

ASBOS

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Contents:

- i) About this document
- ii) What is an ASBO?
- iii) Relevant Legislation
- iv) Figures
- v) What can an ASBO be awarded for?
- vi) What are ASBOs awarded for in practice?
- vii) How can ASBOs be awarded & the definition of 'Anti-social behaviour'?
- viii) Penalties for breach
- ix) ASBOs, Publicity and Young People
- x) The language of ASB.
- xi) Comments and Conclusion



i) About this document

This document gives an outline of the law relating to ASBOs (Anti Social Behaviour Orders). It is not (by any measure) intended for legal purposes - it simply provides a top-level outline of the relevant measures relating to ASBOs.

It also contains some of the more obvious criticisms of this legalisation, in section xi).

ii) What is an ASBO?

An Anti-social behaviour order can be applied for by a wide range of public bodies against any individual aged 10 or over. A court can award an ASBO if it is satisfied that the individual against whom the order is being sought has behaved in a way deemed to meet the legal definition of 'Anti-social behaviour'. No crimes need have been committed though sometimes criminal convictions are used as evidence of 'Anti-social behaviour'.

The penalties for breach of an ASBO can be severe: a 2 year Detention and Training Order for a young person or 5 years imprisonment for an adult.

ASBO legislation affects young people and adults (frequently the most vulnerable adults including prostitutes, beggars, the mentally ill etc), This paper focuses on the use of ASBOs against children and young people.

iii) Relevant Legislation

ASBOs were introduced in the 1998 Crime and Disorder Act. Additional measures were added in the 2002 Police Reform Act and the 2003 Anti-Social Behaviour Act 2003 and the Serious Organised Crime and Police Act 2005.



iv) Figures

Between 1 June 2000 and 31 December 2003 991 ASBOs were issued to young people (aged 10-17).

Of these 392 were breached. 40%.

Of the breaches 179 resulted in custodial sentences.

During this period approximately 52% of ASBOs issued were for young people rather than adults.

In 2004 511 ASBOs were issued to young people. Figures are not yet available for breaches.

All figures from the Home Office Office for Criminal Justice Reform.

As a rough extrapolation however, on the earlier figures 18% of ASBOs issued ended up with a custodial sentence, so unless there has been a significant change in breaches and sentencing patterns we would expect that in 2004 91 young people would have been given custodial sentences as a result of breaching an ASBO.

Comments

ASBOs are obviously being used as a tool to deal with what some in power refer to as 'Youth Nuisance'. More than half of ASBOs issued are against young people.

Young people are being sent to prison for ASBO breaches. An estimate of 91 in 2004. Given that ASBOs are awarded for nuisance rather than criminal behaviour it is a fact that we are imprisoning teenagers who misbehave. As a moral point I would argue that imprisonment is not an acceptable way for a civilised society to deal with misbehaving children and teenagers. Adults have responsibilities towards children including dealing with them when they misbehave. Sending children and teenagers to prison does not appear to be dealing with their misbehaviour. It appears, rather, to be shutting them out of sight.



v) What can an ASBO be awarded for?

From the crimereduction.gov.uk web site:

- ② graffiti — which can on its own make even the tidiest urban spaces look squalid
- ② abusive and intimidating language, too often directed at minorities
- ② excessive noise, particularly late at night
- ② fouling the street with litter
- ② drunken behaviour in the streets, and the mess it creates
- ② Just as the problems of anti-social behaviour are varied, the solution too must operate equally effectively on many levels. While an energetic and constructive police response is essential, it must be supplemented by engagement from a wide variety of partners. To take only the most obvious, schools need to have effective policies in place against truancy and bullying. Local authorities and registered social landlords need to take responsibility for acting against anti-social behaviour by their tenants, and against their tenants. Social services need to ensure that they are taking the welfare of the community fully into account when making their decisions. And, just as important, all of these bodies need to be sharing information with each other to the fullest possible extent in order to act fairly and decisively against the problems of anti-social behaviour.
- ② dealing drugs, with all the problems to which it gives rise.
- ②



vi) What are ASBOs awarded for in practice?

Searching the Internet for ASBO reports in the local press is a good way of seeing what kinds of behaviour is getting young people ASBOed.

A picture emerges of young men (usually) quite often in their early teens involved in low level nuisance behaviour. This is NOT criminal behaviour as in burglaries etc, though often the nuisance behaviour includes at least one act which is technically a crime for example stealing a pack of papers from outside a Newsagents. Harassing neighbours with noise / annoying behaviour (throwing flour, eggs etc), drinking in the street, using abusive language (that means shouting 'F off' to people in the street I suppose), vehicle crimes, letting off fireworks are the most common.

