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Stuart Kirby, Ann Edmondson

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The effectiveness of the ASBO – a practitioner perspective

Stuart Kirby and Ann Edmondson

Stuart Kirby is a Lecturer and Ann Edmondson is an undergraduate Criminology student, both at Lancaster University, Lancaster, UK.

Abstract

Purpose – Academics, politicians and the media have debated the merits of the Anti-Social Behaviour Order (ASBO) for over a decade. Much of this discussion has been associated with negative connotations and there are currently government proposals to abolish the order in favour of a Crime Prevention Injunction (CPI). This study seeks to provide a practitioner perspective to further inform this debate.

Design/methodology/approach – Using qualitative analysis, the research examines 36 ASBOs administered within a policing division in the North West of England. It supplements these findings with qualitative data that harvest the views of practitioners involved in the application and enforcement of these orders.

Findings – The study shows that practitioners view the ASBO as an effective tool in managing and reducing antisocial behaviour. In doing so it questions the interpretation of other research findings and provides timely and relevant information that should be considered prior to the implementation of any change to current practice.

Research limitations/implications – The data relate to one Police Division in the North West of England and caution must be acknowledged when considering how representative they are across the rest of the UK.

Originality/value – A practitioner perspective has been lacking from the debate concerning the ASBO. These data provide a fresh perception on its use and benefits.

Keywords ASBO, Community safety practitioner, ASBO profile, Crimes, Behaviour, England

Paper type Research paper

Introduction

Anti-social behaviour and concern surrounding troublesome youth have been a feature of British history since the seventeenth century (Pearson, 1983), although it can be argued this concern has become more pronounced in recent decades. Anti-social behaviour has often been linked with the onset more serious crime (Brand and Read, 2000), with more recent studies showing the public are unable to differentiate between crime and anti-social acts (Duffy *et al.*, 2008). Even with the consistent fall of crime rates in recent years, the public perceive crime to be more prevalent and feel more at risk than before (Wain and Burney, 2007). As Innes and Weston (2010) report 45 per cent of calls made to the police concern distress about anti-social behaviour, which is said to cost Britain £14 million per day (Home Office, 2004).

Young (2007) argues this concern is a consequence of post-modern society, as fragmented communities, coupled with associated change, generates uncertainty and makes individuals less tolerant of disorder. Whatever the reason these developments have significant ramifications as, since the 1970s, law and order has become increasingly associated with politics. Fuelled by an increasingly energetic and political press the government have often

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responded with a popular punitiveness which has sought to legitimise tough responses towards young offenders (France and Meredith, 2009).

Perhaps one of the most innovative responses has been the anti-social behaviour order (ASBO). ASBO's emerged from the Crime and Disorder Act 1998, as one of the earliest pieces of legislation enacted by the New Labour government. It sought to discourage individuals from committing anti-social behaviour and prevent relatively minor transgressions escalating into more serious forms of criminality (Campbell, 2002). The order, targeted at those who persistently come to the attention of the police and who are aged ten years and older, is enforced for a minimum of two years (Campbell, 2002). As civil orders they impose behavioural restrictions preventing individuals committing anti-social behaviour within the community (Burney, 2008). After an initial slow take-up the ASBO became increasingly more popular (although recent research has once more shown a decline in their use), however, whilst some supported the concept, there were many more detractors. These criticisms are generally founded on four points: the ambiguous nature of anti-social behaviour and therefore the ASBO; the dilution of the criminal justice system; discriminatory targeting often being used differently in different areas; and the effectiveness of the order.

Defining what anti-social behaviour is

The first concern relates to definition. The Crime and Disorder Act, 1998 defines anti-social behaviour as acting in a way that causes suffering to an individual, or a group, not living at the same address as the perpetrator. This definition can be interpreted liberally (Home Office, 2004), with different individuals having conflicting views of acceptable and distressing behaviour, being dependent on such variables as age, geographic location, and life experience. As such the ASBO has been applied to incidents such as street drinking, hoax calls, harassment, and unruly, noisy, or disruptive behaviour (Campbell, 2002); in fact Burney (2005) argued it can be used for almost any behaviour ranging from noise pollution to intimidation, generating concerns that the order can be used too broadly.

