recommends the immediate reinstatement of wording to the effect that begging or sleeping rough does not in itself amount to action causing harassment, alarm or distress and will not, on its own, merit the imposition and/or enforcement of an Order, both in the Anti-Social Crime and Policing Act 2014, and in the statutory guidance accompanying it.**

Impact on Women and Girls

3.81 Domestic abuse, stalking and sexual offending are crimes that affect women and girls in substantially higher numbers than men. [263] Therefore, Orders designed to tackle these offences naturally have a more significant impact on this group. Although these offences are discrete and should be treated as such, [264] the rate at which they are committed is staggeringly high; and puts women and girls in grave danger of serious harm or death. The failure to adequately tackle these offences, as demonstrated by recent crime statistics, [265] remains an acute problem for the UK justice system. [266]

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[262] Furthermore, we note the deliberate decision not to update the 2014 Act, in the light of a proposed Lords Amendment which sought to strengthen the legislation by explicitly stating that "*begging or sleeping rough does not in itself amount to action causing alarm or distress*"; see UK Parliament 'Lord Best's amendment, After Clause 61, Police, Crime, Sentencing and Courts Act 2022'.

[263] For example, the Crime Survey for England Wales statistics show that, in the year ending March 2022, the victim was female in 74.1% of domestic abuse-related crimes ('Domestic abuse victim characteristics, England and Wales: year ending March 2022', (2021) ; The Office for National Statistics reported that in the year ending March 2022, that women were more likely than men to be victims of sexual assault. (Office for National Statistics, 'Sexual offences victim characteristics, England and Wales: year ending March 2022', (2023)).

[264] Notwithstanding the distinction, we note that the consultation pertaining to SPOs identified certain crossovers with other types of order such as DVPOs, as well as crossovers between offences relating to stalking and offences relating to domestic abuse.

[265] The police recorded 910,980 domestic abuse-related crimes in England and Wales in the year ending March 2022, a 7.7% increase compared with the previous year, continuing an increasing trend that may reflect an increasing willingness of victims to report crimes. For example, despite an increase in domestic abuse related crimes, the number of arrests decreased from 32.6 per 100 domestic abuse-related crimes to 31.3 arrests in 2021. Referrals from the Police to the CPS for a charge decision also fell between 2021 and 2022. Similarly, despite reports of stalking haven risen in the past decade, the percentage of cases being charged has fallen from 23% in the year ending March 2016 to 11% in the year ending March 2020. See S. Das 'Anti-stalking Orders 'fail to protect women from danger' (The Guardian), (12 March 2022) (see n.31).

[266] Ibid.

3.82 It is against this background that SPOs were introduced and proposals were made for DAPOs to replace existing civil measures.[267] Contributors were positive about the existence of Orders in this area but emphasised the importance of using them alongside, or prior to, commencing separate criminal investigations to provide immediate protection and safeguard life.[268] In that sense, they felt the Orders gave power to enforcement bodies to be proactive in protecting victims where there is risk of immediate harm, especially via the use of Interim SPOs, which are time-limited.[269] It was also hoped that SPOs would encourage victims to report stalking to the police, earlier.[270]

3.83 However, whilst there is evidence showing that Orders have achieved successful outcomes for some victims,[271] many felt that their effectiveness is severely compromised by the failure of enforcement bodies to apply for them. As the Director of Paladin, the National Stalking Advocacy Service, explained: "*these Orders are as rare as hens' teeth. They're just not being obtained*".[272] FOI data provided to the Working Party by 27 police forces, for the period 1st January 2020-31st March 2023, show that, in this time, just 522 SPOs were applied for, and 375 granted. By contrast, the Home Office records 117,973

[267] Although we note that the proposal for a SPO arose following calls for the maximum sentence for stalking involving fear of violence or serious alarm or distress to be increased to ten years' imprisonment. See R. Kelly 'The Problematic Development of the Stalking Protection Order' (2020), (see n.111).

[268] In particular, Interim SPOs, which can be applied for under s. 5 of the Stalking Protection Act 2019 are temporary orders, designed to be a temporary Order imposing prohibitions and/or positive requirements as the Court considers appropriate. They provide a speedier process when there is an immediate risk of harm, for example in cases where there are factors that include suicidal or homicidal ideation.

[269] Certain Behavioural Control Orders, such as Sexual Risk Orders, Sexual Harm Prevention Orders, Stalking Protection Orders and Knife Crime Prevention Orders, also allow for 'Interim Orders' to be made. Interim Orders are meant to provide a more rapid response; allowing enforcement bodies to put an Order in place immediately, where the risk necessitates it and usually whilst evidence is being gathered in support of a full Order and/or prosecution. Interim Orders are time-limited and the test for imposing them usually lower than for the full application.

[270] For example, a study in 2015 found that victims reported to the Police only after around 100 incidents of stalking had first occurred See Safer Futures 'Stalking'. See also, Crown Prosecution Service, 'Stalking analysis reveals domestic abuse link', (2020). See, for example, The Alice Ruggles Trust 'Stalking Protection Orders Introduced'(2020) and Suzy Lamplugh Trust, 'Stalking Protection Orders', (see n.158).

[271] Ibid.

[272] See S. Das 'Anti-stalking Orders 'fail to protect women from danger' (The Guardian), (12 March 2022), (see n.31).

police-recorded stalking-related offences in the year 2022 alone.[273] Similar data can be found in relation to DVPOs, the predecessor to DAPOs. A 2019 joint briefing by RESPECT and Rights of Women found that in 2018, DVPOs were used in only around 1% of all domestic abuse crimes.[274] The result of this is that victims lack confidence that enforcement bodies will use Orders as intended.

3.84 A number of reasons for the low numbers were offered up by contributors. Some felt that it reflected a reluctance on the part of the police to take stalking and/or its victims seriously, in a way that "*typifie*[d] *the way police deal with violence against women and girls*".[275] Others pointed to the recent findings of the Casey review which found the Metropolitan police to be institutionally racist and misogynistic. It was felt that this contributed to trust in the Police being at an all-time low. The Working Party also heard evidence from a male victim that he felt that he was treated differently due to the fact that "*he was a man*" and was expected to be able to "*deal with it*".[276] Others felt that the failure of Parliament to set out clearly when SPOs should be used; led to confusion amongst enforcement bodies. Either way, the Working Party understands that a number of victims felt that they had to "*fight*" with the police to get any results, and that there was a burden on the victim to prove to the police that an Order should be imposed. One person with lived experience explained that they felt compelled to prepare and present their own indexed dossier of evidence to the police, only to be told, weeks later, that it had not been read and no efforts had been made to contact the witnesses listed in it.

3.85 Another suggested reason for under-use was poor training and lack of resources. In particular, the Working Party heard that many police officers are unfamiliar with the civil process, leading them to be less likely to apply for Orders obtained via a civil process. We note comments by the Suzy Lamplugh Trust that, despite the potential of the Orders to be "*brilliant*", many officers

[273] His Majesty's Government, 'Stalking and Harassment', (2023).

[274] Rights of Women and RESPECT 'Joint briefing on Domestic Abuse Protection Orders (DAPOs)', (2019).

[275] See S. Das 'Anti-stalking Orders 'fail to protect women from danger' (The Guardian), (12 March 2022), (see n.31).

[276] The individual was repeatedly asked by different officers on different occasions what he wanted them [the Police] to do about it. He was also not marked as 'high risk' or vulnerable, despite a risk assessment taking place, and despite him explaining to the Police that he had a history of suicidal ideation, suffered PTSD and had recently considered an attempt on his life owing to the stalking incidents.

had never heard of them.[277] One victim related that they were repeatedly told by the officer dealing with their case that he "*did not know what he was doing*" and that he was "*just an average police officer*". Despite requests to escalate it to an officer with expertise, this did not happen. The Working Party also heard from a practitioner that application forms for DVPOs were often poorly put together, failed to include crucial evidence, leading to them being rejected by the courts. On the other hand, we note statistics that 78% of SPOs applied for at the magistrates court between January 2020 and 2021 were granted.[278]

3.86 A final reason put forward was resource considerations, in particular the costs associated with obtaining Orders – an issue discussed during the passage of the Domestic Abuse Act 2021.[279] A super-complaint put forward by the Centre for Women's Justice and supported by the National Domestic Abuse Helpline and Women's Aid, claimed that victims were often advised to apply for NMOs as an alternative to police action, even where this was not appropriate.[280] One of the suspicions for the motivation behind this practice was due to cost or time taken to complete applications. Although the resultant investigative report found no evidence of this,[281] the Working Party notes the discussions during Parliamentary debates for DAPOs, to that effect:

> *"The Government's insistence that the police pay a court fee to make an application for a Domestic Abuse Prevention Order, while victims do not, will undermine the entire scheme and end any chance of the Orders becoming the 'go-to' Order to protect victims of domestic abuse. Police officers will be put in the invidious position of having to choose to use scarce resources to make an application or persuading the victim to make the application themselves. This effectively removes a key strength of the Order, that an application may be made without the victim's involvement, or even consent. We strongly recommend that applications for Domestic Abuse Protection Orders be free*

[277] See S. Das 'Anti-stalking Orders 'fail to protect women from danger' (The Guardian), (12 March 2022), (see n.31).

[278] Home Office, 'Review of Stalking Protection Orders', 2023, (see n.39).

[279] For example, HC Deb 2 October 2019, vol 664, cols 1292-1293.

[280] Centre for Women's Justice, 'Centre for Women's Justice Super complaint: Police failure to use protective measures in cases involving violence against women and girls' (2019).

[281] Her Majesty's Inspectorate of Constabulary, 'A duty to protect: Police use of protective measures in cases involving violence against women and girls', 2022, p.54.

to the police, with appropriate funding to HM Court and Tribunal Service."[282]

3.87 Anecdotal evidence provided to the Working Party continues to support this assertion. The Working Party were advised that victims often feel disillusioned by the reporting process and their experience with the police. This can lead to the victim either giving up or taking matters into their own hands by pursuing an NMO themselves.[283] This is a particularly dangerous trend, as it increases the risk for the victim. As Rachel Horman-Brown, chair of Paladin, describes, in these cases the victim "*can end up in a worse position because…they're… seen as personally taking the perpetrator to court*".[284] A majority of domestic abuse experts, practitioners and those with lived experience felt that this trend would continue with DAPOs, short of concerted efforts to challenge it.

3.88 These problems are not insurmountable, and it is disappointing that action has not been taken to address them. There are excellent examples of Orders being used effectively within some areas of the country, demonstrating that good practice is achievable. For example, the FOI data relating to 27 forces demonstrated that of the 93 Interim Orders granted in the relevant period, 46 were from a single force – notably, a force that is part of the Multi-Agency Stalking Intervention Programme which brings together a range of experts including victim's advocates.[285] However, the Working Party also felt that good practice was often attributable to the efforts of individual officers within certain police forces who took initiative and truly understood the issues at stake. It is important to learn lessons from these examples.

3.89 In the context of domestic abuse, we also highlight that women from racialised communities are known to face worse criminal justice outcomes related to domestic abuse, and to find it more difficult to access advocacy and support services.[286] For women with unsettled immigration status, the situation appears

[282] Joint Committee on the Draft Domestic Abuse Bill, 'Draft Domestic Abuse Bill: First Report of Session 2017-2019', (2019). The Government have since committed to providing funding to the police, for the duration of the Pilot, but it is not clear how the Orders will be funded beyond then. Please see Home Office 'Domestic Abuse Protection Notices/Orders Factsheet', (updated July 2022), (see n.20).

[283] Some felt that this was a deliberate tactic employed by the police.

[284] See A. Travis, 'Amber Rudd to introduce asbo-style bans for stalkers', (December 2016), (see n.157).

[285] See Suzy Lamplugh Trust, 'Multi Agency Stalking Intervention Programme'.

[286] Interventions Alliance, 'Domestic Abuse in Black, Asian and Minority Ethnic Groups', (2021).

to be even worse.[287] The Working Party was not provided data on this, but conversations with frontline organisations suggested that those from racialised communities felt that their concerns were less likely to be taken seriously and experienced greater mistrust of authorities, than other populations. Finally, in terms of the positive requirements that can be imposed by Orders, there remains a lack of culturally appropriate programmes for recipients.

3.90 **The Working Party makes recommendations in relation to training and monitoring in Part IV of the report. We consider that enforcement bodies must urgently assess their training in respect of stalking and domestic abuse, to ensure that awareness and understanding about Orders is fully embedded.**

Justifications for these Impacts

3.91 There was mixed opinion – amongst contributors to the Working Party and Working Party Members themselves – on whether the impacts referred to in this section were a matter of design or accident. Some members of the Working Party felt that Orders had been introduced to assert control over certain populations deemed "*hostile*" to the State; others felt that the failure to improve enforcement rates for SPOs and DVPOs demonstrated that women and girls continue to be a low priority. Some suggested that a lack of training combined with negative stereotypes about offenders perpetuated by the media, was a more plausible explanation.

3.92 Either way, the examples set out here are clearly concerning. In particular, they raise questions as to the extent to which Orders, and/or the enforcement decisions relating to them, are human rights compliant, particularly with regard to the right not to be discriminated against per Article 14 ECHR.[288]

3.93 We note attempts made by the Home Office to deal with this question in respect of KCPOs. Its memorandum, addressing the compatibility of KCPOs with the ECHR, states that:

> *"[i]n the event that the rights of those of a particular religious affiliation, gender, race, or other national or social origin, may indirectly be disproportionately affected in comparison to other members of society the*

[287] Centre for Gender and Violence Research, University of Bristol, 'DVA0042 – Domestic Violence Bill, Written Evidence', (2018).

[288] This also casts doubt as to the quality of assessments carried out prior to enforcement, in line with the Public Sector Equality Duty.

Government is of the view that there is reasonable and objective justification (namely, the prevention of disorder and crime and the threat posed to public safety by knife crime)"[206]

3.94 However, even if there is a "*reasonable and objective justification*" for the disproportionate impact of KCPOs (and indeed other Orders), this statement does not engage with the other questions necessary to determine if the Orders are human rights compliant. In particular, the Home Office does not engage with the questions of whether there is a link between the justification and the differential treatment, nor whether the differential treatment is proportionate to the aim.

3.95 Not only that, but we notice a tendency for questions of fairness and human rights to be justified on the basis of "*prevention*" – without any meaningful discussions as to the effectiveness of those preventions.

3.96 Evidencing effectiveness appears to be the "elephant in the room" whenever conversations on Orders arise, and in particular, whenever the Government announces proposals to introduce more.

Determining the Effectiveness of Orders

3.97 Whilst the Working Party were provided with examples where Orders – including CPNs, SPOs, NMOs, SHPOs - had worked well or led to satisfactory outcomes from the point of view of enforcement bodies and victims' representatives, it was clear that the utility of an Order was often dependent on who was applying or enforcing the Order, what training they had received, what funding was available, and the extent to which they looked beyond the criminal justice system to embed multi-agency practices, support for victims and non-criminal interventions. What is more, effectiveness looked different to different people.[289] There is no robust mechanism to monitor the effectiveness of the Order 'model', nor any clear national guidance as to what "*success should look like*" in the context of Orders.[290] It is not clear whether efficacy should be determined by protection, prevention, recidivism.[291]

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[289] See for example, interim findings from a review of Stalking Protection Orders by Cheshire Police, reported at Home Office, 'Review of Stalking Protection Orders', 2023, (see n.39).

[290] The difficulties of assessing the effectiveness of Domestic Violence Protection Notices and Domestic Violence Protection Orders, and which "outcome" to measure them by was highlighted by K.Blackburn and S.Graca, 'A critical reflection on the use and effectiveness of DVPNs and DVPOs', (2020).

[291] Terms taken from Orders and policy documents accompanying them.

3.98 In terms of **protection**, the Working Party is not aware of any official system currently in place that monitors the impact of an Order from the point of view of the victim and more specifically, the impact that an Order has on a victim's perception of safety.[292] Nor whether the victim was compelled to employ additional, self-help remedies, in addition to the Order. Although we found one victim survey relating to DVPOs in 2017, we note that the DVPO pilot had problems engaging with victims. Moreover, organisations representing victims' interests tended to suggest that the victim's voice was often absent from conversation surrounding Orders. Without engaging with victims in this way, it is difficult to determine whether Orders are effective at protecting them.[293]

3.99 **Prevention** too is challenging to assess. Breach rates for Orders can exceed 50%,[294] although we note that the figure, for some Orders at least, could be considerably higher; the Ministry of Justice has stated that "*a percentage of overall breaches is not possible to provide, because a CBO can be breached more than once, and in differing years*". On the one hand, high breach rates suggest that the Order did not prevent the conduct from being repeated. On the other, assuming that a breach is swiftly followed-up, then it could be said to have demonstrated the ability for the enforcement body to act before a further escalation.

