

Anti-Social Behaviour Orders and mental health: the evidence to date

November 2007

This paper has been produced by the Sainsbury Centre for Mental Health as a contribution to the Sentencing Guidelines Council consultation on breach of an Anti-Social Behaviour Order (ASBO).

The Sainsbury Centre for Mental Health focuses on two core research areas relating to mental health: Prisons and Criminal Justice, and Employment. Sainsbury Centre is currently examining how people with mental health problems can be diverted away from the criminal justice system and towards appropriate treatment.

However, we are also concerned with policy that may have the opposite effect, where vulnerable people with mental health problems are instead drawn closer and into the criminal justice system, where often their needs go unidentified or unmet. Therefore, along with current research projects examining policies such as the 'Mental Health Treatment Requirement of the Community Order' and the 'Indeterminate sentence for Public Protection' (IPP), we are interested here in summarising the evidence to date on the relationship between ASBOs and mental illness, to inform both this consultation and other key policy developments.

The purpose of the ASBO

Anti-Social Behaviour Orders (ASBOs) were implemented in April 1999 as part of the Crime and Disorder Act 1998, aimed at targeting behaviour that 'caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself'.

Originally intended to be used as part of housing legislation to help social housing landlords evict 'problem families', ASBOs have made their name in popular rhetoric as a behaviour prevention order. They are a hybrid of civil and criminal law, designed to pre-empt activity that may in the future lead to further 'harassment, alarm or distress' but that is not, for the most part, criminal.

The powers conferred by an ASBO and their consequences are significant. They are normally issued by a magistrate's court and must last for at least 2 years with no requirement for a maximum length. They are issued using a hybrid of civil and criminal law. The majority of the Order is processed using civil law, such as allowing for hearsay evidence, but must be proved necessary to criminal burden of proof.

Breach of an ASBO is processed using criminal law, the impact of which can be as serious as five years in prison. As a consequence, behaviour that is not criminal can result in prison sentences that would be given for criminal offences such as grievous bodily harm, serial burglary or rape.

The use of ASBOs

At the time ASBOs were introduced, government expected 5,000 to be issued each year (*Hansard*, 27 January 1998, Column 138). When initial uptake by the courts was slower than expected (only 1,017 ASBOs had been issued by the end of 2002), further legislation was passed to facilitate its usage in a wider range of circumstances e.g. in the 2002 Police Reform Act, the 2003 Anti-Social Behaviour Act, the Criminal Justice Act 2003, the Serious Organised Crime and Police Act 2005, and the Drugs Act 2005.

The broad definition of anti-social behaviour (ASB) has meant ASBOs are used in response to range of problems from speeding traffic to loud music, from marauding youths to litter dropping, from graffiti to verbal abuse (www.respect.gov.uk see website reference 1).

Data about the use of ASBOs is not available beyond 2005. By the end of that year, a total of 9,853 ASBOs had been issued, half of which have been breached. Only 72 ASBOs were refused when an application was made between 1999 and the end of 2005 out of the total of 9,853 (less than 1%). This represents a 99.3% likelihood of local authorities of obtaining an ASBO when one brought to court. 2005 is the most recent year for which published data on ASBO numbers available (for these latest ASBO statistics see website reference 2).

Some 3,997 ASBOs were issued to children (10 to 17 year olds) between 1999 and 2005 (41%), despite 10-17 year olds only making up 13% of the population.

Furthermore, the Sainsbury Centre is particularly concerned that one third of ASBOs are given to people with mental health problems, despite guidance that mental health problems are meant to be a mitigating factor against issuing and sentencing for breach of ASBOs.

ASBOs and mental health

The Sainsbury Centre for Mental Health has particular concerns about the use of ASBOs on people with mental health problems, the high rate at which ASBOs are being breached, and the effect these two inter-related factors are having on the lives of people of all ages with mental health problems.

Guidelines for sentencers and practitioners have repeatedly stated that more careful consideration should be given to proposals for ASBOs if the individual has a mental health problem, e.g.:

- The Sentencing Guidelines Council, which provides advice and delivers guidelines for magistrates and judges on sentencing practices, notes that: 'Some factors may indicate that an offender's culpability is unusually low, or that the harm caused by an offence is less than usually serious...Factors indicating significantly lower culpability [include]...Mental illness or disability...[and] Youth or age, where it affects the responsibility of the individual defendant' (Sentencing Guidelines Council 2004).
- The Justices' Clerks' Society states that: 'The court should be cautious when considering applications that relate to offenders with defined medical/mental problems that give rise to the anti-social behaviour' (Justices' Clerks' Society 2006).
- The Home Office guide to ASBOs states that 'If there is any evidence to suggest that the person against whom the order is being sought may be suffering from drug,

alcohol or mental health problems or an autistic spectrum disorder, the necessary support should be provided by social services or other support agencies. Such support should run parallel with the collection of evidence and application for an order, where an application for an order is deemed necessary. This ensures that the court can balance the needs of the community with the needs of any alleged perpetrator' (Home Office 2006).

Despite these guidelines, a Home Office review of ASBOs found that for 60% of those issued an ASBO there was a mitigating factor such as mental distress, addiction or learning difficulties (Home Office 2002).

In early 2007, a British Institute for Brain Injured Children (BIBIC) report stated that over 30% of young people who receive ASBOs have a diagnosed mental health disorder or learning disability. The report went on to describe how ASBOs were frequently issued without any assessment for mental health problems or learning difficulties, and wide prevalence of case by case variation in the weight attached to mental health problems as a mitigating factor (BIBIC 2007).

ASBOWatch, an organisation that seeks to monitor and highlight the inappropriate use of the Order, has identified many incidents of ASBOs being issued to adults with mental health problems, some of whom have a severe illness. In a report to the European Civil Liberties Network, ASBOWatch noted that 'Adults with mental health problems have been similarly targeted...The behaviour of those with personality disorders has also often been met with an ASBO' (Rowlands 2005).

