

Nuisance or crime? The changing uses of anti-social behaviour control

Elisabeth Burney argues that success in dealing with anti-social acts is increasingly seen in terms of ASBO statistics.

The control of bad behaviour by means of civil law remedies and regulatory enforcement is not novel in itself, but recently in Britain these methods have been keenly adopted as a means of crime control and for the removal of incivilities which are associated with fear of crime. The White Paper 'Respect and Responsibility' (Home Office 2003) and the ensuing *Anti-Social Behaviour Act 2003* rely on a range of exclusionary and bureaucratic interventions in order, it is argued, to protect the well-behaved majority from the anti-social individuals in their midst. At the same time, right minded people in communities are urged to stand up and be counted when it comes to confronting bad behaviour.

This scenario has travelled some way since the *Crime and Disorder Act 1998* introduced the notion of 'anti-social behaviour' as an unspecific category defined by its effect, or potential effect, on the sensibilities of others (behaviour which has caused,

When housing officials said that they needed still more legal teeth to deal with troublemakers who were not tenants, and with juveniles who could not be subject to injunctions, politicians responded with the ASBO, which can be applied anywhere, to anybody over the age of ten years. Hearsay evidence is admissible despite the potential for a criminal charge if the civil order is breached, though the *McCann* (2002, UKHL 39) judgment ruled that the court must apply evidence of anti-social behaviour to a criminal standard before granting an order. Police or local authorities can seek orders, a right now extended to other social landlords.

Yet, to the chagrin of successive Home Secretaries, little use was made of ASBOs for the first three years of availability. Time and money were cited as problems (Campbell 2002) but there were also other reasons why local authorities failed to make use of the orders. As social tenants remain, in the eyes of

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or is likely to cause, 'harassment, alarm or distress'). This all-embracing definition is the basis for a civil order carrying tailor-made prohibitions (the Anti-Social Behaviour Order, or ASBO) which, if disobeyed, becomes a crime carrying a five year maximum sentence.

People who are unhappy with this legal formulation would nevertheless agree that the effects of persistent offensive behaviour cannot be ignored. The ASBO began its life in response to the perceived inadequacy of the criminal law in neighbourhoods afflicted by ongoing nuisances but where people are afraid to testify. It was drafted in response to pressure from MPs and social housing managers from the most deprived areas of social housing which were, and still are, the location of the most intense experience of crime and incivility. As the marginalisation and social exclusion of their neighbourhoods increased, so managers felt unable to cope with the resulting disorganisation. The *Housing Act 1996* gave them greater powers to exclude or deliver injunctions to tenants for anti-social behaviour – including that of family and visitors. Hearsay evidence was permitted in recognition of the power of intimidation.

the authorities at least, the chief generators of anti-social behaviour, the established instruments of eviction and injunction are mainly relied on. Moreover, procedure stipulates multi-agency consultation before an application is made – this can be time consuming, but also means that alternative ways of dealing with the trouble emerge (Burney 2002). Yet, in the eyes of politicians and, increasingly, the public at large, 'success' in dealing with perpetrators of anti-social acts tends to be seen entirely in terms of ASBO statistics.

The recent growth in the use of ASBOs is largely attributable to changes introduced in the *Police Reform Act 2002*. Interim ASBOs can be given at short notice, and the orders can be bolted on to other court disposals. Social landlords can obtain them in the county court to fortify evictions, so that undesirable ex-tenants can be excluded from returning to the neighbourhood. Most importantly, they can be obtained on top of a criminal sentence if proof of anti-social behaviour (not necessarily linked to the current offence) can be shown. The police have seized on this opportunity to extend control over persistent offenders and thus have sharply driven up the total of orders granted. Of the 1,670 ASBOs granted since

this facility became available in December 2002, up to the end of March 2004, 43 per cent were obtained on the back of convictions. It was far from the original vision that the ASBO should become just another sentencing option, but that is what is now happening.

