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Criteria for Concern: The lasting impact of ASBOs and their replacement by CBOs

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Introduction

Behavioural Control Orders (BCOs) attempt to change behaviour by restricting what people can do, where they can go, and who they can associate with. They are used as tools for addressing what the law describes as “antisocial behaviour”. To understand BCOs, we must look at the relationship between the individual and conduct. To make sense of this relationship, behaviour can be viewed as a product of social structure or personal agency. Drawing on the example of sex work, two dominant accounts emerge. One emphasises that sex workers have agency, making an informed decision to participate. The other emphasises the role of unequal social structures in pushing sex workers into the field, where they are subjected to degradation, objectification and exploitation.

Rather than taking an either-or approach, this working paper argues that the concepts of ‘structure’ and ‘agency’ cannot be meaningfully separated. In line with structuration theory, it suggests that individuals exist in and through social worlds, just as social worlds exist in and through individuals. This is evidenced by antisocial behaviour policing, where ‘antisocial’ carries both moral and legal significance.

This matters because BCOs focus primarily on changing individual behaviour. They place conditions on people’s actions but pay much less attention to the conditions in which people live. The implicit message is that antisocial behaviour is something individuals choose to engage in and can choose to stop. Yet, the people most likely to receive such Orders tend to be those already facing multiple disadvantages, such as homelessness, substance misuse, poverty, poor mental health, and chronic contact with the police.

This paper has three main objectives. First, it examines the long-term impact of Antisocial Behaviour Orders (ASBOs) on individuals and communities. Second, it explores their replacement by civil injunctions and Criminal Behaviour Orders (CBOs), considering whether meaningful improvement has followed. Third, it proposes recommendations for measuring effectiveness in a way that is fair, consistent, and evidence-based.

Background

Originally created to regulate football hooliganism in the eighties, BCOs prevent individuals from exercising undesirable conduct by imposing conditions upon unwanted behaviour. If a BCO recipient breaches these conditions, they are committing a criminal offence. Conditions range from prohibiting individuals’ affiliations with specified others to requiring them to undergo certain types of treatment (JUSTICE, 2023).

The Antisocial Behaviour Order (ASBO) is perhaps the most well-known example of a BCO. ASBOs were “civil orders that exist to protect the public from behaviour that causes, or is likely to cause, harassment, alarm or distress” (Home Office, 2003: 9). They prohibited individuals displaying undesirable conduct from going to specific places and engaging in certain activities. They also aimed to tackle antisocial behaviour such as public indecency, drunkenness and vandalism (GOV.UK, n.d.). Over time, ASBOs were joined by a growing number of similar Orders, including Public Space Protection Orders and Sexual Risk Orders.

Although ASBOs have now been replaced by civil injunctions and Criminal Behaviour Orders (CBOs), BCOs at large pose a number of concerns relating to their punitive impact on recipients' lives. Rather than solving complex social issues at the heart of antisocial conduct, these Orders can be complicit in sending already-vulnerable and marginalised individuals through a revolving door of crime (JUSTICE, 2023).

Before assessing the long-term impact of ASBOs, it is helpful to clarify what is meant by "conduct". In its simplest sense, conduct refers to behaviour under certain circumstances. It also includes how behaviour is controlled through formal rules, enforcement, and policy. Finally, it reflects how decisions and restrictions are passed down from authorities to individuals through legal systems and institutions. The example of BCOs brings together all three definitions of conduct by exploring 1) antisocial behaviour within social and legal contexts, 2) the regulation of antisocial behaviour by different authorities, and 3) the transmission of ASBOs/CBOs to recipients as a conduit to curb crime and other undesirable activities.

1 Antisocial behaviour within social and legal contexts

ASBOs (and many BCOs) are civil orders, which highlights that both formal and informal forms of social control play a role in who and what is regulated. There are two meanings of the term "civil order". Legally speaking, it can refer to a court-imposed measure to resolve civil disputes and prevent harm (Nelson Guest & Partners, 2025). Socially, it can refer to public order within society (Duff, 2018). ASBOs bring together both definitions by aiming to prevent harm while also maintaining public order. This suggests that antisocial behaviour is treated as both a matter of criminality and morality.

