

ANTI SOCIAL BEHAVIOUR ORDERS: ANALYSIS OF THE FIRST SIX YEARS

A briefing for the launch of ASBO Concern – 7 April 2005

A) INTRODUCTION

Anti Social Behaviour Orders were introduced in April 1999 as part of the Crime and Disorder Act 1998. It is a community based order which can be applied for by the police or local authorities in consultation with each other against an individual, or several individuals, whose behaviour is anti-social. The behaviour must cause alarm, distress or harassment to one or more people not in the same household as the offender.

Applications are made to the Magistrates Court acting in a civil capacity. The court, if the order is made, can impose additional restrictions. However, controversially, breach of an order without reasonable excuse is a criminal offence tryable either way with a maximum penalty of five years in prison. Home Office notes published at the time the Act was introduced state, "the prohibitions and the order must be such as are necessary to protect people from further anti-social acts by the defendant in the locality. It is intended that the order will be targeted at criminal, or sub criminal, behaviour, not minor disputes between neighbours or matters which can be dealt with effectively under existing legislation."

B) ORDERS MADE

The number of orders made has escalated over the six-year period that ASBOs have been available. During the first eight months in 1999, only 104 orders were made. However, there has been a significant escalation with more than 2,600 orders made since November 2003. The Parliamentary Answers reveal that the breach rate has been 39% for 10-15-year-olds, 38% for 16-20-year-olds, and 31% for those aged over 21. Home Office figures, published in March 2005, show that the breach rate has increased to 42%. However, figures are only available on numbers jailed for the years 2001 and 2002. In 2001, 114 persons breached by the courts following the imposition of an ASBO were jailed out of 322 issued. In 2002, 212 were jailed out of 403 issued. These figures would suggest that around 50% of those who are the subject of an ASBO and breached eventually end up in jail.

C) ABUSE OF INTENTION

Napo believes that the original purpose of the ASBO has been abused in some areas. In many incidents, individuals are receiving a custodial sentence where the original offence was not itself imprisonable. This includes people banned from begging or prostitution. The ASBO is clearly, therefore, moving offenders up tariff and resulting in the inappropriate use of custody. ASBOs are being used against young people whose behaviour may be anti-social but not necessarily threatening. It is being used to deal with nuisance which could be dealt with in other ways. There is also ample evidence that the ASBO merely moves the anti-social behaviour to a different district. There is also evidence to suggest that many of the young people involved eventually end up in Young Offender Institutions.

In Napo's view, it is time the Home Office thoroughly reviewed the role and purpose of the ASBO and sentencing discrepancies. An individual is far more likely to be the subject of an ASBO in Greater Manchester than in Merseyside. In the first six months of 2004, 155 persons were the subject of an ASBO in Greater Manchester compared with just 27 in Merseyside. Similarly the number of individuals subject to an ASBO in West Yorkshire, during the same period, was 128 compared with just 22 in South Yorkshire. Again, during the first six months of 2004, 38 ASBOs were issued in Lancashire compared with just 4 in Leicestershire.

Inconsistencies in use of ASBOs 2003/4		
Magistrates Courts Committee/ Police Force area	1 Jan 2003 to 31 Dec 2003	1 Jan 2004 to 30 June 2004
Derbyshire	4	10
Devon and Cornwall	7	10
Essex	13	16
Gloucestershire	5	7
GLMCA/Metropolitan Police	93	102
Greater Manchester	189	155
Lancashire	38	38
Leicestershire	2	4
Merseyside	37	27
South Yorkshire	28	22
Suffolk	20	23
West Midlands	68	39
West Yorkshire	79	128
North Wales	11	8
South Wales	29	13
Total England and Wales ALL Magistrates Courts	958	952

D) CASE STUDIES

Napo has collected a number of case studies over the last 12 months which illustrate the difficulties:-