Clearly 'nasty neighbours' are no longer the sole, or perhaps not even the main, focus of what is increasingly becoming just another policing tool. In Greater Manchester, an area responsible for one in six of all ASBOs granted in England and Wales, the process is driven by the police as much as by the local authorities. Most Manchester ASBOs are obtained on conviction. Although the Manchester City housing department provides the government with its favourite enforcer (Bill Pitt, who has been recruited by the Home Office to whip other authorities into ASBO-mindedness) very many of the orders issued through the city's legal department are instigated by the police. Street gangs have been a major target, with conditions attached to orders (such as a life-long ban on wearing a balaclava or exhibiting tattoos) which relate to gang culture. If breached, as they are often expected to be, these ASBOs provide a quicker

route to custody than prosecution. Senior officers transferred to other boroughs within the Greater Manchester area have been instrumental in promoting the use of ASBOs in these areas too.

Disruption of drug markets is another form of crime control where ASBOs have been applied, as in the Kings Cross area of London, where some orders banned 'nuisance' addicts from wide areas (in at least one case, an order was sought which would have kept a woman away from the entire boroughs of Camden and Islington for ten years).

In Leeds, a block of 66 interim orders were obtained against drug users so as to clear the 'Little London' area of its drug market and the associated crime and nuisance.

The cleansing of public space, rather than the protection of neighbourhoods, is the motive for injunctions and ASBOs applied against street drinkers and beggars, now firmly ensconced in the anti-social hit-list. Prostitutes are another group not originally seen as targets for the order, but police in several cities have used ASBOs to drive soliciting women from their patch. In the *Potter* [2003, EWHC 2272 (Admin)] case it was held that a prostitute deserved an ASBO because even though she had done nothing herself to cause 'harassment, alarm and distress' her presence contributed to the 'red light' effect which was upsetting to residents.

The Home Office, through its Anti-Social Behaviour Unit led by Louise Casey, has been a strident advocate of spreading the use of ASBOs and the other instruments of social control provided in the Anti-Social Behaviour Act. Special prosecutors have been enlisted, roadshows held in regional centres, and experienced ASBO users sent round to tell others how to do it. Tony Blair returned from his summer holiday in 2004 urging laggard authorities in the south of England to emulate the practices of northern cities, especially Manchester. It does not seem to have occurred to him to make the link – stated clearly by the Social Exclusion Unit (2000) – that structural and social deficits underlie much anti-social behaviour, and that therefore, along with crime, concentrations are mainly found in less prosperous communities.

Apart that is, from the drunken brawling and offensive antics of better-off youth who can afford to indulge in binge drinking in town centres at weekends. Only lately has the government begun to recognise this as 'anti-social' too. But binge drinking is a culture of our times, and a lucrative one at that, which is probably why it has not attracted the same condemnation as daytime homeless street drinkers, or 'youths hanging about' on impoverished housing estates – in other words, the usual targets for social control.

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References

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Data on ASBOs

As ASBOs are the principal court-ordered measure used locally to combat anti-social behaviour, and data on their use is collected by a number of agencies, the Youth Justice Board believes they can be used to demonstrate the scale of this issue in relation to young people.

Numbers of ASBOs taken out against young people

Current data available to the Board on the numbers of ASBOs served against young people includes up to the end of 2003. However, as the table below shows, the numbers have risen substantially since the legislation was enacted, both for the whole population and specifically for the 10-17-age range.

Whole Population

Period	Number of ASBOs taken out
April 1999 - March 2001 (2-year period)	317
April 2001 - March 2002	321
April 2002 - March 2003	492
April 2003 - March 2004	1323

Young people

Period	Number of ASBOs taken out
June 2000	4
July-September 2000	21
October - December 2000	36
January - March 2001	42
April - June 2001	42
July - September 2001	47
October - December 2001	54
January - March 2002	51
April - June 2002	52
July - September 2002	53
October - December 2002	76
January - March 2003	91
April - June 2003	121
July - September 2003	139
October- December 2003	153
January - March 2004 (est.)	175

Data from YJB submission to the House of Commons Home Affairs Select Committee inquiry into Anti-Social Behaviour