
Home Office Research Study 236

A review of anti-social behaviour orders

Siobhan Campbell

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Foreword

Anti-social behaviour is an unpleasant fact of many people's everyday life, regardless of whether they live in leafy, rural villages or deprived inner-city estates. Anti-social behaviour orders (ASBOs) were designed to combat such behaviour. Before ASBOs, the use of injunctions and evictions went some way to dealing with problem behaviour. But many individuals – and most importantly juveniles, who are commonly considered to be the cause of much anti-social behaviour – slipped through the net. ASBOs can be used on any individual, from the age on 10 upward, who has acted in an anti-social manner. The intention is to target persistent perpetrators of anti-social behaviour regardless, for example, of age or the type of housing they occupy, in order to protect their community from further acts of anti-social behaviour.

ASBOs have now been available since April 1999, and have been used in a number of areas throughout the country, successfully in some, less so in others. This review looks at the reasons ASBOs are not being used consistently and offers recommendations as to how they could be used more effectively, based on the strategies of successful areas. It highlights the potential difficulties associated with ASBO applications, and discusses solutions that have successfully overcome such problems.

This is a timely report given the level of interest surrounding ASBOs since they first became available, and gives a useful overview of how ASBOs are working almost three years on. Specific recommendations will also help practitioners as they tailor their strategies to deal quickly and effectively with anti-social behaviour problems in their areas.

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Siobhan Campbell

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Executive summary

Anti-social Behaviour Orders (ASBOs) were introduced under the Crime and Disorder Act 1998. They have been available to the police and local authorities since April 1999, and may be used against any person 10 or over who has acted in an anti-social manner.

They are civil orders and were designed to deter anti-social behaviour and prevent the escalation of such behaviour without having to resort to criminal sanctions, although a breach does give rise to criminal proceedings and penalties. They were not designed to replace any legislation, but instead to complement existing measures to combat anti-social behaviour and are only one weapon in the armoury available to local authorities and the police.

The review

A commitment was made to Parliament during the passage of the Crime and Disorder Bill to review ASBOs after two years. The review evaluates the effectiveness of ASBOs in dealing with anti-social behaviour and identifies best practice in how they are being used. It also looks at the concerns of practitioners, considers how the orders work in practice and offers suggestions as to improvements that could be made.

Information in the review was drawn from a range of sources including:

- statistics collected by the Home Office;
- information from a sample of case files collected from 9 areas throughout the country;
- interviews in 14 areas throughout the country with local authority and police representatives; the relevant internal solicitors; magistrates and court clerks; and witnesses.
- a costing questionnaire on the hours and costs involved in applying and enforcing an ASBO;
- a follow-up of cases to see if and how ASBOs had been breached.

ASBO use

ASBOs are being used successfully in a number of areas throughout the country both as a means to stop existing anti-social behaviour and as a deterrent to future acts. Between April 1999 and September 2001 a total of 466 ASBOs were granted, the majority on men (84%), and those 21 years of age and under (74%). However, the use of ASBOs is not consistent between areas and agencies, with some not considering any and others finding their use problematic and a disincentive to try again.

Used successfully, practitioners indicated that a number of positive outcomes could flow from the use of ASBOs including a reduction in anti-social behaviour amongst both the individual given the order and the entire group, and an increased public confidence in the partner agencies. However, there have been a number of issues associated with the process of obtaining an ASBO which have proven to be problematic in some areas. These include unnecessary bureaucracy, delays and excessive costs.

Areas that have successfully used ASBOs have developed a number of different strategies to overcome such potential obstacles.

Partnerships

The need for consultation and partnership has been variously interpreted due primarily to local conditions and arrangements. This has led to a number of different models of partnerships working that have different implications for the work and resources needed from each agency. However, there is little difference between the overall number of ASBOs applied for by local authorities and the police ASBOs (49% vs 51%).

Ideally some form of partnership working is desirable as such an arrangement can bring agencies closer together, spread the cost of ASBOs and produce creative solutions. However, some areas have felt that partnership working was more of a hindrance than a help, resulting in frustration and delays. In practice, the model of partnership working used will depend on the local environment. The final decision should be based on which arrangement will deal with the anti-social behaviour as efficiently and effectively as possible.

Irrespective of the success of the partnership, the lead agency's commitment to the process and the input of key players within each organisation is essential. A lack of strategic support or the absence of knowledge or commitment in one key player can seriously undermine the likelihood of a successful ASBO being applied for.

Process

The claim that there is excessive bureaucracy involved in applying for ASBOs was not made in every area investigated: some areas have managed to organise their local partnerships and protocols to streamline the process. In the areas visited, complaints about bureaucracy tended to revolve around the delays the necessary processes cause rather than the actual process itself. Most acknowledged that applications that involve the courts will necessarily have legal processes and standards that need adhered to, although some compared preparing an ASBO file to preparing a complex criminal file.

In practice, there were a number of steps that could be taken to minimise both the bureaucracy and delays associated with the application. These centred round drawing up clear and simple local protocols which were designed to deal specifically with the local area, taking into consideration the relationship with partner agencies and the anti-social behaviour problems experienced. Effective strategies and protocols were often short and simple and designed to help practitioners deal quickly and effectively with their local problems within clear timeframes. Tactics such as fast-tracking more severe cases and creating clear easy-to-follow steps for those unfamiliar with the process were also often successful in minimising perceived bureaucracy and delays.

Problem solving

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, others have found that this approach increases the delays associated with applying for an ASBO, with over-consultation leading to a lengthy process, partly defeating the objectives behind applying for an ASBO. Again, tight local protocols that commit partner agencies to action within set timeframes may help these difficulties.

Problem-solving often encourages an holistic approach to the problem behaviour, with ASBOs being used alongside other measures and interventions. 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 passing local by-laws such as prohibiting drinking alcohol in public places.

Acceptable Behaviour Contracts (ABCs) or different but related processes to intervene early with problem behaviour were used in most areas. These have been welcomed by many as a

way of challenging anti-social behaviour with less cost and effort than ASBOs, leaving ASBOs available for more serious cases. If it fails, information has already been collected on the individual, speeding ASBOs applications that may prove necessary in the future.

Court issues

Despite the 1999 guidance clearly stating that delays in the court process should be kept to a minimum, in more than a half of cases (56%) three or more hearings were needed before a decision was made about ASBOs. On average it is taking cases 66 working days (over 13 weeks) from the date of application to the date the ASBO is granted. These delays caused great frustration and were often caused by a lack of preparation by the respondent; delays securing civil legal aid; and a number of hearings taken up agreeing preliminary issues such as hearsay notices.

In addition, although the issue of the standard of proof has been resolved in the Court of Appeal (*R. v. Manchester Crown Court ex parte McCann* (2001)), there remains some residual confusion in the courts. For this reason, many areas have been 'over egging the pudding' and preparing evidence to a higher standard than is necessary to avoid disappointment in court. Overall only four per cent of cases were refused in court.

There were differences throughout the country in how partnerships viewed the courts. Areas that were high users of ASBOs were more likely to report a good relationship. Those areas who had suffered a number of appeals were less satisfied with the court process, and concerned about the ability for the defence solicitor to appeal without stating causes.

Witnesses attitudes

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 much 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.

Possible solutions have included enlisting witnesses from people working rather than living near the problem and using a large number of witnesses to support each other through the process. When there is no other option other than a local resident giving evidence, a number

of support measures can be used, including personal support from either the local authority, the police, or neighbourhood wardens, security and surveillance cameras and panic alarms.

