

Birmingham City Council Birmingham Community Safety Partnership

Submission to the Street Weapons Commission “Innovative use of Civil Powers”

Background

One of the objectives of the City Council is to help protect Birmingham’s citizens from various harms and to develop an environment for a safe city and where all its citizens feel safe.

By using the Civil Justice System to control alleged perpetrators whose activity endangers Birmingham’s citizens, the Community Safety Partnership has been able to tackle serious offending in situations where the Crown Prosecution Service (CPS) have been unable to prosecute. By applying to the courts for a civil injunction or other civil order, the City Council has been able to prevent continued offending, and assist the management of offenders involved with gangs and guns, street prostitution, aggressive begging, domestic violence, environmental crime, illegal money lending and hate crime.

This ground-breaking and country-leading innovation is being led by David Tatlow, Assistant Director (Legal Services) and Feizal Hajat, Principal Lawyer (Community Safety Team). Civil proceedings are being used to tackle serious offending where evidential difficulties preclude against the use of criminal proceedings.

Traditionally, it is the police who institute proceedings in the criminal courts for breaches of the criminal law in liaison with the Crown Prosecution Service (CPS). While local authorities and other statutory enforcement agencies also have significant responsibilities for law enforcement in the criminal courts, this does not usually extend to prosecutions in respect of public order offences and criminal behaviour that endangers the well-being of families and communities. However, on all too many occasions offenders cannot be brought before the criminal courts either because the available evidence is insufficient having regard to the high standard of proof required (guilt to be proven “beyond all reasonable doubt”) or because victims or witnesses will not come forward. It is against this background that the Community Safety Partnership in Birmingham is seeking to use of the Civil Justice System, obtaining orders that seek to control the behaviour of those who threaten the well-being of communities.

The Serial Rapist

A recent example of how this approach is used relates to tackling an alleged serial rapist when the police had been unable to secure sufficient evidence to bring a criminal prosecution. The frequent presence of the alleged offender in the area concerned had led to witnesses being unwilling or fearful of coming forward with evidence.

In this case, a man was suspected of raping a number of prostitutes in a certain area of Birmingham. Some evidence existed but not sufficient for the CPS to prosecute. Clearly, fears remained that the offending would continue. The City Council successfully applied for a civil injunction, preventing the alleged offender from entering the area. This required that we demonstrate that the individual was 'probably' the offender, and there was sufficient evidence to do this. With the help of the Police, the injunction was not breached.

The two main reasons for the injunction application were to prevent re-offending and to provide confidence to witnesses so that they might come forward. Offending ceased and witnesses began talking with police officers. Clearly, the case described is a very serious matter indeed, and one in which Birmingham's citizens can rightly expect adequate protection. However, in this case, the criminal law was impotent to help. Working together with the Police and other agencies, the City Council was able to use the civil law to bridge the gap. This innovative and ground-breaking approach provided the necessary protection.

As a result of witnesses coming forward following the issuing of the injunction, the necessary evidence to bring a criminal prosecution was provided. The CPS was able to prosecute and secured criminal convictions for rape and other offences and the offender received a long custodial sentence.

"I am extremely grateful for the manner in which this concern was shared by the Birmingham Community Safety Partnership and in particular highlight to you the work of your staff to whom I extend particular praise".

Quotation taken from a letter to Stephen Hughes, Chief Executive of Birmingham City Council from Anil Patani, Assistant Chief Constable, West Midlands Police.

Gangs and Guns

From 2006 the Partnership has further developed the use of civil injunctions to protect the people of Birmingham through the tackling of violent armed gangs. Gangs and guns have become a problem in many inner city areas and it had become clear that this was also becoming a problem in Birmingham in a number of isolated neighbourhoods. It was vital that the problem was tackled early on to prevent it getting worse, but the CPS again lacked the evidence it needed to prosecute individuals for criminal offences.

Some 50 Civil Orders and Injunctions have now been successfully obtained, firstly to control gang membership through measures such as preventing contact between known gang members and, secondly, to require gang members to choose between continuing their current lifestyle or exit with new and developing support systems.

