Anti-social Behaviour, Crime and Policing Bill

Quotes from Lords Second Reading Debate, 29 October 2013

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Baroness Smith of Basildon (Labour Spokesman)

"For an ASBO to be issued it had to be considered necessary to protect members of the public from harassment, alarm or distress. The new IPNA can be issued where behaviour is, "capable of causing nuisance or annoyance to any person". The court has only to be convinced that this would be just and convenient on the balance of probabilities. That is a low-level test." (column 1488)

Lord Beecham (Labour Spokesman)

"Moreover, the shift in the case of these new injunction proceedings, from the need to show that an order is necessary and proportionate to what is just and convenient, is deemed by the Joint Committee to be incompatible with the European Convention on Human Rights, not least because the injunction procedures apply to cases where the conduct complained of is, "capable of causing nuisance or annoyance to any person". We have heard that phrase used before tonight. It is a loose, unsatisfactory and highly subjective test." (Column 1500)

Lord Hope of Craighead (Crossbench – former Deputy President of the Supreme Court)

"My Lords, I wish to speak briefly on two issues. The first relates to Part 1 and in particular to the threshold that Clause 1 sets regarding the power to grant an injunction under it. The second issue relates to the test in Part 13 regarding compensation for miscarriages of justice under Clause 151. Of the two, the first issue is much the most important because Clause 1 will enable a court to grant an injunction against a person aged as young as 10, and because of what the breach of such an injunction, whatever the person's age, may lead to." (column 1517)

Speaking on the threshold that appears in subsection 1(2): "Every word used here to describe what the person has been doing, or is threatening to do, is important. We find the words "conduct capable of causing", "nuisance or annoyance" and "to any person". Contrast that phrase "nuisance or annoyance" with "harassment, alarm or distress". Why is the threshold being reduced so much? Will the Minister explain the problem that has led to the decision to do this? It is a very significant reduction, let there be no doubt. I have searched the case law over the past 50 years as much as I can, for some guidance as to what a court would be likely to make of this formula. Most cases where the issue has arisen are about noise: shouting, banging doors, loud quarrels between people. However, it does not have to reach a very high level to fall within the expression "nuisance or annoyance". Those two words, "nuisance" and "annoyance", are put together as if they are a reasonably high threshold. However, the two words mean the same thing; putting the two together does not add anything. That which is a nuisance will annoy, and that which annoys will be a nuisance. Let us face the fact that this clause is simply dealing with people who are thought to be a nuisance." (Column 1518)

"What then of the formula used here, of, "conduct capable of causing nuisance or annoyance", and the words "to any person"? Even the best behaved children are often noisy. Are children whose noise when playing wakes up people who have to sleep during the daytime to be exposed this regime? I cannot believe that the Minister really intends that. If that it is so, surely that should be made clear. Even injecting "serious" into the phrase would help to some extent, but surely it would be far better to retain the ASBO formula unless something is demonstrably wrong with it. Indeed, we find it used in Clause 21(3) for criminal behaviour orders. At the very least, an explanation will be needed in Committee as to exactly why the threshold is being so drastically reduced." (column 1519)

Lord Dholakia (Deputy Leader of Liberal Democrat Peers)

"Although I consider the orders a distinct improvement on the ASBO, I have some reservations about the details—these can be considered in Committee. We should reconsider whether the new injunction should be available for conduct which merely causes nuisance or annoyance rather than the stronger test of harassment, alarm, or distress which applies to the ASBO." (Column 1512)

Lord Hylton (Crossbench)

Referring to the subjective nature of the word 'annoying conduct': "what is annoying to one person will seem quite ordinary to another. The new injunctions replacing ASBOs will have a lower threshold, going wider than causing "harassment, alarm or distress", and a lower standard of proof. This has already been criticised by the Home Affairs Select Committee and the Joint Committee on Human Rights and even by the Association of Chief Police Officers. The new powers should be examined to ensure they are grounded in necessity and not just in convenience. The Government should turn their mind to the standard of proof and to the apparent lack of a defence of reasonableness." (column 1527)

Baroness Stern (Crossbench)

"I refer specifically here to Parts 1 to 6, in so far as they affect those who are under 18—children, teenagers and adolescents. Clause 1 is striking. The Government propose that the full majesty of the law should be invoked and an injunction imposed on a 10 year-old child if that child is engaged or threatens to engage in, "conduct capable of causing nuisance or annoyance to any person", and that it is "just and convenient" to grant the injunction to prevent the child carrying on with the threats to cause nuisance and annoyance. Liberty describes that power as "breathtakingly wide". I am very grateful to the noble and learned Lord, Lord Hope, for his forensic demolition of those powers, which I am sure that the Minister found very helpful." (column 1530)

Baroness Kennedy of The Shaws QC (Labour)

"Some aspects of it may seem to be an improvement but there is a real problem when you have something that is so ill-defined. At least with the ASBO as created by Labour the law required you to have caused or been likely to cause harassment, alarm or distress, whereas this new law says that you just need to be capable of causing nuisance or annoyance. This House is full of people capable of causing nuisance or annoyance, and long may it be so."