3.100 The difficulty in determining **recidivism** is also reflected in the KCPO Impact Assessment. There, the Home Office explained that there had been "*only one small robust study*" in the UK that could be relied upon to forecast whether KCPOs would have an impact on re-offending.[295] Furthermore, the Working Party was advised that in reality, measuring recidivism is often achieved by looking at whether there have been further reports to the Police. This is not a

[292] We are, however, aware that some enforcement bodies have embedded Victim's Advocates within specialised Harm Reduction Units, which may include such assessments.

[293] For example, the concept of protection necessarily invited a degree of subjectivity. Whether a victim "feels protected" is relevant. Furthermore, without engaging with victims, any assessment would not be able to account for whether the victim implemented any self-remedies to protect themselves.

[294] For example, Statistics on Anti-Social Behaviour orders administered in the period 1 April 1999 to 31 December 2013 in England and Wales showed that 58% of ASBOs were breached. See, His Majesty's Government, 'Statistical Notice: Anti-Social Behaviour Order (ASBO) Statistics – England and Wales 2013', (2014). Furthermore, the Home Office 'Impact Assessment', (2020) anticipated that 52% of KCPOs would be breached.

[295] Ibid. Even then, we note that the study related to Gang Injunctions which are not a Behavioural Control Order. Moreover, the study related to one area, Merseyside, and had other limitations.

reliable indicator in demonstrating whether a behaviour has actually stopped.

3.101 Evidently, there are challenges in assessing the efficacy of Orders. Nonetheless, some common themes arise: the ability of Orders to act as a deterrent; the success of coercing parties to engage in positive behavioural programmes; and whether a criminal justice approach alone could ever be effective at addressing the harmful behaviours that sought to be prevented.

Deterrent Effect

3.102 Literature accompanying Orders often draws attention to their utility as a "*flexible tool*"[296] to prevent harmful behaviour and to stop individuals from becoming engaged in the criminal justice system. However, some contributors have questioned whether Orders are capable of achieving this in practice, or whether the opposite is true.

3.103 For example, PSPOs, CPNs and DOs, whilst providing significant discretion to enforcement bodies to use them, have been criticized for failing to target 'the main offenders' by organisations representing victims, nor make a substantial impact on prevalence rates. For example, we note a report by Resolve stating that *"there were likely over 5 million incidents of ASB nationwide in 2022"*.[297] The Working Party has heard evidence from those with lived experience that CPNs are being imposed on victims, owing to vexatious complaints by anti-social neighbours whose complaints have been improperly investigated. In those situations, the anti-social individual is emboldened, not deterred. Not only that but the inconsistent ways in which they are imposed across England and Wales subjects both victims and recipients to a post-code lottery. PSPOs were also criticized for regularly being imposed on people whose perceived anti-social behaviour results from complex social circumstances (and is worsened due to mental health problems or Substance Use Disorder).[298] In those circumstances, anti-social behaviour will not be prevented by way of a Fixed Penalty Notice which the recipient is unable to pay, as the following quote, taken from a study evidencing the impact of PSPOs, CPNs and DOs have on those experiencing street homelessness, demonstrates:

Interviewer: when you were fined did it actually change anything? Did you

[296] See, Home Office, Anti-Social Behaviour Powers, (2013).

[297] Resolve, 'Making Communities Safer', (2023), p.1.

[298] Note the preceding section where we explain that not all those with SUD and mental health problems are in fact committing anti-social behaviour.

decide you were not going to beg, or?
Arwen: No.
Interviewer: Did it actually change your behaviour at all?
Arwen: No. It didn't. [299]

3.104 Indeed, in a report assessing police responses to protestors, His Majesty's Inspectorate of Constabulary and Fire & Rescue Services **("HMICFRS")** found that: "*The concept of penalty notices is to provide swift, simple and unbureaucratic justice. The system only works efficiently if the penalty is paid within the stipulated 21-day period.*" [300] Notwithstanding this, the Working Party heard from multiple sources that FPNs for breaches of PSPOs are routinely left unpaid.

3.105 Those with lived experience explained that being unfairly subjected to a PSPO could lead to retaliation with recipients committing anti-social behaviour in response. Similarly, far from preventing anti-social behaviour, the use of DOs has been criticised for simply moving the problem on from one area to another. [301]

3.106 Owing to the lack of central data collected in relation to PSPOs, CPNs and DOs, it is not possible to comment on breach rates conclusively. However, we note the high number of CBOs breached not just once but multiple times, a trend which is reflective of the situation with ASBOs, which saw 57% of all those imposed up to 2011 breached once, and 47% of them breached multiple times. [302] Furthermore, we are aware of at least one individual who has spent time in jail on 3 occasions relating to breaches of an ASBO, then a CPN and now a CBO, which raises questions about the efficacy of Orders in regulating

[299] V.Heap, A. Black and C. Devany, 'Living within a Public Spaces Protection Order: the impacts of policing anti-social behaviour on people experiencing street homelessness', (Sheffield Hallam University, Helena Kennedy Centre), (2022), (see n.47), p.75.

[300] His Majesty's Inspectorate of Constabulary and Fire & Rescue Services, 'Getting the balance right? An inspection of how effectively the police deal with protests' (2021), (see n.37) p.140.

[301] See, 'Dispersal Orders 'displace crime'', *BBC News* which references a study by the Centre of Crime and Justice Studies which found that although crime fell by 39 percent in one area following the use of Dispersal Orders, it rose by 150 percent in an area which neighboured a dispersal zone.

[302] Home Office, 'Anti-social behaviour order statistics: England and Wales 2013 key findings', (published 2014).

his behaviour.[303]

3.107 In terms of KCPOs, there was consensus amongst contributors that their use against children and young people evidences a lack of understanding of the root causes of serious violence amongst children. In particular, the view that the threat of prosecution would motivate children not to carry knives was felt to be more of an assumption than a position supported by evidence. In particular, the Working Party notes that many children who become involved in crime were first victims of it.[304] Some children carry knives not with the intention of attacking, but rather because they live in fear of being attacked.[305] In this case, the threat of criminalisation is unlikely to be greater than the perceived fears they have for their safety.[306] In their written evidence to Parliament, the Youth Justice Board set out the position clearly:

> "*the creation and/or extension of offences relating to the possession of offensive and dangerous weapons via the Offensive Weapons Act (2019), for children, is unlikely to act as a deterrent and risks further criminalising children. The operational perspective from youth offending team (YOT) practitioners supports the argument that children are not fearful or influenced by the risk of conviction, detention or criminal justice intervention and so legislating to create new offences is unlikely to act as a deterrent. Contact with the criminal justice system can have a negative effect on children and can increase their likelihood of reoffending.*"[307]

3.108 The ability of an Order to act as a deterrent depends on the extent to which it is used by enforcement bodies and breaches swiftly followed up on. In the context of Orders relating to domestic abuse, contributors expressed concern that, even

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[303] C. Matthews, 'Retired Sailor, 77, who has already been jailed three times for his noisy, drunken ranting and playing his TV too loud is punished AGAIN for antisocial behaviour', (14 August 2023).

[304] The Youth Justice Board for England and Wales, 'Written evidence submitted by The Youth Justice Board for England and Wales (BYC007)', (2019).

[305] NACRO,'Young People's Perspectives on Knife Crime', (2023) report includes the views of young people to understand why young people carry knives. The views as to why young people carried knives varied however, the main motivating factor across all focus groups was 'fear'. Other reasons highlighted such as 'postcode rivalry' and 'county lines drug trafficking' seemed less prominent.

[306] "They said that if people were carrying knives out of fear, then the risks of being caught with a knife by the police, or the threat of harsher punishments would not work to discourage them from carrying knives.", ibid, p.6.

[307] The Youth Justice Board for England and Wales, 'Written evidence submitted by The Youth Justice Board for England and Wales (BYC007)', (2019) (see n.304).

if DAPOs were introduced following a pilot phase, their experiences of previous Orders led them to be sceptical about whether breaches of DAPOs would be properly followed up on. The failure of police to follow through on breaches of NMOs formed a major part of the super-complaint brought by the Centre of Women's Justice [308] On the other hand, results from a Home Office survey of police and legal advisors in relation to SPOs, found that 78% of police respondents and 61% of legal advisors respondents felt that SPOs were effective at reducing stalking. Evidence from victims and organisations supporting them, seemed to agree. [309]

3.109 Finally, for Orders to be capable of acting as a deterrent, recipients must understand how to comply with them, along with the consequences of breach. However, the concerns set out above throw doubt as to whether Orders are universally understood by those subject to them. Evidence provided by practitioners, and charities supporting those with criminal offences, suggests that they are not.

The Impact of Coercion on Promoting Positive Behavioural Change

3.110 Policy papers accompanying Orders often refer to their ability to promote behavioural change via the imposition of positive conditions or requirements. However, enforcement bodies are often unable to impose or enforce such requirements due to a lack of resources and available services. Furthermore, several contributors expressed concern that the threat of criminalisation, could actually worsen the problem by increasing tensions and distrust between recipients and enforcement bodies; especially where the Order is imposed in relation to behaviour that is not criminal. The Working Party is therefore not convinced that Orders are consistently achieving this aim.

3.111 We note suggestions that CPNs and PSPOs can be used to gain recipients' access to services to provide therapy for substance use disorders and mental ill-health that might be contributing to the recipients causing harmful behaviours. However, mental health experts explain that for this to be successful, a framework of support must also be available to help the recipient engage in support services. Problems with timekeeping, difficulties regulating chaotic

[308] Suzy Lamplugh Trust, 'Super complaint submitted on police response to stalking' (24 November 2022).

[309] Home Office, 'Review of Stalking Protection Orders' (2023), (see n.39).

lifestyles, and poor mental health itself, all act as barriers to effective participation. Without support being provided to recipients, ideally via multi-agency working, it is unlikely that coercion via an Order alone will assist them to change any harmful behaviours. Whilst the Working Party is aware of some good practice in this area,[310] more needs to be done to ensure that it is rolled out everywhere.

3.112 Contributors also questioned the rationale for coercing children and young people to engage with youth programmes, social clubs, occupational courses, and educational programmes via the imposition of a KCPO.[311] Participants at the knife crime roundtable event explained that it is not the lack of a court order that prevents individuals, particularly children, from engaging in such programmes and activities. Instead, it is usually a result of socio-economic or psychological barriers. A lack of available services within their communities is also a problem, and many felt that the State should focus on increasing the presence of such services within local communities. Doing so, they suggested, would negate the need for KCPOs. This is against the backdrop of severe funding cuts to youth services, including youth clubs. More than 4500 youth work jobs have been cut and 750 youth centres closed since 2010/11.[312]

3.113 Several knife crime charities we spoke to voiced concerns about the quality of prevention programmes offered to children and young people via KCPOs. They explained that many of the typical knife awareness courses were outdated and based around scare tactics. The Working Party was warned about the ineffectiveness of programmes designed to "*shock*" children into not carrying

[310] See, for example, The NPCC and Crisis, 'From enforcement to ending homelessness: How police forces, local authorities and the voluntary sector can best work together', (2021) on the range of case studies that can be adopted.

[311] Professionals have been critical of 'knee jerk' policy reactions to violent crime' and stressed the need for investment in solutions outside the police including in relation to mental health, education, and engagement with communities. Professor Bowling, in reference to stop and search powers has stated that there are constructive and positive ways of contributing to crime reduction. *"A lot of this has to do with engagement outside of the police. It is to do with mental health. It is to do with youth workers. It is to do with education. It is to do with proper engagement with communities. Instead of going down that route – of course this was at a time of austerity – the knee jerk reaction was to say. The magic bullet is to give police a greater latitude in the use of stop-and-search powers".* Please see, Home Affairs Committee, 'Oral evidence: The Macpherson Report: twenty-one years on', p. 24.

[312] See, Local Government Association, 'Re-thinking local: youth services', which found that Funding to youth services by local authorities in England and Wales saw a real terms decline of 70 per cent between 2010/11 and 2018/19 and since 2010/11, youth services such as youth clubs and youth workers have been cut by 69 per cent.

knives.[313] Instead, we were told that more innovative and immersive programmes – especially those that help children to come to terms with their emotions and are designed with input from children[314] – appear to be more effective. Others called for greater investment in mentoring programmes at school. Details of the courses used within the Pilot were not available to the Working Party and therefore it is not possible to comment on the effectiveness of the programmes relied upon. However, it is hoped that the evaluation, due to be published imminently, will shed further light on this.

3.114 SHPOs and SROs were recently updated to allow for positive conditions to be imposed.[315] The Impact Assessment accompanying the legislative changes explained that positive conditions would most likely relate to the use of behavioural programmes, electronic monitoring and polygraph testing. However, it also explained that "*Electronic Monitoring is already being used in SHPOs and SROs as a type of 'restriction' (usually by forbidding the offender to take the tag off)*".[316] It is therefore unlikely that this development will lead to much change in practice, other than a reframing of negative conditions into positive requirements.

3.115 In addition, the Impact Assessment relating to SROs and SHPOs stated that "*there is insufficient evidence to quantify the scale of the impact of positive obligations on reoffending and public safety*".[317] It is not clear if this relates to the use of positive obligations generally, or specifically in relation to sexual offending. We note the contradicting accounts in academic literature around the utility of electronic monitoring, although it was generally accepted that the use of GPS-enabled electronic monitoring in cases where a recipient had been convicted of domestic abuse, stalking, or harm to a specific individual has

[313] N. Cogan et al, 'Are images of seized knives an effective crime deterrent? A comparative thematic analysis of young people's views within the Scottish context' (June 2022).

[314] NACRO, 'Young People's Perspectives on Knife Crime', (2023), (see n.305) which provides several alternatives to criminal preventative interventions which were developed by young people within their focus groups. Examples of preventative interventions including greater access to extracurricular activities, and knife bin/amnesties schemes, where knives were replaced with JD vouchers, were considered amongst the groups.

[315] See Police, Crime, Sentencing and Courts Act 2022, Pt. 10, Ch. 3.

[316] Home Office, 'Impact Assessment: Police, Crime, Sentencing and Courts Bill' (30 June 2021), p.50

[317] *Ibid.,* p.51

obvious practical benefits.[318] Nonetheless, some contributors warned that there requires to be clear messaging to victims about what electronic monitoring does and does not entail, on the basis that it could give survivors a false sense of protection and, therefore, increase the risk to them.[319] Likewise, contributors felt that electronic monitoring could be appropriate for recipients of SHPOs, to prevent them from being in the vicinity of schools or public spaces predominantly used by children.

3.116 Opinions were more divided on whether electronic monitoring was ever appropriate for SROs, or led to positive behavioural change. One organisation that we spoke with, which represents those with criminal records, felt that many of those who were subject to on-complaint Orders such as SROs, felt "*hard done by*" and were less likely to own up to their conduct. This leads to questions around the effectiveness of such Orders in changing behaviours and leading to genuine rehabilitation. In the context of CBOs, these groups strongly opposed the use of electronic monitoring on children.

3.117 Orders such as DAPOs and SPOs can require that a recipient attend behavioural programmes or a Domestic Abuse Perpetrator Programme. Contributors warned that the quality of such programmes varied greatly. Provision was patchy across the country. We also recognise that, following a review by a Ministry of Justice Steering Group, the policy of the Children and Family Court Advisory Service ("**CAFCASS**") is to no longer make referrals to Domestic Abuse Perpetrator Programmes, as of June 2022. Furthermore, the All-Party Parliamentary Group on Perpetrators of Domestic Abuse have remarked that where these programmes are "*designed poorly, perpetrators could be put on programmes that have no impact or worse, actually increase risk to victims*".[320] They also observed that, whilst programmes may be helpful in tackling associated behaviours (e.g., addiction and mental health issues), those issues do not cause domestic abuse, although they may contribute to it. The issues must not be confused, and individuals involved in providing addiction and mental health programmes must also be trained in relation to domestic abuse.

3.118 Nonetheless, the Working Party was made aware that certain perpetrator

[318] See for example, Scottish Government 'Electronic monitoring: uses, challenges and successes', (April 2019).

[319] Rights of Women, 'Transforming the Response to Domestic Abuse', (May 2018).

