

Rethinking Crime and Punishment is a strategic initiative designed to increase the level of public debate about the use of prison and alternative forms of punishment in New Zealand



www.rethinking.org.nz



Issue 42, July 2008

[Click here to read and contribute to the Rethinking Online Forum. Join the discussion today](#)

RECAP
BLOG

[Click here to connect to the Rethinking Crime and Punishment Website](#)

RECAP
WEBSITE

Anti Social Behaviour Orders – Tough on Children – Tough on the Causes of Children

Around May 2008, and following a spate of youth offending, a proposal by the Rotorua District Council to introduce Anti-Social Behaviour Orders gained interest. That was followed by some media interest, and a level of local political interest.

Anti Social Behaviour Orders were promoted by the Home Office as holding out considerable potential in building orderly communities. The history of ASBO's over the last ten years, demonstrates how an idea with promise, can, over time, develop into a blunt instrument of enforcement, rather than a means of promoting public safety.

ASBO's – 1998 - 2002

Anti-social Behaviour Orders (ASBOs) were introduced by UK's New Labour government in 1998. It was in line with communitarian philosophy, which focused on shoring up communities, reversing civic decline and strengthening families. A Home Office evaluation of the scheme, (1) explains that ASBO's were Introduced under the Crime and Disorder Act 1998, and have been available to the police and local authorities since April 1999. They can be used against any person 10 or over who has acted in an anti-social manner, which is defined as:

"a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household"



They were originally designed to deter anti-social behaviour and prevent the escalation of such behaviour without having to resort to criminal sanctions. They were not designed to replace any legislation, but instead to complement measures to combat anti-social behaviour. They were intended to be, according to the Home Office "just one weapon in the armoury available to local authorities and the police."

The Home Office report states that ASBO's were introduced primarily because of complaints from people in public housing estates, around the behaviour of young people, and the impact on tenants, their visitors, and business people. While much of the anti-social behaviour by both juveniles and adults was either sub-criminal, or relatively trivial when considered in isolation, it was sometimes persistence, and annoying. The nature of the prohibition was specified in the order. While an ASBO is a civil order, its breach is a criminal matter, with convicted persons liable to up to six months in prison or a fine, in the Magistrates Court, and up to five years in the Crown Court.

ASBO's were intended to target a variety of behaviour. That included: those who intimidate their neighbours; groups of disruptive individuals on a housing estate; those committing verbal abuse; abusive behaviour towards the vulnerable; persistent bullying, racial harassment or homophobia; and anti-social behaviour as a result of alcohol or drug misuse. An evaluation in 2002 showed that the most common kinds of behaviour for which ASBO's were used, were those associated with generally 'yobbish' and unruly behaviour. Criminal damage and graffiti were also common, as was petty arson.

While assurances were initially given that they would only be used on very young people only in exceptional circumstances, in practice, ASBO's have been directed primarily at the behaviour of young people, and as a means of holding parents to account. They include provisions to compel parents to attend parenting courses, and other measures intended to ensure that parents take responsibility for their children.

A 2002 Home Office evaluation identified a number of shortcomings. In particular:

The Need for Partnership

The need for consultation and partnership between the Police, service providers, and community organisations was desirable. Some Police and local authorities felt that working in partnership was more of a hindrance than a help, resulting in frustration and delays. In practice, the model of partnership working depended on the local environment.

The Benefit of Problem Solving rather than Law Enforcement

Some areas have benefited greatly from adopting a problem-solving approach to anti-social behaviour, resulting in there often being no need to take the final step of securing an ASBO. However, some Police found this approach increased the delays. On the other hand, problem-solving often encourages an holistic approach to the problem behaviour, with ASBOs being used alongside other measures and interventions. Such interventions included mediation, diversion activities, engaging key agencies and multi-agency co-ordination and co-operation. It can also involve changes to the local environment to deter anti-social behaviour and regulating behaviour e.g. drinking in public, through local by-laws.

Court Delays

Delays in processing ASBO applications caused great frustration and were often caused by a lack of preparation by the respondent; and delays securing civil legal aid.

