

# ASBOs: more questions than answers

Judy Nixon agrees with the European Human Rights Commissioner that the use of ASBOs presents some serious concerns. She summarises what is known to date, and calls for more research to clarify what ASBOs are doing, where, and to whom.

ASBOs are one of the most controversial and talked about examples of the wide range of measures introduced by New Labour to regulate conduct and promote active citizenship. Although they have been vigorously promoted as “the weapon that is needed to fight the blight of anti-social behaviour in our communities” (then Home Secretary Jack Straw 1999 – see further Burney 2005: 32), very little is actually known about either their effectiveness or impact. While there is a diverse and growing literature on ASBOs the absence of robust empirical research means that much of what is written is dominated by anecdote, conjecture and rhetoric.

In June of this year the European Human Rights Commissioner, Gil-Robles, identified four concerns about ASBOs. He focused on: first, their scope in terms of the broad range of prohibited behaviour; second the ease with which such orders can be obtained; third, the use of publicity strategies associated with orders; and finally the serious consequences of breaches (Gil-Robles, 2005:4). This article briefly examines each of these four concerns, outlining the urgent need for more research to establish the impact and effectiveness of ASBOs as they are variously employed in different parts of the county.

## The scope of ASBOs

Anti-Social Behaviour Orders were created under the *Crime and Disorder Act 1998*. They are civil orders most commonly made in the magistrates’ court or Crown Court which place tailor-made prohibitions on named individuals from entering certain areas and/or carrying out specified acts. Orders are effective for a minimum period of two years with no maximum and if breached, can on conviction result in a custodial sentence of up to five years. They can be used against any person aged 10 or over deemed to be acting “in a manner that caused or was likely to cause harassment, alarm or distress” (*Crime and Disorder Act 1998* s.1(i)(a) (b)). The definition employed in the Act is deliberately wide-ranging, focusing on the *impact* of behaviours rather than particular *forms* of disorder or incivility, enabling ASBOs to be used to regulate *any* behaviour depending on the context and the tolerance levels in the community. Indeed anyone who challenges authority can become the subject of an order, as is illustrated by some of the more extreme orders made. In December 2004 a Norfolk farmer was issued with a interim order to prevent his pigs

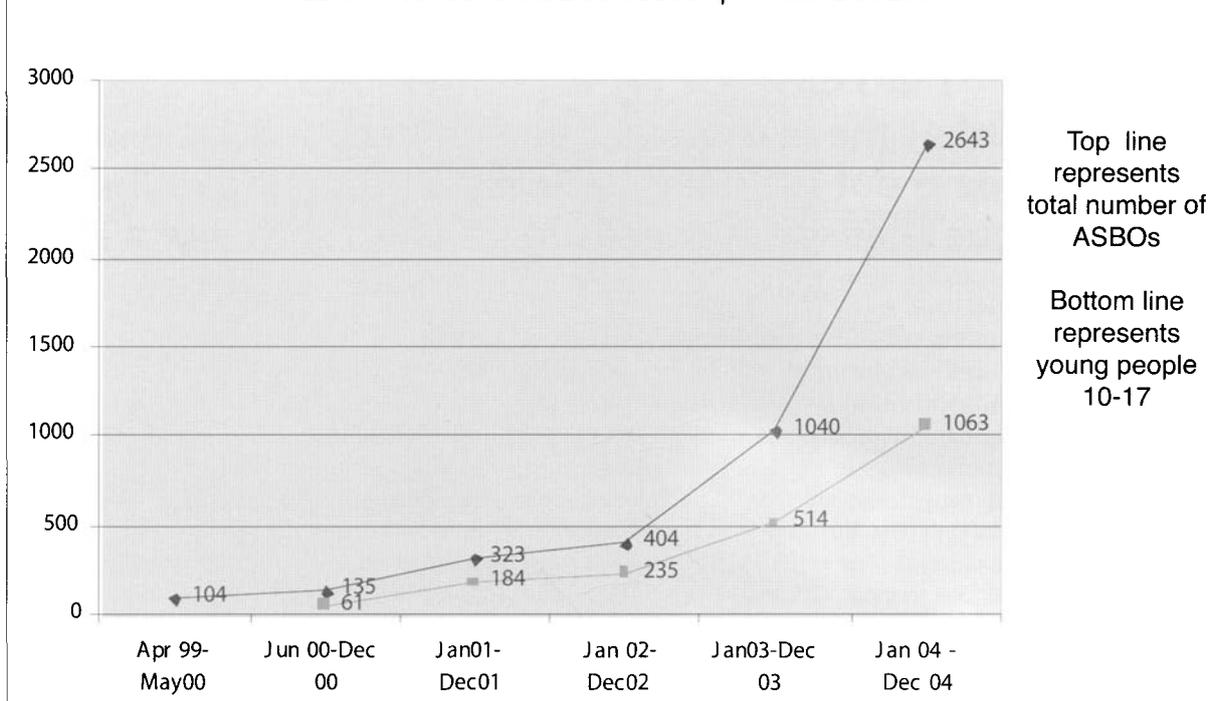
from damaging crops in neighbouring fields, while in February 2005 a five year ASBO was issued by Bath Magistrates to a suicidal woman who tried to kill herself by jumping off bridges. In Eastbourne a sixty year old man was even issued with an ASBO forbidding him from sunbathing naked or in a thong (Statewatch, 2005).