Together with the use of Anti-Social Behaviour Orders to tackle serious anti-social behaviour, civil injunctions are a major tool in delivering protection to people in the city. This work also makes a positive contribution to the success of the Birmingham Community Safety Partnership.

However this particular focus of our work, vital though it is to the communities affected in the city has now been judicially criticised by the County Court in Birmingham. We are now appealing this adverse decision to the Court of Appeal and have been given an early hearing date (June). Simplistically, the County Court decision now (after granting the Council some 50 Orders) finds the application for civil orders unlawful in that appropriate remedial action is to be found within the Criminal Courts; however we will continue to argue that we are not seeking to criminalise perpetrators, which is rightly within the proper jurisdiction of the Criminal Justice System but rather attempting to find new ways to protect communities and to manage – not punish – those who destabilise and harm communities within the city.

Domestic Violence

Partnership with the West Midlands Police has also opened up the possibility of much closer co-operation with legal enforcement action in respect of domestic violence. An inter-agency Partnership Group, including the Council, Police, Birmingham Women's Aid and the Women's Advice and Information Centre, has been established to handle cases appropriate for civil action.

Both the police and the voluntary sector organisations have expressed particular interest in this development as it raises the possibility of effective action in a number of difficult cases where criminal prosecution has proved impossible. Some 50 cases have now been, or are being, taken to court by the Council on behalf of the Community Safety Partnership – all successfully.

From the outset the Partnership has upheld the primacy of the Criminal Justice System where prosecution is possible and has taken particular care to ensure that issues of confidentiality, data protection and the safety of women affected and children of the family are fully considered.

The number of domestic violence cases with the police, but which cannot be brought before the criminal courts, is very considerable and the use of civil orders in appropriate cases is now being used. Perpetrators are being held to account and injunction orders obtained to protect the women and children affected – men as well although this is much less common. If court orders are breached – and some have been – then perpetrators are liable to be, and have been, sent to prison for contempt of court.

Women and families affected will take individual civil action using the courts, often with the support of private law firms, where they feel able to do so. However all too often those affected feel powerless and unable to take legal action themselves. In appropriate cases therefore the Council, in partnership, is pioneering a new form of civil action. It will be the name of the Council, not those affected, which appears on the court papers. It is the Council bringing the legal action against perpetrators on behalf of woman affected, children, and families and indeed also on behalf of the wider community.

Ongoing Impact / Offender Management

2007 has, however, seen some of the greatest advancement in this work and has led to the Department getting involved in some of the most high profile community problems in the City including drugs and alcohol related crime, public place wounding, and, given the necessary funding the Partnership wishes to extend this new form of offender or pre-offender management to a wider range of criminal and anti-social activity including hate crime that harms our communities.

Partnerships have been formed with other statutory agencies and third sector organisations to use Civil Orders not only to protect communities from harm, but to address the causes of that harm. In the context of

domestic violence, with the help of Women's Aid, women affected have been offered both emotional and practical support. In the case of gun and knife crime, together with the Police, Youth Offending Team, Probation and Community Groups, efforts are being co-ordinated to provide services for young men to help them exit gang life.

Value for Money

This rapidly developing work clearly has to operate within the financial constraints often associated with the work of local authorities and it is vital that these innovative strategies are founded on excellent value for money. We have achieved this in a number of ways. Firstly, we have worked in partnership and pooled resources; secondly we have recruited and trained our own internal team of solicitors and barristers, and secured an arrangement with a barristers' chambers whereby we offer short-term seats to pupils and newly qualified barristers at a reasonable agreed fixed rate. This has all meant that we have been able to focus the available financial resources at the maximum number of issues possible.

Way Forward

Use of the Criminal Justice System by the police and crown prosecution service remains of primary importance but all too often there is insufficient evidence to mount a criminal prosecution and families and communities remain unprotected. In these circumstances Birmingham City Council, in partnership, has intervened using the Civil Justice System against perpetrators with the twin key objectives of safeguarding families and communities and, in the process, deflecting perpetrators from their criminal and anti-social activities.

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