Witnesses

Many witnesses viewed ASBOs quite positively, as they felt that something was being done to combat what they previously thought an intractable problem. However, there was also evidence of fear and intimidation amongst witnesses, resulting in an under-reporting of the behaviour before the ASBO was applied for and an unwillingness to co-operate with the ASBO process.

Overall Result

According to the 2002 Home Office Report, the overall opinion of ASBO's was generally positive. When used successfully, ASBOs had managed to curb unruly behaviour, help rebuild the quality of life in communities and cement good relationships both between partner agencies and between these agencies and the community. Reservations focused on poor relationships with one of the links in the ASBO chain – the local authority, the police or the courts. Co-operation was needed from all agencies, and experience and time were needed for the process of working in partnership. Some regions used ASBO's sparingly, choosing to use a variety of other strategies to deal with antisocial behaviour.

After Six Years

Between April 1999 and September 2001 a total of 466 ASBOs were granted. By the end of September 2004, 3,826 orders had been issued, over 3,100 of them in the 18 months after April 2003. As the numbers of orders grew, so did the criticisms. Squires and Stephen (2) summarised concerns about the application of ASBO's. They were:

Reservations about the departure from criminal due process

The policy was overly reliant upon enforcement and was too punitive to children and young people

There was widespread criticism of the balances being struck between enforcement and support for ASB perpetrators and their families

There was evidence of a gap between community perceptions of ASB and the authorities' enforcement priorities

Growing skepticism concerning the consequences of ASBOs for some of the most deprived and excluded families and communities.

ASBO's lacked accountability to the communities they were supposed to be serving

The original promise of ASBO's was that they would enable crime and disorder, even 'pre-criminal nuisance', to be 'nipped in the bud'. Instead, they widened the net and steepened the tariff encountered by young people. It was not seen as a successful outcome.

Community Safety or Community Law Enforcement?

The use of ASBO's as an enforcement tool, rather than as a means of securing community safety was influenced by changes in

views about how the Police and others defined 'community safety'. Once heralded as a potential new field for social policy development, by 2006 'community safety' had turned into a rather more narrowly selective process of 'community enforcement'. The establishment of new community liaison groups, neighbourhood watch associations and crime prevention panels developed into programmes which recycled the 'respectable fears' of adults primarily about children and younger people. Policy making had largely focused upon resolving the problems that young people cause for adults.

Adopting a community perspective and "responsibilizing" communities can result in the focusing of existing community fears, concerns and intolerances, empowering them and incorporating them as community enforcers. The public responds by developing supplementary, volunteer driven 'policing' initiatives.

Naming and Shaming

This community enforcement approach was further reinforced when local authorities distributed leaflets depicting the photographs of young people to whom ASBOs had been issued, along with the conditions imposed by the court, soliciting the assistance of residents in monitoring the compliance of the young people concerned. This action was justified in terms of aiding the enforcement process, but also served to forcefully 'name and shame' certain individuals, irrespective of the consequences. In the city of Guildford, a 'wall of shame' was established - a large public wall onto which the pictures and details of ASBO recipients were projected 'for public information'. It became a campaign of vilification not unlike those faced in the past by 'benefit scroungers', single parents and, once again, immigrants and asylum seekers. It had the effect of isolating those already excluded within the community, without offering little in the way of opportunities for reintegration.

Growing Concern

By 2005 the numbers of ASBO's issued had increased to 4,060, and there was growing concern from those working in local authorities and voluntary sector agencies, about the injustice, inappropriateness and ineffectiveness of ASBOs. Many of the people criticizing the enforcement driven approach to ASB were themselves working in local authority community safety teams, sometimes alongside ASBO strategy coordinators.

Such people, bypassed in the rush to enforcement, were emphasizing an alternative and critical community safety practice which emphasized support, welfare, social justice and needs and the requirement to address social exclusion issues (rather than exacerbate them) through restorative justice approaches and locally accountable mediation initiatives.