These are however, atypical cases, and more usually ASBOs are used to regulate the conduct of particular target populations, most frequently youths, disruptive tenants, and those who ‘abuse’ public spaces including drug users, beggars and prostitutes. More specifically, although young people were not initially perceived as a particular target group, they have in practice become the dominant target population. Since 2000 for example, the number of ASBOs served on young people has increased five fold with 1,063 children under the age of 17 subject to ASBOs in 2004 (see Table 1). The types of conduct orders seek to regulate is illustrated by reference to the specific terms of orders made which typically include reference to abusive language, threatening and intimidating behaviour, hanging out in groups. Orders frequently target ringleaders of groups, focusing on geographical exclusions and prohibitions on congregating with other named individuals. Children as young as ten have been served with orders for misbehaving on their housing estate by playing ball games, peering into other people’s windows and banging on stairwells. One ten year old boy was banned from four areas of Leeds and from having any contact with 17 named youths for the next five years. He was also made subject to a 7pm - 7:30 am curfew unless accompanied by family members (Statewatch 2005).

## Ease of obtaining orders

Despite the all encompassing nature of ASBOs, initially there was a marked reluctance from practitioners to use orders and rather than the anticipated 5000 orders per annum less than 1,000 ASBOs were taken out over the first three year period April 1999 to March 2002. New Labour on the other hand has remained completely committed to their promotion, introducing new measures in the *Police and Criminal Reform Act 2002* and the *Anti-social Behaviour Act 2003* to make the process simpler and easier. As a result of these changes, the number of orders issued has escalated exponentially with a total of 4,649 orders made up to

Table 1: Number of ASBOs issued April 1999-Dec 2004



Source: Crime reduction website, ASBO statistics. [www.crimereduction.gov.uk/asbos2\(cjs\)jun05.xls](http://www.crimereduction.gov.uk/asbos2(cjs)jun05.xls)

December 2004 of which 3,683 were made during the period January 2003 to December 2004 (see Table 1 above).

The ease with which ASBOs can be obtained is vividly illustrated by the fact that of the 3,069 applications made between 1 April 1999 and 30 June 2004, only 42 were turned down. What this means in practice however, is harder to establish. It appears that on the ground ASBOs have a dual function, acting as both a net widening mechanism bringing more subjects into the criminal justice system while also providing a form of mesh thinning to capture prolific offenders. Thus on the one hand ASBOs are used to prohibit low level nuisance behaviours such as drinking, swearing and playing loud music in public. Gil-Robles highlighted two notable examples of the net widening capacity of ASBOs, including the serving of an ASBOs on an 87 year old for being repeatedly sarcastic and the imposition of an order on a 17 year old deaf girl for spitting. On the other hand the wide-ranging scope combined with the ability to employ professional witnesses and use hearsay evidence has made ASBOs an attractive alternative to more complex criminal proceedings and thus can be seen as a form of mesh thinning. There is compelling evidence that orders are often preceded by a long history of criminality with the subjects of ASBO action well known to social control agencies. Burney for example, attributes the increase in orders primarily to the reforms introduced in the *Police Reform Act 2002* which enable orders to be granted on the back of other proceedings. The police, she argues have “seized this opportunity to extend control over persistence offenders” with 43% of orders made in conjunction with criminal proceedings (Burney, 2005). Supporting this view, the Youth Justice Board found that 95 per cent of young people entering custody as a result of breaching an ASBO were already known to the Youth Offending Team and that in 43 cases where a previous offence history was known, on average 42 previous offences had been recorded (Brogan, 2005).

### Publicity campaigns

A further controversial aspect of ASBOs is the use of publicity strategies, more commonly referred to as ‘naming and shaming’ campaigns, whereby local agencies use a variety of media to publish details of individuals subject to ASBOs, including their names, sometimes their photograph, details of their offences, information about prohibited activities and guidance for individuals about reporting breaches of the ASBO. The use of such publicity campaigns clearly raises issues about human rights and data protection, the vulnerability of young people and the extent to which publicity is proportionate and consistent with the aims of an ASBO. These concerns have been picked up on by a recent Home Affairs Committee report which questioned whether the use of ‘naming and shaming’ was consistent with the support and rehabilitation of offenders and that warned that it could increase the risk of danger and victimisation of individuals subject to ASBOs (Home Affairs Committee, 2005). Gil-Robles also expressed grave reservations about the use of publicity leaflets containing photos and addresses of children subject to ASBOs, stating that such measures “risk transforming the pesky into pariahs. Such indiscriminate naming and shaming would, in my view, not only be counter-productive, but also a violation of Article 8 of the *ECHR*. ...Stricter guidelines and greater restraint would reduce this risk in practise and are urgently necessary”. (Gil-Robles, 2005:38, para 120). These concerns must be taken seriously, but in the absence of research it is impossible to establish exactly what impact publicity strategies have on either individual perpetrators and their families or the wider community.