The use of abusive and threatening behaviour crops up very frequently. This suggests one purpose of ASBOs is to tackle this kind of behaviour, which was difficult for the authorities to tackle before ASBOs. That is: ASBOs are not simply an easy way to deal with criminal matters as some campaigners suggest but really have been brought in to enable the authorities to clamp down in an area where they could not before.

The impression I gained by reading through several dozen newspaper reports of ASBOs awarded to young men, a few young women and to children is that in the majority of cases the 'Anti-social behaviour' is simply the action of bored teenagers.

A smaller percentage of the kinds of behaviour, by young people, which lead to ASBOs being awarded does seem to be more serious than could be reasonably understood as the actions of bored teenagers.



vii) How can ASBOs be awarded & the definition of 'Anti-social behaviour'?

This is one of the most controversial aspects of ASBOs amongst campaigners.

They can be awarded:

i) In a civil hearing in a magistrates court. In these cases the order can be applied for by: the police, Local Authorities, British Transport Police and Registered Social Landlords, (the latter two added in the 2002 legislation).

Note that while the British Transport Police and Registered Social landlords may only apply for orders which effect areas they manage that Registered Social landlords can apply for orders against people who are not their tenants.

ii) In a criminal sitting in a magistrates court or Crown court or Youth court. In these cases ASBOs can be 'added on' to a criminal sentence. For example:

A 29 year old man was sentenced at Birmingham Crown Court for vehicle crimes to 4 years in jail with an additional Criminal ASBO banning him from being in Birmingham City Centre for 3 years on his release.

iii) In a county court where the proceedings involve 'anti-social behaviour'. This was added in the 2002 legislation.

There is a misconception amongst some campaigners that the standard of proof for an ASBO issued in a civil hearing in a magistrates court is the lower civil standard. This is not the case. Magistrates are required to apply the criminal standard of proof to past acts of 'anti-social behaviour'. (More information on this in the House of Lords is available in the Home Office publication 'A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts' [p10])³. However, with regard to future acts the same legal ruling stated that this was an evaluation on the part of the court.

However, hearsay evidence is allowed. This means that a police officer or local authority officer can say that "someone said that they felt harassed" and this is allowable as evidence - the judge or magistrate can decide what weight to put on it. Given that the definition of anti-social behaviour is "acting in an anti-social manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the complainant" [Crime and Disorder Act 1998] it follows that the standard of evidence needed is pretty low. This may explain why for example less than 1% of ASBOs applied for in 2004 against young people were refused.

I am not sufficiently versed in the law to be sure how the criminal standard of proof requirement interacts with the allowance of hearsay evidence and professional witness evidence.



viii) Penalties for breach

The maximum penalty for a breach of an ASBO for a young person is a DTO. This is a 2 year order including one year inside and one year under supervision outside. A 12-14 year old must be a persistent criminal offender to be given a DTO. A 10-11 year can be given a Community Order for breach of an ASBO.



ix) ASBOs, Publicity and Young People

The government sees publicity as an integral part of its ASBO strategy including for children.

In the case of ASBO hearings in magistrates courts because these are civil courts the normal course of events is that there are no restrictions on press reporting. On some occasions a magistrates court may make a reporting restricting order under section 39 of the Children and Young Persons Act 1933.

In the case of ASBO breaches which are tried in the Youth Court it was the case until the Serious Organised Crime and Police Act 2005 that young people were automatically protected in the Youth Court . Section 141 of this act reverses this automatic protection of privacy in the Youth Court for breach of an ASBO. While reporting restrictions can be applied the presumption is that they will not be.

This measure was introduced specifically to remove protection from young people who were in breach on an ASBO.

The Government provides a significant amount of guidance to the army of professionals tasked with enforcing its 'Anti-social behaviour' laws, which is freely available on the together.gov.uk web site. (Try a search for 'asbo publicity'). The government encourages publicity for young people and children who have been subject to an ASBO.

In brief, with a few mild words of caution about publicity and young people the government advice to professionals in this field is to do leaflet drops, poster campaigns and make use of the local media to publicise the ASBO recipient's name, address, photograph, age description, together with other details of the order and a means to report breaches.

In effect then the whole community is invited to gang up on and keep tabs on, say, a ten-year old child.

This is a horrible perversion of the actual idea of community. A real community would work together to support and help a young person who was getting into trouble, perhaps with local adults joining together to provide a local youth club with interesting activities and some moral guidance.

