



**Include Youth Response to Northern Ireland Housing  
Executive Statement of Policy and Procedures on Anti Social  
Behaviour Consultation Document**

**January 2006**

## **Introduction**

Include Youth promotes best practice with young people at risk of social exclusion. We achieve this through the development and promotion of resources, the provision of training, information and support of practitioners and organisations. We also undertake activities which attempt to influence public policy and public awareness locally and nationally.

Include Youth promotes the development of positive choices and opportunities for vulnerable and challenging young people whether in the community, residential care or custody. Include Youth promotes the use of community alternatives to care and custody for children and young people.

Amongst the young people at risk with whom, and on whose behalf Include Youth works are young people from socially disadvantaged areas, those with a learning disability, those with special needs, those who have been truanting, suspended or expelled from school, those from a care background, those who have had a negative parenting experience, young people who have committed or are at risk of committing crime, misusing drugs or alcohol, undertaking unsafe sexual behaviour or other harmful activities, or of being harmed themselves.

Include Youth runs project called Young Voices, which is a participation project for young people who have been involved or are at risk of becoming involved in the criminal justice system, with the aim of supporting these young people to become involved in decision-making processes which impact upon their lives. Currently the Young Voices project supports young people in two groups – one drawing its members from the Greater Belfast area, and the second based in the Juvenile Justice Centre, Bangor.

## **General Comments**

Include Youth welcomes the opportunity to respond to the Northern Ireland Housing Executive's Consultation on its draft Statement of Policy and Procedures on Anti-Social Behaviour. Whilst the draft Policy deals with the NIHE's approach to tackling anti-social behaviour generally, Include Youth wishes to make a focused response to the issue of proposed use of ASBOs and ABCs, particularly in respect of their use

against children and young people. We wish to state our belief that ASBO's and ABC's are a clear breach of children's rights and the UNCRC and we note the two cases pending in the European Court of Human Rights. We also note the report published on 8 June 2005 by Mr Alvaro Gil-Robles, Commissioner for Human Rights, Council of Europe. We refer to pages 34-37 of same and recommendations 19-23 which are particularly pertinent to this consultation. He states that ASBOs are, "particularly problematic" and states that,

"The ease of obtaining such orders, the broad range of prohibited behaviour, the publicity surrounding their imposition and the serious consequences of breach all give rise to concerns."

We would respectfully submit that the NIHE should give full consideration to this authoritative report before proceeding.

### **Consultation**

Include Youth understands that the draft Policy has been circulated for comment to organisations detailed at Appendix 4 of the consultation document, but it is not clear whether children and young people were directly consulted in the drawing up of this document. Children have a right to be consulted about decisions affecting them (Article 12 UN Convention on the Rights of the Child), and if the policy is to be effective it is important that children and young people are given the opportunity to contribute to the policy process, at all stages.

In addition, Include Youth submits that a version of this draft policy should be produced in forms accessible to children and young people of different ages, telling them about the policy and about how they should expect to be treated by NIHE representatives. We would therefore be grateful if you would forward copies of your child accessible format of this document, and if you could provide us with details of how you have or intend to consult directly with children and young people as the group likely to be most impacted upon by this policy in regards to the implementation of the ASBO's and ABC's procedures. This is essential not only in order to ensure compliance with Section 75 of the Northern Ireland Act 1998 but also to ensure government's compliance with Article 12 of the UNCRC.

We are concerned that the draft policy provides very little mention of the NIHE'S statutory duty to equality as contained in section 75 of the Northern Ireland Act 1998. In respect of the process of consultation the policy omits any mention of how consideration was given to, or consultation undertaken on, issues around section 75. There is no information as to whether a screening exercise has been conducted, as is required by section 75, which we believe should be included in the current document, together with information on the process and outcomes of any screening exercise. In addition, it is our view that this policy will have potential adverse impact on a number of named groups under s75, and therefore requires an equality impact assessment.

Finally in respect of consultation, we would be grateful if you would respond with details of the system which you intend to use to analyse responses to this consultation process including the degree of weight which will be attributed to both individual and organisational responses. This is a vital element to drawing conclusions from responses and progressing with identified areas for immediate action or otherwise. For this reason, we would appreciate information both on the system itself and on its operation for the purposes of analysis.