It is also important to provide aftercare for witnesses who have been involved in the process, to ensure they continue to be protected and so they understand the order and know what constitutes a breach. In this way any community benefits won as a result of the ASBO can be maintained, and enforcing the order can be made easier.

After the order

In order for an ASBO to be successful there is a definite need, even after the order has been granted, for partner agencies to continue to work closely together. Failing to enforce the order can result in benefits gained during the application process to be lost: the behaviour escalating and public confidence diminishing.

Failure to enforce the order can have a number of causes including a lack of police priority; a lack of resources and inconsistent attitudes to breaches from within partner agencies. There is also a perception amongst both partner agencies and witnesses that breaches are not being treated seriously by the courts. However, data from the Courts Proceedings Database indicate that this is not necessarily the case: in 2000 over half of those sentenced in court for breach of ASBO received a custodial sentence. Monitoring the outcome of ASBOs and communicating this information is obviously important.

One possible pitfall associated with ASBOs is that enthusiasm and support can be built up within the community, only for it to be dissipated if they feel the order has not been successful. Fundamentally, if the order does not change the behaviour it is targeting, then it has failed. Areas have developed a number of strategies in order to ensure orders are successful including targeting ringleaders for the ASBO, carefully wording the conditions in the order and using the local press to publicise the order and make sure the public are aware of how to enforce it.

Costs

The average cost of the ASBO was £5,350 in total, including the staffing costs of preparing the case, attending problem-solving meetings and dealing with appeals and breaches. The cost of the application alone excluding appeals and breaches, which do not necessarily occur, was £4,800. Areas satisfied with the ability of ASBOs to reduce anti-social

behaviour considered the order cost-effective, as it can save on costs such as future staffing, repairs, legal costs and insurance claims. Those who did not consider ASBOs cost-effective usually did not see improvements in the behaviour.

A number of agencies pointed out that work including evidence gathering and attending incidents is work that the local authority and the police would be involved in anyway. Considered in this way, staffing is not actually an additional cost, but a cost that would be incurred anyway.

The average cost for legal assistance was £760 for internal solicitors and £1,200 for external advice, although there was great variation between areas. These are additional cost to agencies, as ASBOs are not replacing other legal work, but can be minimised by a partnership approach.

Conclusion

The overall opinion in the areas visited was generally positive. When used successfully, ASBOs have 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 is needed from all agencies, and experience and time are needed for the process of working in partnership and applying for ASBOs to bed-down. However, in the absence of co-operation, local strategies need to be developed to deal with local situations.

Delays in the process are a major concern. There are a number of reasons for this, but they can be tackled by streamlining local processes for dealing with anti-social behaviour; setting timeframes for each stage of the process; allowing key staff time to develop the case; using other agencies to collect evidence where appropriate; and having strategic support.

Some areas of the country are using many ASBOs, whereas others are using very few. This can be because of a lack of strategic support or disillusionment, or else the result of a variety of strategies dealing with anti-social behaviour, tackling the behaviour but not necessarily using ASBOs.

Resources were also a concern for some, although it was acknowledged that a successful ASBO should free up resources in staff time, support and repairs. However, to legal departments ASBOs represent extra work without savings in any other aspect of their work.

Recommendations

- Local areas need to develop streamlined time-limited strategies to deal with anti-social behaviour to overcome delays and unnecessary bureaucracy.
- An information resource or network should be provided to give support and encouragement to individual agencies' attempts to tackle anti-social behaviour and troubleshoot potential problems.
- Each agency should be able to demonstrate their commitment to talking anti-social behaviour either alone or in partnership by demonstrating strategies and their outcomes.
- Outside agencies should be invited onto problem-solving groups and given training by partners on their anti-social behaviour strategy.
- All partnerships should have clear procedures in place to ensure ASBOs are enforced and breaches prosecuted.
- Registered social landlords need to be able to deal with their anti-social behaviour problems in as effective and timely a manner as their statutory partners, as do the British Transport Police.
- Local attempts need to be made to develop a two-way understanding between the courts and partnerships: training and feedback to the courts would be useful and lead to a demonstrably consistent approach.
- Those responsible for administering the civil legal aid system should pay urgent attention to speeding up the process of obtaining legal aid in ASBO cases.
- Problem-solving would be helped if small funds were available to pay for diversion initiatives.
- Local areas should develop clear strategies to protect witnesses both before and after the order is granted, while managing their expectations.
- In the absence of speedy court processes, interim orders should be considered to ensure witness protection and a timely end to the problem behaviour.

- Strategies should be developed centrally to assist local areas to monitor the use and effectiveness of ASBO and other anti-social behaviour initiatives. This information should also be communicated to the community.

Anti-social behaviour orders

Anti-social behaviour orders (ASBOs) were introduced under the Crime and Disorder Act 1998 to deal with persistent, anti-social behaviour. They have been available to the police and local authorities since April 1999, and may be used against any person aged 10 or over who has acted in an anti-social manner. This 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"

Anti-social behaviour includes behaviour that puts people in fear of crime.

ASBOs were designed to deter anti-social behaviour and prevent the escalation of such behaviour without having to resort to criminal sanctions, although a breach does give rise to criminal proceedings and penalties. They were not designed to replace any existing legislation, but instead to complement measures that both the police and the local authority have available to them to combat anti-social behaviour. They are based on the same principle as an injunction and are not penalties for offences.

Background

Before the Crime and Disorder Act, there were various legislative provisions upon which the police and local authorities could draw to deal with this type of behaviour (Nixon, Hunter and Shayer, 1999). In many cases, anti-social behaviour affects those who live close to the perpetrators, resulting in many of the measures revolving around the management of public housing. Most commonly it has been dealt with using the Housing Act 1996 to take possession of both secure and assured tenancies, or to use introductory tenancies for new tenants. In addition, injunctions can be granted to prevent anti-social behaviour against tenants, their visitors or anyone carrying out a lawful activity at or near residential premises. Other cases can be dealt with under the Environmental Protection Act 1990 where a problem is judged prejudicial to health, or a nuisance, and under the Noise Act 1996.

In addition to such measures, much anti-social behaviour has been dealt with by the use of the substantive criminal law, such as the Protection from Harassment Act 1997, Public Order Act 1986 and offences such as criminal damage, assault, drunk and disorderly, and breach of the peace.

However, despite these measures, there was a general dissatisfaction among both the local authorities and the police with their ability to deal adequately with anti-social behaviour.

Those in private rented or privately owned accommodation were largely immune from the powers of the Housing Act. Often, possession of property merely served to push the problem individuals into private rented accommodation without altering the behaviour, or the ability of the individuals to continue to cause the same disruption to the community as before.

Local authorities which had tried to deal with persistent anti-social behaviour through the use of injunctions found them successful in some cases, but inadequate in others, as there can be difficulties enforcing them, they can be costly and they cannot be used against juveniles (Nixon *et al*, 1999).

Much of the legislation summarised above, including injunctions, cannot be used to deal with the behaviour of juveniles, who were therefore able to commit their anti-social behaviour in the full knowledge that there were few criminal sanctions that could touch them. This situation can often cause local frustrations, as juveniles are often perceived as the cause of many anti-social behaviour problems (NACRO, 1997), and anti-social behaviour is often used as a synonym for problems with young people (Bland and Read, 2000).