2 The regulation of antisocial behaviour by different authorities

The Crime and Disorder Act (1998) not only allowed legal bodies to regulate harmful behaviour through ASBOs, but it also gave local authorities the power to apply ASBOs to individuals displaying antisocial behaviour within their communities (JUSTICE, 2023). As a result, decisions about what constituted "harmful" behaviour often depended on location rather than national standards. The Anti-Social Behaviour, Crime and Policing Act (2014) further strengthened the ability of local authorities to respond to what were described as "local concerns". However, localising control runs the risk of BCOs being applied inconsistently across locations, with some areas being more punitive than others. A report by the House of Commons Library admits there "[was] huge variation in use of ASBOs across the country" (Berman, 2009).

3 The transmission of ASBOs/CBOs to recipients as a conduit to curb crime and other undesirable activities

Given the relationship between the law and local values, it is unsurprising that ASBOs were issued to target crime and perceived deviance. However, the extent to which these were successful remains in question. Like the contested terms 'crime' and 'harm', notions of antisociality shift across time, place and context. This variation not only points to the inseparability between structure and agency, but suggests the 'success' of the ASBO is not clear-cut. Although the CBO is often described as the "death of the ASBO", it continues to impose similar restrictions and carries similar consequences for recipients.

Assessing the impact of ASBOs

Between April 1999 and December 2013, more than 24,000 ASBOs were issued in England and Wales (GOV.UK, 2014). However, measuring their impact is no easy task. Much like measuring “success”, assessing the impact of the ASBO is fraught with ambivalence, ambiguities and assumptions. With no national data available on the use of ASBOs, analysis is limited to the fragmented evidence that is available.

To begin, let us consider the definition of antisocial behaviour. Its “wide legal definition” (Home Office, 2003: 5) gives rise to a number of concerns. How do we begin to measure the impact, let alone efficacy, of something so widely defined? According to the Home Office (2003: 5), antisocial behaviour includes conduct that is “likely to cause harassment, alarm or distress to one or more people who are not in the same household as the perpetrator.” To simplify, antisocial behaviour involves conduct which could cause harm to the community. While harm reduction is a vital goal, how exactly is harm defined in practice? As critics of harm reduction approaches are quick to point out, most things can be considered harmful to someone, somewhere.

Despite the lack of clear definitions to use as a starting point, some deductions can be made about the long-term impact of ASBOs on individuals, society and safety at large. At the individual-level, the impact of ASBOs can be measured in terms of proportionality. Under a retributive model of justice, punishments for breaching an ASBO should correlate to the severity of the breach. According to the Home Office (2003), adult offenders faced a maximum sentence of five years in prison, and juveniles faced a maximum sentence of twenty-four months in the form of a detention and training order (DTO). Fines were also possible (Home Office, 2003). Although the Home Office mentions proportionality in their 2003 guidance, this remains discretionary due to vague standards of ‘antisocial behaviour’ to begin with.

Further, it is difficult to apply the retributive model to cases where an ASBO breach was victimless. Some breaches may only involve deviation from the norm. Because antisocial behaviour does not always involve victimisation, the severity of punishment deemed suitable appears arbitrary. For example, one person might have received an ASBO due to drug dealing, while another “clos[ed] the door too loudly” (JUSTICE, 2023: 2). In theory, the stark difference in severity of these actions would be reflected in perpetrators’ punishments if they breached their ASBO. However, with no nationwide data surrounding the use of these Orders, proportionality is difficult to gauge. What can be said is that trivial ASBO applications undermined attempts to tackle more serious harms.

On average, those who breached their ASBOs did so five times (GOV.UK, 2014). In the case that an individual was convicted for breaching an ASBO, possessing a criminal record had the potential to limit opportunities later in life. It is no secret that the consequences of punishment stretch far beyond the prison cell. Access to jobs, education, housing and family can be adversely affected by criminal sentences. Even community sentences can cause strain on the lives of low-level offenders, despite being revered as a promising alternative to incarceration (Centre for Justice Innovation, 2020). When this is considered alongside evidence that ASBOs have a disproportionate impact on marginalised groups (JUSTICE, 2023), repeated breaches suggest that the Orders were ineffective at addressing the root causes of antisocial behaviour. This also raises doubts about their effectiveness at achieving their aim of public protection through a rehabilitative lens.