### **1.3 Policy**

Include Youth recommends that the NIHE Statement should include reference to the Executive's commitment to preventing anti-social behaviour.

### **2.1 Definition**

We note that the statutory definition outlined, which is taken from the Housing (NI) Order 2003, differs from the statutory definition contained in the Anti-social Behaviour (NI) Order 2004. Will both definitions be used by the Housing Executive in its efforts to address anti-social behaviour? Include Youth believes that the definition contained in the 2004 Order is so vague that it may potentially give rise to potential violations under Article 6 of the Human Rights Act 1998. In addition, the list outlined at paragraph 2.1 outlines some acts which constitute criminal behaviour, and as such, we submit should be dealt with under the full rigours of the criminal law. Include Youth believe that having several conflicting definitions is confusing and unhelpful. We recommend that a clear definition is developed by the Housing

Executive in guidance, not only for its officers who would administer the different orders, but also for members of the general public, not to mention those children and young people and their families who may potentially become the subject of an ASBO or ABC, and / or be rendered homeless.

The policy states that this list is ‘illustrative rather than prescriptive’ and that ‘judgement will be exercised by Northern Ireland Housing Officers when considering and responding to a particular report of ant-social behaviour.’ Once again it is unclear as to how housing officers will exercise this ‘judgment’ and we recommend that the NIHE should state very clearly how it intends to ensure consistency of decision making among officers and what training and further guidance is being provided to ensure that decisions are not made arbitrarily. We are concerned about the potential for the arbitrary application of sanctions, which has happened in England with some areas recording very high figures of ASBOs whilst others have comparatively few(e.g. Greater Manchester which in the first six months of 2004, saw 155 people become subject to an ASBO compared with just 27 in Merseyside: Home Office Statistics 1 April 1999 – 31 March 2004, Issued September 2004)

## **2.2 Strategic Context**

Whilst the draft policy makes reference to the Human Rights Act 1998 and NI Act 1998, we recommend that more detail be expressly included in the Statement. The points relating to the equality duty have already been raised, however, there are also significant human rights and children’s rights issues given rise to in this draft policy, which we recommend must be clearly articulated in the document. The NIHE clearly accept that ASBO’s and ABC’s will be used against children and young people yet there is nothing in the policy or procedures to indicate that they envisage putting any protections in place to ensure compliance with the United Nations Convention on the Rights of the Child and other relevant international instruments the Human Rights Act and section 75 of the Northern Ireland Act. This is extremely worrying given the grave implications for a child or young person who is the subject of an ASBO or ABC.

### **2.3 Our Approach to Anti Social Behaviour**

Include Youth believes, as earlier stated that the NIHE should adopt a preventative approach to anti-social behaviour, and that this should be expressly stated at the beginning of this paragraph, in addition to being more fully outlined at paragraph 2.9 of the document.

We note with concern that the draft policy does not contain a commitment that ASBOs will be used only as a measure of last resort. We believe that ASBOs should only ever be sought as a last resort and never against children and we recommend that the NIHE amend this draft Statement of policy and procedures accordingly.

In addition, we recommend that the NIHE should include reference in this paragraph to preventative, diversionary and other support services which it can make available to alleged perpetrators of anti-social behaviour, particularly where this is a child who may be in vulnerable and in need of help. Furthermore, whilst dealing with children who engage in anti-social behaviour is mentioned later in the draft Statement, we recommend that the NIHE state in this paragraph its commitment to working in a multi-disciplinary way to ensure that any child in need or at risk who the Housing Executive has concerns about in relation to their alleged behaviour, can access quickly the services they need and to which they are entitled.

### **Community Safety Team**

Include Youth suggests that this section be extended to include reference to the Community Safety Team's role within the multi-disciplinary approach which the Housing Executive have more fully outlined at paragraph 2.11 of the consultation document.