[320] All-Party Parliamentary Group on Perpetrators of Domestic Abuse, 'DAPO – Positive Requirements APPG on DA Perpetrators Briefing', (2021).

programmes were achieving very good results.[321] In particular, charities that support victims of stalking pointed to the success of the Multi-Agency Stalking Intervention Programmes (**"MASIP"**), currently being piloted across 3 sites.[322] An evaluation of the MASIP pilot by researchers at University College London found positive outcomes and promising indicators, while also highlighting that such multi-agency programmes require longer-term stability and funding to fully assess impact and effects.[323]

3.119 In conclusion, where positive requirements such as behavioural or educational programmes appear to achieve the most success, in relation to the Orders discussed here, is where they are personalised to the needs and vulnerabilities of the recipient, where they are multi-disciplinary[324] and are designed and staffed by experts. Moreover, that are capable of taking into account the needs and views of the victim. Furthermore, programmes that are deemed most useful are those that encourage voluntary engagement, and, importantly, are not seen as a 'tick-box' or even as a cure to the harmful behaviours triggering the Order.[325] Nonetheless, the availability of such services is currently an issue, as is the funding to promote engagement with them. Too often, only the punitive conditions in Orders can be imposed, despite the best intentions of enforcement bodies to use Orders to route recipients to support.

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[321] The Drive Project, run by Respect, SafeLives and Social Finance which has achieved results in reducing offending amongst high-risk, high-harm and/or serial perpetrators. See, Safe Lives, 'Responding to perpetrators'.

[322] Cheshire, Hampshire and London.

[323] L. Tompson, J. Belur and K. Jerath, 'Treating and managing stalking offenders: findings from a multi-agency clinical intervention', (published April 2022). The Working Party note an announcement by in May 2023 that £39 million has, or will be, made available to fund 50 projects designed to intervene in domestic abuse and stalking cases.

[324] For example, The Drive project which: "*implements a whole-system approach using intensive case management alongside a coordinated multi-agency response, working closely with victim services, the police, probation, children's social services, housing, substance misuse and mental health teams. Drive focuses on reducing risk and increasing victim safety by combining disruption, support and behaviour change interventions alongside the crucial protective work by victim services. Drive has been developed to knit together existing services, complementing, and enhancing existing interventions.*" Please see, RESPECT 'Drive'.

[325] The Working Party are particularly encouraged to hear that the Home Office has promised funding of £39 million to 50 projects across England and Wales designed to provide programmes and training focussed on earlier intervention in stalking and domestic abuse cases. See, Home Office, 'Stalkers and domestic abusers to be targeted as millions invested in new intervention projects', (May 2023).

Failure to Address Underlying Causes of Harmful Behaviour

3.120 Nearly all of the individuals and organisations we spoke with, across all of the Orders mentioned, suggested that the only way to reduce the victims of crime was to tackle the drivers of it. This includes addressing issues such as poverty,[326] homelessness, school exclusions and the educational attainment gap, and mental ill-health and substance use disorders.[327] Orders, in and of themselves, were not capable of creating this change.[328] Contributors also felt that earlier investment and interventions were required 'upstream' and outside the criminal justice system.[329] Several questioned the rationality of creating new Orders, against the backdrop of significant public service cuts including the reduction in funding for the police.

3.121 The Working Party was advised of several non-coercive, multi-disciplinary programmes within enforcement bodies that involved working with 'at risk' children and young people on a voluntary basis to get them access to support via housing etc.[330] Not only did such programmes tackle the underlying causes of criminality, but they also fostered positive relationships with enforcement bodies. The Working Party understands that similar programmes involving anti-social behaviour and knife crime were also achieving positive and sustainable results.[331] Finally, whilst such discussions go beyond the scope of this inquiry, we note requests by numerous experts and organisations to give

[326] Trust for London, 'Crime and income deprivation', (2022); S. Kingston, C. Webster, 'The most 'underserving' of all? How poverty drives young men to victimisation and crime', (2015).

[327] NACRO, 'Young People's Perspectives on Knife Crime', (see n.305), p.12, suggests that to tackle knife crime we need to tackle the root social causes, including poor mental health, inadequate education and a lack of affordable housing.

[328] The link between inadequate housing and anti-social behaviour is well-established as is the relationship between school exclusions and criminality. Income inequality, misogyny, racism, mental-ill health and support for those with learning difficulties have to be addressed if behaviours relating to stalking, domestic l offending are to be prevented "up stream".

[329] Professor Bowling, in reference to stop and search powers has stated that there are constructive and positive ways of contributing to crime reduction. "*A lot of this has to do with engagement outside of the police. It is to do with mental health. It is to do with youth workers. It is to do with education. It is to do with proper engagement with communities.*" Please see, Home Affairs Committee, 'Oral evidence: The Macpherson Report: twenty-one years on', p. 24.

[330] See, for example, Essex Police 'Knife Crime and Violence Model – Fearless Futures', (June 2021).

[331] See for example, Cranstoun, 'DIVERT – breaking the cycle of knife crime', (2020), and PCC Cumbria, 'County Lines Informed Cumbria County Lines Informed Cumbria (1CLIC) winning the war on drugs in south Cumbria'.

more weight to 'public health responses', like those seen in Scotland, when tackling crime and harmful behaviours generally. [332]

Inadequate Training

3.122 Many of the problems raised in this section flow back to poor training and inadequate resources. Lack of knowledge and training has been consistently referred to as a reason for the inappropriate and inconsistent use of Orders, the imposition of problematic conditions, and also the under-use of Orders in circumstances where urgent protection is needed. There is substantial variation in the volume of Orders imposed and enforced in different areas and the types of conduct that triggers enforcement bodies to impose an Order. The Working Party also heard that applications for Orders and the Orders themselves are often poorly drafted, contain errors and contradictions and are therefore difficult for recipients to understand.

3.123 The need for enhanced training was particularly acute where the imposition of an Order did not involve the court, e.g., in relation to CPNs, PSPOs and DOs. The Working Party heard that in such cases, the investigations leading to the imposition of a CPN, or finding someone to have breached a PSPO – were woefully inadequate. Furthermore, we heard that enforcement decisions could be the responsibility of one person alone. This was problematic both in the context of ensuring quality control around decision-making but also, in larger organisations, ensuring that sufficient enforcement officers recognised when an Order should be applied for.

3.124 Anecdotal evidence from those with lived experience demonstrated, from their interactions with enforcement bodies, mixed understandings amongst officers of their responsibilities in respect of Orders. For example, an individual seeking the protection of an SPO was repeatedly told that it was "*not my area*" by the officer dealing with the case, which suggested that specialist expertise was required. In that case, a SPO was never applied for, nor was the case ever handed over to a more specialised officer, despite repeated requests by the

[332] NACRO supports a Public Health Approach to tackling serious violence which seeks to address its root causes and welcome the government's acknowledgement of the need to shift focus from a punitive response towards a multi-agency, more preventative approach. They provide several suggestions to the Government on how a public health approach can be taken including, stopping the roll out of KCPOs and providing a national commitment to early interventions. NACRO 'Young People's Perspectives on Knife Crime', (see n.305), p.4. Also, His Majesty's Inspectorate of Probation, 'Promising approaches to knife crime: an exploratory study', (2022) suggested that a "public health approach aims to ensure that children do not enter the criminal justice system in the first place", p.34.

victim to do so. On the other hand, the Working Party was informed by a charity, representing the interests of those with criminal records, that recipients of SROs and SHPOs were often given different advice by different officers as to what the effect of the Order was on them and what would or would not amount to the breach of a condition.

3.125 In response to FOI responses received by the Working Party in 2023, one local authority referred to the fact that PSPOs "*are still relatively new*", despite them being in place for ten years, suggesting a lack of familiarity and/or frequent use of these Orders in that area. FOIs directed to the police in relation to SROs, also revealed that at least one was not aware that positive requirements can now be imposed. One victim explained to the Working Party that, whilst they were requesting the imposition of an SPO, police repeatedly told them that they were "*still getting to grips with the new legislation*", notwithstanding that it had been in place for three years.

3.126 Training needs were also identified on the part of practitioners. A number of contributors we spoke with felt that Orders were relatively niche. They highlighted that due to most applications being presented in the magistrates' court, they were often dealt with by junior practitioners, or recipients representing themselves, notwithstanding that a significant amount of work was required in contesting them and that the rules and procedure were far from clear. For example, they reported mixed understandings about the possibility e to request a directions hearing, or apply to cross-examine a witness. It was also felt that increased training for Judges would be beneficial.

3.127 We also note comments made during parliamentary debates about the need to provide funding for training, and the concerns that Orders would not be effective without it:

> *"On the lack of police action on existing Orders, I hope the act of criminalising breaches will keep victims safer, although there is currently no evidence for that… **I am simply concerned that the police have the capability and the training capacity to deal with the whole host of Orders, which will still exist, and with the new Order**."* [333]

[333] Home Office 'Impact Assessment', (2020), (see n.294). The Impact Assessment did at least mention that the Government will support the introduction of DAPNs and DAPOs with a programme of work to include training, guidance, communications, and awareness-raising for key agencies. In addition, the new Order will be piloted in a small number of areas across the country to assess its effectiveness before any national roll out.

3.128 Finally, across all Orders, the Working Party heard examples whereby recipients and victims have had negative experiences with enforcement bodies, highlighting a lack of trauma-informed approaches and a misunderstanding of vulnerability.

Shortfalls in the data capture regarding Orders

3.129 The lack of data is a critical issue within the Order regime – one that requires addressing urgently. In particular, there are significant gaps and variations in data capture across enforcement bodies and in respect of different Orders. Information obtained via interviews, as well as FOI data, shows worrying variation in the types of data collected,[334] the quality of data collected, the means of inputting the data,[335] the location of the data,[336] and the ability for the data to be extrapolated and shared internally, as well as with relevant agencies where appropriate to do so.[337] We understand that there is no single, central, and universally accessible data system within the police, nor a central database which out who is subject to an Order. This means that the relevant information pertaining to Orders was not contained in one, distinct, central record or database and instead required manual trawls across a number of systems and databases.

3.130 Without data it is not possible to adequately assess the effectiveness of Orders,[338] nor is it possible to understand trends arising out of their imposition,

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[334] For example, although some police forces were able to provide detailed information, many were not able to respond to a FOI request about conditions imposed as part of SPOs, as the forces did not have a central record of information. A similar trend was observed in response to FOI requests concerning SRO conditions. A number could not provide information about which conditions were breached, how often they were breached and whether other Orders were also in place.

[335] In response to an FOI, one force explained that information could not be provided relating to SROs, as the ability to find the relevant documents was dependent on them having been labelled, 'SRO or Sexual Risk Order'.

[336] A number of FOI responses explained that information was spread across databases and records and across different departments.

[337] See, for example, The Independent Inquiry Into Sexual Abuse, 'Children Outside the United Kingdom', (January 2020), (see n.43), part B.3, which explains the difficulties experienced in obtaining data on the use of foreign restrictions in Sexual Risk Orders and Sexual Harm Prevention Orders, from a number of sources including the Home Office, the Ministry of Justice, National Police Chief's Council and MAPPA.

[338] See End Violence Against Women Coalition, 'Police super-complaint investigation highlights police failures to protect victims of violence against women and girls', (August 2021), (see n.162) whereby the Head of Policy states: "*we need transparent data so that we can hold accountable the institutions with*

enforcement and breach – including any disproportionate impacts. It limits the availability of an evidence base which can inform future policy decisions regarding Orders.[339] Of particular concern is how enforcement bodies are monitoring their use of Orders to identify room for improvement and training.[340] Moreover, it is not clear how they are adequately complying with the Public Sector Equality duty during their imposition and enforcement decisions – given that data capture in relation to mental ill-health, neurodiversity and substance use disorder appears to be so poor.

3.131 Moreover, we are also aware of problems pertaining to the way that data is shared between enforcement bodies and the courts. This has a direct impact on the ability of the police to follow up and enforce breaches. In particular, a super-complaint submitted by the Centre of Women's Justice, regarding NMOs, revealed that poor information-sharing practices often meant that police were unaware that an NMO had been imposed and so were unable to enforce it.[341] In addition, many police forces could not provide figures relating to breaches of SPOs, as these are handled by the CPS, meaning that police forces did not have access to the information. During interviews with experts on SHPOs, some expressed concern about data and/or monitoring gaps when recipients moved between areas.

3.132 These issues are not exclusive to the police; we note the inconsistent recording and reporting practices of local authorities too, as well as the Home Office. For example, we understand that information on breaches of Orders is "*routinely collected*" by the Home Office, depending on the data supplied to them by police forces.[342] Data pertaining to breaches of certain types of Order are then

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duties to protect us. Violence against women and girls profoundly affects lives and how it is dealt with matters – there needs to be effective monitoring, data collection and disaggregation for us to be able to measure change and identify failings."

[339] Particularly relevant given that many Impact Assessments state that it is difficult to quantity costs, volumes, and breach rates for new Orders – presumably inhibited by a lack of data.

[340] See, College of Policing, His Majesty's Inspectorate of Constabulary and Fire & Rescue Services and Independent Office for Police Conduct, Hidden Victims: Report on Hestia's super-complaint on the police response to victims of modern slavery', (4 April 2022).

[341] Centre for Women's Justice, 'Super-complaint: Police failure to use protective measures in cases involving violence against women and girls', (March 2019).

[342] The Working Party was advised that information about breaches of Orders is collected in the form of sub-offence codes and that currently, 40/44 police forces submit data on sub-offence codes to the Home Office.

"*published in 'aggravated' offence groups by the Office of National Statistics* ("the ONS")", meaning that individual statistics relating to breaches of Orders are not accessible.[343]

3.133 However, there are some exceptions to this. For example, we were advised that the ONS publishes data relating to breaches of NMOs and DVPOs, whilst His Majesty's Courts and Tribunals Service ("**HMCTS**") collects data on SPOs, which has been published separately by the Home Office "*to support policy documents*". Whilst information on FBOs is published via the Home Office, the Home Office does not require enforcement bodies to send them data relating to breaches of CPNs or PSPOs. In any event, the situation is confusing, and even where data is published, it is often aggregated and usually limited to the number of breaches, which tells only part of the story.

3.134 **We recommend that the Home Office, in collaboration with enforcement bodies, the Office of National Statistics, and HMCTS, undertake a review of the way that data pertaining to Orders is collated, shared and made accessible to the public. As best practice, enforcement bodies should also publish data relating to the Orders that fall within their jurisdiction, via their website.[344] In particular, the Working Party considers that the following data should be recorded and collated:**

a) **The number of Orders applied for**
b) **The number of Orders granted**
c) **The conditions included in the Order**
d) **The conduct or offence/s that triggered the imposition of an Order**
e) **The average duration of an Order**
f) **The number of appeals of Orders**
g) **The protected characteristics of the recipient of an Order, including data relating to whether the recipient is neurodiverse and/or the steps taken to ascertain whether the recipient has any protected characteristics or is experiencing vulnerability**
h) **The number of breaches of Orders**
i) **The conduct that triggered the breach of an Order**
j) **The average time between imposition and breach, where breach of an Order occurs**
k) **The disposal for breach of an Order**
l) **In the context of DAPOs and SPOs, when a victim or representative**

[343] Information provided to the Working Party from the Home Office.

[344] The Working party notes of at least two enforcement bodies who currently do this.

requests the imposition of an Order, this should also be recorded

m) **In the context of DAPOs and SPOs, when neither an Order nor a charge is issued, the reasons why.**

n) **The time taken for courts to draw up Orders and serve Orders.**[345]

3.135 **As part of this process, we consider that the Home Office must take steps to rationalise the data systems relied upon by the police and/or consider the creation of a specific, central Behavioural Control Order database.** Without doing so, the Working Party understands that the data will continue to be difficult to track and extrapolate across systems and police forces. This has a detrimental and potentially unsafe impact upon practice.

3.136 **Finally, as part of any review, the Working Party recommends that attention be paid to the need for a unified system for data sharing and recording between enforcement bodies and the courts.**

The need for a Government-led Inter-disciplinary Review

3.137 The Working Party considers that the issues raised in the preceding sections require serious consideration, concerning as they do, the rule of law, the legitimate use of state power and of course, public safety. During the lifespan of the Working Party, we heard calls for certain Orders to be revoked; others to be consolidated as well as opinions that the imposition of Interim Orders should be mandated in certain circumstances. For that reason, **we recommend that the Government conduct an urgent review of existing Orders. Any review must be multi-disciplinary in nature – either in terms of how it is constituted and/or in respect of the parties it engages with and takes evidence from.**

3.138 The review should consider the efficacy and impact of individual Orders including their relationship with other Orders, criminal law provisions and civil Injunctions. It should identify and seek to resolve practical barriers that inhibit their ability to protect victims and which lead to their inconsistent application across the country. For example, the Working Party heard examples of victims waiting weeks or months for Orders, including Interim Orders, to be granted, owing to a number of factors including court scheduling and backlogs.[346]

[345] See Rights of Women, 'Response to Government Consultation on proposed Pilot Practice Direction (PD) on Domestic Abuse Protection Orders (DAPOs)' (2023), (see n.114) which explains delays in courts serving Orders once granted.

[346] For example, as of March 2023, over 340,000 cases are outstanding in the Magistrates' courts and

Solutions need to be found.