Diluting the criminal justice system

Second there is concern that the ASBO has distorted the distinction between civil and criminal law. Application for an ASBO only requires evidence that matches a civil burden of proof (on the balance of probabilities), rather than a criminal burden of proof (beyond all reasonable doubt), and can also include hearsay. This, some argue, dilutes the value of due process underpinning the British criminal justice system (Downes and Morgan, 2007). Further, it is feared many of the behaviours involved in the application of an ASBO could be defined as criminal, suggesting the order provides an easier route to sanctioning the recipient, rather than proving individual offences (Squires and Stephen, 2005). Further once the ASBO is breached those non-criminal acts are criminalized as the perpetrator faces a custodial sentence (Smith, 2006).

Unfair targeting

The third concern revolves around the unfair targeting and stigmatising of certain groups, leading towards a concept known as "net widening" (Cohen, 1985). Manders (2009) argues the vast remit of anti-social behaviour is more likely to encompass vulnerable populations, such as the homeless, adolescents, and those suffering mental health problems. Campbell (2002) also argues 84 per cent of ASBOs are given to males below the age of 21. As such they argue the ASBO unfairly directs more vulnerable individuals into the criminal justice process. Furthermore, because the orders are often applied without consideration of existing problems, or lack supporting procedures, this makes the conditions of the order difficult to adhere to. In this way Muncie (2002) is concerned measures such as ASBOs are more likely to capture and fast-track young people into the criminal justice system, with subsequent breaches only increasing the already excessive number of children in custody, compared to other European countries (Wain and Burney, 2007). Others are concerned that capturing more younger people within the criminal justice system will increase their overall offending (McAra and McVie, 2010).

Also as the ASBO needs a certain amount of publicity to assist enforcement, excessive media reporting can result in stigmatisation towards the individual and their families (Wain and Burney, 2007). Naming and shaming of local ASBO recipients places the individual and family at risk of victimisation with the community able to single out the individual as a scapegoat for the declining standards of the area (Millie, 2009).

The effectiveness of the ASBO

The final criticism of the ASBO relates to its effectiveness. An isolated number of commentators have pointed out that the order can reduce anti-social behaviour and its very implementation can increase public confidence and reduce the fear of crime (Campbell, 2002); however, the majority of the academic literature has been critical. This is not helped by the ambiguous nature of anti-social behaviour which makes evaluation difficult.

Much of the discourse appears to measure the success of ASBOs by their associated breaches and critics specifically point out that the high proportion of breaches are evidence that the order is failing to act as a deterrent. Matthews *et al.* (2007) also highlight that the majority of ASBOs are placed upon young people at their peak age of offending and their misdemeanours would reduce in time anyway. Other scholars, such as Muncie (2002) and Mayfield and Mills (2008), have noted that the conditions proposed by ASBOs do little if anything to address offender motivation or the underlying causes of anti-social behaviour, such as boredom, peer pressure, or substance abuse. They suggest resources could be used more cost effectively in establishing youth groups, community centres, or other diversionary projects.

Furthermore, the conditions of ASBOs can often distance recipients from their families and friends as they are banned from certain neighbourhoods. This segregation can reduce the ability to form stable relationships in adulthood, a concept often associated with desistance from criminality (Millie, 2009). In fact concerns have also been expressed regarding the excessive length of some ASBOs, which does not allow scope for the individual to mature and change. Similarly labelling theory would also suggest ASBOs can result in a self-fulfilling prophecy. Instead of the ASBO improving behaviour it can push some towards a life of criminality. Numerous reports have referred to the ASBO being a “badge of honour”, with young people living up to their label (Wain and Burney, 2007).