In addition, much anti-social behaviour by both juveniles and adults was either sub-criminal, or relatively trivial when considered in isolation. This resulted in the offences either failing to reach the courts, or generally attracting light sentences once there. It is the persistent nature of such behaviour that compounds the problem, but only single incidents are considered in court. Anti-social behaviour orders, therefore, were designed as a solution for such persistent behaviour, regardless of the kind of housing in which the perpetrators lived.

The legislation

To obtain an ASBO it is necessary to show that the person concerned has acted in an anti-social manner and an order is necessary to protect others in that local government area from further anti-social acts by that person. Under section 127 of the Magistrates' Courts Act

1980, an application for an ASBO (by complaint) must be made within six months of the behaviour taking place, although earlier incidents may be used as background information to support a case.

Only the police or the local authority can make applications, after first consulting the other. If the behaviour spreads over two or more different local authority areas, a single ASBO can be used. Such an ASBO may contain prohibitions affecting more than one adjoining local government area, providing all relevant authorities have been consulted.

The Court of Appeal (*R. v. Manchester Crown Court ex parte McCann* (2001)) confirmed that ASBOs are civil orders. This decision also confirms that the standard of proof and rules of evidence that relate to ASBO proceedings are civil (i.e. on the balance of probabilities) and not criminal. However, the ruling states that the standard of proof is flexible, to be applied with greater or lesser strictness according to the seriousness of what has to be proved.

The order itself consists of prohibitions. These must be necessary for the purpose of protecting persons in the local government area from further anti-social acts of the same kind by the defendant. The content of the order is only restricted insofar as the requirements in the order must be negative; there is no power to compel an individual to do anything. The content of the order can range from prohibiting an individual from entering a specified area to a more general statement prohibiting them from acting in an anti-social manner in the local authority area.

For legal assistance during the application process the ABWOR scheme (assistance by way of representation) has been extended. If an order has been breached, legal aid is available, as it is a criminal offence. However, as breach is a criminal matter, the breach must be proved to the criminal standard of evidence of beyond reasonable doubt. Conviction for breach carries the normal maximum sentence in the magistrates' courts (6 months in prison, or a fine not exceeding the statutory limit or both) and five years plus a fine in the Crown Court.¹ A conditional discharge is excluded by statute.

Guidance

Two sets of guidance have been published in relation to ASBOs. The first, issued in March 1999 to accompany the new powers, set out procedures and practice for local authorities and the police, including how to apply for an order and how to deal with a breach.

1. Juveniles will usually be dealt with in the youth court. The maximum sentence for 12- to 17 year-olds is a 24 month detention and training order (DTO), half of which would be spent in custody, half in the community. A DTO can be given either in the youth court or in the Crown Court, both of which have the same sentencing powers.

The second guidance was published in June 2000 and was drawn up jointly by the Home Office and the Local Government Association in consultation with other agencies. It followed on from the conclusions of an Action Group led by Lord Warner, which looked into best practice in the use of ASBOs. The guidance sets out best practice for drawing up local protocols and highlights areas of policy and practice which partnerships should consider.

The 2000 guidance also reiterated the PAT 8 recommendation that there should be a named person in each local authority district to co-ordinate action on anti-social behaviour². The 2001 Labour Party manifesto also referred to another PAT 8 recommendation encouraging local authorities to set up specialist teams which engage people from a range of agencies to focus on combating anti-social behaviour.

The research

A commitment to conducting a review of ASBOs was made to Parliament by Alun Michael during the passage of the then Crime and Disorder Bill. Since then, the public and political profile of ASBOs has been high. There has been much discussion about the volume of ASBOs being used, with political concern that ASBOs were not being used as much as anticipated: 141 parliamentary questions were asked about ASBOs between April 1999 and September 2001, 58 relating to the number of ASBOs that have been granted. There have also been high profile comments that ASBOs are costly and unwieldy, most notably a well publicised report by the Metropolitan Police (Palmer, 2001) estimating that ASBOs cost in excess of £100,000 and were 'a hammer to crack a nut'. There has also been concern that ASBOs are not as effective in quelling anti-social behaviour as was originally intended.

The aim of the research described in this report was to evaluate the effectiveness of ASBOs in dealing with anti-social behaviour and to identify best practice in how the legislation is being used. It also examines the concerns of practitioners, considers how the orders work in practice and offers suggestions as to improvements that could be made.

The review has looked at a number of features of ASBOs and asked all parties involved, from criminal justice professionals to victims of anti-social behaviour, about their experiences and opinions of ASBOs. The following strategies were used.

2. The Policy Action Team on anti-social behaviour (reported in PAT 8) was one of 18 teams set up after the first Social Exclusion Unit report on neighbourhood renewal. The team included voluntary and statutory agencies working at local and national levels. Findings from the PAT reports fed into the National Strategy for Neighbourhood Renewal.

- Statistics and details of orders granted were obtained from monitoring forms returned by magistrates court committees (MCCs) to the Home Office each quarter. This information forms the basis of the information that is available on numbers of ASBOs used, where they are being used and the characteristics of the application. This information has only been collected since June 2000. Numbers for the period of March 1999 to May 2000 were obtained from a data collection exercise by the Home Office, the Association of Chief Police Officers (ACPO) and the Local Government Association. During the process of the research for this review, it came to light that monitoring forms had not been returned for all ASBOs granted. Information on these previously uncounted ASBOs was therefore obtained through a reconciliation exercise conducted in October 2001, again with the support of ACPO.
- Fourteen areas were visited in 10 police forces. Areas were chosen either for their high use of ASBOs or because, according to the British Crime Survey, they had a high self-reported level of disorder, but a small number of ASBOs. Interviews were conducted with as many key players as possible in each of these areas including:
 - representatives responsible for dealing with anti-social behaviour from both the local authority and the police
 - the solicitor in either of these organisations responsible for conducting the legal work associated with ASBOs³
 - magistrates and court clerks who have dealt with ASBO applications
- witnesses, primarily those who have given witness statements and who were willing to give evidence in court.

Full details of the interviews conducted are given in Table A.1. In total 111 interviews were conducted.

- A sample of 94 case files was examined in 9 areas in order to gain an insight into the details of individual cases: timing did not permit the examination of case files in all 14 of the areas visited. Drawing upon these cases, details were

3. Only the force solicitor was visited in Derby, as this was an additional area visited at the end of the fieldwork period.

obtained about the perpetrator, their previous offending behaviour, the nature of their anti-social behaviour, and the specifics of their order.

- An exercise was carried out to identify the cost of taking ASBOs forward (from both the police and local authority's perspective). This involved asking key players in each of the areas visited to complete a costs form detailing the hours and costs involved in taking forward their first and most recent ASBO.
- Details about breaches were obtained from following up a sample of cases to find out whether the ASBO had been breached, and if so, what the outcome was.

Full details of the methodology of the data collection is given in appendix A.

The report

This report begins by detailing the current statistics known about ASBOs; the numbers requested and the characteristics of those being given ASBOs, ending in a more detailed look at the behaviour that has led to the ASBO being granted. Chapter 3 looks at the structure of partnerships and how they are working in practice, and Chapter 4 discusses the actual processes of developing a case of anti-social behaviour towards an ASBO. The important issue of how the courts are dealing with ASBO applications is discussed in Chapter 5 and that of how witnesses view the proceedings in Chapter 6. The impact of the order on the community and the various considerations that have to be made after the order is granted are in Chapter 7, followed by an analysis and discussion of the costings in Chapter 8. Finally conclusions and policy implications are discussed in Chapter 9. Additional tables and case studies can be found in the appendices, as well as a more detailed description of the methodology.