3.139 Any review of Orders must consider whether discriminatory practices relating to their use can be overcome via improvements in the process, including through legislation, training, and resource allocation (see recommendations made earlier in this Part of the report and also in Part IV). It should also consider what other measures or services are required, outside the justice system, to support those affected by Orders. Even then, the impact of these improvements must be monitored over a set period. Where they do not lead to a significant reduction in the discriminatory practices (or resolve them entirely), the Working Party considers that the relevant Orders should be revoked.

3.140 It should also consider the status of Orders in the justice system generally, including whether their use should be limited to particular types of harms and/or circumstances and whether they are appropriate for children. The review should determine what "success" looks like and whether the model is effective at achieving prevention, protection and rehabilitation, in comparison to other measures both inside and outside the criminal justice system including other preventive interventions. Finally, the review must pay due regard to the funding that requires to be made available to ensure that Orders achieve their outcomes.

3.141 The review must give due regard to the voices of those with lived experiences (as victims and recipients) and engage with relevant subject matter experts both within the criminal justice system and beyond.[347] It should utilise data and collect evidence from not only the criminal justice system, but other areas such as public health, children's services, and education, given the substantial focus that Orders are meant to have on rehabilitation.

over 62,000 in the Crown Court.

[347] NACRO 'Young People's Perspectives on Knife Crime', (2023), (see n.305).

IV. RE-ENVISAGING THE PROCESS FOR IMPOSING BEHAVIOURAL CONTROL ORDERS

4.1 Notwithstanding the need for a review, this section of the report is concerned with setting out how some of the thematic concerns identified in Part III could be mitigated in practice. **The Working Party draws upon examples of existing good practice within the regime. We also endorse recommendations made elsewhere.**

The Pre-Legislative Stage

Establishing a robust evidence base for Orders and Increasing Pre-Legislative Scrutiny

4.2 The introduction of new Orders should be founded upon a robust evidence base which demonstrates why they are needed, what harm they will address, and why they will work. The Working Party was advised that these factors continue to be left unaddressed when new Orders are proposed.[348]

4.3 The Working Party also considers that the Home Office should be more transparent about the evidence it relies upon to inform its decisions relating to Orders. This is to increase confidence in the integrity of the evidence and the impartiality of underlying studies. It also mitigates the concern that they are rushed through to 'fill a gap' without adequate scrutiny.[349] It also allays fears that Orders are being introduced for purely performative or otherwise

[348] Please see, S.Kingston and T.Thomas, 'The Sexual Risk Order and Sexual Harm Prevention Order: the first two years', (2018), *"no substantive research had been completed to say whether the evidence existed that any of the Orders – including those introduced by the 2003 Act or the 2014 Act, would make a difference."* Furthermore, NACRO, in their 'Young People's Perspectives on Knife Crime', (see n. 305), p. 4, objects to the use of KCPOs on the grounds that *"there is no evidence that KCPOs will be effective at tackling harmful behaviour, or that they will address the root causes of knife carrying".*

[349] S.Kingston and T.Thomas, 'The Sexual Risk Order and Sexual Harm Prevention Order: the first two years', (2018), (see n.357), pp.77-88. The Working Party also advised that the idea for Knife Crime Prevention Orders was rushed through with little oversight or reconsideration. See also, P. Goodfellow, 'Rethinking 'Justice' for Young People', The Open University, 'Youth Violence Commission Final Report', (see n.114) *"The imminent introduction of Knife Crime Prevention Orders exemplifies the absence of an evidence informed and joined-up approach. They did not receive the level of consultation, parliamentary scrutiny, or impact assessment appropriate for legislation with such wide-reaching potential and were rushed through despite a wide coalition of professional bodies and voluntary sector organisations expressing strong concerns."* p.71.

inadequate reasons.

4.4 The Working Party considers that the Home Office must also provide greater clarity on how new Orders should interact or overlap with existing Orders in practice. The same applies for the relationship between Orders and existing offences. The Government should demonstrate that there is a real gap in existing protections, which necessitates the introduction of a new Order. Doing so will reduce the confusion currently experienced by enforcement bodies in trying to understand which Order, injunction, or criminal offence they should pursue in any given situation.

4.5 In particular, whenever new Orders are proposed, an economic assessment should be undertaken to identify what funding is required to adequately support training, enforcement, the imposition of positive requirements and ongoing monitoring. The costs associated with behavioural programmes should not be benchmarked against "low-cost" programmes, especially not those designed for recipients of Orders relating to serious crimes such as domestic abuse, stalking, sexual offending and serious violence.[350] Doing so only increases the risk of unsafe results.

4.6 In the light of the issues raised here, **the Working Party recommends that the Home Office and/or the relevant department must consider the following information when proposing to introduce new Orders and/or to substantially alter existing Orders. This information should be set out in the Impact Assessments accompanying the relevant Bill or Statutory Instrument. It should also be reflected in the consultation documents.**

a) What harm the new Order seeks to address
b) Whether the harm is covered by an existing criminal offence, civil Order and/or Order
c) Where the harm is covered by an existing criminal offence, civil Order, and/or Order, what gap the new Order seeks to address
d) Where the harm is not covered by an existing criminal offence, civil Order, and/or Order, what is it about the harm that requires a new Order, rather than a new criminal offence;
e) What, if any, implications the new Order will have on any existing civil Orders or Orders, e.g., do previous Orders require amendment or repeal to ensure no duplication? Does statutory guidance and training materials for other Orders require updating?

[350] Home Office, 'Domestic Abuse Bill 2020: Impact Assessment, (2020), p.20.

f) **Where available, any evidence statement should be supported by statistical data and/or any academic literature or studies that have been relied upon in support of the proposals.**

4.7 **The Home Office must investigate, and thereafter set out, the costs associated with training, enforcement, and the provision of services to fulfil positive conditions in the Impact Statements that accompany legislation to introduce new Orders. The Home Office should also stipulate how such costs will be met. It must consult with relevant experts across the enforcement bodies to understand the costs associated with enforcement and training and set out how the Home Office intends to address any shortfalls in resources.**

The Impact on Human Rights

4.8 The Working Party acknowledges the range of human rights implications that arise out of Orders. We consider that the potential impact of Orders on human rights to be varied and far-reaching, concerning a balance between the rights of the recipient and the rights of victims to be safe from harm.

4.9 In light of this, the Working Party recommends that more attention should be given to the human rights implications of Orders during the pre-legislative stage, both when new Orders are to be introduced and/or when amendments to existing Orders that materially alter them are proposed. Material alterations include any amendments to widen the scope of the Order or its availability, including amendments to the standard of proof to be applied, the statutory test, or the conditions that can be applied.

4.10 **The Working Party recommends that the relevant Department(s) must submit a detailed Human Rights Memorandum to the Joint Committee on Human Rights for the creation of any new Orders and/or when amendments to materially alter existing Orders are proposed.**

4.11 In this context, material alterations are any alterations that directly or indirectly widen the scope or availability of an Order and/or alters the standard of proof. The Human Rights Memorandum must be provided to the Joint Committee on Human Rights upon publication of the Bill or Statutory Amendment containing the provisions. This is in recognition of the frustrations experienced by the Joint Committee on Human Rights concerning the inadequate time it had to consider the impacts of certain Orders, and the delay experienced by the Committee in receiving such Memorandums.

The Role of Consultations

4.12 In Order to comply with the pre-legislative requirements recommended by the Working Party, the Home Office and/or relevant department(s) must conduct robust consultations with relevant experts and members of the public representing different interests. [351]

4.13 Public consultations must be given central importance in the process for introducing or amending Orders. As indicated in previous parts of this report, the particular harms that Orders seek to address are often highly specialized and complex. Consultation with subject-matter experts is crucial to ensuring that Orders are effective and do not suffer from avoidable pitfalls that hinder the protections afforded by them. Furthermore, by consulting widely, the Government can mitigate concerns that its decision-making processes primarily include evidence from other branches of the State e.g, enforcement bodies alone.

4.14 **As part of any consultation, the Working Party recommends that the Home Office and/or any relevant Departments must proactively consult a broader range of stakeholders including, but not limited to:**

a) frontline organisations and workers;
b) enforcement bodies and in particular, officers who have practical experience of using Orders;
c) victims and those representing the interests of victims;
d) those with lived experience as recipients and those representing the interests of recipients, including legal representatives;
e) the judiciary and;
f) experts from relevant agencies including social services, mental health, child services, youth justice and experts from third sector organisations.

4.15 Consideration should be given to how such engagement is to be achieved. This is especially pertinent in light of feedback from third-sector organisations that taking part and responding to consultations takes up a significant amount of resource, particularly for small and frontline organisations. Funding to enable

[351] The NACRO report demonstrated the importance in engaging directly with members of the community and seeking the opinions of young people in understanding what can be done to tackle knife crime. (see n.314).

such organisations to offer their expertise and take part in consultations, without negatively impacting upon service delivery, should be made available. Alternative ways to proactively engage with relevant parties should also be explored. For example, we note the use of stakeholder events across England and Wales concerning the introduction of DAPOs.[352] Others have recommended that relevant consultations relating to Orders should be advertised via local authority, police and CPS intranet pages to afford more opportunities for less-senior officers to respond.

4.16 Greater attention should be paid to consultation responses generally. This is in light of several examples of problems identified in relation to pre-existing Orders being continually recycled into their replacements. One way that this could be achieved is via Impact Assessments. There is a section in the Impact Assessment template dedicated to discussion on consultation, it was felt that criticisms of proposals were often inadequately demonstrated there.[353] For example, the KCPO Impact Assessment is notably silent on the opposition to KCPOs, despite setting out opposition to other proposals within the Offensive Weapons Act 2019, pertaining to the sale of weapons and firearms.[354] We also note criticism concerning omissions from Impact Assessments in the context of recent changes to SDPOs.

4.17 Going forward, the Home Office and/or relevant Department decides to proceed with the introduction of, or an amendment to, an Order, objections from consultees should be set out clearly in the Impact Assessments.

The Role of Pilots

4.18 **The Working Party recommends that all new Orders, and any amendment which materially alters an existing Order so as to widen its scope, availability and/or standard of proof, should be piloted before becoming permanent in law. Pilots must be conducted in multiple areas so that information on divergent practices can be identified, whilst also assessing the use of Orders relative to different demographics.** Where Orders are capable of being imposed by more than one enforcement body, this

[352] According to the Home Office, Impact Assessment, officials held 25 stakeholder events in six regions engaging more than 1,000 people including victims, charities, local authorities, and professionals.

[353] P. Goodfellow, 'Rethinking 'Justice' for Young People', The Open University, 'Youth Violence Commission Final Report', pg. 71. (see n.114)

[354] Human Rights charity Liberty raised concerns at the Bill stage that KCPOs would fail to address the root causes of violence, and would likely exacerbate the conditions conductive to it.

should also be reflected in the pilot. This recommendation reflects the significant public interest issues relating to Orders, the difficulties assessing their effectiveness, and the concerns about how Orders might be used in practice against marginalised populations.

4.19 **All pilots should be subject to robust evaluative outcomes, pre-agreed and co-designed with specialist, multi-disciplinary input. These outcomes should capture an array of procedural and access to justice metrics and should be capable of assessing whether Orders have had any substantial impact on protection, prevention, and recidivism and/or any other evaluative outcome that the Home Office or relevant Department pre-determines. The evaluative criteria should be generally applicable across the Order regime, subject to some context-specific variations. Where particular concerns have been addressed during public consultation, these must be monitored and reported on both during and after the pilot.**

4.20 The need for a set of evaluation criteria is borne out of the difficulties in assessing the effectiveness of Orders mentioned in Part III and, as demonstrated by previous pilots for Orders, a lack of advance consideration of "*what success looked like*". By way of example, the evaluation of a pilot might include an assessment of the following information, obtained via qualitative interviews and other methods:

EVALUATION CRITERIA	
The robustness of the investigation	Information should be collected about the process that was followed to impose the order including the nature of the evidence relied upon to: 1) prove that the individual had carried out the conduct triggering the order, and 2) prove that the recipient did pose a risk going forward, and 3) prove the order was necessary Information about what multi-agency consultation took place prior to the imposition of the order, along with what alternatives to imposition of an order were considered, should also be collected. Where Orders are introduced that do not involve court intervention, as with PSPOs and CPNs, information should be collected about whether or not the recipient had an opportunity to see the evidence against them and respond to it.
Procedural outcomes	Information on: • whether the Civil Procedure Rules and Criminal Procedure Rules were adequate and straightforward• whether enforcement bodies felt able to identify any vulnerability on part of the recipient and appropriately respond to it; • whether the recipient had access to legal representation; • the nature and volume of the evidence produced at court; • whether Hearsay was relied upon and if so, how many applications for cross-examination of witnesses were presented; • whether the recipient was able to access legal aid.
Suitability of conditions	• whether evidence was led in relation to the appropriateness of the conditions; • what efforts, if any, had been taken to understand the availability of services in the area in fulfilment of any positive requirement necessitating attendance at a programme or course etc. Furthermore, whether said programme or course accredited or quality-assessed • whether the views of the recipient and/or victim were taken into account when imposing the conditions, including to make sure that they did not interfere with the recipient's employment, education, religious practice etc • whether support was made available to the recipient, to help them comply with the conditions imposed and if so, what the nature of that support was • If positive conditions were not imposed, the reasons why including any factors relating to the availability, quality or resourcing of such services in the particular area.
Breach rate	Information on how often Orders were breached; the conditions that were breached and the timeline between imposition and breach. The reasons for the breach should also be recorded.
Appeal Rate (including the rate at which orders and the conditions contained therein were varied and/or discharged)	Including the time between an order being imposed and appealed, whether or not recipients were legally represented; the ease in which the orders could be varied and discharged and whether legal aid was available. Feedback should be sought on whether or not the variation and discharge process is capable of, or should be capable of, taking place upon the papers.
User Experience - Recipient	Information on: • whether recipients felt that they were treated with dignity and respect throughout the process; • whether recipients felt able to understand and engage in the process; • whether recipients felt that they had adequate support to engage with any positive conditions that were imposed; • the views and attitudes of the recipient in relation to any condition imposed; • whether the recipient's attitude towards their behaviour / conduct / imposition of the order and/or any of the conditions imposed, changed during the Pilot period;
User Experience – Enforcement Body	Information on: • whether enforcement bodies felt that they understood how to use the tools and were qualified to do so should be collected; • whether enforcement bodies felt able to identify any vulnerability on part of the recipient and appropriately respond to it; • the level of training made available to enforcement bodies during the Pilot scheme should also be collected, along with any feedback from enforcement bodies on what further training needs they might have; In particular, enforcement bodies should be asked whether they felt able to understand the legislation and/or the accompanying Guidance • whether enforcement bodies knew and were in contact with, other stakeholders/ multi-disciplinary partners from other relevant public services;
User Experience – Defence agent (where relevant)	The views of any legal representatives should be collected. This includes seeking the views of legal representatives in relation to the ease of navigating court rules, the appeals process and any other aspect relating to the defence of their client's case.
User Experience - Victim	Where appropriate, feedback should also be sought from the victim including in relation to: 1) whether victims felt that they were treated with dignity and respect throughout the process; 2) Whether victims felt protected / more safe as a result of the order being imposed and if so, whether that changed throughout the course of the Pilot
Vulnerability and protected characteristics	Data should be captured on "vulnerability" including whether the recipient is experiencing any situational vulnerability such as homelessness. Information on protected characteristics should also be recorded including on mental health, physical disability, learning difficulty, neurodiversity, substance use disorder and the ethnicity of the recipient.
Misc. - over-arching evaluative outcomes	Given the nature of Orders being apparently protective, preventative and decreasing recidivism; information and feedback should be collated during the Pilot that helps to understand this question. For example, at the start of the Pilot, the Home Office should specify what quantifiable evidence would suggest success, e.g., whether that was determined in respect of breach rate and/or any other relevant information.

4.21 Following the completion of a pilot, the results should be assessed before any pilot is extended or any Order made permanent. If the measure is ultimately to be continued, the Government must address how it seeks to address any limitations or concerns identified as part of the pilot.

The Post-Legislative Stage

4.22 Royal Assent should not be the end of the process of legislative scrutiny. **The Working Party recommends that Parliament undertake 'post-legislative scrutiny' to determine whether Orders are functioning as intended and**

propose possible solutions where they are not.[355] To do so would provide an opportunity to identify and resolve any unintended consequence or "*oversight*", relating to legislation or practice, that was overlooked at the time of drafting.[356]

4.23 Moreover, post-legislative review provides a further opportunity to consider whether the statements made in respect of pre-legislative ECHR Memoranda, continue to hold true. For that reason, the **Working Party recommends that post-legislative memoranda be produced for all legislation introducing or materially altering Orders.**[357] **Post-legislative Memoranda should explicitly refer to concerns raised during the pilots and/or in the ECHR Memoranda. The post-legislative memoranda should then be submitted to the relevant House of Commons Departmental Select Committee, to determine whether a more comprehensive post-legislative inquiry is required to ascertain whether these concerns have been addressed.**[358]

[355] J. Sargeant and J. Pannell, '*The legislative process: how to empower Parliament*', *Institute for Government*, (2022), p.31.