"I am therefore very concerned about this new invention, and I am not sure that it is a very real improvement. What is even worse is that the test will be that the police think that the injunction is just and convenient, and that it will be on the balance of probabilities whether a person might be a nuisance or not. The conception of the provision is flawed and I hope that we will test it hard in this House." (Column 1540)

Baroness Linklater of Butterstone (Liberal Democrat)

"However, the crux of the Bill revolves around the new definition of anti-social behaviour. Hitherto, it has been defined as that which is likely to cause "harassment, alarm or distress". That is pretty clear and it has formed the basis of an order. It is now, as we have heard from several speakers, to be replaced by a new injunction, addressing instead, "conduct capable of causing nuisance or annoyance to any person"— just "capable". This IPNA, an injunction to prevent nuisance and annoyance, clearly has a far wider, open-ended definition, which, as the Home Affairs Select Committee has stated, "is far too broad and could be applied even if there were no actual nuisance or annoyance whatsoever". (column 1543)

Lord Dear (Crossbench, former Chief Constable and HM Inspector of Constabulary)

"Are there any compelling reasons why we should redraft sections of that Act? Is there anything that cannot be addressed by changes in policing practice, better targeted policing and embracing to better effect the other statutory services? I will not go on at great length as much of what I had planned to say, inevitably at this late stage, has been said but I, too, am concerned about the imprecise wording which, as we have heard, has already been criticised by Justice, Liberty, the Home Affairs Committee, the Joint Committee on Human Rights and others." (column 1553)

"I have a distinct feeling of déjà vu in connection with the words "nuisance " and "annoyance", because it is almost exactly a year ago that I stood on the Floor of the Chamber to talk about an amendment that I had tabled to remove the word "insulting" from Section 5 of the Public Order Act 1986. Noble Lords might remember,if they were there, that that section criminalised, "threatening, abusive or insulting ... behaviour" . "Threatening" is no problem, "abusive" is no problem, but the definition of "insulting" had been widely abused for many years. It was used by vindictive complainants to urge the police to take action when otherwise they would not, and by over-zealous police officers to deal with something that could have been dealt with by the exercise of common sense. Whether or not the individual went to court, it had a distinct chilling effect on the exercise of free speech. The amendment was whipped against, but it was solidly backed by many Members of your Lordships' House, and was carried by a substantial majority." (column 1554)

Lord Marks of Henley-on-Thames (Liberal Democrat Spokesman)

"The threshold conduct required for an order is both too trivial and too ill defined. The phrase: "Conduct capable of causing nuisance or annoyance to any person", could cover almost anything, as many noble Lords have pointed out. Speaking for too long in this Chamber would clearly suffice. The noble Lord, Lord Dear, is absolutely right to draw the comparison with insulting words and behaviour. Conduct should not qualify unless it actually causes or at least is likely to cause—not is merely capable of causing—harassment, alarm or distress, not merely nuisance or annoyance to any person."(column 1561)

"The second condition for the grant of an injunction in Clause 1, that it should be, "just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour", involves a very low hurdle, which risks encouraging courts to grant such injunctions far too readily. When a statutory test like this is both insufficiently demanding and poorly defined, implementation is likely to be far too variable, both geographically and over time, so that reasonable uniformity and predictability are unattainable." (column 1561)

Lord Rosser (Labour Spokesman)

"We will need to look at what will be regarded as behaviour capable of causing nuisance or annoyance. Some people seem to find the decisions of a referee at a football match annoying, and it is not unknown for some landowners to regard walkers on a footpath through one of their fields as a nuisance." (Column 1565)

"Different people will interpret generalised or ambiguous wording in a different way. There does seem to be a clear message being given by the change in the criteria from behaviour causing, or being likely to cause, harassment, alarm or distress, as at present for an anti-social behaviour order, to behaviour causing nuisance or annoyance for the new IPNA, and in the change in the burden of proof from beyond reasonable doubt to balance of probabilities. That message is surely that the Government want much more behaviour—some would say including normal behaviour of many young people—to be liable to be caught under the terms of the IPNA with a much lower threshold necessary to establish and prove the case." (column 1566)

Lord Taylor of Holbeach (Conservative, Home Office minister)

"The nuisance and annoyance test is based on the current statutory test, which has worked well in the housing sector since 1996. It is readily understood by the courts and it will allow agencies to act quickly to protect victims and communities from more serious harm developing. This test was reaffirmed by the previous Government in the ASB legislation passed in 2003. So it is not a new test." (column 1568)

"We must not lose sight of the needs of victims of anti-social behaviour. I wholeheartedly agree, and this view has been widely expressed by noble Lords around the House. The test for the injunction will ensure that swift action can be taken if it is needed." (column 1568-1569)