### **2.4 Obligation of Tenants**

Include Youth is somewhat concerned that while this paragraph outlines tenant's obligations, there is no concomitant commitment by the Housing Executive to give support and advice to the complainant and/or witnesses. Given that the definition of anti-social behaviour is so broad and vague, a determination of behaviour as 'anti-social' is so subjective and the implications for families with a member or visitor to the household found to be acting in an anti-social manner so onerous, it is vital that

support and advice is provided to the family who are in grave danger of losing their home. In terms of the obligations of tenants, it is essential that all tenants are fully informed about their obligations, the implications for them if found guilty of anti-social behaviour and what constitutes anti-social behaviour, and we recommend that such commitment to inform tenants, private tenants and owner-occupiers is clearly stated in this policy.

We are concerned with the last sentence in this paragraph, which states that ‘anyone who has been involved in anti-social behaviour may find they are ineligible for housing and homelessness assistance in the future’ and the fact that ‘the tenant is responsible for the behaviour of every person (including children) living in or visiting the tenants home...’ We believe that this is extremely onerous and potentially disproportionate, especially when this effectively means that children can be made homeless by the state, given that the NIHE is the largest provider of housing in Northern Ireland and someone in a family unit may find themselves homeless and ineligible for any assistance as a result of the actions of a family member or even a visitor to the family home. This may also pose further problems for such children and their family, in terms of accessing services to which they have a right, such as education, healthcare, social services, and homeless children, we submit, also presents a very significant child protection risk.

This issue also is relevant to care-experienced young people who are making the transition to independent living. It is well documented that this transitional period is a particularly vulnerable time in the lives of looked after children, and they can often be easily influenced and susceptible to abuse or being taken advantage of. They could be particularly vulnerable to having tenancy rights removed. It is essential that these children are supported to successfully navigate their way through this very vulnerable period in their lives – and we submit the Housing Executive has, with other partners, a key role to play in this regard. Therefore, it is important that the Supporting People Strategy is included in this section, and that such vulnerable children do not fall foul of this provision which could render them homeless.

In addition, it is important in this paragraph to include a commitment within the Housing Executive to explain to all tenants, and their family, what the law is in

regards to anti-social behaviour, and what the consequences will be. It is crucial that any explanation is delivered in a manner which is appropriate to the age and understanding of those to whom it is being made, also having regard to the particular needs of other groups within the context of section 75. Children and young people have been disproportionately adversely affected by the implementation of ASBO legislation in England and Wales. We submit that there is a duty on government and all partners who have responsibility for tackling anti-social behaviour, including the NIHE, to take all reasonable steps to ensure that children and young people are informed about what constitutes anti-social behaviour, how serious it is to be involved in such behaviour – not only for themselves but for their entire family.

It is also essential that ASBOs are not used against anyone who has a mental health problem or a learning disability. In England and Wales, recent research by the British Institute for Brain Injured Children found that between April 04 – April 05, 35% of children who were subject to an ASBO had a diagnosed mental health disorder or a recognised learning difficulty – with the majority diagnosed with ADHD, others having Tourette Syndrome, conduct disorders, emotional behavioural difficulties, depression. (*Young People with Learning and Communication Difficulties and Anti-social Behaviour*, November 2005) Clearly such children require and have a right to receive services and support from the state – it is a clear violation of children's rights and an indictment on our society that the state is potentially criminalising these children by serving them with ASBOs.

Include Youth's Young Voices project has in partnership with Children's Express and Challenge for Youth, produced an information leaflet and poster outlining the main provisions in the ASBO legislation, which we have circulated widely to young people at risk or involved with the criminal justice system. In addition, our Young Voices worker has delivered over 30 ASBO Information workshops to young people at risk across Northern Ireland – and on almost every occasion this was the first time these young people had had a chance to learn anything about this subject. We recommend that this policy is amended to include details of what steps the NIHE are taking to address this issue and fulfil their duty to inform young people of this very serious issue in an accessible manner.