[356] For example, Kelly explains that the drafting of legislation for SHPOs, reliant as it is on Schedules, allows for SHPOs to be imposed in respect of "aerodrome offences", but not in respect of "revenge porn". R.Kelly, 'Sexual Harm Prevention Orders and Necessity', (2020). It was assumed that this was a matter of oversight and not design. The Working Party are also aware of a review of SPOs conducted by the Home Office in 2023. The review sought feedback from a sample of police officers, the National Stalking Consortium and one victim. Please see, Home Office, 'Review of Stalking Protection Orders', (2023), (see n.39). The Working Party considers that such reviews should become common practice across all Orders; although the range of consultees must be expanded if the review is to be effective.

[357] Since, Government departments have been responsible for producing post-legislative memoranda for Acts relevant to their respective responsibilities, three to five years following Royal Assent. Then Leader of the House of Commons, Harriet Harman MP, announced by way of Written Ministerial Statement this "*new process for post-legislative scrutiny*" with Committees of the House of Commons providing a "'*reality check' of new laws after three to five years*". See, HC Deb, 20 Mar 2008, vol 473, col 74WS.The full approach was detailed in the Government's response to the Law Commission Report on Post-legislative Scrutiny, published simultaneously. Please see Office of the Leader of the House of Commons, 'Post-legislative scrutiny – The Government's Approach'.

[358] The Working Party notes the steady decline in the number of memoranda published year-by-year. See T. Caygill, 'The UK post-legislative scrutiny gap', (2020), 397. Caygill revealed that despite 374 Acts of Parliament being passed between 2008-2019, only 91 memoranda were published. To that end, The Working Party also endorses the recommendations made by Caygill to formalise the Government's commitment to producing Memoranda, and to create an enforcement mechanism to ensure they do so.

The Application Stage

Identifying the Event Giving Rise to an Order

4.24 The starting point for assessing whether or not to apply for an Order is to identify what event or 'harm' has taken place and thereafter, whether it is covered by any of the Orders. This should involve a relatively straightforward consideration of the statutory tests. However, in response to concerns demonstrated in Part III, the Working Party considers that the statutory tests for imposing Orders require clarification. Failure to do so will continue to lead to operational difficulties and confusion, not just for enforcement bodies, but also for the courts in determining when an Order should apply. This is demonstrated by several appeal cases concerning the appropriate interpretation of statutory tests for Orders.[359]

4.25 Moreover, a failure to clarify the types of events, harms, or behaviours that could give rise to an Order has negative implications for legal certainty and risks Orders being imposed in manners not intended by Parliament and in situations that are not appropriate. The Working Party acknowledges that the statutory tests that appear to cause most problems for enforcement bodies, recipients, and the courts alike, are those that are vague, framed broadly and rely heavily on subjective assessments.

4.26 That being said, we recognise that certain types of harmful conduct evade precise description. For example, we understand concerns that restricting the statutory tests for Orders under the 2014 Act may inhibit the ability of enforcement bodies to protect victims of anti-social behaviour. Similarly, we acknowledge concerns that enforcement bodies continue to disregard incidents of stalking behaviour as innocuous.

4.27 **Nevertheless, the Working Party considers that those responsible for drafting statutory tests for Orders, should consider it best practice for the tests to be set out, as far as possible, in objective and narrow terms. Where it is considered not possible to do so, owing to the detrimental impact it would have on victims,[360] consideration should be given to wording that**

[359] For example, see *Khan* [2018] EWCA Crim 1472. There, the Court of Appeal observed that the statutory test for CBOs "*might on a literal construction be said to apply to a high proportion of cases in the criminal court*". However, the Court went on to state that, "*We do not believe that it was the intention of Parliament that criminal behaviour Orders should become a mere matter of box-ticking routine. …* [S]*uch Orders are not lightly to be imposed*". See also, DPP v Stanley [2022] EWHC 3187 (Admin).

[360] For example, in the context of Stalking where the definition of Stalking itself is purposefully broad.

can be included within the legislation to mitigate against the imposition of Orders in inappropriate circumstances that extend beyond the intentions of Parliament. For example, in the context of Orders under the 2014 Act, the Working Party considers that the legislation should include wording to strengthen statements made in the Guidance to the effect that conduct that is merely annoying or offensive, short of causing harm, is unlikely to meet the threshold for imposing an Order.

The Test for Orders Constituted by a Previous Offence

4.28 **The Working Party recommends that where the imposition of an Order is triggered by the recipient having been convicted of a previous offence, the relevant offences that can trigger an Order should be contained in a Schedule. Consultation with enforcement bodies and subject matter experts should take place to inform which Offences should be included in the Schedule. Furthermore, where Orders are to be imposed only upon the most *"serious and persistent offenders"*, this should be set out explicitly in the legislation and not left for statutory guidance.**

Assessing the Appropriateness of a Behavioural Control Order

4.29 Even where the first branch of the Statutory Test for imposing an Order is satisfied, enforcement bodies should also consider whether it is appropriate to seek an Order, in the circumstances. For example, contributors felt that the process for imposing an Order, in circumstances that did not involve serious or immediate harm to an individual(s), should reflect a 'progression' towards an Order, with enforcement bodies first exploring other options that did not involve potential criminalisation, including the use of measures such as warnings, informal conversations, Anti-Social Behaviour Contracts and support to address underlying problems.[361] Mediation may also be appropriate in some contexts. We also note the potential success of approaches such as restorative justice in the context of on conviction Orders and other diversionary programmes established jointly with specialist third sector or

[361] See, for example, the Scottish approach, set out in the Antisocial Behaviour etc. (Scotland) Act 2004: Guidance on Antisocial Behaviour Orders, (2004), which recommends that *"[a]uthorities will want to consider a range of options such as mediation, support services, voluntary agreements and diversion projects before deciding to pursue legal action"*. For example, it has provision for 'Acceptable Behaviour Contracts', for children and adults, and 'restorative warnings' for young people (informal conversations with a police officer about the behaviour).

frontline organisations.[362] Some Orders already embed such an approach. For example, CPNs should only be imposed following the recipient first being issued with a Community Protection Warning (**"CPW"**). However, interviews with contributors demonstrated that warnings were not always issued.

4.30 When an Order will be appropriate depends on a number of factors. We acknowledge that statutory guidance, to varying degrees, attempts to address this question. However, the information contained therein can be vague and differs greatly between Orders. More often than not, it is left to enforcement bodies to develop their own guidance and practice. The Working Party are aware of examples of best practice across enforcement bodies, whereby proportionality assessments or risk assessments are conducted. However, leaving it up to individual bodies to create their own practices risks leading to inconsistency in enforcement practices across the country.

4.31 For that reason, we consider that the position requires clarification and rationalisation, putting examples of best practice onto a more formal footing. In particular, **when assessing whether or not to impose a full Order, (e.g., not an Interim Order), enforcement bodies must take into account (and must be prepared to demonstrate to the court how they have taken into account), the following factors, unless there is good reason not to. Good reason includes where the risk of harm to a victim(s), and/or the need to take immediate action to protect the victim(s), negates such an exercise.**[363] **The factors to take into account are:**

i. **the risk of harm to a victim / the need to protect a particular person or persons (s) from the actions of the recipient and the consequences of not imposing an Order;**
ii. **the immediacy of the harm posed by the recipient to the victim;**
iii. **where appropriate, the views of the victim;**
iv. **the age of the recipient, and, where the recipient is under age 18, the views of the Youth Offending Team and Children's Social Care;**
v. **whether there are grounds for believing that a recipient is experiencing vulnerability by reason of age, mental-ill health, substance use disorder, learning disability and/or economic circumstances e.g., by reason of homelessness. Where such**

[362] See for example, Cranstoun, 'DIVERT – breaking the cycle of knife crime', (2020), (see n.331).

[363] For example, it is unlikely that this recommendation should be applicable to Stalking Protection Orders and Orders in the context of domestic abuse.

vulnerability is identified:

a. **the views of relevant agencies including Social Work concerning the appropriateness of imposing an Order;**
b. **whether or not referral to an appropriate health or mental health service is appropriate;**
c. **the impact that such vulnerability is likely to have on the recipient's ability to engage with any proceedings relating to the imposition and enforcement of an Order;**
d. **the impact that such vulnerability is likely to have on the recipient's ability to comply with any Order imposed on them;**

vi. **whether any informal measures e.g., warnings, informal conversations or, where relevant, an anti-social behaviour contract have taken place;**
vii. **whether alternative intervention outside the criminal justice system e.g., mediation or restorative justice is appropriate and/or available in the circumstances; and**
viii. **whether imposing an Order would give rise to any issues under the Equality Act 2010.**

4.32 **The Working Party considers that this approach should be set out clearly in the statutory guidance. For Orders that do not involve applications to the Court, such as CPNs, the Working Party recommends that enforcement bodies must otherwise set out, by way of an internal report or application form, how they have demonstrated compliance.**

4.33 **In the context of PSPOs, the above list of factors reflects the types of questions that must be asked during any consultation relating to the creation of a PSPO.**

4.34 For Orders that require application to the court, the Working Party recommends that the Procedural Rules/Practice Directions should be updated to reflect the requirement to consider these factors. We also note the recommendation made by the Civil Justice Council to create a bespoke Pre-Action Protocol in the context of ASBIs. Whilst this was not an option explored by the Working Party, we consider that it is worthy of further consideration.

4.35 We emphasise that in the context of behaviour giving rise to grave risks of harm to a victim, such as stalking, domestic abuse and sexual offending, consideration of these factors is unlikely to be appropriate. Nothing in this section is intended to dilute the protections to victims in cases where they are at risk of serious and immediate harm from the recipient, nor worsen the

existing under-use and delays experienced in relation to certain Orders.

Multi-Agency Working

4.36 The Working Party understands that joined-up working between agencies and multi-disciplinary approaches to Orders, tended to produce the safest outcomes – both in terms of Orders being imposed in appropriate circumstances and in terms of them having a positive impact on the reduction of harm or change in behaviour of the recipient. We are aware of examples of excellent practice where enforcement bodies have in place successful partnership working arrangements, including a fully integrated multi-agency team, staffed by experts and victims advocates that provide a *"whole systems approach"* to tackling the harm.[364] Furthermore, there are several examples whereby enforcement bodies are working with specialised third sector organisations to support individuals who are experiencing vulnerable circumstances including substance use disorders – diverting them from the criminal justice system without the threat of criminalisation.[365] The Working Party considers that such arrangements and co-working should be encouraged and best practice shared between enforcement bodies.

4.37 **To that end, the Working Party recommends that enforcement bodies should have local memoranda/protocols in place with a) other enforcement bodies, where relevant and b) appropriate agencies. Appropriate agencies may include, but are not limited to, social services, children's services, Youth Offending Teams, adult services, public health experts and psychiatrists, safeguarding teams, as well as relevant third sector organisations. By way of example, such protocols should set out what support and treatment services are available in an area and what alternative forms of action may be available to address the underlying causes of the behaviour, where appropriate. The protocol should also set out the circumstances that merit consultation taking place between**

[364] For example, Cheshire Constabulary's Harm Reduction Unit is an integrated risk management service that specialises in tackling stalking. Within the unit are two full-time Specialist Victims' Advocates, who are accredited Independent Stalking Advocacy Caseworkers, as well as police officers, mental health professionals and probation officers. Cheshire Police continues to rank highly in respect of the number of Stalking Protection Orders and Interim Orders, obtained. See, Centre for Justice Innovation, 'Harm Reduction Unit', (2021).

[365] See for example, Cranstoun, 'DIVERT – breaking the cycle of knife crime', (2020), (see n.331) and PCC Cumbria, 'County Lines Informed Cumbria County Lines Informed Cumbria (1CLIC) winning the war on drugs in south Cumbria'.

agencies and enforcement bodies prior to an application for an Order, along with the arrangements for doing so. For cases whereby Interim Orders or Notices exist, as with stalking and domestic abuse, care must be taken to ensure that any consultation arrangements do not interfere with the ability of enforcement bodies to apply for them, while further evidence is gathered for the full Order.

4.38 **The Home Office, Ministry of Justice, the Association of Police and Crime Commissioners and, where relevant the Department for Levelling Up, Housing and Local Government should liaise to discuss how such protocols/memorandum should be periodically reviewed to ensure consistent approaches across England and Wales and to identify best practice.**

At the Hearing

Assessing Risk, Necessity and Proportionality

4.39 The legislation underpinning Orders states that such Orders should only be imposed where they are required to achieve some future outcome, be that the prevention of harm or protection of a person. However, as explained in Part II, the tests are framed differently and the role that Orders are to play in achieving the outcome varies.

4.40 Furthermore, the evidential threshold that is to apply to these assessments also varies. For example, it is a matter of "*judgement and evaluation*" as to whether the forward-looking element of CBOs has been met,[366] whilst for SPOs, the guidance suggests that the court must be satisfied beyond reasonable doubt. Again, it is not clear why there is a difference.

4.41 Multiple contributors felt that forward-looking elements of the statutory tests should be clarified. In particular, Kelly explains the role that courts have had to play in setting out a "*more structured examination*" of when it will be appropriate to impose an Order.[367] For example, there have been a series of key cases that discuss when an SHPO will be "*necessary*",[368]what constitutes a "*risk*" in the context of SCPOs,[369] and the importance of establishing

[366] *Bulmer* [2016] 1 Cr App R (S) 74 para 30.

[367] R.Kelly, 'Sexual Harm Prevention Orders and Necessity', (2020) (see n.356).

[368] *R v Parsons; R v Morgan [*2018] 1 Cr App R(S) 307.

[369] *Rv Hancox [2010] 2 Cr App R (S) 484; R v Carey [2012] EWCA Crim 1592.*

proportionality in the context of CBOs.[370] Contributors we spoke to concerning SHPOs, explained the role that case law had played in establishing key principles that must be demonstrated prior to imposing an Order. However, evidence suggested that this practice was not taking place across all Orders and/or jurisdictions. Furthermore, whilst some legislation, statutory guidance and Sentencing Council Guidance refers to the need for those applying for and imposing Orders to consider the proportionality of the Order in light of the risk posed, not all do. The legislation for SPOs sets out what the risks to be prevented are, but this is not true of other Orders.

4.42 The Working Party agrees with contributors that the position requires clarification. **In particular, the Working Party recommends that, as part of any Governmental review, the Home Office should consider rationalising the legislation for Orders to ensure that the statutory tests for all Orders are made consistent with reference to the forward-looking element and/or, where there is variation, that the reasons for the variation are clearly set out and evidenced.**

4.43 **Moreover, the Working Party recommends that the factors to be considered by the courts and/or enforcement body, when determining whether an Order should be imposed, should be made consistent and placed on a statutory footing. In particular, the Working Party considers that in their determinations, the court/enforcement body should have due regard to:**

i. **The risk posed by the recipient to the public and/or a specific individual;**
ii. **The likelihood of the Order mitigating and/or preventing that risk;**
iii. **The conditions to be imposed by the Order, including their practicality and enforceability, taking into account the personal circumstances and characteristics of the recipient;**
iv. **In the case of on-conviction Orders, the interaction between the Order and any sentence imposed relating to the conviction, including any impact that the latter has on the proportionality of imposing the former. The impact that an Order has on when a conviction will become spent, should also be considered;**
v. **The need to tailor any Order to the particular facts of the case (and, in the case of PSPOs, the geographical area); and**

[370] Bulmer [2016] 1 Cr App R (S) 74.

vi. **At all times the court/enforcement body must have due regard to both the rights of the recipient and the rights of the public/persons to be protected, bearing in mind that in the context of certain Orders, the victims' Article 2 rights may be engaged.**

Setting the Standard: The Standard of Proof

4.44 As a general point, the Working Party is concerned about the expansion of Orders via the lower standard of proof, given that the imposition of an Order can have serious consequences not just in terms of criminalisation but stigmatisation too. In the context of SROs, we note previous concerns raised in Parliament about reducing the standard of proof, along with more recent statements made by the Independent Inquiry into Child Sexual Abuse, that lowering the standard of proof for SROs and SHPOs would not address the problem of the lack of foreign travel restrictions being imposed on sexual offenders.[371] A more detailed commentary on the implications of this decision, along with further reflections on the standard of proof relating to KCPOs and PSPOs, is provided in the Advisory Opinion attached at Annex 2 of this report. Moreover, we note a review of SPOs conducted by the Home Office found that: *"the majority (84%) of respondents thought the criminal standard of proof had not created any problems when applying for a full SPO and the majority of respondents stated that they have not had their SPO application rejected in court."*[372]

4.45 **In absence of robust evidence demonstrating why it is necessary and proportionate to do so, the Working Party considers that the burden of proof for Orders should not be reduced. Any decision to do so must be scrutinised and consulted on widely.** Where the standard of proof is reduced, Orders should be monitored closely to identify any adverse consequences on procedural fairness that arise as a result.