A submission to a Home Affairs Select Committee on ASBOs from the National Association of Probation Officers (NAPO) stated that there was both an issue with ASBOs being issued to those with mental health problems, and a wide geographical variation in the frequency of use, leading to a disparity in justice. It noted that:

'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. There is also evidence that ASBOs have been used where people have mental health problems where treatment would be more appropriate. 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' (Home Affairs Select Committee 2005)

The Sainsbury Centre concludes, therefore, that there is significant evidence that ASBOs have been given to people with mental health problems where other alternative actions, which would deal better with the underlying causes of the behaviour deemed anti-social, were available (see recommendations below).

Breach of an ASBO

In 2006, the Youth Justice Board found that half of ASBOs issued to children were breached. In the same year, the magazine 'Regeneration and Renewal' found that 61% of ASBOs issued to all ages in Westminster Council were breached, while the rate was 68% in Sheffield. The research also found that prior to breach an average of six offences had occurred (Youth Justice Board 2006).

Breach of an ASBO can result in a wide range of consequences, from a toughening of the Order's requirements to up to five years in prison. Government figures show that '134 people in total in England and Wales between 2000 and 2003 were sentenced to custody for breach of ASBOs alone. In all other cases, they were convicted for other offences at the same time' (*Hansard*, 3 September 2007, Column 1835W).

This means that 6% of ASBOs resulted in a prison sentence for breach of the ASBO alone, and not in conjunction with a further offence, despite the fact that the original 'offence' was not found to be criminal in nature, let alone punishable with detention in custody. If the 6% rate is applied to all ASBOs issued up to 2005, then 561 people given an ASBO for behaviour not deemed to be criminal in nature will have been sent to prison.

Conclusions

In the light of the available evidence, we conclude that:

- There is insufficient up-to-date information about the use of ASBOs and limited evidence for their effectiveness of in terms of their impact on the criminal justice system or reducing anti-social behaviour;
- ASBOs often result in a fast-tracking of vulnerable individuals into the criminal justice system, and even to prison, leading to a diversion away from services (such as education, mental health services) that would more adequately address the behaviour that has been deemed anti-social;
- Current guidance to sentencers, on mitigating factors, is not monitored and implemented sufficiently, and alternative sanctions are often not explored as a first option.

Recommendations

- Screening for mental health problems and learning disabilities should take place before any application for an ASBO proceeds. This should be done in court before the ASBO is issued, or as part of the pre-sentence report after a breach has occurred. Better mental health awareness training for court staff and sentencers, particularly magistrates, would be a useful starting point.
- Alternatives should be attempted before proceedings begin for issuing an ASBO such as diversion schemes to Community Mental Health Teams (CMHTs) or Community Adolescent Mental Health Services (CAMHS), referral to primary care mental health services, third sector agencies (such as revolving doors), or other less criminalising behaviour control methods like Acceptable Behaviour Contracts (ABCs) (see website reference 3).
- Breach of an ASBO must be viewed in the individual's context. An individual with any of the following issues or combinations of issues - mental health problems, learning difficulties, youth, poor literacy, poor accommodation, substance misuse – should rarely be punished in equal proportion for breach as someone who is otherwise able to be fully compliant.

- The Sainsbury Centre agrees with NAPO (see the NAPO recommendation, above) that a government review into the effectiveness of ASBOs, including their use among people with mental health problems, should be carried out to inform future policy and practice, and we are very concerned that such a review has not taken place.

References

BIBIC (2007), 'BIBIC research on ASBOs and young people with learning Difficulties and mental health problems', see <http://www.bibic.org.uk/newsite/general/campaigns3.htm>

Home Office (2002), *Review of ASBOs*, London: Home Office

Home Office, *A Guide to Anti-Social Behaviour Orders*, August 2006

Home Affairs Select Committee (2005), *Memorandum submitted by NAPO to Home Affairs Select Committee*, Fifth Report, 22 March 2005, see <http://www.publications.parliament.uk/pa/cm200405/cmselect/cmhaff/80/80we20.htm>

Justices' Clerks' Society (2006), *Good Practice Guide – Anti-Social Behaviour Orders: A Guide to Law and Procedure in the Magistrates*, May 2006, see http://www.respect.gov.uk/uploadedFiles/Members_site/Documents_and_images/Evidence_and_court/JCS_ASBOGuide_May06_0041.PDF

Rowlands, M. (2005), 'The State of ASBO Britain: The Rise of Intolerance', in *European Civil Liberties Network: Essays for Civil Liberties and Democracy in Europe*, ECLN Essays No. 9, see <http://www.statewatch.org/asbo/ASBOwatch.html>

Sentencing Guidelines Council (2004), 'Overarching Principles: Seriousness', see http://www.sentencing-guidelines.gov.uk/docs/Seriousness_guideline.pdf

Youth Justice Board (2006), *Anti-Social Behaviour Orders*, London: YJB, see <http://www.yjb.gov.uk/publications/Resources/Downloads/ASBO%20Summary.pdf>

Website references:

1. Defining ASB – <http://www.respect.gov.uk/members/article.aspx?id=7538>
2. ASBO statistics – [http://www.crimereduction.gov.uk/asbos/asbos2\(la\)dec05.xls](http://www.crimereduction.gov.uk/asbos/asbos2(la)dec05.xls)
3. Acceptable Behaviour Contracts – <http://www.homeoffice.gov.uk/anti-social-behaviour/penalties/acceptable-behaviour-contracts/>

Max Rutherford
Policy Officer, Sainsbury Centre for Mental Health
Max.Rutherford@scmh.org.uk