Throughout this report, certain conventions of wording will be followed. Although, as discussed in Chapter 3, partnership working is not the model followed in some areas, with either local authorities or police leading the application with very little assistance from their partner agency, all reference to either the local authority or the police or both will use the term 'partnerships', unless there are clear differences between their approaches. This ensures that no one agency is targeted as either successful or unsuccessful, as there were examples of both in different areas. Likewise, individuals from either the police or the local authority who have developed cases are always referred to as 'officers', regardless of their parent agency.

Monitoring arrangements

The Home Office's Research Development and Statistics Directorate has been monitoring the numbers of ASBOs applied for and granted since June 2000. Monitoring forms are received from each Magistrates Court Committee (MCC) detailing when orders are made and other related details. A copy of the order is also attached so that fuller details about the nature of the order can be gauged.

Before June 2000 this information was not collected routinely by the Home Office. However, specially conducted data collection exercises means the numbers of ASBOs given between April 1999, when ASBOs were first available, and the end of May 2000 is known. It also came to light during the course of the research for this report that some MCCs had not completed monitoring forms for all ASBOs granted. Another special data collection exercise was therefore conducted in October 2001 in order to rectify this under-counting and establish the true number of ASBOs granted.⁴

Number of ASBO applications

As Table 2.1 shows, between April 1999 and September 2001 a total of 466 ASBOs were granted and only 18 (4%) were refused. The pattern of use of ASBOs differs considerably throughout the country, with some areas prolific users whereas others have used little or none. A full breakdown of orders by police force area can be found in appendix B.

Table 2.1 *Number of ASBOs in England and Wales, April 1999 to March 2001*

	Apr 99 to May 2000	Jun to Sep 2000	Oct to Dec 2000	Jun to Mar 2001	Apr to Jun 2001	Jul to Sep 2001	Total	Percent
Granted	104	63	68	74	95	62	466	96
Refused	4	3	0	6	1	4	18	4
Total	108	66	68	80	96	66	484	

4. Because of the many different data sources for these overall statistics, a different base number can be found in many of the figures and tables reported in this chapter. This is due to different data priorities for each data collection exercise resulting in different data being collected.

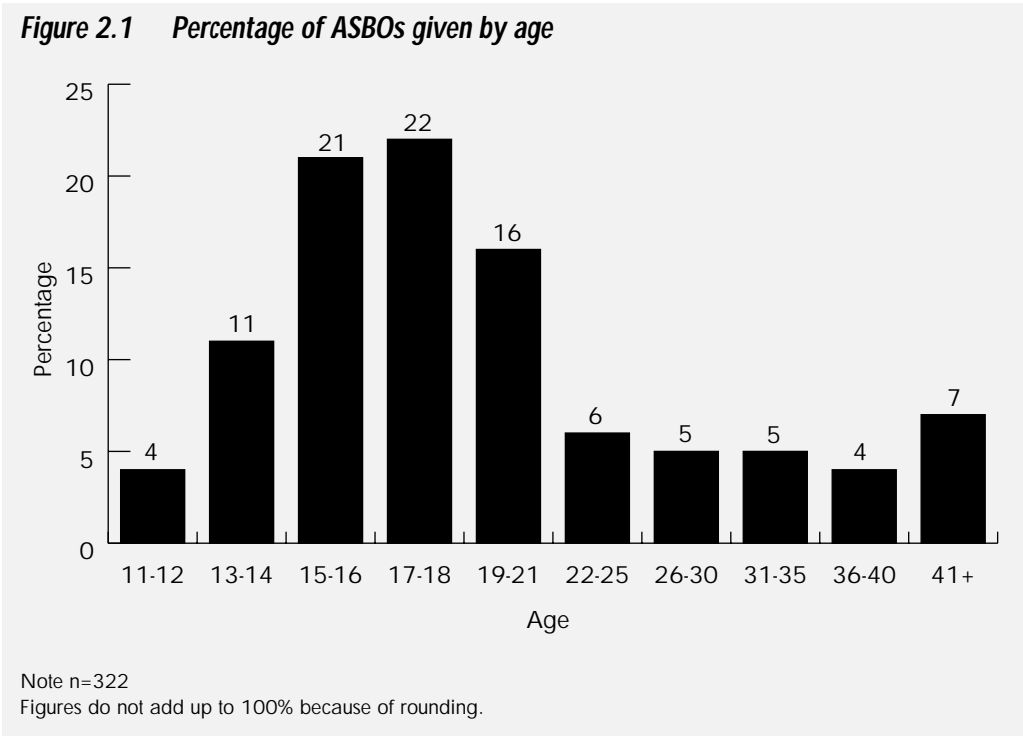
Age and sex

Of the 343 successfully granted ASBOs for which there is data, it can be seen that the majority of ASBOs are given to men (84%). There are slightly more juveniles given ASBOs than adults (58% vs 42%, base = 322) (Table 2.2).

Table 2.2 Breakdown of ASBOs by sex and age

	Number	Percent
Males	288	84
Female	55	16
Under 18	186	58
Over 18	136	42

That said, of those given ASBOs, almost three-quarters (74%) are aged 21 and under (Figure 2.1). This bears out the common perception of ASBOs as largely combating anti-social youth.



The ratio of males to females in the 21 and under category was much higher than in the over 21 age group (14:1 and 2:1 respectively), again suggesting that ASBOs are most commonly used on anti-social young men (Table 2.3). The higher number of adult women given ASBOs than girls under 18 most likely relates to strategies in some areas to tackle problems associated with prostitution by using ASBOs.

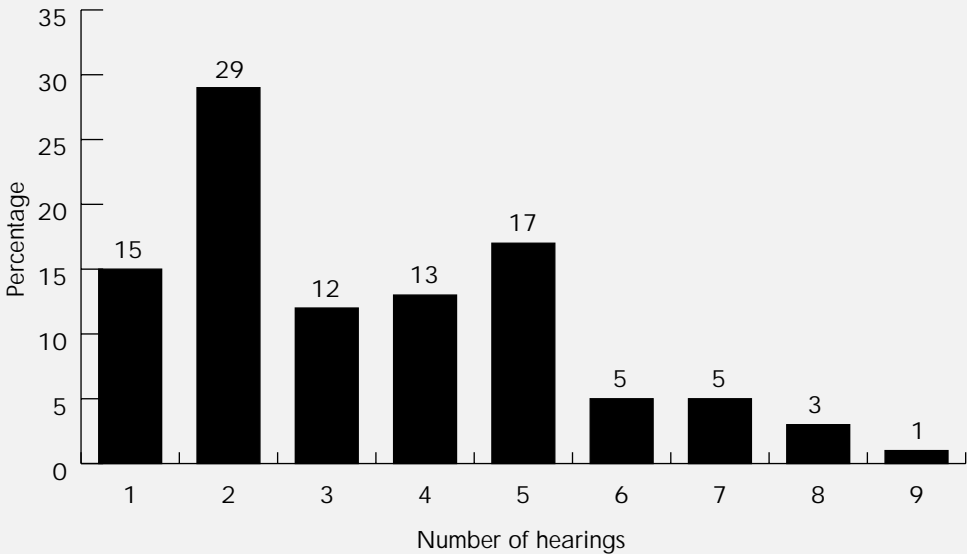
Table 2.3 Age of respondent by sex

	Female		Male		Ratio
Under 21	15	(7%)	204	(93%)	1 : 14
Over 21	25	(31%)	56	(69%)	1 : 2

Number of court hearings

As Figure 2.2 illustrates, only 15% of cases resulted in an ASBO being awarded after just one hearing. Interviews suggest that these were generally uncontested cases. In just under a third of cases two hearings were required, while in more than half (56%) three or more were needed. Two cases required nine hearings.