4.46 Due to PSPOs, CPNs and DOs not having any court involvement in their imposition, the legislation and guidance is silent on any standard to be met when investigating and imposing these Orders or enforcing them in the event of breach. We do note that the section of the Guidance dealing with appealing

[371] The Independent Inquiry into Child Sexual Abuse, 'Children Outside the United Kingdom' , (January 2020), (see n.43), p.24, para 26.

[372] Home Office, 'Review of Stalking Protection Orders' (2023), (see n.39).

a CPN states that:

> "*in most cases, officers will have collected evidence to place beyond any reasonable doubt that the behaviour occurred. However, in cases where the officer has relied on witness statements alone, they should consider the potential for this appeal route and build their case accordingly.*"

4.47 The Working Party has heard several complaints about the quality of investigations and the standard of evidence relied upon. Whilst there are examples of good practice, the general approach to investigations and enforcement appeared to be inconsistent. In particular, there were multiple complaints that recipients of CPNs were prevented from seeing or being notified of the evidence against them. **The Working Party recommends that the Guidance for CPNs, PSPOs and DOs sets out requirements relating to the types of evidence that can be relied upon to prove breach in CPN and PSPO cases, as well as the process for disclosing the evidence to recipients, including in writing and not just verbally.**[373] **The text of CPNs should include wording to advise recipients of their right to request sight of the evidence against them. If in most cases, officers collect evidence to show the behaviour has occurred 'beyond reasonable doubt', this should be reflected as a requirement.**

The Appropriateness of Conditions

4.48 Greater consideration needs to be given to the appropriateness of conditions imposed by Orders. As set out in the Advisory Opinion at Annex 2 of this report, many conditions imposed by Orders could give rise to a prima facie infringement of Article 8 (right to privacy), Article 9 (freedom of thought, conscience and religion), Article 10 (freedom of expression) and 11 (freedom of assembly and association) of the ECHR. In some instances, Article 5 (deprivation of liberty) may also be engaged.

4.49 Inappropriate conditions were one of the major concerns raised by contributors. Examples of poorly formed overly draconian, and irrational conditions were provided across the piece. The majority of criticisms related to conditions being imposed that could not be complied with for reasons beyond the recipient's control. As explained in Part III, sometimes the

[373] We note that the Home Office, 'Anti-social Behaviour, Crime and Policing Act 2014', (2023). Guidance states that "*the issuing officer should make clear to the potential recipient, preferably verbally and in person, the alleged ASB and supporting evidence. Potential recipients should also be able to contact the issuing officer to discuss their case."*

personal characteristics of the recipient made compliance difficult, e.g., where the individual experienced a substance use disorder or mental health problems. Often, geographical restrictions meant that recipients were cut off from vital support networks or services such as foodbanks or, indeed, from family and friends. Geographical restrictions can exclude individuals from large swathes of the country.[374] In turn, it was felt that this might, in some cases, increase the likelihood that they would breach the conditions and/or undertake further undesirable conduct.

4.50 Restrictions relating to the use of electronic devices or restrictions on internet access required greater consideration, generally. Often such conditions went further than enforcement bodies had likely intended – for example, making it impossible for a recipient to gain employment in any organisation that had an IT department or to use otherwise harmless devices (including household devices that had internet connectivity). Restrictions on electronic devices and internet usage also led to access to justice issues. Contributors explained that a huge array of services – for example, finding a job, renewing a driving license, or accessing benefits and banking – meant that restrictions on internet usage could be extremely intrusive. From examples of CPNs provided to the Working Party, CPNs often included conditions that were difficult to understand or that contradicted other restrictions contained in the CPN, raising quality of law concerns.

4.51 For the reasons set out in Part III, positive conditions are often incapable of being imposed owing to a lack of availability of quality-controlled, accredited programmes and/or resourcing problems making them difficult to monitor. This was particularly evident in relation to SPOs, where the Working Party was advised that, from a review conducted by a contributor concerning 100 Orders, only six included positive requirements and just one of these required participation in a programme. The Working Party considers this a missed opportunity, bearing in mind the positive outcomes that have been achieved, including in the three areas involved in MASIP. Enforcement bodies also complained of difficulties monitoring compliance with positive conditions, in the context of not knowing how to assess "*engagement*".[375]

[374] For example, Football Banning Orders imposing conditions prohibiting a recipient from being within 2 miles of any football ground whilst a game is taking place.

[375] See *Khan* [2018] EWCA Crim 1472. "Prohibitions should be reasonable and proportionate; realistic and practical; and be in terms which make it easy to determine and prosecute a breach."

4.52 Overall, it was felt that greater consideration needed to be given to the conditions imposed by Orders, both in terms of the conditions themselves and the impact they have on questions relating to proportionality. Whilst the legislation for certain Orders expressly states that the "*suitability and enforceability of conditions*" should be considered, this was not the case for all Orders, although the Working Party acknowledges the attempts made by the courts to clarify the position. **The Working Party recommends extending this provision to all Orders and requiring enforcement bodies to demonstrate that they have considered the suitability and enforceability of the conditions to the court. Where Orders are imposed/enforced outside the court process (e.g., CPNs), the suitability and enforceability of conditions should be set out in writing as part of the investigatory process and signed off by a more senior authorising officer. In the context of PSPOs, evidence on the conditions to be imposed should be set out during the consultation process.**

4.53 **Before imposing an Order, the court/enforcement body should consider the following:**

i. **The conditions should be set out clearly and in a manner capable of being understood and enforced.**
ii. **The conditions imposed should not go further than is necessary to address the behaviour concerned. Care should be taken to ensure conditions do not contradict one another and are capable of being complied with, taking into account the recipient's individual circumstances.**
iii. **Where geographical restrictions are sought, regard should be had to the recipient's family and support ties within the relevant area, to ensure that the terms of the Order are not setting recipients up to fail.**

Furthermore, where an Order is sought requiring a recipient to engage with a service or programme, the following should apply:

a) **Programmes designed to form part of positive requirements in Orders should be properly assessed and/or accredited by experts, prior to recipients being referred to them. Ongoing monitoring and evaluation must take place to ensure that such programmes are of sufficient quality.**

b) **Where recipients of Orders have engaged with such services, their feedback, along with that of enforcement bodies, support workers and those involved in the running of the programme, should be gathered to assess the ongoing suitability of the programme.**
c) **Enforcement bodies should demonstrate that they have engaged with, and sought agreement from, all relevant agencies involved in running the programme and ensuring compliance with it, in advance of the condition being imposed and ideally, during the establishment of any protocol or multi-agency arrangements, referred to at para 4.37 above.**
d) **Terms such as 'engagement', 'participation' and 'attendance' must be clarified with reference to the specific case. This is to ensure that both the recipient and enforcement body understand what is required in terms of compliance and how to monitor it.**
e) **The Working Party supports recommendations made elsewhere that there should be liaison between Public Health England and the Home Office to establish a national network for people managing positive requirements in Orders, so that data, best practice, and what works can be shared, along with problems encountered.** [376]

4.54 Practitioners also explained that they were often given insufficient time to consider the conditions being sought, prior to the hearing of an application for an Order. Often, the draft Order was only presented to them on the day of the hearing. **The Working Party recommends that compliance with time limits contained in the rules must be strictly monitored by the courts. In particular, recipients and defence agents should be given early notice of draft Orders and the conditions which are to be imposed.**

4.55 Finally, the Working Party heard suggestions that the types of conditions that can be imposed in any situation should be restricted, to provide greater consistency and to ensure quality control. To that end, **the Working Party recommends that the Home Office, in consultation with relevant stakeholders (including enforcement bodies, practitioners and those representing recipients and victims), create a standard set of conditions that can be imposed in relation to each Order, albeit still allowing for variations and additional conditions to be added where the particular**

[376] See Civil Justice Council, 'Anti-social behaviour and the Civil Courts', (2020), (see n.48).

circumstances of the case require it.[377] **This list should be set out in a Compendium or Guidance, or included in the Procedural Rules, subject to the recommendation at paragraph 4.77.**

Appeal Stage

4.56 The Working Party also heard complaints regarding the difficulties in appealing different Orders. These concerns were particularly prominent in respect of Orders that did not involve judicial oversight.

4.57 In particular, it was felt that there needed to be a mechanism to dispute the imposition of a CPN and PSPO, that was more summary in nature, short of an appeal to the magistrates' court (for CPNs) or, the High Court (PSPOs). Contributors to the Working Party suggested that most recipients of CPNs and PSPOs do not have legal representation and are unlikely to understand the court process. Recipients of CPNs and PSPOs are therefore less likely to challenge the imposition of them within the time limit which, for CPNs is 21 days. Others are likely to be put off by the costs associated with challenging Orders and the risk that they might be liable for the enforcement bodies' costs. The appeals process for challenging the imposition of a PSPO is particularly limited. For example, there is no merits-based appeal route.[378] Only two challenges of PSPOs have been brought and they have been mostly unsuccessful.[379]

4.58 In response to these concerns, the Working Party was advised that recipients have the right to request an internal, independent review of enforcement decisions relating to CPNs and/or the process to withdraw a CPN.[380] **The Working Party considers that enforcement bodies should review their**

[377] We understand that such lists of conditions already exist for certain Orders. For example, see Home Office, 'Practitioners Guidance: Knife Crime Prevention Orders' (July 2021). Furthermore, the Working Party was advised that flexibility was key in the context of stalking and domestic abuse whereby the forms of abuse can be highly individualised.

[378] See Anti-Social Behaviour Crime and Policing Act (2014), s.66 which sets out that interested persons (those who live in, work in or regularly visit the area covered by the Order, can appeal to the High Court within 6 weeks of the Order being made on the basis that that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order; or (b) that a requirement under the statute was not complied with in relation to the Order.

[379] See *Summers v Richmond upon Thames LBC* [2018] EWHC 782 (Admin) and *Dulgheriu and Orthova v Ealing LBC* [2018] EWHC 1667 (Admin).

[380] See *Stannard v The Crown Prosecution Service* [2019] EWHC 84 (Admin).

processes for communicating this to recipients. The officer considering submissions from a recipient must be an independent officer, and not one directly involved in the case (e.g., the issuing officer) or with connections to the parties involved. Information about how to submit a written request for review should be included in the CPN itself, along the following lines:

"*Applying to vary or discharge this CPN:*

You can apply to vary or discharge this CPN. In Order to make such an application you should write to [name of officer] at [address] setting out the reason why you are asking for the CPN to be varied or discharged."

4.59 Statutory guidance should set out clearly how applications to vary and discharge a CPN via the informal review are to be processed, including time limits to do so. This information should be made available to the recipient and publicised on enforcement body websites. Given the difficulties experienced by recipients in challenging Orders, we also recommend that enforcement bodies set up a process to undertake a periodic review of CPNs, to ensure that they are not in place for longer than is necessary and proportionate.

4.60 **CPNs should also provide information about how to appeal to the Magistrates' court on the face of the Order. The CPN should set out the grounds for appeal, the method of appeal (e.g., the need for it to be in writing and to include a copy of the CPN and the case number), and the time limit to appeal, along with practical information including the name of the magistrates' court to which they must appeal, the method of contacting the court (e.g., the email address), and any fee involved in doing so.**

Accessing Legal Aid

4.61 More broadly, contributors also referenced the difficulties in obtaining legal aid and/or the insufficient level of legal aid available to challenge the imposition or breach of an Order. Many recipients did not know they were entitled to legal aid, whilst practitioners involved in challenging the imposition of SROs stated that the level of legal aid was not reflective of the amount of work involved. These complaints were made against the backdrop of severe cuts to legal aid generally[381] and a failure to adjust fees to a

[381] Annual expenditure on legal aid has dropped by a quarter between 2009 and March 2022. Gov.uk,

sustainable level.[382] Legal aid is currently not available for challenging the imposition of PSPO.

4.62 Furthermore, recipients often experience great difficulty in finding lawyers who undertake this work. Legal advice deserts affect huge swathes of the country.[383] Many practitioners explained that the first time they heard about an Order, was when a client had breached one. This suggests that many recipients are not represented during the hearings to impose an Order which greatly increases the chance of such an Order being imposed. As stated by the Civil Justice Council, *"The position contrasts sharply with the criminal courts where a person eligible for and seeking publicly-funded legal advice and representation, would not ordinarily face being deprived of their liberty without it being provided*."[384]

4.63 **We echo the calls made elsewhere, including by the Civil Justice Council, that the Ministry of Justice and Legal Aid Agency, urgently review and addresse the availability of legal advice and representation in respect of all hearings regarding Behavioural Control Orders. Specific attention should be directed to the creation and/or expansion of, legal aid duty advice schemes in respect of applications for Behavioural Control Orders. Given the potentially significant criminal outcomes that they have for recipients, the level of legal aid must be revisited to ensure that it is financially viable for those with civil legal aid contracts to represent parties in respect of Behavioural Control Orders. Finally, the Legal Aid Agency should reverse its position that statutory appeals of Public Spaces**

'*Justice in Numbers: Access to justice'.* This breaks down into a 30% drop in total criminal legal aid expenditure and a 10% in civil legal aid expenditure. Legal Aid Agency & Ministry of Justice, '*National Statistics: England and Wales bulletin Oct to Dec 2022',* (2023). When looking at claim volume, the picture is complex, particularly for civil legal aid. Grants for civil representation have, for example, dropped by 35% since 2009, but so has the number of applications (they have dropped by 43%). It is possible that individuals do not think legal aid will be available and therefore do not apply. A significant drop in the civil legal aid sphere has occurred at the stage of 'legal help' (when an individual is given advice or assistance regarding a legal problem). It has dropped by nearly 90% since 2009. As for criminal legal aid, it tells a somewhat similar story. These statistics have been drawn from the Government's Legal Aid Statistics Dashboards.

[382] D. Casciani, '*Solicitors' pay deal 'fatal blow' to justice, says Law Society',* (*BBC News*, 2022).

[383] Spending cuts have also led to the loss of jobs in some areas of law, which has led to 'legal aid deserts' in the most deprived areas. LexisNexis, '*The LexisNexis Legal Aid Deserts report*', (2022), quoting the President of the Law Society, Lubna Shuja.

[384] Civil Justice Council, 'Anti-social behaviour and the Civil Courts', (2020), (see n.48), p.14.

Protection Orders under s.66 are out of scope.

4.64 We echo recommendations made by Rights of Women that the Ministry of Justice and Legal Aid Agency guidance to recognise that reporting to the police is not always the most appropriate course of action for victims of domestic abuse, and that a decision not to prosecute by the police or CPS should not be a reason to refuse legal aid for DAPO applications. Such a review of legal aid must also look at removing the barriers for victims of abuse who are of unsettled asylum/immigration status.

4.65 Finally, in respect of appeals and applications to vary and/or discharge Orders, the Working Party heard that there needed to be greater flexibility in the system to allow for both Orders and the conditions they impose to be frequently reviewed, varied and/or discharged. This was in keeping with the demands of proportionality and the views of contributors that the effectiveness of the Order and the risk posed by the recipient is likely to change over time. Some contributors suggested that automatic review dates should be set for certain Orders, and that applications to vary and discharge certain types of Orders should be capable of being reviewed "on the papers", with recourse to a full hearing, if need be. Given the stigma involved in respect of Sexual Risk Orders and Sexual Harm Prevention Orders, at least on contributor questioned whether this could not take place online. Again, these are issues which require further consideration in the light of any Government review and/or discussion relating to a review of the applicable Procedural Rules, discussed below.

After an Order Has been Imposed – Ongoing Monitoring

4.66 The Working Party agrees with a number of contributors that there is a need for improved monitoring and support for recipients and victims, once an Order is imposed. This includes monitoring to ensure that breaches of Orders are acted upon, but also to ensure that those subject to an Order are capable of understanding and complying with them and/or know who to turn to when they have questions about compliance. Furthermore, ongoing monitoring of Orders would allow for feedback to be sought from recipients as to whether the Order was helpful in altering their behaviour. This is especially important in light of the difficulties that evaluators of pilots experienced in engaging with recipients and/or determining what success should look like. Where appropriate, feedback from victims or their representatives could also be sought to build an evidence base of what works and what does not in relation to Orders, and thereby inform future enforcement practices and policy.