The ASBO publicity strategy as it relates to young people is to persuade the local community to act as snitches against a child who is isolated in his own community in a practice which uses modern media to enforce a 21st Century form of branding.



x) The language of ASB.

The forward to the Home Office publication 'A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts' by the RT Hon John Denham MP gives a fairly clear sense of the attitudes of those setting the ASB agenda.

ASBOs enable people to "fight back" against those who cause "fear, misery and distress" ASBOs and ABCs (Acceptable Behaviour Contracts) are "weapons in your armoury". (The 'your' is the professionals tasked with implementing ASBO legislation).

This is the language of war.

The phrase 'Youth Nuisance' turns up frequently. A home office paper "Defining and Measuring Anti-social behaviour" published in 2004 (ISBN 1 84473 332 7) considers the definition of anti-social behaviour. This paper specifically states that

"However, the decision was taken not to include a youth category in the typology as it was felt that anti-social behaviour should be defined by the nature of the activity, not the age of the perpetrator. It was also felt that a youth category would attract reports of young people 'hanging around' and, while it is recognised that a group of young people can appear intimidating to members of the public, gathering in a group is not in itself necessarily anti-social. Only when these groups engage in nuisance or threatening activities can their behaviour be considered as anti-social behaviour and it is then the nature of the activity that defines it as such."

Despite this, local authorities and in some cases central government use the phrase 'youth nuisance'. For example; Suffolk Coastal District Council provides a handy PDF on its web site which people can download to report "Anti-social behaviour" which includes a specific category for "youth nuisance".

The language makes frequent use of the word "community". ASBOs are about protecting "local communities" That the targets of the ASBOs are themselves, with their families, also members of "local communities" is vanished away.

Another phrase often on the lips of politicians is "young thugs". For example; John Prescott.² This phrase is being applied to ten year olds.



xi) Comments and Conclusion

Youth Centres or Jails?

In the case of young people ASBOs are being used frequently to punish behaviour, which results from the lack of youth provision. Reading through reports of ASBOs issued a litany of bored teenager behaviour emerges. Society has a responsibility to provide young people with facilities for their personal and social development. With the provision of such facilities there would be a reduction in youth misbehaviour.

Adults have a responsibility to deal with children (those under 16) who misbehave. Sending children to prison is not dealing with misbehaviour.

Children from middle-class families whose parents can afford to pay for interesting out-of-school activities are much less likely to end up on the streets getting into trouble with the authorities through boredom. ASBOs used against young people target working-class youths. A socialist government should, by its own terms, be providing facilities for young people whose parents cannot afford these activities, in order to promote equal opportunities.

Recent examples of what constitutes 'Anti-social behaviour' from the Home Office now explicitly include: "yobbish behaviour and intimidating groups taking over public spaces" ¹. This in practice will apply to groups of young people. Young people, by congregating in public spaces, are showing social behaviour and an awareness of public space and thus community. Society can either intervene to offer something to these young people, which is the authentic response of youth work, or, can demonise them and focus purely on the minor fears that some people feel when they see groups of youths whom they don't know, which is the response of the present regime.

What we see here is an instance of a typical adult-child relationship pattern. Adults are failing to fulfil their responsibilities to young people and then, when the young people misbehave, are demonising, controlling and punishing them.

The youth work agenda itself has been hijacked by the government; youth services have been told to run certificated education programmes. So; what youth centres and clubs there are have been made even less meaningful to young people, in terms of opportunities to fulfil their social and personal needs. The UN Rapporteur on the Rights of the Child, Prof. Katarina Tomasevski, has criticised the UK government for running a testing regime in schools which is geared around fulfilling government policy objectives rather than meeting childrens' needs; requiring Youth Services to run certificated educational projects rather than meet young people on their own terms is more of the same.



Punished for how someone else feels not what you've done

Under ASBO legislation while the required standard of proof for "past acts of anti-social behaviour" is the criminal one nonetheless the accepted legal definition of 'Anti-social behaviour' in Section 1(1) of the 1998 Act is:

"acting in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the perpetrator." .

It would seem to the present writer that given the subjective nature of this definition that any protection provided by the Law Lords judgment³ about applying the criminal standard of proof can only be regarded as joke; it may be that the test for whether someone threw an egg at someone is the criminal one but if the subjective response of the victim is the grounds on which the egg-thrower will be ASBOed what hope does the egg-thrower have of a fair hearing? The victim merely has to say she felt "alarmed" for the egg-thower to be ASBOed. Since any one individual has no control over how his or her behaviour is subjectively experienced by another there is clearly no natural justice in this.