In essence there are many detractors concerning the ASBO, however, there has been a lack of research into the impact and effectiveness of the order from the perspective of those who apply and administer them. Therefore, this research aims to look at the effectiveness of ASBOs from a practitioner perspective. The research is particularly relevant as the Home Secretary seeks to remove ASBOs in favour of a more rehabilitative approach to punishment (BBC, 2010). In spring 2011 the Home Office released a consultation document containing the new proposals to reform the current toolkit available for dealing with ASB (Home Office, 2011). In relation to where a case is made for a “stand alone” ASBO, the government suggests these should be replaced with a crime prevention injunction (CPI). The new injunction would contain prohibitions on behaviour as well as positive requirements to address any underlying issues. Examples of positive requirements include clauses to attend an anger management course. Unlike ASBOs the Home Office propose that the CPI would be a purely civil order and that a breach would not constitute a criminal offence. Although not within the remit of this study a further recommendation proposes the CRASBO (an ASBO granted at the time an individual is convicted of a criminal offence) should be replaced by a criminal behaviour order.

Methodology

This research analysed all ASBOs administered within the Lancashire Constabulary Western Division ($n = 36$). This is a police area situated in the North West of England, covering the Blackpool and Fylde local authority areas. This area has a total population of 213,217 two-thirds of whom reside in Blackpool, which also has the highest percentage of young people (24 per cent under the age of 21 years). The coastal region has both deprived and affluent council wards, and provides a diverse range of policing challenges. The research was

conducted with the assistance of practitioners employed by Lancashire police and the Blackpool and Fylde Borough Councils, resulting in a combination of both quantitative and qualitative findings. The quantitative element comprised a content analysis of the case papers surrounding each individual subjected to an ASBO during this period. The qualitative analysis was based upon questionnaires provided to the police, council employees, and councillors who had some experience of applying for and implementing ASBOs. This mix of data is said to provide a more thorough understanding picture of the situation and more case-specific details (Noaks and Wincup, 2007). The authors were vetted by the constabulary prior to gaining access to the data, and all information was anonymised prior to analysis.

Findings

During this period of study 36 ASBOs were being administered in the Blackpool and Fylde area, and all were used in the analysis. All but one related to local individuals involved in local anti-social behaviour. The exception was one man whose restrictions related to the Warwickshire policing area.

As previous studies show, the majority (92 per cent) of individuals within the sample were male. However, the age range was diverse with the youngest person being 14 years and the oldest being 63 years of age. Although the average age was 33 years there was a 15-year standard deviation around this mean. As Table I shows below there is a slightly higher concentration of ASBO's in relation to younger men, albeit 47 per cent are over the age of 35 years.

The time frame for implementing an ASBO in this region was relatively consistent. A significant number of the orders are in place for two years (34 per cent), with the majority being monitored for three years or less (63 per cent), and a small number in place for a period of five years (3 per cent).

The next stage of the analysis looked at the number of restrictions attached to each ASBO. These are the conditions the applying authority (police or local council) feel are necessary to prevent the offending behaviour, and which are agreed (or not) by the court upon application. The restrictions, found in this sample, ranged in number between 1 and 11. The average number was 4, with just over half of the ASBOs having three or less stipulations. The graph below shows the distribution of these restrictions (NB most labels are self-explanatory; the label "AS Manner" is a catch all title requiring the recipient "to desist from any general behaviour that is likely to cause antisocial behaviour"). Figure 1 shows the most commonly used restriction prohibits the individual from entering particular areas or premises (64 per cent). Two other often used stipulations (apparent in 42 per cent of applications) prohibited alcohol consumption in public, or used the general restriction ("AS Manner" – explained earlier). Other frequently used preventative stipulations included not being in possession of alcohol, not using abusive words or behaviour (33 per cent); or not associating with specific individuals (28 per cent). The category "other" relates to specific acts such as begging and threatening witnesses.

The final analysis looked at how often the conditions of the ASBO were breached. Table II shows the distribution and frequency of these breaches.

