

Real life ASBOs: trouble-makers or merely troubled?

Melanie Krudy and Greg Stewart tell the stories of people issued with Anti-Social Behaviour Orders.

The purpose of this article is to examine the facts of four real life cases (but fictional names) that have come before the Magistrates' Courts in South London since the advent of the *Crime and Disorder Act 1998* (CDA). The writers, from their experience of these cases, are concerned at the use being made of Anti-Social Behaviour Orders – ASBOs. The writers expect that fellow practitioners will have come across similar scenarios. As they will be aware there is real anxiety about the use of these applications to circumvent the more demanding rules of evidence and burden of proof that would apply if the cases were brought before a criminal court. However this article seeks to illustrate wider sentencing issues and the profound effect these Orders are having on the liberty of the individual given that their scope is often only limited by the ingenuity and imagination of the sentencer. The only challenge left to the practitioner is to resort to the slippery concept of 'proportionality'. Their experience also indicates that ultimately the use of ASBOs will lead to an increase in custodial sentences.

Henry is 13 years of age and attends a local state school. He comes from a stable family who live on an inner city London housing estate close to the Millwall Football ground.

Henry had had no previous contact with police let alone previous convictions or reprimands. He had never been excluded from school and was not associated at school with bullying, fighting nor any other type of bad behaviour. At the worst his school reports present him as being quiet and a little lazy.

One afternoon last year representatives from the local authority and a police officer attended Henry's address and served on his parents two lever arch files of documentary evidence setting out allegations as to their child's behaviour. The papers also contained a covertly recorded video. In general the allegations showed a small group of youths hanging around an estate playing with water hydrants, behaving badly and being fairly noisy. His parents were also handed an Interim ASBO. Similar visits were made to five other families.

The local authority had conducted an investigation into the activities of a local group of children all aged between 13 and 17. This investigation had lasted a number of months and had involved covert recording of the children. The costs in time and money must have been considerable. The investigating officers from the

local authority had visited the local schools and asked the teachers to look at photographs taken from the covert recordings to see if they could identify any of the children. Henry was identified by some of his teachers.

The local authority's guidelines clearly state that a multi-agency approach should be used when considering an application to the courts for an ASBO. They also state that attempts should be made to work out a voluntary contract with the child and their guardian or parent. Members of the local Youth Offending Teams (YOT), social workers and police should try to liaise with parents and children to see if there are issues that can be addressed, and a behaviour plan agreed, without having to resort to the courts.

The local authority made no attempt to follow its own guidelines preferring to make a 'without notice' application to the magistrates court. It should be noted that no attempt was made to arrest Henry at an early stage nor was any attempt made to contact Henry's parents to appraise them of Henry's behaviour. Perhaps an earlier intervention may have stopped the behaviour continuing or escalating. That might have provided relief to the residents of the estate. It is obvious that use of the existing structures would have been much more cost effective. Furthermore had there been intervention by the police the most likely outcome would have been the issuing of a reprimand or final warning. These outcomes would in themselves have triggered the involvement of the local YOT, enabling them to work with Henry and his parents. Neither Henry nor his family have received any assistance or guidance since the imposition of the Order.

In the unlikely event that Henry had been charged he would have appeared before a youth court specifically designed to deal with young offenders. Had he pleaded guilty at a youth court a referral order would have been passed. This would have triggered the intervention and assistance of the YOT with the aim of preventing further similar behaviour.

As a decision was taken to institute proceedings under the CDA, Henry was summonsed to appear before the adult Magistrates' Court. There were several hearings over a number of months. The result was an ASBO lasting for 2 years. Henry is prevented from having contact with five of his friends, he is banned from going into any of the local parks or walking through the local estates.

Jane is 32 years of age and was convicted last year of an offence of gross indecency. Whilst heavily intoxicated one Sunday morning she had been seen on a grassy area in Brixton to masturbate and bare her breasts in public. In addition to imposing a Rehabilitation Order to deal with the issue of her alcohol addiction, the Court took the opportunity to make an ASBO. That Order is unlimited in time and prevents Jane from entering a designated area of Brixton that includes the high street and the tube station, it also orders her to refrain from shouting, from abusive or drunken behaviour and from swearing. She must not remove any clothing in public so as to reveal her breasts or pubic area, must not masturbate through her clothing in a public place and must not assault any persons including police officers.

An appeal has been lodged and it is to be hoped that the exclusion from her local town centre will be lifted. However, equally worrying is the increasingly common theme of proscribing behaviour that is already caught by the criminal law. This duplicity is intentional: breach of the Court Order will usually have custodial consequences whereas minor public order offences are non-imprisonable.

Rebecca is a prostitute. She has severe psychiatric problems combined with heavy drug dependency. Early in 2004 she received an ASBO for yet another offence of loitering, she has dozens of previous similar offences in the Streatham/Brixton area. The terms of her order is that she should not solicit for prostitution or loiter for the purposes of prostitution within the Greater London area bounded by the M25.

For the original offence of loitering she can only be punished by way of a fine. She can now be imprisoned for identical behaviour. The maximum sentence for breaching the ASBO is five years. In the nine months since the Order was imposed Rebecca has been arrested several times for loitering in South London. She has received sentences of imprisonment of increasing length.

Robbie is 14 years of age. He suffers from ADHD and has not attended mainstream school since he was 11. He has been given a placement at a special needs educational unit for three hours each week. Robbie already has numerous criminal convictions for offences of criminal damage. One of his few talents is as an artist. Apart from minimal educational commitments Robbie's days are generally unstructured and often unsupervised. His mother works part-time and has no one else to look after him. Robbie has been repeatedly arrested for offences of graffiti. Criminal damage carries a maximum sentence in summary proceedings of 3 months imprisonment. In order to prevent custodial sentences being imposed on young people for such minor offences the minimum threshold for sentence in the youth court is four months detention. Therefore, a custodial sentence cannot be imposed even for repeat offences of criminal damage.

Robbie was recently made subject to a Supervision Order. In addition an ASBO was made. The Order stated that he was not to have in his possession in a public place for a period of five years any: aerosol cans, permanent markers or white board markers. The next time that Robbie comes before the court for an offence of criminal damage where he has also been found with one of the prohibited items he will be liable to a term of detention, not because of the seriousness of the offence, but because of the breach of Order. The Youth Court is able to impose sentences of up to two years detention and training. Apart from escaping from the usual constraints on custodial sentences there is a further issue with young people: often the teenage offenders are immature, they lack the ability to foresee the consequences of their actions and act on impulse. They will often act in contempt of what their elders and betters have told them. The imposition of ASBOs will lead to breach proceedings. This will lead to an increase in the use of detention to punish behaviour that previously Parliament had outlawed.

These cases are not unusual. At a time when many are urging the judiciary to reverse the trend in custodial sentences, their use will only increase as breach of court orders usually produces such an outcome. None of these clients can be said to be a danger to the public. They are guilty of abusing people or property with the attendant harassment that causes to the public. Their behaviour is influenced by a matrix of underlying problems that include a lack of suitable educational provision, poor parenting, social exclusion and drug dependency. ASBOs are attractive weapons to combat behaviour that appears to blight many areas. Their employment will grow in our zero-tolerance culture. As they are not designed to identify or address any of the causes of that behaviour they will result in breach proceedings. Rebecca has already started a cycle of custodial sentences, many more will follow. ■

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