

# Out with jobs!

Elizabeth Burney describes one of this government's most dramatic innovations: the Anti-Social Behaviour Order.

The Anti-Social Behaviour Order (ASBO) is the best known and arguably the most controversial of the many criminal justice innovations brought in by New Labour. It is also popular with the public, who welcome what they see as a firm answer to local incivilities, especially harassment and rowdiness.

Even before the 1997 election which brought in the Blair government, the Labour party had produced the blueprint for what became Section 1 of the *Crime and Disorder Act 1998*. MPs were aware of the blight caused in many deprived neighbourhoods by persistent low level personal crime and intimidating behaviour in public spaces. Urged on by managers of social housing who bore the brunt of complaints, it was decided to introduce a new form of preventive order (Burney 2005).

It was argued that the normal prosecution route was inadequate to deal with the problem and that therefore a civil law sanction, similar to an injunction, would be more effective. But the sting in the tail of the ASBO, as it became, is that breaching

This formula rides roughshod over many legal principles. First, the definition of anti-social behaviour (ASB) is unspecific and subjective – punitive law should make clear what is prohibited. Second, it creates a hybrid instrument, confusing civil and criminal law. Third, for the individuals concerned it creates crimes which do not apply to anyone else, if the breach of some aspect of their order is merely technical, such as entering a forbidden street. It means that somebody can be imprisoned for non-criminal actions or for crimes which do not normally attract custody. Even interim ASBOs (imposed prior to a full hearing to prove ASB, and sometimes *ex parte*) carry the same sanctions.

The two year minimum may be excessive and there is no firm proportionality rule in terms of the number and intensity of the prohibitions applied – research shows many recipients have no clear idea of what is forbidden, let alone knowledge of an appeal process.

The civil standard of proof applies to ASBO applications and hearsay evidence is allowed

***It creates crimes which do not apply to anyone else...  
It means that somebody can be imprisoned for non-criminal actions or for crimes that do not normally attract custody.***

any of the conditions of the order creates a crime, which can then be prosecuted, with the possibility of imprisonment to a maximum of five years.

There is merit in a process which recognises the insidious effect of repeated nasty behaviour, and which controls the obedient perpetrator without imparting a criminal record. However, there are grave objections both to the form of the ASBO and to the way it is being used – leading *inter alia* to a damning critique on human rights grounds from the Council of Europe (Gil-Robles 2004). Even before enactment, serious criticisms were raised in principle and for fear of scapegoating.

The statutory requirement for an ASBO application in s.1 (1) *CDA 1998* (as amended by the *Police Reform Act 2002*) is (a.) “that the person has acted in an anti-social manner, that is to say, 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 himself; and (b.) that such an order is necessary to protect relevant persons from further anti-social acts by him.” The order must last for a minimum of two years and may be indefinite, though there is provision to apply for variation or discharge.

(mainly to protect intimidated witnesses). The House of Lords has ruled (*McCann [2002] UKHL 39*) that hearsay evidence does not breach human rights law as the sanction is a civil one. However the same judgment stated that the standard of proof that ASB has occurred must be equivalent to the criminal standard; but there is no proof required that the ASBO is necessary to protect others.

The standard procedure is that ASBOs are obtained by application to magistrates sitting in their civil capacity, brought by police or local authority after consultation with each other. But since 1998 this route has been overtaken through the *Police Reform Act 2002* which provides for ASBOs to be imposed ancillary to a criminal conviction. By 2005, 70% of ASBOs were coming from the criminal courts – thus making them just another sentencing add-on and often making defendants feel they were being punished twice. This procedure accounts for the swift rise in ASBO numbers after a slow start – the latest total from April 1999 stood, at September 2005, at 7,356. This is still far from the 5,000 a year anticipated at the outset.

More agencies are now able to apply directly for ASBOs, such as social landlords and environmental

health officers. New government proposals seek to give community representatives the same power – a worrying development which could lead to more scapegoating and inappropriate use of orders. It is in line with Tony Blair's frequent appeals to right-thinking people to confront the yobbish minorities.