In a recent study, Koffman (3) tracks the history of ASBO's. Concern over anti-social behaviour was a legitimate issue when New Labour gained office, and the idea that "responsibility starts in the family and that parents are accountable for the actions of their children", was well received at the time. It would seem however, that in recent times ASBO's were used to excess, and insufficient attention was paid to the underlying causes of anti-social behaviour and to substantive issues of social justice. Instead, the government relied on stigmatizing and punitive behaviour, both in relation to offending children and their parents.

Koffman points to a recent study of teenagers, who were subject to ASBO's. It showed strong evidence of absenteeism, exclusion from school, drug use, and clear evidence of behavioural and mental health problems. A significant number were suffering from ADHD (Attention Deficit Hyperactivity Disorder), while others were suffering from depression. These underlying symptoms were not addressed through the ASBO process.

Do ASBOs work?

Margo and Stevens (4) conclude that there is little evidence that ASBO's work, and some evidence that they do not work at all. Anti-social behaviour has not declined in light of these measures. The breach rate for ASBOs imposed on under 18 year olds is around 55%, of which 46% resulted in a custodial sentence in 2004. ASBO legislation has been fast tracking young people into the criminal justice system. Significantly, ASBOs were not sending a message to young people that their behaviour was inappropriate. In some of the most "at risk" groups they became a symbol of cool rebellion.

Over the last year interest in ASBO's have declined, with the numbers issued declining by a third.

Margo and Steven's report is a comprehensive look at the most effective ways of dealing with preventing youth crime, and consider ASBO's in that context. [You can download the full report here.](#)

Conclusion

Margo and Stevens comment that the development of effective strategies for addressing anti-social behaviour among young people is complex, and raises a range of dilemmas. Professionals involved in the decision-making process inevitably have different views of the place of Anti-social Behaviour Orders in such strategies. Those who see their role principally in terms of community protection are generally less critical of enforcement-type measures than those whose predominant concern is working directly with young people to change their behaviour. Effective practice may in future depend on achieving a balance between those perspectives: one that is sensitive to the needs both of the (frequently disadvantaged and excluded) young people, and of the communities in which they reside.

Children as young as 10 cannot be treated as autonomous individuals who are fully aware of the consequences of their actions

– cognitive science and psychological research makes that clear. Problematic behaviour of children of this age should be seen as a signal of a problematic family or social context that needs to be the focus of intervention. Strategies to tackle individual risk factors will not work if they do not also tackle the factors that underpin poor emotional and social development.

The focus of ASBOs has been on the failings of individuals. That approach allows the state to intrude upon family life, at the same time failing to locate these problems in the wider context of poverty and the shortcomings of essential services. That leads to a failure to address wider issues such as the decline of communities, the loss of informal support for families, and the absence of a collective response to family and neighbourhood problems. As a result, disadvantaged families become more isolated, yet find themselves increasingly blamed for matters beyond their control. When government focuses on behaviour and moral values at the expense of welfare issues, it reinforces the myth that the key to promoting family stability is to control anti-social behaviour.

The UK government's response to genuine social problems has been misguided, with a variety of orders, injunctions, summary offences and pseudo-contractual agreements which, although intended to build community 'respect', appears to bully those sections of society which have the greatest need of better education, social and health services, improved housing conditions, and government support.

Families who are clustered together in areas of disadvantage, and suffer from a range of serious problems, including physical and mental health issues, drug and alcohol issues, and poor school attendance, are unlikely to respond effectively to punitive action. A more balanced and less judgmental approach needs to be adopted, so as to enable multiple disadvantage to be addressed without unnecessary intrusion into, and 'policing' of, family life.

(1) Campbell, Siobhan, "A review of anti-social behaviour orders", Home Office Research Study 236, Home Office Research, Development and Statistics Directorate, January 2002

(2) Squires, Peter & Stephen, Dawn, "Rethinking ASBO's" Critical Social Policy 2005; 25(4) ; 517-528

(3) Koffman, Lawrence, "Holding Parents Accountable – Tough on Children, tough on the Causes of Children. Journal of Law and Society, Volume 35, No 1, March 2008, pp 113 - 130

[\(04\) Margo, Julia & Stevens, Alex; "Make Me a Criminal – Preventing Youth Crime", Institute for Public Policy Research, May 2008](#)