1. In 2004 an application was made in Manchester for an ASBO on a female prostitute. It was alleged she was causing a nuisance in Manchester by accosting men and generally causing offence. The Magistrates agreed to an ASBO. One of its conditions was that she was prohibited from carrying condoms within the given area. Unfortunately her drug clinic was within the restricted area and one of the services it provided was the provision of free condoms as part of its harm-reduction strategy. She breached the order, was put on probation and faces the possibility of prison.
2. In 2004 an 18-year-old youth was made the subject of an ASBO in the same city with a condition not to congregate with three or more other youths. He was subsequently arrested for breach of his order when he was entering a local youth club on the grounds that there were more than three youths in the premises. This was a successful club with a good reputation providing a valuable service to young people locally, and on the particular evening the session scheduled for the youths was how to deal with anti-social behaviour.
3. Again in 2004, in Manchester, the Council used its powers to obtain an ASBO to stop mobile soup vans operating in the city centre. These vans provide food and assistance regularly each evening to about 100 homeless people. The Council however argued that after the vans had left there was a mess all over the place and people had complained. Probation staff argued that the same could be said about every kebab shop, pub, chip shop and off-licence in the city.
4. A probation officer visited a 20-year-old, long term, prisoner in the North East to finalise his release plan. He expressed the wish to return to his grandmother's flat two weeks hence. He had been her registered carer since he was about 12 years old. She wasn't well and needed assistance. However, the day before his release the Council obtained an ASBO on him which included a condition that he was banned from entering the estate where his grandmother lived because of previous activities in the area.
5. A drug addict faced jail if he was caught sleeping in the street or begging in 'an earnest or humble way'. Greater Manchester police obtained an ASBO against Peter Broadbent aged 36 after he pleaded guilty to rough sleeping under the Napoleonic Begging Laws. He was found under the Mancunian Way surrounded by needles and now faces up to five years jail if he breaches. During the year, another homeless man, Leonard Hockey, who begged in a non-aggressive way in Kendal's car park was ASBOed. He was later breached and jailed and died before finishing his sentence. Broadbent's ASBO prevents him from sleeping rough contrary to Section 4 of the Vagrancy Act 1824 and asking "earnestly or

- humbly” for money in a place to which the public have access. He was also banned from selling the Big Issue without a license.
6. In 2004, a youth appeared in Court in Manchester for breach of his ASBO. The Order had been made in the youth’s absence without his being able to give his side of the story (one of the main concerns about ASBOs and one that can lead to misuse). The day after the Order was made someone came to his house to ‘serve’ it on him. This consisted of his being handed a copy of what was a fairly bulky document running to several dozen pages with no attempt to explain it or even to ascertain if he was literate enough to read it. The Order included an restriction preventing him entering a particular estate nearby and another preventing him from associating with certain others. Unfortunately, he went out before reading the Order and breached it twice that day. The next day he went out again and breached it three times by mistake as he had not read the part covering the particular restriction. He now faces possibly custody although he has never been convicted of a criminal offence.
 7. A 40-year-old woman made over seven hundred 999 calls from various phone booths in her town over a four to five month period. The police applied for and obtained an ASBO banning her from the booths and from making 999 calls. She made a further 999 call within days of the ASBO being made and was subsequently given two weeks imprisonment.
 8. A 26-year-old homeless beggar from Birmingham was banned from begging in various car parks in Birmingham. He breached almost immediately and was, according to his solicitor, given 24 months custody. He was discharged earlier this year having served about eight months and was breached again for returning to begging and on this occasion got three years’ jail. His solicitor, therefore, says he received a total of five years’ imprisonment for an offence that itself is non imprisonable.
 9. A 50-year-old man with numerous convictions for shoplifting, clearly ill and a kleptomaniac, was banned from going into certain shops. If he entered other shops the condition of the ASBO was he told the shopkeepers of his conviction and the condition.
 10. A teenage boy in the Oldham area has been banned from displaying the name of a gang anywhere on his body. The ASBO was issued to Damien White which banned him from the district of Sholber. The order prevents him from displaying a gang name ‘Mayhem’ on any part of his body or publicly displaying any mark or words to identify himself with any gang or group of youths causing a criminal act or anti social behaviour.
 11. A 13-year-old was served an order banning him from using the word ‘grass’ anywhere in England and Wales. (*source – Statewatch ASBOwatch*)
 12. In May 2004, a 16-year-old boy was banned from behaving in an anti-social manner at school. The five year order covers the whole of England and Wales

and came as a response to his disruption of a science class *(source – Statewatch ASBOWatch)*.