Figure 2.2 Number of hearings required to obtain an ASBO



Note: n=157

Obviously the number of hearings will be reflected in the number of days between the application for the anti-social behaviour order and the order being either granted or refused. On average it took cases 66 working days (just over 13 weeks) from the date of application to the date of the final hearing.⁵ Again there is a great difference between individual cases. Some cases were decided in a little as four working days, whereas the longest took 173 working days (almost 35 weeks).

Which agency led the application?

Examining the orders themselves, the name of the complainant can indicate whether it was the local authority or the police who led the application. The numbers applied for by local authorities and the police were more or less equal (49% versus 51%), Table 2.4. It must, however, be borne in mind that in joint applications it is usual for only one authority’s name to be on the application, disguising the fact that both agencies may have contributed equally to the preparation of the case through partnership working.

Table 2.4: Lead agency in ASBO application

	Number	Percent
Local authority	73	49
Police	76	51
Total	149	149

Orders against groups

Overall, the number of applications made against individuals was roughly equivalent to those against people who were members of a group (54% of individuals were taken to court as part of a group, compared with 64% taken to court alone). However, case files analysed as part of this research can give more detailed information into the behaviour that led to the order, although they tend to be more biased in favour of group applications than the national picture (only a third were lone applications, Table 2.5). These files reveal that only one in six individuals were ‘lone operators’, and committed their act of anti-social behaviour alone. Half of all case files revealed that the behaviour was committed as part of a gang, while the remainder were part of a family group (Table 2.5). However, ASBOs were not necessarily sought against all members of the group.

5. Sixteen case files stated that the order was made on the same day the application was made. Because this was considered very unlikely in all but the most exceptional cases, these figures have been omitted from the analysis.

Table 2.5: Individual's offences alone or as part of a gang

	Number	Percentage
<i>Behaviour</i>		
Alone	15	16
As part of a family	29	31
As part of a gang ⁶	47	50
Missing	3	3
<i>Application</i>		
Alone	31	33
As part of a family	23	24
As part of a gang	37	39
Missing	3	3

Note: Percentages may not add up to 100 because of rounding.

Where groups of individuals committing anti-social behaviour were concerned, partnerships often tried to identify and target the ringleaders, or else submitted each member of the group to a 'threshold' test. The largest group charged together in the monitoring forms is seven, although applications relating to as many as 15 individuals are currently underway in some areas. In court, each application for members of a group is treated separately, although a number of related applications might be heard at the same time. Orders are granted against individuals.

The case files reveal that, whereas 50 per cent of the behaviour under consideration takes place as part of a gang, only 39 per cent are dealt with as such.

The family groups discussed here are not necessarily 'families from hell'. Seven out of the ten groups of family members considered for an ASBO together were groups of siblings who committed acts of anti-social behaviour together, not the entire family (18 out of the 29 individuals). Overall there have been three sets of twins and one set of triplets amongst those given an ASBO.

If the possibility of applying for more than one order in the same group exists, most practitioners interviewed agreed that it makes sense (from a best value point of view – saving both time and money) to take these forward together. However, as discussed later, applying for too many at one time can cause scheduling problems.

6. Here 'gang' is not referring to an organised coherent group with a group identity, but merely denotes that the individual 'hung around' with others, who were involved in similar types of behaviour

Nature of the behaviour

An application for an ASBO may be made where it is alleged that a person or persons have acted 'in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household' (Crime and Disorder Act 1998, Section 1(1)(a)). This definition of anti-social behaviour is general enough to cover a wide spectrum of behaviour: the Act does not specify in more detail either the types of behaviour or the kinds of perpetrator that might warrant an ASBO being given.

The 1999 guidance suggested a variety of behaviour for which an ASBO might be an appropriate response. These include: 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.

Many of these forms of behaviour have been the target of ASBOs so far, although they have also been used quite creatively in some areas to deal with other types of persistent, anti-social behaviour. The case files revealed at least 18 categories of behaviour (Table 2.6).

Table 2.6: Types of behaviour

Behaviour	Number	Percentage
Verbal abuse	55	59
Harassment	52	55
Threats	43	46
Intimidation	35	37
Graffiti and criminal damage	34	36
Assault	31	33
Noise	26	28
Public disturbance	25	27
Arson	22	23
Racial harassment/abuse	21	22
Criminal Behaviour	21	22
Drunk and disorderly	14	15
Shoplifting	12	13
Harassing a specific person	11	12
Throwing missiles	10	11
Trespass	6	6
Prostitution	5	5
Other	15	16
No information available	10	11

Note: 1. Cases often consist of more than one kind of anti-social behaviour. Percentages, therefore, do not sum to 100 per cent.
 2. N = 95
 3. The figures represented here are from the selection of 95 case files examined for the review. They do not represent all ASBOs in the 14 areas visited.

Most of the case files analysed revealed a wide variety of misconduct, with the average case citing six different types of anti-social behaviour. The most common kinds (as reflects the profile of the individuals given ASBOs) are those associated with generally ‘yobbish’ and unruly behaviour. The potential vulnerability of victims is illustrated by the fact that just under half of perpetrators used threats, and over a third intimidation. Criminal damage and graffiti were also common, as was petty arson, with over a quarter engaging in this type of behaviour.

ASBOs do not seem to have been used to deal with situations in which the primary misbehaviour amounted to racial harassment. However, over one in five of the case files revealed some degree of racial harassment. In these cases, the victim appeared to be

targeted, like most victims, merely because they were more vulnerable and not because of their ethnicity, although the behaviour directed against them amounted to racial harassment.

Those applying for ASBOs in different areas of the country tended to focus on different themes, depending on local issues and strategies. Some considered ASBOs most appropriate for juveniles. Others primarily used them on adults, trying, where possible, to deal with young people through measures short of ASBOs. One city had taken ASBOs out on 15 prostitutes as part of an attempt to reduce the problem of prostitution in specific residential areas, whereas another was trying to deal with their city's growing graffiti problem.

Other areas were only using ASBOs to highlight their most problematic cases, often involving persistent offenders. One reason for this may have been that it was considered less likely that applications in such cases would be rejected, but also because resources were scarce and did not permit any cases other than the most severe to be dealt with in this way.

"At present the police don't have the capacity to deal with all the criminal matters, never mind the sub-criminal."

Police

Case study 1

In a relatively isolated village, youths congregated nightly outside a row of shops, up to 70 on weekend nights. This alone was considered threatening but it was their behaviour which intimidated and distressed locals to such an extent that the area became a 'no-go' area after 6pm. The youths drank excessively, consumed drugs and committed breaches of the peace, nuisance, public order and minor damage offences. A significant proportion of offences was racially motivated, and the behaviour seriously affected local businesses. There had been 85 complaints about the behaviour in five months, although the police were aware of a great deal of unreported crime due to fear and intimidation.