### Consequences of breaches

The bare statistics collected by the Home Office reveal that 42 per cent of all ASBOs were breached up to December 2003 and of those who breached their ASBO on one or more occasion,

*Continued on page 37*

55 per cent received an immediate custodial sentence ( Home Office 2005). From their inception the capacity of ASBOs to criminalise non-criminal conduct has been widely criticised by both academics and lawyers and more recently concerns over the inappropriate use of ASBOs has been voiced by practitioner organisations, pressure groups and even sections of the media (Statewatch 2005, NAPO 2005). Critics point to the evidence that in many cases people subject to orders have a wide range of underlying problems stemming from substance misuse, exclusions from school, learning difficulties and neurological disorders (Campbell 2002, Statewatch 2005). The potential for ASBOs to be used in an excessive and inappropriate way led Gil-Robles to conclude that rather than constituting an effective deterrent, ASBOs are more likely to exacerbate anti-social behaviour and crime amongst youths. This view is supported by anecdotal evidence that in some areas ASBOs have become a badge of honour rather than a preventative deterrent.

### The urgent need for further research

Despite the conflicting evidence on the impact of ASBOs New Labour continues to assert that they; “are making a real difference to people’s lives by helping to rebuild confidence in communities and bring the actions of a selfish minority to task” (Bleas 2005). In contrast to the political rhetoric, a number of recent studies suggest that in practice ASBOs only provide short-term relief and need to be supplemented by longer- term interventions to address the underlying causes of the problem behaviour (Millie *et al* 2005; National Community Safety Network 2005). The published statistics indicate that ASBOs are drawing both new populations into the CJS while simultaneously being employed to capture known prolific offenders. While ASBOs have undoubtedly become an increasing popular mechanism to control behaviour there is scant evidence as to exactly whose behaviour is being controlled and why and whether they act as a form of prevention, as claimed by New Labour or if they are simply a new form of discipline and punishment. It is apparent that there are very significant variations in their use across the country, with a person living in the Greater Manchester area being twelve times more likely to receive an ASBO than in Lincolnshire (Home Affairs Committee, 2005) but in the absence of rigorous research it is impossible to establish why ASBOs have proved so popular in some areas and have hardly been used in others. In order to respond to the growing expressions of disquiet about inappropriate use, disproportionate and excessive consequences of orders and the uneven way in which they are used in different parts of the country, there is an urgent need for a programme of independent research into the use (and potential abuse) of ASBOs. Until such work is undertaken any discussion of ASBOs inevitably raises more questions than answers.

**Judy Nixon**, Senior Lecturer in Housing Policy, Sheffield Hallam University.

### References

Bleas, H. ( 2005) *New Measures Will Tackle Causes of Anti-social Behaviour*, Home Office Press Release Ref: 098/20005. Home Office: London.

Brogan, D. (2005) *Anti-social Behaviour Orders: An Assessment of Current Management Information Systems and the Scale of Anti-social Behaviour Order Breaches Resulting in Custody*. Youth Justice Board for England and Wales. [www.youth-justice-board.gov.uk](http://www.youth-justice-board.gov.uk)

Burney, E. (2005) *Making People Behave – Anti-social Behaviour, Politics and Policy*. Willan Publishing: Devon.

DTZ Peda Consulting and Heriot Watt University (2005) *Use of Anti-social Behaviour Orders in Scotland*. Edinburgh: Scottish Executive <http://www.scotland.gov.uk/Publications/2005/04/07104508/4509>

Campbell, S. (2002) *A Review of Anti-Social Behaviour Orders*, Home Office Research Study No. 236. London: Home Office Research, Development and Statistics Directorate.

Gil-Robles, A., (2005) *Report by the Commissioner for Human Rights, on His Visit to the United Kingdom 4th -12th November 2004*. Strasbourg: Office of the Commissioner for Human Rights. <http://www.statewatch.org>

Home Office (2005) *Yobs Will Face the Consequences of their Actions*. Home Office Press Release Ref: 042/2005. Home Office: London.

House of Commons Home Affairs Committee (2005) *Report into Anti-social Behaviour*. London: House of Commons.

Millie, A. Jacobson, J. McDonald, E. and Hough, M. (2005) *Anti-social Behaviour Strategies – Finding a Balance*. Joseph Rowntree Foundation, Policy Press: York.

National Community Safety Network (2005), *National Community Safety Report, ASB Key Issues and Recommendations: A Practitioners’ Perspective*. [www.community-safety.net](http://www.community-safety.net)

NAPO (2005) *Anti-social Behaviour Orders: Analysis of the First Six Years*, London: NAPO.

Statewatch (2005) *‘ASBOWatch: why should we be concerned about ASBOs?’*, [www.statewatch.org](http://www.statewatch.org)