The Home Office document 'A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts' states that:

"The definition [of Anti-social behaviour] is intentionally wide-ranging to allow for the orders to be used in a variety of circumstances."

The power is being placed in the hands of professionals. If a council officer can persuade the victim of an egg-throwing incident to say that they felt "distressed" rather than annoyed, say, that will be sufficient for ASBO purposes. People in local communities are being encouraged to see themselves as victims in need of the protection of the professionals. The professionals it has to be said are benefiting from this financially.

This is a significant shift in how the state controls individuals. No longer can one assume that if one obeys the laws one is one safe from penalties. Now - the subjective feelings of others marshaled by 'professionals' into evidence can be sufficient for a control order and subsequent possible conviction.

Criminal ASBOs

Criminal ASBOs make a mockery of the idea that prison is a place of rehabilitation. Why would a post-sentence ASBO be applied unless the assumption was that the offender would leave prison unreformed? What will the effect be on someone so sentenced? The message is that we have no hope at all in your changing your behaviour. Such a person might be entitled to feel "why bother"? Again; this is a new paradigm. No longer crime, punishment and rehabilitation. But now, a life-long management of certain sub-classes of people to protect the comfort of the property-owning classes.



Conclusion

Despite the rhetoric the ASBO culture represents a profound attack on communities. Armies of professionals lead the way; which means less rather than more involvement from local communities. The role proposed for adults in local communities is for them to undertake surveillance against young people who in many cases are merely bored teenagers lacking guidance and activities. Young people from disadvantaged communities are being penalized, subject to invasive control orders, and in many cases being sent to jail, for minor acts of misbehaviour. Youth work provision, which could provide guidance and activities for young people, is instead being hijacked as part of a training agenda, which ignores young peoples' social and personal needs.

The young people who are targeted by ASBO legislation tend to show a greater appreciation of sociability, community, and public spaces than the politicians who are targeting them.

The ASBO agenda is driven by a very nasty lack of empathy for young people characterized by phrases used by government ministers about children such as "young thugs". The needs of young people are not met, their contribution to community building is not recognized, and when, sometimes, they kick-off, the response is completely without understanding or any sense of belonging to the same community as the young people. ASBOs are not even a punishment: they are a control order. A punishment at least recognizes someone's subjectivity. An ASBO is simply designed to control behaviour with no reference at all to the subjectivity of the person awarded the ASBO.⁴ ASBOs represent therefore the (current) extreme of society's abdication of its responsibilities towards young people.

Far from being about building communities ASBO culture is about the power of the state wielded over some of society's most vulnerable people. Those who do suffer from anti-social behaviour are encouraged to see themselves as victims who need the protection of the state. The highest act for someone who is effected by anti-social behaviour is not to challenge and address the anti-social behaviour through direct or community-mediated action but to sneak and snoop to the authorities. The government awards prizes to individuals who do this through the "Taking a Stand Awards". This doesn't build communities. It does, however, build up the power of the state and the power and incomes of the professionals associated with it, which is, what I would suggest the ASBO culture is about.

Certainly anti-social behaviour can be annoying. But, at least in the case of young people, this should be seen as a call to engage with young people at a community level. An approach, which treats young people as an enemy to be obliterated is both pathetic and unjust.



Notes

¹ <http://www.homeoffice.gov.uk/anti-social-behaviour/what-is-asb/>

² For example; John Prescott quoted by BBC news Online
http://news.bbc.co.uk/1/hi/uk_politics/776533.stm

³ House of Lords, Clingham (formerly C (a minor)) v Royal Borough of Kensington and Chelsea (on Appeal from a Divisional Court of the Queen's Bench Division); Regina v Crown Court at Manchester Ex p McCann (FC) and Others (FC), October 2002

⁴ "Publicity is not intended to punish the individual. An **ASBO** is a civil order, which restrains future anti-social behaviour: it is **not a punishment**." . This is from a Home Office document, advising practitioners about publicity and ASBOs.

Bibliography

The material in this document has been researched chiefly through the following Government web sites where more information is available:

<http://www.homeoffice.gov.uk/crime/antisocialbehaviour/orders/>

The Home Office publication 'A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts' available as a PDF from:
<http://www.crimereduction.gov.uk/asbos9.htm?fp>

The document "Guidance on publicising Anti-social behaviour orders" available from together.gov.uk.

The series

This is one of a series of papers prepared by Youth Rights UK. The purpose of this series is to provide a clear overview of the basic terrain with regard to major pieces of legislation and other acts of power, which are aimed at young people in the UK.

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