4.67 **The Working Party recommends that when Orders are imposed, a named individual should be responsible for monitoring/supervising a recipient's compliance with the Order and/or responding to practical questions that recipients have in relation to them.** Whilst supervision requirements are part of some Orders, this is not the case with all. **In circumstances where Orders are imposed on children, the role of Youth Offending Teams in liaising with recipients and acting as points of contact, should also be explored. Funding must be made available to support ongoing monitoring.**

4.68 **Finally, the Working Party considers that the Home Office should provide more information about Orders to members of the public and to recipients generally. This can be facilitated via the creation of a designated web page on Gov.uk that explains what Behavioural Control Orders are.** Such a page already exists for Orders under the Anti-Social Crime and Policing Act 2014.[385] This practice should be expanded for all Behavioural Control Orders. Moreover, the Government and relevant departments should liaise with relevant stakeholders, including legal representatives and those assisting litigants in person to assess the content contained therein. The page should set out clearly what Orders are, the types of conditions and restrictions that they can impose, along with information on where recipients (and victims) can access support, including legal representation, support through the court process and assistance from external agencies, including public health services, where appropriate.

4.69 Some recipients may find it difficult to retain information communicated to them orally, or to understand legal jargon. Leaflets presented in accessible formats should be provided to recipients (and victims) when Orders are served on them, which sets out the process involved in imposing and enforcing Orders, and what they mean in the context of their daily lives.

4.70 A similar exercise should be undertaken by enforcement bodies. For example, the Working Party was referred to examples of good practice by certain local authorities who provided detailed information on their website about the Orders employed by them. We consider that this should be standard practice across the Order 'regime'. Moreover, such resources should be designed with the input of individuals who have been subjected to Orders, where possible.

[385] His Majesty's Government, 'Punishments for antisocial behavior.'

Rationalising the System: The Role of Procedural Rules and Statutory Guidance

4.71 The Working Party heard that the Order regime was defined by its gaps, overlaps and grey areas which led to inconsistencies, misunderstandings, and general confusion. To that end, the Working Party considers that greater rationalisation could help to ensure that Orders were used more appropriately and effectively.

4.72 In particular, many of the concerns outlined in this report could be addressed, and the solutions referred to facilitated by, rationalising and making more consistent:

i. Procedural Rules and Practice Directions (where Orders are made in Court)
ii. Statutory Guidance

4.73 Currently, the type of information provided in legislation and Guidance for one Order often differs greatly from that provided for another. For example, sometimes the guidance explains the information to be provided to the recipient, at other times it does not; sometimes it refers to the applicable Procedural Rules, at other times it does not. Whilst some guidance includes template application forms and letters, this is not true of all, leaving it up to individual enforcement bodies.[386] We understand that the lack of standardisation across the Order regime is particularly frustrating for enforcement bodies who have responsibility for applying for several different types of Order. Not only that but the volume of guidance documents, toolkits, and practitioner's guidance also varies and can be voluminous. For example, the statutory guidance for SPOs lists no less than 10 other relevant guidance documents and publications.

4.74 The procedure for imposing, challenging, appealing, varying and discharging Orders is currently spread out across Civil Procedural Rules, the Family Procedural Rules and Criminal Procedural Rules. This is confusing for practitioners and legal representatives, but more so for 'litigants in person'.[387] Several practitioners we spoke to explained that the civil function of the

[386] We were advised that a number of enforcement bodies have created their own templates. Whilst this is positive, it does not exclude the possibility of inconsistency between enforcement bodies.

[387] Litigants in Person refer to parties who do not have access to legal representation and are representing themselves.

magistrates' courts was not generally well understood. Whilst specific Rules and Practice Directions exist for certain Orders, this is not true of all.[388]

4.75 For that reason, the Working Party recommends that the relevant Procedural Rules Committees should consult in order to bring together, as far as practicable, the relevant rules and procedures applicable for Orders, 'under one roof'.[389] This could be achieved by way of a defined set of Procedural Rules for Orders accompanied by Practice Directions for individual Orders.

4.76 Not only that, but the Working Party considers that the content of the Rules and/or Practice Directions should formalise some of the matters currently contained in the statutory guidance. This is to mitigate concerns that the contents of statutory guidance, no matter how well set out, often goes ignored.

4.77 Taking into account the recommendations made earlier in this report regarding procedural concerns, **we recommend that the Civil Procedure Rules Committee, the Family Procedure Rules Committee, the Criminal Procedure Rules Committee and the Sentencing Council consult with the aim of producing a defined set of Procedural Rules and/or Practice Directions applicable to the imposition of Orders both on complaint and on conviction. In particular, the rules and/or practice directions could include:**

i. **Template application forms;**
ii. **Example conditions;**
iii. **The role that Directions Hearings play in the process for imposing an Order;**
iv. **A requirement that the court must inform the recipient, at the first hearing, of the availability of legal aid;**
v. **Rules on service of applications;**
vi. **Rules relating to evidence and the admissibility of hearsay, including whether or not recipients are able to apply to cross-examine a witness in any given case;**

[388] For example, Knife Crime Prevention Orders made otherwise than on conviction are governed by the Magistrates' Courts (Knife Crime Prevention Orders) Rules 2020; by contrast, Knife Crime Prevention Orders made on conviction and the Government have proposed a specific Practice Direction for Domestic Abuse Protection Orders.

[389] We draw attention to the work of the Sentencing Council which has created an explanatory guide for "*ancillary Orders"* which may be imposed at the time of sentencing in the Magistrates' Court, see Magistrates Court Sentencing Guidelines, 'Explanatory Materials for Ancillary Orders'.

vii. **Rules on service of Orders;** [390]

viii. **Rules relating to appeal and the ability to apply to vary and discharge an Order, including different conditions contained therein and whether such reviews can be conducted on the papers.**

4.78 Care must be taken to ensure that Procedural Rules and/or Practice Directions are sufficiently clear and capable of being understood by litigants in person. [391]

4.79 **The Working Party recommends that the Home Office conduct a review of statutory guidance with a view to ensuring that the format of it is rationalised across all Orders and that the information contained therein is set out in a way that is user-friendly. The information provided should be comprehensive, up to date, and 'leaves no gaps'. Certain information should be contained in the statutory guidance across all Orders, as standard.**

4.80 As a minimum, the Working Party considers that the Guidance should clearly set out: the process to be followed when investigating whether to impose an Order; an overview of consultation arrangements with relevant agencies, including the steps to be taken to ensure that alternatives to Orders are considered, where appropriate. The guidance should set out the relationship between any Order and an existing criminal offence and in which situations, one should take priority over the other or be used in conjunction with one another. The process for imposing Interim Orders should be given specific attention. The Guidance should set out the need to adopt a trauma-informed, person-centred approach, including practical examples of steps that may be taken to achieve this. The statutory guidance should also set out the type of information that should be provided by enforcement bodies to recipients and to victims. Finally, the Guidance should make reference to real-life case studies.

4.81 Such a review should involve engagement with key stakeholders and subject matter experts including enforcement bodies, legal representatives, relevant

[390] For example, given the problems with data being shared between the Police where Orders are applied for by victims, in the case of Non-Molestation Orders, a number of contributors felt that the Police should be served with a copy of a Non-Molestation Orders/Domestic Abuse Protection Orders immediately following the service of the Order on the recipient. In their 'Response to Government Consultation on proposed Pilot Practice Direction (PD) on Domestic Abuse Protection Orders (DAPOs)' (2023), (see n.114). Rights of Women provides recommendations for rules on service of DAPOs.

[391] *Ibid.*

public services, Youth Justice Services, and those representing the interests of victims, as well as those with lived experience as recipients of Orders. Such conversations should help to determine the appropriate content. This is to ensure aspects of poor operational practice can be mitigated by way of Guidance going forward.

Training Needs

4.82 In order for procedural safeguards to be effective, they must be enacted and promoted. The Working Party identified significant shortfalls in training and understanding across the entire Order regime, relevant to all types of enforcement bodies, as well as other actors. Conversations with practitioners, victims' representatives, recipients, enforcement bodies, and other experts reinforced the assumption that Orders are still widely unfamiliar to most members of the public and even amongst those who currently play a role in imposing, enforcing or challenging them within the justice system. At the same time, we were also made aware of examples of best practice arising from enforcement bodies, especially where they had instructed the services of specialist, accredited training providers.

Training for Enforcement Bodies

4.83 **The Working Party recommends that enforcement bodies must urgently review the training provided to all officers around the use of Orders. In particular, we recommend that when designing training programmes on Orders, care must be taken to ensure that training:**

a) is geared to particular actors within the enforcement body. This is in recognition that different individuals, of different seniority are involved in any case pertaining to the imposition of an Order. For example, call handlers in enforcement bodies will require different training on Orders, compared to that of Senior Officers; frontline officers will require different training than police solicitors; and so forth.

b) is designed with the input of subject matter experts outside of enforcement bodies.

c) covers the use of trauma-informed approaches and safeguarding.

d) involves the voices of those with lived experience, where possible. This includes both recipients and victims.

e) Relies upon case studies and real-life examples. Where possible the

case studies should be frequently revisited. This is to ensure consistency in enforcement across regions and enforcement bodies.

f) Encourages engagement with external agencies, and emphasises the role that consultation may play in determining whether to impose a Orders.

g) Sets out the relationship between any Order and an existing criminal offence and in which situations, one should take priority over the other or be used in conjunction with one another.

h) Moreover, as well as providing training on the particular Orders, training must also be provided in terms of the broader context. For example, training on SPOs should also include training on what constitutes stalking and how to recognise it; training on CPN, should include training on the types of harm constituting anti-social behaviour and how to recognise it.

4.84 Where appropriate, training materials used by enforcement bodies should provide guidance specifically on what Order to use in different contexts, and when to apply for it. Particular attention must be given to Interim Orders, where applicable, to help enforcement bodies recognise how they differ from full Orders and the circumstances which mandate their use. Training should also focus on identifying what alternatives exist e.g., where civil injunctions and or criminal investigations should be pursued instead. Process maps, or decision trees may assist decision making.[392]

Single Points of Contact / Behavioural Control Order Leads

4.85 A number of contributors felt that the imposition and enforcement of Orders would be enhanced if specific individuals within enforcement bodies were designated as leads. In the context of local authorities, the Working Party are aware that ASB leads already exist. We are also aware that police forces across England and Wales also have departmental leads or Single Points of

[392] The need for visual flow-charts, process maps or decision trees is borne out of concerns about the difficulty some enforcement bodies have expressed in knowing when to apply for an Order. The Working Party are aware of the effectiveness of the "Are you a victim of stalking" tool designed by Suzy Lamplugh Trust in helping victims to identify if they are being Stalked. We are also aware of an app being designed to assist Police Officers to decide which approach to take/ Order to impose in cases concerning domestic abuse. Such initiatives could help improve consistent decision making across the Behavioural Control Order regime. Nonetheless, where such tools are designed – experts including those who represent victims and recipients – must be involved in the design.

Contact ("**SPOCS**") for certain types of offences, including stalking.[393] One force even had an Ancillary Order Manager.

4.86 **The Working Party recommends that with reference to Orders that fall under their jurisdiction, National Police Chiefs Council, in consultation with the College of Policing; and the Local Government Association in consultation with local authorities, explore how the system of Single Points of Contact / Leads could be expanded to ensure that each enforcement body had a single point of contact/subject matter expert for different types of Behavioural Control Order.**

4.87 The SPOCS should have a defined role to play in relation to Behavioural Control Orders. Depending on the size of the force and capacity issues, the lead/SPOC may not be the officer responsible for applying for an Order at court. However, it was felt that the SPOC would have an important role to play in advising, monitoring and sharing best practice in relation to the use of Orders in their force. With reference to protocols/memoranda referred to at para 4.37, it was considered that a SPOC/subject matter expert would be responsible for engaging with external agencies and identifying appropriate services and programmes for the purpose of enforcing positive requirements, within their area. SPOCs/subject matter experts would be responsible for forming relevant networks with counterparts in other regions to share best practice with matters such as training and enforcement, via meetings and dedicated knowledge-sharing forums.

4.88 Contributors suggested that care must be taken to ensure that the role did not amount to a tick-box exercise, however. The Working Party considers that the role is specialist in nature and therefore would benefit from being accredited. There requires to be longevity within the role to ensure that any specialist knowledge was not lost when individuals moved on or were promoted to a different role.

4.89 **The Working Party also recommends that the College of Policing create a National Knowledge Hub page for Behavioural Control Orders to facilitate the sharing of best practice.**

Training for the Judiciary

4.90 **The Working Party recommends that the Judicial College provide**

[393] For example, we note that under the National Crime Coordination Committee there are individual leads for domestic abuse, violence against women and girls, drugs, and cybercrime.

magistrates and their legal advisors with mandatory training in relation to Behavioural Control Orders and the types of harms (and/or offences) that they are designed to address. This should apply to all newly-appointed judges and require that existing judges attend training periodically and in response to any changes in legislation affecting Behavioural Control Orders. In particular, training should focus on the factors to determine when an Order should be imposed, the interaction of Orders on sentencing and rehabilitation periods, and the appropriateness of conditions and requirements.

4.91 Where possible, training should include those with lived experience and be informed by subject-matter experts across the range of areas covered by Behavioural Control Orders.

Training for Legal Professionals

4.92 **The Working Party recommends that training providers for legal professionals should create online learning modules relating to Behavioural Control Orders. The training should be developed in partnership with practitioners, those with lived experience and be based on common problems experienced by legal representatives including matters concerning the reliance on hearsay.**

Training on Vulnerability and Identifying Complex Needs

4.93 Finally, as part of any training package on Orders, **the Working Party recommends that all professionals involved in imposing Orders receive training in relation to identifying vulnerability and supporting those with complex needs**.[394] The Working Party considers that many recipients are likely to be in a more vulnerable position due to having an Order imposed upon them, whilst victims seeking protection from an Order also require specialist support.

[394] The Working Party are aware of schemes already in operation for legal professionals and judges. For example, The Inns of Court College of Advocacy, 'Advocacy and Vulnerable Training Programme'. We acknowledge that there are likely to be robust and informed approaches which could be adopted from elsewhere in social services, and that psychological and mental health services, for instance, are likely to offer best practice templates for communication with vulnerable people. Again, we consider that close multi-agency working, referred to earlier in this report, will present opportunities to develop specific training in relation to vulnerability and Orders.

V. CONCLUSION AND RECOMMENDATIONS

The purpose of this Working Party was to explore the function and effectiveness of the Behavioural Control Order 'model', and to identify common problems and solutions that apply across the 'regime'. To do so, we have built on a wealth of reports, reviews, and studies. We have benefited from the expertise of many, both here in the United Kingdom, and abroad. Many of the problems we have identified are not new, and many expand beyond simply the enforcement of Behavioural Control Orders. Instead, they question the nature of evidence-based policymaking, the resourcing of public services and the degree to which complex social problems can be resolved via coercive interventions enforced through the criminal justice system, alone.

We have found that wherever they appear in the justice system, Behavioural Control Orders have significant consequences. Not just for the individuals subject to them, but also for those whose safety depends on their effective, and appropriate, use. Therefore, it is essential that the voices of victims, and the experiences of recipients, are placed at the forefront of efforts to use Orders to protect and rehabilitate them.

Behavioural Control Orders must be capable of achieving their purpose, and those tasked with using them should be supported to 'get things right, the first time around'. However, it seems that all too often, the utility of an Order and the appropriateness of its use, is dependent on who is applying for or enforcing the Order, what training they have received, what funding is available, and the extent to which they look beyond the criminal justice system to embed multi-agency practices and, where appropriate, make use of non-criminal interventions.

In this report, we have attempted to set out a 'road map' to increase the effectiveness of Behavioural Control Orders and mitigate some of the problems identified. We built on examples of best practice to 're-envisage' the Behavioural Control Order process: from their inception in Parliament, their entry onto the statute books, their imposition and enforcement journey, through to the measures that should be put in place to assist recipients and support enforcement bodies to use them. In doing so, the Working Party focussed on making recommendations that it felt could reasonably apply to Orders across the regime. We encourage decision-makers to take forward these recommendations which will enable best practice to be embedded across the Behavioural Control Order regime, and reduce harmful impacts on both victims and recipients.

However, it is clear that more work is required to ensure that Orders (both individually and collectively) across the United Kingdom function in a way that affords robust protection to victims and is befitting of a fair, equitable and accessible 21st-century

justice system.

The ongoing viability of several Orders requires serious consideration and structural barriers (including those not mentioned here) that inhibit the effectiveness of several others need to be addressed. We consider that this can only be achieved via a comprehensive review undertaken by the Government, working closely with subject matter experts from across the justice system and beyond, including those with lived experience.