Table I The age of individuals subjected to an ASBO

<i>Age group</i>	<i>Numbers</i>
14-18	11 (31%)
19-25	4 (11%)
26-35	4 (11%)
36-45	8 (22%)
46-55	7 (19%)
56-65	2 (6%)
Total	36

Figure 1 Showing the frequency of each type of restriction

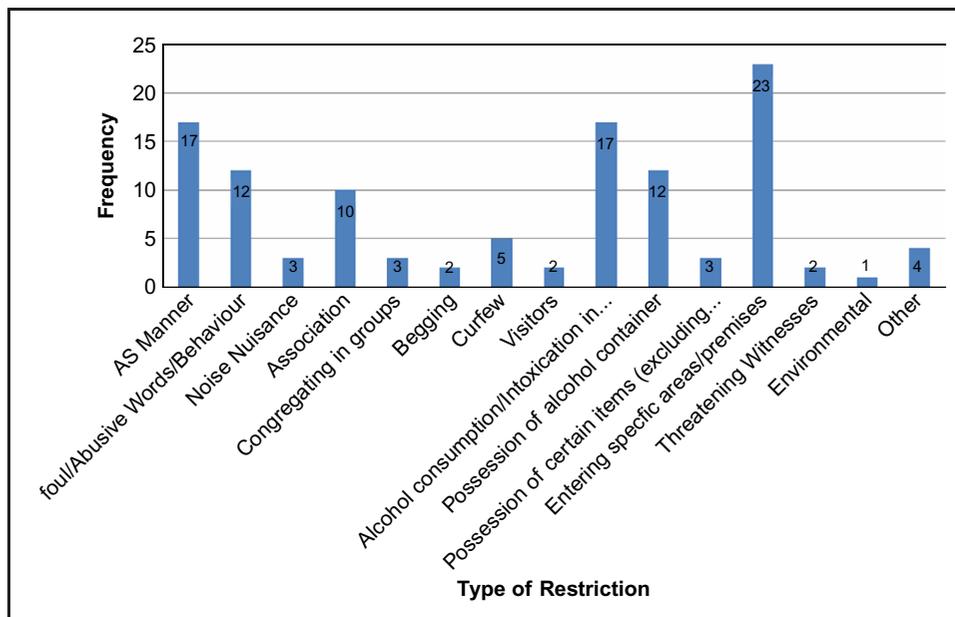


Table II The distribution of breaches

Number of ASBO breaches	Frequency of breaches	(%)
0	11	31
1	6	17
2	5	14
3	1	3
4	3	8
5	1	3
7	2	5
8	2	5
10	1	3
12	1	3
23	1	3
28	2	5

Nearly a third of ASBOs were never breached and 62 per cent of ASBOs were being breached twice or less. However, there were a small number of individuals (14 per cent) who breached their ASBO on ten or more occasions. It was also discovered the number of breaches is slightly higher than the number of convictions, showing not all breaches resulted in a successful prosecution. Table III shows no correlation between the age of the recipient and subsequent breaches. However, perhaps counter-intuitively the majority of 19-35 year olds do not breach their order whereas older males, aged 46-55, are most likely to (the highest number of breaches being 28). In total, three recipients of ASBOs in this sample were in prison at the time of this study.

In summary the quantitative analysis showed the typical profile of an individual with an ASBO in the Blackpool and Fylde area is a male (91.7 per cent) with an average age of 33 years. The majority of ASBOs are applied for by the police (75 per cent) with the remainder of applications being submitted by the borough council and one other police force. Typically an ASBO is valid for 24 months, with an average of four restrictions and is most likely to include a restriction prohibiting the individual from entering specific areas or premises. On average the ASBO is breached 4.8 times, with the individual being convicted 4.4 times for these breaches.

Table III The relationship between the age of the ASBO holder with the number of reported breaches

Age	Number of breaches	Age	Number of breaches
14	10	34	0
14	0	36	2
15	0	37	1
16	3	38	0
17	0	40	2
17	0	41	13
17	5	41	1
18	4	43	0
18	4	45	0
18	1	48	28
18	1	48	5
19	0	50	8
22	0	51	25
24	0	51	12
25	6	54	1
27	6	55	0
30	2	58	4
30	1	63	0

A practitioner perspective

Although 45 questionnaires were sent out to those engaged with the introduction and monitoring of ASBOs, only nine were returned (33 per cent from council employees and the remainder from police staff). This was obviously a low rate of return and caution must therefore be taken when considering these individuals as a representative. The practitioners were asked to describe the decision-making process surrounding the ASBO application and whether, in their view, the order prevents anti-social behaviour/criminality. They were also asked what they felt were the most effective restrictions, and whether any rehabilitative support was available. Finally, the staff were asked whether there was any displacement of anti-social behaviour following implementation.