## **2.6 Professional Witnesses**

We note with concern that the use of professional witnesses is proposed to introduce hearsay evidence, which we believe contravenes human rights (Article 6 ECHR as incorporated in the HRA 1998) and children's rights standards and conventions. Include Youth is opposed to the use of professional witnesses in ASBO cases, which permit the introduction of anonymised hearsay evidence, and which remove the alleged perpetrator from his right to due process – i.e. his right to test the veracity of the evidence before the court, by way of cross-examination. However, in order to more fully comment on this proposed course of action by the Housing Executive, we would request that further information be provided on the parameters of suggested usage – some questions which occur on current information as provided in the consultation document include: when will professional witnesses be used; what criteria will be applied and who will make this decision as to when they will be used; in what circumstances will 'officers from statutory agencies' be used as is envisaged at paragraph 2.6; and perhaps more pressing, is the question of what other personnel do the Housing Executive envisage taking on this role, and how will this be 'quality controlled.' We would as a very minimum requirement recommend that clear guidance is produced in respect of this matter and fully consulted upon, in line with section 75 obligations.

## **2.8 Domestic Violence**

Whilst we commend the Housing Executive for its stated commitment to 'working in partnership with a range of statutory and voluntary agencies to address all aspects of domestic violence' we believe that this part of the Statement must include express reference to current multi-agency strategic and policy initiatives addressing the issue of domestic violence across Northern Ireland. Include Youth's experience suggests that sometimes children and young people who are living in violent households, will stay away from their homes until late at night, to avoid either witnessing or being subjected to violence. Whereas this is clearly a child protection matter, often these children are perceived by members of their community as perpetrating acts of anti-social behaviour. Children in need or at risk who exhibit difficult or challenging behaviour, need and have a right to services and support which will help address any problems which they may be living with. Serving such children with an ASBO, the

breach of which will fast-track them into the criminal justice system, is clearly not the answer. Include Youth believes strongly that this policy Statement must make these connections.

## **2.9 Prevention of Anti-social Behaviour**

Include Youth is pleased to see a section in the draft Statement of policy and procedures on Anti-social Behaviour focused on Prevention. We believe that this paragraph should link with paragraph 2.4, recognising the importance of clearly and fully explaining to new tenants from the outset of a tenancy, what their obligations are, what the potential consequences of their actions could be, and what preventative measures are in place by the NIHE. In particular, we recommend that support services available are clearly included in this section, outlined to tenants.

With regard to the proposed use of **Warning Letters**, we note that the policy states that the use of these letters be considered at an early stage, indicating that such warnings may not necessarily be issued in every case. Include Youth believes that further guidance is required to clearly show how this decision will be made. Within this we further recommend that such warning letters be issued in person so that they can be explained, particularly when a notice is being served on a child or young person. It has been our experience that young people at risk may quite often have low educational attainment, and may have literacy problems; in addition they may have a learning disability, or on-going mental health issues, all of which make it essential that time is spent with the individual young person to explain the gravity of the situation and offer support in a manner which is understood by the young person. In our respectful view, we submit that Housing Officers must undergo training to equip them to fulfil this crucial role.

With regard to **Acceptable Behaviour Contracts**, the policy states that a model for the delivery of ABC's is currently being developed. We feel that we must urge the NIHE to be extremely cautious about the use of ABC's, particularly as they are voluntary agreements but in England and Wales, that the fact that a child or young person has been subject to an ABC can be used in evidence when applying for an ASBO and also if a person refuses to engage in the process this can be documented and can be used as evidence in ASBO applications. Recent research by the BIBIC

found that 74% of children who were subject to ASBOs had previously failed to meet conditions imposed by an ABC. (November 2005) In the Northern Ireland context, recent draft proposals made by the PSNI - Draft Procedures and Guidance on ASBO's and ABC's, October 2005 - have suggested replicating this approach. As ABC's are allegedly voluntary agreements, their proposed use in securing ASBOs, which could lead to criminal prosecution, raise human rights concerns. We are concerned at the proposed use of ABCs with children under the age of 10, the age of criminal responsibility, through the mechanism of parental control agreements. Whilst there is no doubt that children under the age of criminal responsibility may require support to help them deal with problematic behaviour – including understanding and addressing the underlying causes – our concern arises due to the evidential link to ASBOs outlined above, and the fact that ASBOs carry a criminal sanction upon breach. We are deeply opposed to any steps to informally lower the age of criminal responsibility, and would seek assurances from the NIHE that in no circumstances will this be the case. We also pose the question whether in delivering these parental control agreements will criminal justice agencies be involved with young people under the age of 10 years of age? Include Youth suggest that in developing the model for delivery of ABCs, the Community Safety Team ensures takes advice to ensure that the NIHE is fully compliant with Article 6 of the ECHR – the right to a fair trial. In addition, we look forward to this ABC policy being fully consulted upon in line with section 75.