13. A 16-year-old boy was banned from showing his tattoos, wearing a single golf glove, or wearing a balaclava in public anywhere in the country. He was also forbidden from congregating in public places in groups of more than three people. *(source – Statewatch ASBOWatch)*.
14. A 19-year-old convicted of graffiti damage to a tube depot was served an order banning him from carrying any graffiti related materials for a period of five years. He was also banned, over this time, from associating with any of those he committed the original offence with. *(source – Statewatch ASBOWatch)*
15. In September 2004, on the same day as he was released from prison, a 21-year-old found himself back in court being served with an interim order which banned him from entering any car park in England and Wales, touching any car without the owners permission, and riding a bicycle. On the full application hearing, the Council also managed to have him banned from wearing all forms of headwear in public. *(source – Statewatch ASBOWatch)*
16. In October 2004, a profoundly deaf girl was served an order for spitting in public. Having broken it she is currently in prison on remand. *(source – Statewatch ASBOWatch)*
17. Thought to be the oldest recipient of an order, a 87-year-old was among other things been forbidden from being sarcastic to his neighbours. He was found guilty of breaking the terms of his order on three separate occasions. On sentencing, the judge made it clear that 'there would be no prison for an 88 year old man'. *(source – Statewatch ASBOWatch)*
18. In July 2004, a 15-year-old from Surrey received an order banning him from drawing graffiti anywhere in England and Wales or to be in a public place with spray paint, marker pens, etching materials or any other articles related to the practice of graffiti. *(source – Statewatch ASBOWatch)*
19. In August 2004, a 57-year-old homeless alcoholic was banned from carrying or consuming alcohol in a public place and entering licensed premises. Unsurprisingly he breached the order within two weeks. *(source – Statewatch ASBOWatch)*
20. Again in August 2004, a 47-year-old was banned from buying or consuming alcohol anywhere in England and Wales. Having breached it he was sentenced to 8 months in prison but walked free because of the time spent on remand. *(source – Statewatch ASBOWatch)*
21. In July 2004, a 51-year-old was served with an order, and has since breached, banning him from consuming or being under the influence of alcohol in any public place on Merseyside and using abusive or insulting language. *(source – Statewatch ASBOWatch)*

22. In October 2004, two brothers aged 10 and 11 were banned from, among other things, congregating in a group of more than two people, riding as a driver or passenger on a motorcycle, setting foot on any school premises unless attending a lesson and entering any domestic or commercial property without consent of the owner. *(source – Statewatch ASBOwatch)*
23. In December 2004, Brian Hagan from Norfolk became the first farmer to be the subject of an ASBO when he was ordered to keep his swine and geese under control after people living near to his farm complained of damage. The order was made on Monday of the week beginning 13 December, but on Tuesday he was charged with allegedly breaching the order after reports that his pigs had escaped again. A breach of the order could lead to up to five years in jail.
24. In November 2004, a 38-year-old man was served an ASBO for ‘intimidating and harassing drivers and causing distress’ by clamping cars parked on land where he had no licence to operate.
25. In late 2004 a family accused of damaging property, driving recklessly, threatening neighbours and using abusive language were banned from going out together. The mother, father and 3 sons – aged 16 to 20 – can only leave their home in pairs and are also banned from meeting more than one friend at a time.
26. In Atwick, Yorkshire, a 17-year-old has been banned from causing damage to flowers and plants pots when entering gardens without the owners permission and from throwing mud at windows.
27. In Warwickshire, a 15-year-old boy has been banned from swearing and using violence, or threats of violence against people ‘not of his household’.
28. In County Durham, a football mad 15-year-old has been given an ASBO banning him from playing football in the street after having had 12 footballs confiscated from in barely two weeks. He was using bus stops as goal posts, disrupting traffic and playing without regard for other people using the street.
29. A 26-year-old West Lothian man has been made the subject of an ASBO after playing the Band Aid single “Do they know it’s Christmas” dozens of times daily to the annoyance of neighbours. He has been banned from ‘playing loud music, stamping his feet and dropping objects.’ *(source –BBC News)*
30. A 28-year-old man was served with an ASBO banning him from shouting, swearing, banging windows, moaning and dumping rubbish after he alarmed neighbours by standing on his windowsill and pretending to dance with a Christmas tree while moaning loudly. The behaviour was apparently influenced by having watched the film American Werewolf in London. The howls continued and he was duly jailed for two months in August this year. He has since been jailed for another four months and will be spending Christmas in prison. *(source – BBC News)*