As an initial step the entire village was leafleted, calling locals to an open meeting in the village hall. The local radio station and newspapers were also used to publicise both the problem and the meeting, resulting in over 200 members of the public attending. At the meeting forms were given out to obtain evidence or intelligence, which could then be submitted in confidence.

Four ringleaders were identified. Evidence was divided into 'primary evidence' – evidence from those willing to attend court as witnesses – and 'secondary' – evidence from those who were not. The force solicitor then produced a document bundle, which included the relevant pieces of legislation; a case summary; the full witness statements (including names); certificates of consultation; and a draft order. This was then served in person to the four youths.

The orders granted were all for five years. Conditions included stipulations that they should not use or incite or encourage others to use foul, abusive, threatening or racist language or gestures within any public place within the village. They were not to enter named shops in the village, or loiter within 100 metres of them or enter another two specified locations or loiter near them.

A number of other measures were also used in parallel to halt the anti-social behaviour including terminating the evening bus service which was trafficking youths to the village, and targeting the local off-licence which was selling alcohol to under-age children. Members of the Special Constabulary and regular officers also paroled the area and used their powers to confiscate alcohol from juveniles, and target the local drug problem.

These measures have been largely successful: the local police measured 24 incidents of disorder in the month preceding the Order and only 5 the month after. The ASBO seem to have combated the behaviour of the ringleaders and reduced the behaviour of the whole group.

Case study 2

Prostitution has affected a residential area of one of England's large cities for a number of years. On a daily basis, residents have suffered verbal and physical abuse from prostitutes and kerb crawlers alike. Driveways and gardens have been used as toilets and used by prostitutes to have sex with their clients. Condoms, tissues and used syringes have been discarded where they were used. There has also been a related influx of drug-related crime into the area.

Between January 1999 and March 2000 over 1,200 prostitute-related incidents in this area required a police response. In response the community set up a street-watch scheme to deter the prostitutes and their clients. The local authority invested in road closures, improved street lighting and put in place traffic calming measures. The police continued to prosecute offenders as well as provide drug referral schemes and a voluntary referral scheme to help divert women away from prostitution in conjunction with the Safe Sex

Partnership. However, these efforts did little to curb the prostitution, and actually displaced the problem to a larger geographical area. Arresting the prostitutes often led the offender back to the streets to pay for the resulting fine.

ASBOs were used to tackle the behaviour arguing that prostitution causes harassment, alarm and distress to the community; traditional methods of combating the problem have failed; and the individuals considered were prolific offenders and significantly contributed to the problem. Two individuals were initially targeted, the first had 165 convictions for prostitution related offences, the second 35. Neither lived in the area; the sole reason for their presence was for the purposes of prostitution.

Successful ASBOs were brought against each of these individuals, excluding them from the area and prohibiting loitering for the purpose of prostitution in the entire local authority area. From that time, neither has been seen in the area again, although one has breached their order by soliciting in another part of the city, resulting in a three-month custodial sentence. In addition, the prostitution problem in the area did subside for a time, presumably because of the publicity surrounding the order.

However, the extent of the problem in this area has meant that it is very hard to eradicate the behaviour completely. After the initial orders, a further 13 have been used in this area, but the problem persists. The police are currently continuing to target the behaviour in collaboration with the local authority and the community. ASBOs are one of the tools they are continuing to use to combat this problem.

Case study 3

The behaviour centred on a 13-year-old boy who effectively 'ruled' the area in which he lived: a deprived area of a large metropolitan city. Commonly a number of young people were involved, but the 13 year-old was the ringleader. The behaviour consisted of smashing windows, throwing missiles, and seriously damaging a neighbouring school. The five neighbours in the houses adjacent to his, including a local councillor, had been intimidated out of their homes, and the houses subsequently vandalised to such an extent that they were uninhabitable. There were also incidents of arson against property, including setting fire to neighbours' back doors and posting firebombs through their letterboxes; racial harassment; intimidation; robbery; and the petrol bombing of a car.

The behaviour was extreme, but because of intimidation and a culture of 'not grassing' few of these incidents had been reported to the police, or if they had, few were willing to come forward and give evidence. Those simply supporting neighbours who had given evidence were also then targeted with similar anti-social behaviour. Some criminal

charges had been made, but many dropped because of inconclusive evidence. The quality of life of the estate was severely affected. Because of fear and intimidation, few victims were visited by their relatives and no cars were driven or parked on the street for fear of what would happen to them. Many were scared to leave their homes, especially after dark. Others were desperately keen to leave the area altogether.

Both the local authority and the police developed the ASBO case. Police officers collected information and statements, and neighbourhood wardens dropped in regularly to update statements in the light of any new incidents and give support to witnesses. The local authority installed a video camera in a number of witnesses' homes. This gave the witnesses a feeling of protection, and also gave evidence that was later used in court.

Only four community members were willing to come forward and give evidence in the contested case, although one stated that if everyone who had a complaint had come forward, the court would have been full. However, these witnesses were so convincing the District Judge did not want to hear the police evidence: the community's evidence was enough.

This order was recent, but witnesses have reported feeling safer, and are continuing to be supported through visits from neighbourhood wardens. Although none of the witnesses think that the bad behaviour will end, they are sure that if he is caught for breaching the order, then he will be given a custodial sentence.

Nature of the individuals

Some of the case files analysed included minutes or outcomes of problem-solving meetings or gave some background on the individual. Table 2.7 indicates that, in the 60 per cent or so of cases where information was available, there was a high proportion where some mitigating factor appeared to have contributed to their behaviour. Almost a fifth had a drug abuse problem and a sixth a problem with alcohol. Problems with school were also common, with many being either temporarily or permanently excluded, or noted as having learning disabilities. It is not always clear, however, in which direction causality lies. Some of the problems may have been caused by their anti-social behaviour rather than being the cause of it. This may have been the situation in those cases where the individual or their family had already been evicted on at least one occasion.

Table 2.7: Underlying problems stated in case files

	Number	Percentage
Drug abuse	17	18
Temporary or permanent exclusion from school	16	17
Alcohol abuse	16	17
Eviction	12	13
Learning disabilities	8	9
Other	15	16
Noted as no underlying factors	2	2
No information available	34	37
Total number with any factor	57	61

In the 'other' category were four individuals whose mother had admitted openly that she could not handle her children anymore. Others had been in care at some point or had been diagnosed as having psychological problems such as personality disorder, behavioural problems or depression. One of the files revealed that the subject of the ASBO was deaf and dumb.

There was also a high proportion of individuals who had a criminal history. Although many of the files did not include such information, where it was available (41 cases) there was often a long history of criminality before the ASBO was given. The number of criminal convictions ranged from 2 through to 70. For those with convictions, the mean number was 13, although the median figure was lower at six.⁷ These criminal convictions were for offences as wide-ranging as arson and trespass. The most common offences were theft, criminal damage, burglary, car-related offences, assault, disorderly behaviour, drug related offences and harassment.

The sentences that these individuals received also varied considerably, from conditional discharges to substantial periods in custody. Sentences which had been served (or were still being served) were (in descending order of frequency): time in a young offenders institute; supervision orders; conditional discharges; community service orders; attendance centre orders; action plan orders; fines; and supervision orders. Whether or not these sentences addressed the offending behaviour for which they were given, they would not appear to have had an impact on the problems underlying the anti-social behaviour for which the current ASBO had been awarded.