More recent figures suggest that antisocial behaviour remains widespread. Almost one million incidents were reported to police in England and Wales in 2025 alone (CrimeRate, 2025). Although ASBOs were abolished in 2014, prevention does not appear to be a significant indicator of success, either.

The death of the ASBO?

ASBOs were abolished in 2014 by the Antisocial Behaviour, Crime and Disorder Act (2014). However, civil injunctions and Criminal Behaviour Orders (CBOs) work to a similar effect. Civil injunctions have replaced ASBOs on application, and CBOs have replaced ASBOs on conviction. In other words, the civil injunction is used to impose restrictions on antisocial behaviour, and the CBO is imposed following conviction of a crime. Importantly, breaching a civil injunction can be considered a contempt of court and may result in an unlimited fine and/or up to two years imprisonment. Breaching a CBO may also result in a fine and/or a maximum of five years imprisonment (GOV.UK, n.d.).

As laid out in the 2014 legislation, the key difference between the ASBO and its successors is the potential application of 'positive requirements'. These may be used in addition to behavioural prohibitions or replace them altogether. Positive requirements can involve attending programs to treat substance misuse, counselling, or employability workshops. The purpose of positive requirements is to address the underlying causes associated with an individual's antisocial behaviour (Crown Prosecution Service, 2020). However, due to the lack of criteria to measure the effectiveness of positive requirements and CBOs more generally, there is no way of knowing the extent to which they work. In the best-case scenario, positive requirements may offer temporary relief without addressing underlying problems. In the worst-case scenario, it is possible they may even perpetuate harm (JUSTICE, 2023).

Both civil injunctions and CBOs are quicker and easier to enforce than ASBOs (Croydon Council, n.d.). While this may seem like a strength, there is a risk of CBOs being applied as a kneejerk reaction to state-inflicted harms such as poverty, inequality and public underfunding (JUSTICE, 2023). Individuals from marginalised groups are already more likely to come into contact with the justice system than those from majority backgrounds. (GOV.UK, 2024). The persistent data gap surrounding CBOs is especially problematic in cases where discriminatory practices go undetected and unprevented (JUSTICE, 2023).

Like ASBOs, civil injunctions and CBOs are commonly enforced against those experiencing homelessness, poverty and/or drug abuse. Individuals residing in areas with higher rates of policing are also more likely to be penalised by these Orders. As the saying goes, where crime is sought, crime is found. Given that police presence is highest in disadvantaged communities, these Orders can disproportionately impact individuals who are marginalised by socioeconomic status, ethnicity, and health, amongst other important factors (JUSTICE, 2023). Even in cases where discrimination is not intentional, marginalised individuals may find it harder to understand, engage with, or access support for civil and/or legal processes. This is particularly concerning for juveniles, whose early experiences with the justice system can have long-term consequences.

For these reasons, referring to civil injunctions and CBOs as the “death of the ASBO” might be an overstatement. While it is difficult to refute their intentions, it becomes all-too-easy to see a resemblance between the ASBO and the legislation of 2014, particularly considering the absence of evidence to measure the effectiveness of BCOs and the knock-on effects this has on practice.

Discussion

The contested relationship between BCOs in theory and in practice points to my claim at the beginning of this working paper that social structure and personal agency cannot be meaningfully separated. As Giddens (1984) argues in structuration theory, structures are both a product and producer of agency. Similarly, agency is a structured and structuring force. Viewed this way, BCOs can be thought of as responses to antisocial behaviour, where antisocial behaviour is both the reason for, and result of, social outcomes.

In the previous section, I explored the potential for BCOs to be discriminatory. Even in the wider justice system, discrimination persists in the form of implicit biases about who is or is not “criminal”. Increased policing efforts, heightened arrests and harsher sentences for ethnic minorities suggest that they are often perceived as embodying criminality (Institute of Race Relations, 2025). This conception strengthens when coupled with young age. Similarly, the significant amount of sexual misconduct cases that go unprosecuted or unpunished evidences profound gender-based disparities in the current system. All of this to say: discrimination stems from and reinforces inequality.