We hope that this report provides a useful starting point.

Recommendations

Discriminatory Impacts

1. The Home Office should not extend the use of Knife Crime Prevention Orders beyond the duration of the Pilot, until such time as a Government-led review of Behavioural Control Orders takes place and/or, measures are introduced to monitor and prevent discriminatory impacts of Orders. Should the Serious Violence Reduction Order Pilot identify similarly disproportionate impacts on Black children and adults, Serious Violence Reduction Orders, too, should not be extended beyond the Pilot (**para 3.41**).
2. As recommended by the Civil Justice Council, the Home Office, in consultation with the Ministry of Justice, HMCTS, and the Liaison and Diversion service should explore 1) how the Liaison and Diversion service should liaise and work with local enforcement bodies and agencies; and 2) how the civil courts and criminal courts, exercising a civil jurisdiction, can gain assistance from/cross-refer to the Liaison and Diversion Service. (**para 3.57)**
3. The Government should abandon its proposals to reduce the age limit at which CPNs can be enforced against children, and/or any proposals to create new Orders that can be imposed upon children. Orders should only be imposed on children following consultation with youth justice experts and child services, and only after other 'non-legal' interventions have been explored. Enforcement bodies should be prepared to evidence how they have considered and reflected issues arising from those consultations, in their enforcement decisions and applications for Orders (**para 3.68).**
4. There should be immediate reinstatement of wording to the effect that begging or sleeping rough does not in itself amount to an action causing harassment, alarm or distress and will not, on its own, merit the imposition and/or enforcement of an Order, both in the Anti-Social Crime and Policing Act 2014, and in the statutory guidance accompanying it (**para 3.80**).

Shortfalls in the data capture regarding Orders

5. We recommend that the Home Office, in collaboration with enforcement bodies, the Office of National Statistics, and HMCTS, undertake a review of the way that data pertaining to Orders is collated, shared and made accessible to the public. As best practice, enforcement bodies should also publish data relating to the Orders that fall within their jurisdiction, via their website.[353] In particular, the Working Party considers that the following data should be recorded and collated:

    a) The number of Orders applied for
    b) The number of Orders granted
    c) The conditions included in the Order
    d) The conduct or offence/s that triggered the imposition of an Order
    e) The average duration of an Order
    f) The number of appeals of Orders
    g) The protected characteristics of the recipient of an Order, including data relating to whether the recipient is neurodiverse and/or the steps taken to ascertain whether the recipient has any protected characteristics or is experiencing vulnerability
    h) The number of breaches of Orders
    i) The conduct that triggered the breach of an Order
    j) The average time between imposition and breach, where breach of an Order occurs
    k) The disposal for breach of an Order
    l) In the context of DAPOs and SPOs, when a victim or representative requests the imposition of an Order, this should also be recorded
    m) In the context of DAPOs and SPOs, when neither an Order nor a charge is issued, the reasons why.
    n) The time taken for courts to draw up Orders and serve Orders. (**para 3.134)**

6. The Home Office must take steps to rationalise the data systems relied upon by the police and/or consider the creation of a specific, central Behavioural Control Order database (**para 3.135**).

The need for a Government led Inter-disciplinary Review

7. The Government should conduct an urgent review of existing Orders. Any review must be multi-disciplinary in nature – either in terms of how it is constituted or in respect of the parties it engages with and takes evidence from (**paras 3.137 – 3.141**).

The Pre-Legislative Stage

8. The Home Office and/or the relevant department must consider the following information when proposing to introduce new Orders and/or to substantially alter

existing Orders. This information should be set out in the Impact Assessments accompanying the relevant Bill or Statutory Instrument. It should also be reflected in the consultation documents.

a) What harm the new Order seeks to address
b) Whether the harm is covered by an existing criminal offence, civil Order and/or Order
c) Where the harm is covered by an existing criminal offence, civil Order, and/or Order, what gap the new Order seeks to address
d) Where the harm is not covered by an existing criminal offence, civil Order, and/or Order, what is it about the harm that requires a new Order, rather than a new criminal offence;
e) What, if any, implications the new Order will have on any existing civil Orders or Orders, e.g., do previous Orders require amendment or repeal to ensure no duplication? Does statutory guidance and training materials for other Orders require updating?
f) Where available, any evidence statement should be supported by statistical data and/or any academic literature or studies that have been relied upon in support of the proposals (**para 4.6**)

9. The Home Office must investigate, and thereafter set out, the costs associated with training, enforcement, and the provision of services to fulfil positive conditions in the Impact Statements that accompany legislation to introduce new Orders. The Home Office should also stipulate how such costs will be met. It must consult with relevant experts across the enforcement bodies to understand the costs associated with enforcement and training and set out how the Home Office intends to address any shortfalls in resources (**para 4.7**).

10. Relevant Department(s) must submit a detailed Human Rights Memorandum to the Joint Committee on Human Rights for the creation of any new Orders and/or when amendments to materially alter existing Orders are proposed (**para 4.10**).

11. The Home Office and/or any relevant Departments must proactively consult a broad range of stakeholders including, but not limited to:

a) frontline organisations and workers;
b) enforcement bodies and in particular, officers who have practical experience of using Orders;
c) victims and those representing the interests of victims;
d) those with lived experience as recipients and those representing the interests of recipients, including legal representatives;
e) the judiciary and;
f) Experts from relevant agencies including social services, mental health, child services, youth justice and experts from third sector organisations.

(**paras 4.14-4.15**).

12. All new Orders, and any amendment which materially alters an existing Order so as to widen its scope, availability and/or standard of proof, should be piloted before becoming permanent in law. Pilots must be conducted in multiple areas so that information on divergent practices can be identified, whilst also assessing the use of Orders relative to different demographics. **(para 4.18)**

13. All pilots should be subject to robust evaluative outcomes, pre-agreed and co-designed with specialist, multi-disciplinary input. These outcomes should capture an array of procedural and access to justice metrics and should be capable of assessing whether Orders have had any substantial impact on protection, prevention, and recidivism and/or any other evaluative outcome that the Home Office or relevant Department pre-determines. The evaluative criteria should be generally applicable across the Order regime, subject to some context-specific variations. Where particular concerns have been addressed during public consultation, these must be monitored and reported on both during and after the pilot. **(paras 4.19 – 4.21)**

The Post-Legislative Stage

14. Parliament should undertake 'post-legislative scrutiny' to determine whether Orders are functioning as intended and propose possible solutions where they are not (**para 4.22**).

15. Post-legislative memoranda be produced for all legislation introducing or materially altering Orders. Post-legislative Memoranda should explicitly refer to concerns raised during the pilots and/or in the ECHR Memoranda. The post-legislative memoranda should then be submitted to the relevant House of Commons Departmental Select Committee, to determine whether a more comprehensive post-legislative inquiry is required to ascertain whether the concerns have been addressed (**para 4.23**).

The Application Stage

16. Those responsible for drafting statutory tests for Orders, should consider it best practice for the tests to be set out, as far as possible, in objective and narrow terms. Where it is considered not possible to do so, owing to the detrimental impact on victims, consideration should be given to wording that can be included within the legislation to mitigate against the imposition of Orders in inappropriate circumstances that extend beyond the intentions of Parliament. **(para 4.27**)

17. Where the imposition of an Order is triggered by the recipient having been convicted of a previous offence, the relevant offences that can trigger an Order should be contained in a Schedule. Consultation with enforcement bodies and

subject matter experts should take place to inform which Offences should be included in the Schedule. Furthermore, where Orders are to be imposed only upon the most "*serious and persistent offenders*", this should be set out explicitly in the legislation and not left for statutory guidance (**para 4.28**)

18. When assessing whether or not to impose a full Order, (e.g., not an Interim Order), enforcement bodies must take into account (and must be prepared to demonstrate to the court how they have taken into account), the following factors, unless there is good reason not to. Good reason includes where the risk of harm to a victim(s), and/or the need to take immediate action to protect the victim(s), negates such an exercise. **(para 4.31 – 4.33)**

19. Enforcement bodies should have local memoranda/protocols in place with a) other enforcement bodies, where relevant and b) appropriate agencies, relating to Behavioural Control Orders. The Home Office, Ministry of Justice, the Association of Police and Crime Commissioners and, where relevant the Department for Levelling Up, Housing and Local Government should liaise to discuss how such protocols/memorandum should be periodically reviewed to ensure consistent approaches across England and Wales and to identify best practice (**para 4.37 – 4.38)**.

At the Hearing

20. As part of any Government-led review, the Home Office should consider rationalising the legislation for Orders to ensure that the statutory tests for all Orders are made consistent with reference to the forward-looking element and/or, where there is variation, that the reasons for the variation are clearly set out and evidenced (**para 4.42**).

21. The factors to be considered by the courts and/or enforcement body, when determining whether an Order should be imposed, should be made consistent and placed on a statutory footing. In particular, the Working Party considers that in their determinations, the court/enforcement body should have due regard to:

    a) The risk posed by the recipient to the public and/or a specific individual;
    b) The likelihood of the Order mitigating and/or preventing that risk;
    c) The conditions to be imposed by the Order, including their practicality and enforceability, taking into account the personal circumstances and characteristics of the recipient;
    d) In the case of on-conviction Orders, the interaction between the Order and any sentence imposed relating to the conviction, including any impact that the latter has on the proportionality of imposing the former. The impact that an Order has on when a conviction will become spent, should also be

considered;

e) The need to tailor any Order to the particular facts of the case (and, in the case of PSPOs, the geographical area); and.
f) At all times the court/enforcement body must have due regard to both the rights of the recipient and the rights of the public/persons to be protected, bearing in mind that in the context of certain Orders, the victims' Article 2 rights may be engaged (**para 4.43**).

22. Guidance for CPNs, PSPOs and DOs sets out requirements relating to the types of evidence that can be relied upon to prove breach in CPN and PSPO cases, as well as the process for disclosing the evidence to recipients, including in writing and not just verbally. The text of CPNs should include wording to advise recipients of their right to request sight of the evidence against them. If in most cases, officers collect evidence to show the behaviour has occurred 'beyond reasonable doubt', this should be reflected as a requirement (**para 4.47**).

23. Enforcement bodies must demonstrate to the court that they have considered the suitability and enforceability of the conditions to be imposed. Where Orders are imposed/enforced outside the court process (e.g., CPNs), the suitability and enforceability of conditions should be set out in writing as part of the investigatory process and signed off by a more senior authorising officer. In the context of PSPOs, evidence on the conditions to be imposed should be set out during the consultation process (**para 4.52**).

24. Before imposing an Order, the court/enforcement body should consider the following:
    a) The conditions should be set out clearly and in a manner capable of being understood and enforced.
    b) The conditions imposed should not go further than is necessary to address the behaviour concerned. Care should be taken to ensure conditions do not contradict one another and are capable of being complied with, taking into account the recipient's individual circumstances.
    c) Where geographical restrictions are sought, regard should be had to the recipient's family and support ties within the relevant area, to ensure that the terms of the Order are not setting recipients up to fail. (**para 4.53**).

    Furthermore, where an Order is sought requiring a recipient to engage with a service or programme, the following should apply:

    a) Programmes designed to form part of positive requirements in Orders should be properly assessed and/or accredited by experts, prior to

recipients being referred to them. Ongoing monitoring and evaluation must take place to ensure that such programmes are of sufficient quality.

b) Where recipients of Orders have engaged with such services, their feedback, along with that of enforcement bodies, support workers and those involved in the running of the programme, should be gathered to assess the ongoing suitability of the programme.

c) Enforcement bodies should demonstrate that they have engaged with, and sought agreement from, all relevant agencies involved in running the programme and ensuring compliance with it, in advance of the condition being imposed and ideally, during the establishment of any protocol or multi-agency arrangements, referred to at para 4.37 above.

d) Terms such as 'engagement', 'participation' and 'attendance' must be clarified with reference to the specific case. This is to ensure that both the recipient and enforcement body understand what is required in terms of compliance and how to monitor it.

e) The Working Party supports recommendations made elsewhere that there should be liaison between Public Health England and the Home Office to establish a national network for people managing positive requirements in Orders, so that data, best practice, and what works can be shared, along with problems encountered. (**para 4.53**)

25. Compliance with time limits contained in the rules must be strictly monitored by the courts. In particular, recipients and defence agents should be given early notice of draft Orders and the conditions which are to be imposed (**para 4.54**).

26. The Home Office, in consultation with relevant stakeholders (including enforcement bodies, practitioners and those representing recipients and victims), should create a standard set of conditions that can be imposed in relation to each Order, albeit still allowing for variations and additional conditions to be added where the particular circumstances of the case require it. This list should be set out in a Compendium or Guidance, or included in the Procedural Rules (**para 4.55**).

The Appeals Process

27. Enforcement bodies should review their processes for communicating to recipients that they have a right to request an informal review of Community Protection Notices. The officer considering submissions from a recipient must be an independent officer, and not one directly involved in the case (e.g., the issuing officer) or with connections to the parties involved. Information about how to submit a written request for review should be included in the CPN itself, along with information on how to appeal to the Magistrates' court using the formal route, providing specific information. (**para 4.58- 4.60)**.

28. The Ministry of Justice and Legal Aid Agency, urgently review and address the availability of legal advice and representation in respect of all hearings regarding Behavioural Control Orders. Specific attention should be directed to the creation and/or expansion of, legal aid duty advice schemes in respect of applications for Behavioural Control Orders. Given the potentially significant criminal outcomes that they have for recipients, the level of legal aid must be revisited to ensure that it is financially viable for those with civil legal aid contracts to represent parties in respect of Behavioural Control Orders. Finally, the Legal Aid Agency should reverse its position that statutory appeals of Public Spaces Protection Orders under s.66 are out of scope **(para 4.63 - 4.64)**.

After an Order Has been Imposed – Ongoing Monitoring

29. When Orders are imposed, a named individual should be responsible for monitoring/supervising a recipient's compliance with the Order and/or responding to practical questions that recipients have in relation to them. In circumstances where Orders are imposed on children, the role of Youth Offending Teams in liaising with recipients and acting as points of contact, should also be explored. Funding must be made available to support ongoing monitoring. **(para 4.67).**

30. The Home Office should provide more information about Orders to members of the public and to recipients generally. This can be facilitated via the creation of a designated web page on Gov.uk that explains what Behavioural Control Orders are. Leaflets setting out key information about Orders in an easily readable and accessible format, along with information about support services, should be provided to recipients when an Order is served on them (**para 4.68**).

The Role of Procedural Rules and Statutory Guidance

31. The Civil Procedure Rules Committee, the Family Procedure Rules Committee, the Criminal Procedure Rules Committee and the Sentencing Council consult with the aim of producing a defined set of Procedural Rules and/or Practice Directions applicable to the imposition of Orders both on complaint and on conviction. In particular, the rules and/or practice directions could include:
    a) Template application forms;
    b) Example conditions;
    c) The role that Directions Hearings play in the process for imposing an Order;
    d) A requirement that the court must inform the recipient, at the first hearing, of the availability of legal aid;
    e) Rules on service of applications;
    f) Rules relating to evidence and the admissibility of hearsay, including

whether or not recipients are able to apply to cross-examine a witness in any given case;

g) Rules on service of Orders;

h) Rules relating to appeal and the ability to apply to vary and discharge an Order, including different conditions contained therein and whether such reviews can be conducted on the papers (**para 4.77**).

Training Needs

32. All enforcement bodies must urgently review the training provided to all officers around the use of Orders. Enforcement bodies should have regard to particular factors when designing training programs (**para 4.83 – 4.84).**

33. For Orders that fall under their jurisdiction, National Police Chiefs Council, in consultation with the College of Policing; and the Local Government Association in consultation with local authorities, should establish Single Points of Contacts/Leads for each Order type to ensure that each enforcement body had a single point of contact/subject matter expert for different types of Behavioural Control Order (**para 4.86-4.88).**

34. The Judicial College should provide magistrates and their legal advisors with mandatory training in relation to Behavioural Control Orders, including specific Orders, and the types of harms (and/or offences) that they are designed to address. This should apply to all newly-appointed judges and require that existing judges attend training periodically and in response to any changes in legislation affecting Behavioural Control Orders. In particular, training should focus on the factors to determine when an Order should be imposed, the interaction of Orders on sentencing and rehabilitation periods, and the appropriateness of conditions and requirements (**para 4.90**).

35. Training providers for legal professionals should create online learning modules relating to Behavioural Control Orders. The training should be developed in partnership with practitioners, those with lived experience and be based on common problems experienced by legal representatives including matters concerning the reliance on hearsay (**para 4.92**).

36. All professionals involved in imposing Orders receive training in relation to identifying vulnerability and supporting those with complex needs (**para 4.93**).

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