31. The endless blazing rows of a couple in Blackburn led to their being made the subject of an ASBO barring them from contacting each other. The 47-year-old man was additionally ordered not to go within 50m of his fiancée's home. He argued this was completely over the top and Blackburn magistrates eventually backed down and overturned the order. *(source –BBC News)*
32. A West Midlands woman was the subject of an ASBO banning her from using a pay as you go mobile, using a mobile phone that is not in her name, or using a mobile to make nuisance calls for five years after she tried to convince the parents of a former school friend that their daughter had been kidnapped and forced into prostitution. Police said an investigation into the kidnapping allegations had used 640 hours of police time before the young woman was tracked down. *(source –BBC News)*
33. A 43-year-old Port Talbot woman was also made the subject of an ASBO after making 765 nuisance calls to the emergency services in less than a year. On one occasion she complained she was having difficulty tuning in her television. She received an interim ban stopping her from calling the emergency services unless there really is a crisis. *(source –BBC News)*
34. A 17-year-old Birmingham youth has been banned from travelling on the top deck of buses. The conditions of his ASBO are that he cannot travel on a bus unless he sits where the driver and other passengers can see him. *(source –BBC News)*
35. A 17-year-old from Oldham has been banned from using the word 'grass' as a term of abuse against people who 'stood up to him' and from other abusive language and throwing missiles. *(source –BBC News)*
36. In Harrogate, police wanted to ban persistent criminals from entering the town. They asked magistrates to consider an ASBO preventing known offenders for crimes like burglary from setting foot in the town. *(source –BBC News)*
37. In Manchester, a football fan whose 11-hour kick-about caused damage to cars, gardens and houses has been banned from playing ball games in the street outside his home.
38. A 10-year-old in Bath, who caused £80,000 of arson damage is banned from having matches until he turns 16.
39. A 40-year-old woman from London made over seven hundred 999 calls from various phone booths in her town over a four to five month period. The police applied for and obtained an ASBO banning her from the booths and from making 999 calls. She made a further 999 call within days of the ASBO being made and was subsequently given two weeks imprisonment in Holloway.