There was a general consensus across practitioners in relation to these issues. First all of the respondents felt applying for an ASBO was a “last resort” due to the costly and time-consuming nature of developing an application for court, which meant the process was only set in motion for the most serious cases (this process should not be confused with the CRASBO mentioned earlier). Practitioners were keen to point out that they did not wish to criminalise anyone and respondents pointed to a diversity of other responses, such as family intervention projects or acceptable behaviour contacts that had been tried and failed prior to instigation of the ASBO. The practitioners also revealed relevant agencies (e.g. education, social services, housing) were consulted prior to initiating the ASBO, at multi-agency meetings, to establish the approach was both appropriate and proportionate. Indeed the consultation showed although there would be benefit in engaging the individual in more positive activities to reduce their long-term offending behaviour, this would involve increased resources and an increased time frame to apply for the order.

All of the respondents deemed ASBOs were effective in preventing anti-social behaviour. The fact that ASBOs were breached stimulated a number of responses. Many police officers highlighted the fact that a significant number of young people tend not to breach, as the threat of a possible custodial sentence hanging over them is sufficient to make them behave. A police respondent suggested that many of the individuals issued with an ASBO are bound to breach at least once pointing out that they were persistent offenders and therefore needed to experience the consequences before it acted as a deterrent. Others highlighted the problems of constant breaching and attributed this problem to the courts, which delivered weak sanctions. Others also claimed that the success of the order is dependent on the individual and their response to the conditions.

Practitioners claimed that the “general restriction” is the most effective (“Acting in an anti-social manner, that causes or is likely to cause harassment, alarm or distress by using foul and abusive language or using threatening or intimidating language or behaviour”) as it encompasses many behaviours. Also wider conditions (e.g. applicable to whole town not just the area where the unacceptable behaviour is committed) were considered more effective and prevented the displacement of the troublesome behaviour to other areas. Indeed there appeared to be no evidence of displacement generated by the ASBO. Curfews, restrictions, and prohibitions preventing association with certain individuals were also considered to be effective.

Discussion

This research has established a number of findings contrary to the conclusions provided by previous academic literature. Practitioners are clearly of the view that ASBOs are effective when used in the right context, despite government, academic, and media views to the contrary.

In her study Campbell (2002) claimed that ASBOs are granted to individuals without full consideration of existing problems – a process that may cause, or exacerbate, anti-social behaviour. However, this research challenges that view, showing the time and cost commitments required to apply for an order are so significant that it rules out the intervention in all but the most acute cases. It appears ASBOs are only applied for as a last resort when all other possible avenues have been explored. Although the police made 75 per cent of the ASBO applications in this study, a multi-agency consultation is implemented to ensure all agencies agree the ASBO is the best route to deal with an individual's behaviour. This process requires significant evidence and also refutes some of the concerns surrounding the dilution of due process within the criminal justice system (Squires and Stephen, 2005).

A wealth of academic literature surrounding ASBOs is concerned with the criminalisation and stigmatisation of youth (Smith, 2006; Wain and Burney, 2007). In this sample the youngest individual was 14 years and the oldest was 63 years highlighting that no single age group is disproportionately targeted for an ASBO (Campbell, 2002). This sample is also supported by a recent Home Office document released in March 2011 that found that 65 per cent of all ASBO/CRASBO applications are for individuals 18 years and over (Clarke *et al.*, 2011).