When we apply this line of thought to BCOs, a similar pattern emerges. Inequality can significantly impact life circumstances, which in turn can affect life choices. To paraphrase Karl Marx, we all make choices, but not necessarily under the conditions of our choosing. The choices we make then influence social outcomes, for better or for worse. When the State responds to certain types of conduct, it must recognise its own role in perpetuating the inequalities underlying that conduct. Just as BCOs can constrain individual behaviour, they can enable the government to overlook its part in producing it.

Drawing on a more specific example, BCOs have commonly been used to control street-based sex work. Although sex work is legal in England and Wales, ASBOs were used in the late twentieth and early twenty-first centuries to push sex workers off the streets (Neville and Sanders-McDonagh, 2017). Given society’s emphasis on privacy and the family, this is not necessarily surprising. Yet, the relationship between morality and the law deserves further attention. If we consider morality an individual freedom and the law a State-enforced structure, an interrelationship emerges: moral norms shape legal structures, legal structures shape moral norms.

Key Recommendations

Envisaging practical solutions to reconcile structure with agency is no easy task. Bottom-up approaches favour the former, while top-down approaches favour the latter. The following recommendations are drawn from my experience in academia and policy. They attempt to work from the top and the bottom in order to balance different perspectives.

1 Refine the definitions of key terms used in legislation.

Refining the legal definitions of terms such as ‘antisocial behaviour’ and ‘harm’ will better inform legislators, local agencies and the public about what is and is not acceptable in the community. It will also support a more consistent application of BCOs, reducing the discretion currently allowed by vague terminology.

2 Collect data relating to the application, enforcement and breaching of BCOs.

Without national data surrounding the use of BCOs, it is extremely difficult to assess their impact on individual recipients, victims and the general public. Collecting data relating to BCOs’ application, enforcement and breaching will not only help evaluate success; it will shed light on discriminatory practices which can then be addressed. Data collected should take a holistic approach and be triangulated to consider BCO recipients, issuing bodies, and victims.

3 Clarify measures to indicate the success (or failure) of BCOs.

Although the purpose of different types of BCOs is laid out in the law, legislation does not specify how to measure success or against what benchmarks. Clearly stating how success can be operationalised will clarify a current grey area.

4 Increase communication between law enforcement and local agencies that issue BCOs.

Once legal definitions and scales for success are narrowed, law enforcement and local agencies should liaise to decide exactly what lies within their scope of power. Currently, local agencies run the risk of exhausting resources on trivial forms of antisocial behaviour. Increased communication with law enforcement will ensure local powers focus their resources on more significant community concerns rather than minor day-to-day issues.

5 Enforce greater training for, and accreditation of, positive requirement diversion programs.

In their current incarnation, diversion programs implemented as positive requirements not only suffer from inadequate training, but also limited availability and/or accessibility for participants. They should be subject to accreditation to ensure they are of the highest, standardised quality and maximise their impact on those who need them.

6 Make reparations to current and former BCO recipients where the system has failed them.

Once the impact of BCOs has been properly studied and 'success' operationalised, some individuals may be identified as disproportionately affected. In instances where BCOs were wrongly applied or applied too punitively, reparations need to be made and criminal records cleared.

7 Ensure BCOs are being used as the exception, not the rule.

Going forward, make sure BCOs are used as a last-resort to address antisocial behaviour. This is especially pertinent in victimless, civil cases where a criminal record could be more damaging to an individual's livelihood than their behaviour was to the community. Handing out BCOs haphazardly not only dilutes their power; it has the potential to permanently tarnish criminal records – especially juveniles'.

Conclusion

Although 'success' remains a precarious concept under the implementation of civil injunctions and CBOs, this working paper has attempted to unpack the implications surrounding the management of antisocial behaviour in England and Wales. From football hooliganism in the 1980s, to the ASBO in 1998, to the Antisocial Behaviour, Crime and Disorder Act of 2014, concerns relating to conduct and criminality continue to shift. Yet, one thing remains certain: the lack of national data surrounding BCOs is a cause for concern. Without this critical insight, it is impossible to fully gauge BCOs' impact on individuals, society and overall safety. This working paper is a call to action for State and local actors to collect data relating to the use of BCOs. Using this data to inform meaningful change can help restore public faith in the justice system, which is crucial to its success.

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