40. An Eninem and Dido fan, who incessantly played the musicians' songs at top volume was banned recently from owning a stereo, radio or TV. It is the first order of its kind.
41. In the Midlands, a middle-aged couple, were served an ASBO banning them from playing gansta rap or swearing in front of children, after upsetting staff and parents at a nursery near their worksop home.
42. In Wirral, a man was banned from assaulting and verbally abusing bin men after they were so intimidated by his behaviour they stopped collecting rubbish from his street.
43. In 2005 a 47-year-old man with a fetish for medical supplies has been banned from all NHS buildings or private medical practices in the country after he tried to get hold of a surgical mask on 47 occasions in the last 5 months. He would tell staff he needed the masks for amateur dramatics or charity fun runs. He has also been jailed for 3 years and will have to abide by the terms of the ASBO when his sentence ends.
44. Two elderly men in Birmingham living in sheltered accommodation were served ASBOs after police were called to their flats amid complaints that they were being used by drug taking prostitutes. The men claimed they had simply made friends with the call girls. They are banned from any further contact with the women.
45. A 40-year-old man in Manchester, who offered to build extensions at a fixed price and then simply took homeowners' money without doing the work, has been jailed for three and a half years and also received an ASBO banning him from advertising his services, or working in the building industry – unless it is for a bona fide construction company.
46. In Manchester, two brothers aged 11 and 12 were banned from wearing balaclavas.
47. In Oldham a 19-year-old has been banned from having the name of his gang shaved into his head.
48. In London, a 30-year-old man has been banned from using doorbells or phoning households without permission. He had stolen from 250 elderly people after entering their homes under false pretences.
49. A 17-year-old has received an ASBO banning him from leaving or entering his home except by a back alley after he harassed neighbours and shouted obscenities.
50. A 13-year-old boy has been sentenced to 4 months youth custody after being convicted of drink driving. He had received an ASBO and been banned from driving twice before. Noting that none of these measures had seemed to work magistrates in Salford decided custody was the way forward.

51. In 2005, a 30-year-old woman was served with an ASBO the conditions of which were that she was not to be heard shouting from inside her house and she was not to play music that could be heard from outside the house. She was breached for arguing with her heroine addict son over money. She could be heard from the front path to her house by the police. She failed to appear for the breach hearing and was subsequently jailed.
52. A 50-year-old man in Manchester has recently been banned from claiming anyone is 'involved in suspicious activity and drug dealing'. Magistrates were told he bombarded the police with false accusations of drug dealing among his neighbours.
53. A 38-year-old father-of-five recently escaped an ASBO banning him from his home, following noisy rows with his new wife, but he was banned from getting into anymore noisy rows with her. There will be a full hearing in July 2005, but in the meantime he must not use bad language or behave threateningly.
54. A 55-year-old man in Portsmouth has been given an ASBO against parking his car in a disabled parking space. It wasn't his space and when its 86-year-old intended user asked him to move his vehicle he reportedly called her 'village pond life'. He is thought to be the first person in the UK to be specifically banned from parking in a disabled space.
55. In March 2005 a woman was banned from 70 stores in Dundee for 2 years. A photograph of Nicola Walker, a serial shoplifter, has been circulated to the shops and she will face imprisonment if she spotted in any of the stores.
56. A 21-year-old prolific car thief has been banned from wearing a woolly hat, baseball cap or hooded top, by Teeside Magistrates so that he can be identified on CCTV by operators and police. He has also been banned from entering car parks.
57. In February 2005, a 23-year-old woman who has repeatedly tried to kill herself was issued with an ASBO banning her from going near railway lines, rivers, bridges and multi-storey car parks by Magistrates in Bath. The woman had been rescued from the River Avon three times and had been found 'hanging by her fingertips' from a railway bridge and was repeatedly spotted loitering at the top of multi storey car parks. She will face a jail sentence if she breaches the 2 year order.
58. In March 2005, A young Scottish woman received an ASBO banning her from answering the front door in her underwear. She also faces the threat of jail if she is seen in her garden or windows in just knickers and a bra. The 27-year-old woman in East Kilbride was granted legal aid to fight the interim order which, she says, was the result of a witch-hunt that began when her neighbours were given

ASBO diaries to record what she was up to. The mother of two suggested fellow residents got upset when she wore an Ann Summers bikini to do the gardening one hot summers day.