Who then are the main recipients of ASBOs? Undoubtedly they fall very heavily on the young – about 40% have been imposed on 10-17 year-olds, and the majority on under 21s. 'Youths hanging about' are now seen as the embodiment of ASB. This is contrary to the original stereotype of 'nasty neighbours' – although many adult recipients fall into that category. As early Home Office research noted (Campbell 2002) many people with mental health and substance abuse problems receive ASBOs, and some well publicised cases indicate how inappropriate this can be, such as the suicidal woman who was banned from visiting lakes, rivers and bridges!

Prostitutes and beggars are likewise outside the original remit, but many ASBOs have been used to 'cleanse the streets' of these alarming and distressing persons. Drug markets have been successfully targeted too, although the issue of displacement has not been addressed. Environmental incivilities, such as graffiti, can be 'asboed' once the culprit is identified. These are often the visible signals that arouse unease and fear.

Infrequent use of ASBOs in some local authorities does not necessarily imply indifference to ASB, as the government would have us think, but may rather reflect different local cultures and practices which favour a gradualist approach, such as warning letters, visits from housing officers and other agencies, and informal 'Acceptable Behaviour Contracts' (ABCs). These are non-legal agreements promising good behaviour to landlord or police. According to the National Audit Office (2006), the ASB ceases thereafter in 65 % of cases, compared with 45% for ASBOs. But a threat may be implied of an ASBO or even eviction if the ABC is ignored, and it has been shown that this can be quite oppressive, especially if no support is offered from the other half of the so-called 'contract' (Stephen and Squires 2003).

The effect on young people of receiving an ASBO is particularly worrying. Two years is a very long time in the life of a teenager, especially if conditions like curfews and exclusion from family surroundings are involved. For all the talk of ASBOs being a 'badge of honour', they can weigh very heavily on young lives, well beyond the perceived need to relieve the community of nuisance behaviour. ASBO recipients are not spared the publicity which normally protects the identity of youth court defendants, and indeed the government encourages names, addresses and photographs to be shown, arguing that this is needed for enforcement purposes.

A Youth Justice Board report (Solanki *et al* 2006) raises these concerns. It asks for ASBOs to be used

much more sparingly and in a form which focuses on the bad behaviour rather than imposing many other blanket prohibitions, especially geographical exclusion and non-association with peers. The orders should be regularly reviewed and lifted if a young person has clearly abandoned ASB. ASBOs over two years' duration should be rarely used. The Youth Offending Teams should be much more involved the moment an ASBO is proposed, because they can often supply support, reparation and diversion instead.

Many people have voiced concerns about the focus on punitive ASBOs rather than prioritising individual needs and difficulties that so often lie behind unacceptable behaviour. Some Crime and Disorder Partnerships do have procedures which involve all relevant agencies when a case of ASB is flagged up and then an appropriate intervention may be offered. The National Audit Office favours a gradualist and holistic approach. It found that low key interventions worked most of the time and clearly sees the ASBO as bad value for money – expensive and often unnecessary, while failing to curb the worst perpetrators.

Now that people have been encouraged to see anti-social behaviour in every street football game, and led to believe that ASBOs are a cure-all, it will be hard to put the genie back in the bottle. But at least, beneath the populist rhetoric, the government's so-called 'Respect Agenda' does recognise that a range of different solutions exist, and is putting money into neighbourhoods with greatest need. Deprivation, educational failure, mental health and addictions are where the focus should be on reducing unacceptable behaviour, with the criminal law for intractable cases.

*Elizabeth Burney is Honorary Research Fellow at the Cambridge University Institute of Criminology.*

## References

- Burney, E. (2005) *Making People Behave: Anti-social Behaviour, Politics and Policy*. Cullompton: Willan Publishing.
- Campbell, S. (2002) *A Review of Anti-social Behaviour Orders*. Home Office Research Study 236. London: Home Office.
- Gil-Robles, A. (2004) *Report by Mr Alvaro Gil-Robles, Commissioner for Human Rights, on His Visit to the United Kingdom 4-12 November 2004*. Office of the Commissioner for Human Rights, Strasbourg.
- National Audit Office (2006) *Tackling Anti-social Behaviour*. London: Home Office.
- Solanki, A. R. *et al* (2006) *Anti-social Behaviour Orders*. London: Youth Justice Board.
- Stephen, D. and Squires, P. (2003) *Community Safety, Enforcement, and Acceptable Behaviour Contracts*. Brighton: Health and Social Policy Research Centre, University of Brighton.