7. The median value is one of three measures typically used to represent the average. It is the 'middle value' with half of cases falling each side of this number. It is less likely than the arithmetic mean to be skewed by a small number of extreme values.

The existence of these underlying disorders amongst those given ASBOs supports previous research, which suggests that there are various risk factors associated with offending and anti-social behaviour. For example Flood-Page et al (2000) found that drug use, disaffection from school, hanging around in public places, associating with delinquent friends, poor parental supervision and persistent truancy were all predictive of offending behaviour in juveniles. Likewise an unpublished piece of work reported in the PAT 8 report (Social Exclusion Unit, 2000) reported major risk factors for anti-social behaviour in adults included being brought up by a lone parent; homelessness; involvement with the criminal justice system; mental health problems; drug dependency and marital separation.

Nature of the order

As reflects the community nature of ASBOs, and the stipulation that prohibitions contained within the order must be only those necessary for the purpose of protecting those in the local government area, all conditions are geographically specific. In practice, the extent of the area covered by individual ASBOs differs between orders: of the 136 ASBOs where there is information, 53 per cent had elements that covered the entire local authority area, the remainder covered a smaller, more local area. However, the majority of orders covering the whole local authority area combined both these elements. For example, one condition might exclude the individual from a specific location, another might prohibit acting in a manner likely to cause harassment, alarm or distress in the local authority area. In many cases there were a number of specific conditions and then a final, more general, condition to ensure the individual did not 'get round' the other conditions, or simply move their behaviour a small distance away.

Incorporating 'exclusion' conditions, prohibiting the individual from entering specific locations, was very common: almost three-quarters of orders (74%) included at least one exclusion element. Exclusions included prohibiting individuals from entering specific shops, shopping centres, streets, parks or estates. Four per cent related to exclusions from particular areas during specified times, for example one prolific shoplifter was not permitted to enter the town centre during trading hours, but was allowed to visit bars and restaurants in the evening.

In relation to ASBO applications, Section 1 (2) of the Crime and Disorder Act 1998 states: 'A relevant authority shall not make such an application without consulting each other relevant authority', although there does not need to be consensus. Indeed the 1999 guidance states that differences in opinion arising from consultation with the partner agency should not prevent the application from going forward (para 4.1).

The further guidance produced in June 2000 focused on the drawing up of local ASBO protocols and encouraged the setting up of problem-solving groups. It also dealt with issues surrounding consultation with other agencies and individuals.

In practice, however, the need for consultation has been variously interpreted, with each area visited having a different slant. There is a range of explanations for this including:

- different interpretations of the guidance
- the nature of the existing relationship between partnerships
- established procedures in place to deal with anti-social behaviour
- the relative priority of anti-social behaviour between areas⁸
- the perceived benefits of working in partnership
- the logistics in term of staff, money and time available.

These individual circumstances can both ease and hinder problem-solving and the application process. Of most concern, however, is the opinion amongst many with a successful relationship that success had much to do with personalities.

In summary, four general models of partnership working can be identified (summarised in Boxes 1 to 4). Other models fit in-between the four mentioned but these exemplify the general trends.

8. A study by Phillips et al (2000) revealed that 72% of Crime and Disorder Strategies had disorder/anti-social behaviour as a priority. It would therefore be unusual for individual agencies within the Crime and Disorder partnership to not be prioritising anti-social behaviour.

Box 1

Single agency led

In the single-agency led approach either the local authority or the police took the lead, with the partner agency having little input into the process, except for a cursory consultation. Consequently the burden of resources fell completely on the lead agency. In most cases the lead agency continued with the application regardless, but in some the process failed to get off the ground.

There are a number of reasons for this approach. One reason was the result of differing priorities: one agency had committed themselves to the reduction of anti-social behaviour and released resources to tackle it, whereas the other had not, preferring to focus attention on other local issues. Another reason was different preferred strategies between agencies. For example the police in one area believed that criminal convictions were the best way to deal with anti-social behaviour, whereas the local authority were committed to using ASBOs. A third reason is that one agency concentrated on a type of behaviour that was of little concern to the other. In such circumstances there was reluctance for the other to contribute resources. Others were of the opinion that partnership working was a blind-alley, causing delays and problems where there need not be any. Finally, in some areas there was simply unwillingness for one partner agency to co-operate with the application. For example, amongst a few local authorities, especially those who had sold off much of their housing stock, there was a feeling that anti-social behaviour was no longer their concern.

Box 2

Dual-lead

The dual-lead approach was usually negotiated between the two agencies with both taking forward ASBOs, but separately from each other. For example some partnerships decided that the local authority should deal with all applications that were housing-related, whereas the police dealt with all of those with a criminal slant. Others simply dealt with cases that came to their attention. Sharing responsibility in this way builds the expertise of each agency and often divides the work evenly between them (in most areas with this approach, a comparable number of ASBOs had been applied for by each agency). This approach involved varying degrees of consultation, depending on the relationship between partner agencies. However, it is reasonable to presume that problem-solving and information sharing do assist in the process.

Box 3***True partnership***

True partnerships involved close working relationships, with the two agencies having a joint say and contributing equally to the process (if not the legal costs). ASBO applications were usually developed through problem-solving meetings and case conferences and the strengths of each agency were relied on to facilitate the application process. For example the police were the main statement gatherers in some areas, whereas the local authority were able to protect witnesses and give legal advice and representation. In these true partnerships there was often little concern about the distribution of resources between agencies, as this usually worked out evenly in the long-run (or there was an unwillingness to bring the issue of costs up and upset the relationship). One partnership overcame issues surrounding costs by adding up all costs at the end of each case and dividing it equally between the two agencies.

Box 4***Multi-agency units***

There was one example of a specific multi-agency unit established to deal with anti-social behaviour. This worked through partnerships inputting resources to a team that then concentrated on all aspects of anti-social behaviour. Representatives from all relevant parties, including registered social landlords (RSLs) were invited into this team on secondment. The unit itself was resource intensive, but was able to develop individual cases fast and with a minimal amount of resources because of the experience gained over time and the availability of all interested parties. However, because of the size and cost of such a dedicated unit, it would only be considered practical in areas that had identified a relatively large anti-social behaviour problem. Many areas agreed that, although this was an appealing solution, neither the police nor the local authority had the resources.

In general, where there were strong working relationships, as in the 'true partnership' and 'multi-agency unit' approaches, partnerships were often able to deal with problem behaviour more quickly. They also more often had strategies and protocols in place, detailing the responsibilities of each agency and resulting in clear obligations. However, the consultation machinery could slow the process of applying for an ASBO considerably in some areas. In one instance there was a three-month wait for a problem-solving meeting. Under these circumstances, most agencies found it preferable to continue in isolation.

Anti-social behaviour co-ordinators

The Policy Action Team (PAT) 8 on anti-social behaviour recommended that Crime and Disorder Partnerships should identify a named person who should co-ordinate action on anti-social behaviour for both the police and local authority within the partnership area. This was reiterated in the 2000 Home Office guidance on the drawing up of protocols.

In practice, there was little evidence of such a formalised arrangement in many areas visited, successful or otherwise. However, there were generally key people in either the local authority or the police or both who were either responsible for anti-social behaviour or who could be consulted for advice, effectively fulfilling the role of an anti-social behaviour co-ordinator. In most circumstances where there was an active partnership there were key players in both the local authority and the police who liaised and fed information back to their respective organisations.