We are pleased to note the NIHE's reiteration in this draft policy of the Executive's Corporate Plan, which acknowledges that 'the problems some communities face are complex and whilst no single solution can tackle these effectively equally no single agency can meet these challenges on its own.' We are pleased to further see in this draft policy articulate a Multi-agency Partnership approach to addressing anti-social behaviour. We note that the policy addresses this issue in two separate places, (2.9 and 2.11) – perhaps it would be useful to merge these into one piece, or at least to cross-reference the sections.

At 2.9 we note that partnership 'facilitates discussion...to provide a comprehensive assessment of and individual's problem behaviour' between relevant authorities such as PBNI, Health and Social Services, Youth Justice and Education Welfare, which

also ‘provides the opportunity to refer the individual to an appropriate agency for support, diversion or another early intervention.’ We are pleased to see these statutory agencies expressly included in the statement, as, in the context of working with young people at risk, it is well established that a holistic approach to meeting their needs is most effective. In addition, these together with a range of agencies from the voluntary and community sector have developed a wealth of knowledge, skills and expertise in engaging with and providing services and support to young people at risk. Include Youth would suggest that reference is therefore also made to the positive contribution to be made to multi-agency partnership working by the voluntary and community sector in this paragraph.

### **2.13 Information Sharing Protocol**

Include Youth recommends that this paragraph should be amended to state that personal data will be disclosed/shared only when absolutely necessary and then shared discreetly and the minimum information disclosed to protect the rights of the individual about whom personal data is being shared.

### **2.14 Sharing Information with Tenants and the Wider Community**

Include Youth is extremely concerned with the statement in the draft policy stating that: ‘Publicity will be determined on a case by case basis and in liaison with the Housing Executive’s Information Department... In the case of Anti Social Behaviour Orders a decision need to be made whether or not to publicise the personal information of those who are the subject of an ASBO needs to be made. It is therefore necessary to balance the human rights of individuals subject to an ASBO against those of the community as a whole when considering publicising Anti Social Behaviour Orders.’

We do not believe that there are any situations where the safety or human rights of a child can be ever balanced with the ‘benefits’ of publicly identifying that child. Enormous child protection concerns are raised by these provisions, which potentially expose vulnerable children to paedophiles or other predatory adults, and in the Northern Ireland context may place children at increased risk of paramilitary attack. During the period 1<sup>st</sup> April 2003 – 1<sup>st</sup> April 2004, 13 children were shot and 25 assaulted by non-state forces for allegedly engaging in anti-social behaviour. (Central

Statistics Unit, PSNI) Considering publicity in the case of a child, may we submit, breach both the UNCRC (Articles 3,6,16, 37) and ECHR (Articles 2 and 3). All other types of cases involving children prohibit the use of publicity, and we submit that this should be no different in relation to applications for ASBOs. Include Youth therefore strongly recommends that the NIHE adopts a clearly stated policy that they will not in any circumstances challenge an application for the imposition of reporting restrictions and make a young person's personal information public in the context of an ASBO, and that the policy and procedures be amended to reflect this.

### **2.15 Confidentiality**

We are concerned to note that information will be disclosed by the NIHE to other parties with the complainant's consent. We would point out that this is 'alleged' anti-social behaviour, and that no provision has been made to seek the consent or otherwise of the person against whom the allegation has been made. The balance appears to be very firmly weighted towards the complainant, while the alleged perpetrator can have the application for an ASBO granted against her/him while relying on hearsay evidence, using "professional witnesses."