59. In March 2005, a fuel sniffer was jailed for breaching an antisocial behaviour order that banned him from petrol station forecourts in North East England. Brian Taylor, aged 36, received the ASBO in February after he was caught on CCTV slashing a fuel line at an Asda petrol station in Middlesbrough, inhaling the fumes and dancing round the forecourt. The order, supposed to help him overcome his addiction, banned him from all Asda stations and prevented him from going near any others in Middlesbrough, Redcar or Cleveland. However, he was caught on camera a second time at the same forecourt and was jailed for 3 months. His ASBO remains in place until January 2009.
60. On 17th March 2005, a 50-year-old woman was served with an ASBO by Magistrates in Northallerton, North Yorkshire, after she threw 3 sticks of rhubarb at her elderly brother, catching him in the eye, and leaving him with double vision. The six year ASBO bans her from entering property belonging to her son with whom she had also fallen out. Magistrates heard that the ill feeling, which was worsened by the woman's 'paranoid personality' dated back to her father's death and to what she believed to have been an inequitable settlement of the will.
61. In March 2005, a 20-year-old man in Devon was sentenced to 15 months imprisonment following 3 breaches of an ASBO. He was a prolific shoplifter who was on a young offender licence. He was given a 3 year ASBO last year, with a condition which prohibited him from entering all shops, stores and retail outlets in Devon and Cornwall. The probation officer involved in the case did not think an ASBO was appropriate and believed that the conditions were effectively telling him to leave the area. Following the breach, he refused to cooperate with a court report interview and was jailed.
62. A 20-year-old man in Plymouth was sentenced to a 3 year ASBO whilst on parole. The Order contained a condition that he was not to assault, threaten, harass, pester, or use threatening behaviour against any individual who worked, resided in or was visiting Plymouth. He was also ordered not to carry out any criminal acts in Plymouth. He was breached in April 2004 and given a community order and was breached again in March 2005 and given 12 months custody.
63. A 22-year-old man was given a 2 year ASBO at Plymouth Crown Court in March 2005. The Order included a condition not to enter pubs, clubs or any other establishment with an alcohol licence or to possess alcohol in the South Hams area. His probation officer wrote a court report following a psychiatric assessment and proposed a community order with a condition that he undertake substance abuse treatment and anger management. An ASBO was not considered appropriate but was nevertheless imposed. Ironically, the offence was heard in a court outside the area where he lived and therefore was of limited value in any event.

64. A man in his early 20s, who has a chronic drug problem, and who steals in order to buy drugs, was made the subject of an ASBO in March 2005. In all, 6 conditions were imposed, including:

- that he was not to engage, or incite to engage, in any behaviour likely to cause harassment, alarm or distress to any person residing, working or living in Plymouth;
- exclusion from the city centre and named streets except when travelling on a bus;
- not to enter any shop in Plymouth which is a member of "Plymouth Against Retail Crime" (PARC)
- not to be in possession of any drugs paraphernalia;
- not to physically strike, hit, kick, punch, or assault any person;
- not to be in a drunken or intoxicated condition in any part of Plymouth at any time.

His probation officer pointed out that these conditions were criminal offences anyway, that a lower level of proof would be needed to obtain a breach and therefore a conviction, and that criminal proceedings were thereby avoided.

E) CONCLUSION

The number of anti social behaviour orders has escalated markedly since November 2003. There is ample evidence of the issuing of ASBOs by the courts being inconsistent and almost a geographical lottery. There is great concern that people are being jailed following the breach of an ASBO where the original offence was itself non-imprisonable, and that ASBOs are being used where people have mental health problems where treatment would be more appropriate. There is also evidence that conditions on ASBOs are unreasonable and the behaviour would constitute criminal offences in any event. It is of concern that the lower level of proof needed to obtain a conviction circumvents criminal proceedings. Certain local authorities are using ASBOs to clear sink estates of problematic families and individuals. This appears to avoid dealing with wider environmental problems on those estates and also avoids putting in place wider social policies that would deal with the underlying problems of anti social behaviour. In Napo's view the time is right for a fundamental review of the use and appropriateness of Anti Social Behaviour Orders by the Home Office.

Harry Fletcher - 7 April 2005