Academics and the media have also claimed that the intervention serves as a “badge of honour” particularly for younger recipients. Although individual examples can be found to support this point, this research found that younger ASBO recipients did not act up to the label, with 50 per cent of 14-18 year olds only breaching on one occasion, or not at all. In fact the 19-25 age group generally appear to be obeying the conditions of their ASBOs (although it is acknowledged the absence of a breach can at times illustrate a failure to detect, rather than compliance). This may be due to these individuals reaching their peak of offending and/or the ASBO is a sufficiently strong mechanism to tip them into desistance (albeit desistance is a difficult concept to define – see Farrington, 1986). Furthermore, the low or non-existent levels of breaches in the 19-35 age bracket goes against McAra and McVie's (2010) findings that minimal intervention with the criminal justice system during adolescence makes younger individuals less likely to offend. It also challenges the suggestion that ASBOs push individuals towards a life of further criminality (Wain and Burney, 2007). The observation that the older ASBO holders appear to breach the most suggests that anti-social behaviour is more ingrained in their behaviour, having had a life littered with persistent criminality.

Other literature surrounding ASBOs refers to the excessive length and unnecessary number of conditions that make breaches unavoidable (Smith, 2007). About 33 per cent of ASBOs in this sample are valid for 24 months, but practitioners made it clear that orders were reviewed after 12 months if the recipient had abided by the conditions of the order. This provides evidence that an ongoing review of individuals with ASBOs does allow scope for change and maturity, especially in the case of young people. There were on average four conditions to the ASBO, which is a relatively low figure. The stipulations found in this study do not include any unusual requirements that as such could be ridiculed in the media as suggested

by Burney (2005). The most common stipulation prohibited individuals from entering specific areas/premises, closely followed by the general ASB stipulation. Practitioners also acknowledged the value of families and other relationships in helping deter an individual from anti-social behaviour and were able to provide examples of when conditions were adapted to ensure individuals could visit family members. This is in contrast to Millie (2009) who claims that the prohibitions associated with ASBOs distance individuals from support networks, such as family members. Stipulations involving alcohol (either possession of or intoxication due to alcohol) are also widely adopted in Blackpool, suggesting possible links between alcohol consumption and anti-social behaviour. Furthermore, although previous researchers claimed ASBOs applying to England and Wales are more difficult to enforce (Smith, 2007), officers in Blackpool claimed wider restrictions prevented displacement.

Turning to breaches, cumulatively 60 per cent breached twice or less and 31 per cent of the individual's had no recorded breaches. However, it has become apparent during the course of this research that unlike many other commentators the police and other partnership agencies do not necessarily view breaches as failure. First one police officer referred to the advantage of offenders breaching the terms of their ASBOs once in order for them to suffer the consequences. Many police officers claimed that the court did not sufficiently deal with the breaches, examples provided included £15 fines, one day detention, and community orders.

In essence practitioners identified many similarities between the new Home Office proposals and the current ASBO process. It was suggested that the proposed CPI is just a rebranding of the ASBO with the addition of some positive requirements. Implementing specific rehabilitative proposals would be welcomed but would require further resources to provide more services, staff, and training. There was some concern that this could not be achieved in austere times and some scepticism was evident that the proposals were nothing more than what Wain and Burney (2007) referred to as the revamping of the country's law and order agenda, in an attempt to show government control.

Conclusion

The ASBO has been a controversial intervention, blurring the boundaries between civil and criminal law. Many previous studies have concluded that ASBOs are an inappropriate intervention marginalising particular sections of society, and have also been ineffective, when based upon the excessive numbers of breaches associated with the order.

However, although acknowledging this study involved only one UK policing area and presented the subjective opinion of practitioners, it has challenged many previous findings. The study argues, from a practitioner perspective, that the ASBO is an effective tool and fails to support the notion that particular groups (particularly young people) are targeted for intervention. Further it appears that the ASBO was used sparingly and often as a last resort, involving a wide variety of public agencies and community safety practitioners, only when other attempts to change persistently poor behaviour had failed. It showed there was no significant support in changing to the proposed CPI, however, if potential ASBO targets were to receive more supportive and preventative action, practitioners would require appropriate resources to deliver it.

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Corresponding author

Stuart Kirby can be contacted at: s.kirby@lancaster.ac.uk

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