### **2.19 Training of Staff in Dealing with Anti-social Behaviour**

In respect of training, we recommend that all NIHE staff which are coming into contact with members of the community are trained not only in the legislation and policies and procedures, but also receive children's rights training, and in particular training around issues and working with children at risk. In addition, it is essential that high quality training is delivered to all NIHE staff on the UNCRC, the Human Rights Act, section 75 of the Northern Ireland Act in the context of the implementation of the ASBO policy and procedures. Training will be required to ensure consistency of decision making and procedural fairness. Training needs must be kept under review and continually adapted to meet the changing needs.

### **2.20 Information on Other Relevant Policies**

Once again in this section reference is made to a vague and subjective term 'unacceptable behaviour', which does not appear elsewhere in the draft policy. We believe this to be very confusing and unhelpful and reiterate our recommendation to have a clear and coherent definition, which is communicated effectively to the public.

Whilst we welcome the commitment to consultation with NIHE tenants we are unsure as to the level of participation of children and young people in these processes. Children and young people should be central to this consultation to ensure that their voices are heard and that their views influence the debate around the use of ASBO's and ABC's in line with Article 12 of the UNCRC and section 75 of the Northern Ireland Act. This is especially important as children and young people are the group most likely to be affected by the implementation of this policy and procedures as the child's right to housing should be the paramount consideration.

## **PART 2 – PROCEDURES**

Include Youth believe that more information is required in this section, particularly in relation to the use of ASBOs.

### **Stage 3 - Preliminary Information Gathering**

Bullet point 3 should be amended to state that the age, as well as the vulnerability and special needs of the alleged perpetrator will be taken into consideration in determining how to deal with cases.

We are concerned that the draft procedures appear to illustrate a process which is weighted in favour of the complainant, and appears to presume guilt of the alleged perpetrator, thereby undermining the investigation process as a result. For example, we are concerned with the phrase 'individuals involved in the anti-social behaviour' – there is no acknowledgment of a presumption of innocence – and we recommend that this be amended to include the word 'allegedly'. Moreover, the draft policy provides for the complainant to receive on-going contact with the NIHE during the course of an investigation, whilst simultaneously the Housing Executive will be checking the tenure of the alleged perpetrator, any house sale application and house selection scheme/transfer application. The NIHE does not undertake to offer any support to the alleged perpetrator, despite the fact that it may be a child or young person. We are concerned that references made in the draft procedures to NIHE staff making 'attempts' to contact the alleged perpetrator, do not go far enough, and contrasts with the commitment to support the complainant and keep her/him informed at every stage of the process. We strongly recommend that, in the interests of procedural fairness,

the draft policy be amended at Stage 5 to ensure that on no occasion should the NIHE decide to proceed with a course of action in respect of an allegation of anti-social behaviour, without having first made contact, interviewed the alleged perpetrator and conducted a thorough investigation. By contrast, the procedures undertake to maintain regular contact with witness/es and advise on case development, explain the court process to witness/es, ensure all witness/es are advised of time, date and location of hearing and make any arrangements to ensure the witness/es attendance at the court hearing. Include Youth strongly recommends that this situation be remedied to ensure procedural fairness and due process.

### **Conclusion**

Include Youth welcomes the Northern Ireland Housing Executive's consultation on the Draft Statement of Policy and Procedures on Anti-Social Behaviour. We wish to re-state our deep opposition to the NIHE taking forward applications for ASBOs or progressing ABCs in this jurisdiction. Despite the experience in England and Wales that these orders will disproportionately impact upon children and young people, we are concerned that the draft policy and procedures fail to demonstrate a commitment to children and young people – in terms of providing support, information, awareness raising and ensuring understanding. We are concerned that the equality and human rights implications of the draft policy have not been given sufficient consideration, and recommend that the draft policy be amended accordingly.

We hope that our comments have been constructive, useful and will contribute to the further development of this process. To that end, we are more than happy to meet with you to discuss anything in this response. We wish to be kept fully informed of progress in the development of the NIHE's Statement of Policy and Procedures on Anti-social Behaviour, and look forward to the issues raised and recommendations made in this response being addressed, taken forward by the NIHE and hearing from the NIHE in the near future. We also look forward to receiving your response to the questions we have asked in the response and receiving the additional information requested including the child accessible version of this consultation document. In addition, we would be grateful to receive a copy of your analysis of responses when same becomes available.