In many cases the internal solicitor within each agency was the main contact for advice and support. In other cases this role was taken up by community safety officers or else it was left to caseworkers and the neighbourhood police to identify the problem and take the lead. Despite some agencies progressing ASBOs without an overall co-ordinator, the need was visible in agencies where there was no leadership within the organisation to deal strategically with anti-social behaviour.

"The problem is the impetus and support we need to take ASBOs further is not being driven from the top... it shouldn't be down to constables to feel their way in the dark."

Police

Although there was a need for someone to have a strategic overview of anti-social behaviour, most partnerships agreed that there were real advantages to tackling problem solving locally, with individual officers dealing with situations on a case by case basis.

"The direction must come from the top, but they must empower those at the coal face to implement the strategy... One person should have ownership of an individual to make sure these orders are successful"

Police

Importance of key players

The partnership approach can be successful and work well, with most involved in such arrangements happy at their ability to get things done and work as a team. However, there have been problems with partnership working for a number of reasons, despite the partner agencies having a good relationship.

One reason for this was key players in the process not supporting the order. If line managers do not empower their staff, or allow them time to liaise and develop cases, in many instances little will be done.

Another possible reason for a lack of successful case development is that key players do not always have the relevant knowledge or commitment. For example, some areas have experienced their in-house solicitors either steering them away from using ASBOs or being unwilling to do the work involved in taking them forward. In either case this has delayed the process considerably, or else resulted in it being abandoned. There was more than one example of this happening after considerable evidence had been collected.

The level of knowledge amongst key players will naturally be limited during their first application. This has put a great many police or local authority officers off the idea of applying for an order, considering them *'too hot to handle'* in their complexity and the amount of work involved, even if successful applications have been made in their area. Others have made mistakes during their first application: for example, collecting out of date and unusable evidence. Such experiences could then put them off the ASBO process, especially when these mistakes were the result of poor advice. However, there is a consensus amongst most partnership staff that the best learning comes from applying for an ASBO, and that it should become easier in the future.

Thus, in the areas not using ASBOs or finding ASBOs problematic, there was often a good deal of confusion and misunderstanding. Without solid guidance and support, it becomes more unlikely that an ASBO will be attempted, even if it is regarded as a useful tool.

Training

Interviews revealed that few partnerships had received any formal training in relation to ASBOs. Of those who had, the majority were given it as part of broader training on the Crime and Disorder Act. A few had attended the Home Office regional seminars conducted in the spring of 2000.

In some areas there were committed individuals who had identified the potential of ASBOs and had immediately studied them and set about drawing up local protocols and strategies. However, in practice, learning about ASBOs often occurred on the job, in response to real situations. In the majority of cases individuals either had realised they had a problem with anti-social behaviour and decided to research ASBOs further or else had been told that this was the route they should explore and investigated from there.

"We just got the end where we had to take him to court and get them evicted... Then he just started to come back on the estate and was running riot. We were stuck with the situation, there was nobody we could evict and he was the main ringleader and we'd already taken the action. So that's when we looked at the ASBO."

Local authority

This often led to the individual who investigated the first ASBO becoming a 'trail-blazer', using their experience to encourage others to do likewise. The individual and the case then became an information source within the organisation. Over time an organisational knowledge base was built up, which was then used as a resource for all those thinking of using an ASBO, sometimes even those in other areas. Often it was the internal solicitor who gained most knowledge through dealing with every application and having the legal expertise to give accurate advice.

Information learnt through trial and error was also cascaded to others within the agency and to partnership organisations through formal training. There are a number of benefits to this, including: strengthening the relationship between partnerships; improving the knowledge of individuals within all related agencies; and the ability for the training to reflect local concerns and issues. It has also been the case that individuals and agencies who feel they have 'cracked' ASBOs and have successful strategies in place become quite evangelical and want to share their knowledge. Indeed there are at least two seminars planned for late 2001 by areas wishing to share knowledge further afield.

It must be noted that not all those interviewed were in favour of training. There were some police concerns that mass training focusing on issues, separate from day-to-day work, such as the civil burden of proof would confuse new recruits. Some also felt that there were too many training needs for staff to concentrate on a comparatively little used order. Instead it was suggested that an awareness of the existence of ASBOs was all that was needed, so that those dealing with problems in their community should know that these powers were available should they want them.

There was also awareness amongst many, especially in the police, that the degree of staff movement between posts was such that a training exercise for all community safety officers would only be of benefit for a limited amount of time. To overcome this problem, some areas have produced packs for caseworkers and officers who are developing and taking forward cases. These packs include:

- relevant background information
- separate checklists and booklets for the consultation process and ASBOs
- a progress checklist to ensure all appropriate steps have been taken
- a log for all partnership contact with the perpetrator (attending incidents/conducting warnings/interviews)
- a log for all complaints against the perpetrator.

Using this systematic approach ensures that all files are developed in a consistent manner, and assists in situations where the key officer has little experience.

Problem-solving meetings

Two approaches were used to calling problem-solving meetings: either to hold meetings at regular intervals or to convene a meeting when there is a need. In practice, there are advantages and disadvantages to each approach.

Regular problem-solving meetings provide forums where all aspects of anti-social behaviour can be discussed, and are attended by representatives able to act on the group's decisions. They also provide a more convenient forum in which to adopt an holistic approach to anti-social behaviour, and are a convenient place to share information between all relevant parties, including non-statutory partners. Anti-social behaviour can be monitored over time, and strategic approaches to local problems can be developed between agencies. The group will also develop experience and expertise, and become better equipped to deal with anti-social behaviour in the future.

The disadvantage of this approach is that those attending meetings may often have no personal knowledge of the individuals or situations being discussed. Many partnerships are keen to keep the solution to problems local and may need the relevant housing officers and

police officers to understand what response is both necessary and possible. Another disadvantage is that, because of the variety of organisations represented at meetings, a good deal of time may be spent discussing cases in which agencies have no interest and over which they have no jurisdiction.

Calling a problem-solving meeting in response to a particular case has the advantage that the relevant professionals are meeting solely to discuss that specific problem. They will possess detailed knowledge about the individual, the nature of the problem, what initiatives have been tried and what the situation currently is. The meeting should also be relatively short, as only one case is discussed.

However, the disadvantages to this approach are that the meetings can be difficult to set up quickly. It can also be difficult to ensure that the appropriate people attend who have the 'right' level of authority to make decisions. It may also be difficult for other agencies such as Housing Authority landlords to break into this group, unless protocols have been agreed.

A compromise between these two approaches is in operation in some areas. Regular problem-solving meetings are held, where high-level monitoring and decision making can take place and a strategic approach to tackling the problem of anti-social behaviour can be developed. This ensures the timeliness of ASBO decisions, and that the progress of all cases is monitored. However, for more detailed discussion of specific cases, a further meeting with all relevant parties would be called.

In practice, the approach adopted depends on the size and the resources of the agencies involved and the extent of the local problem. In some areas with a low volume of cases, regular problem-solving groups may be able to deal with all cases coming to their attention. Otherwise it may be more practical to arrange local problem-solving groups on either a regular or a response driven basis, with one over-arching problem-solving group to tackle strategic aims. The need for timeliness, the sharing of information and the inclusion of all interested parties does suggest a strong argument for regular meetings at some level.

However, as will be discussed below, there can be difficulties in involving all relevant parties in problem-solving groups.

Local authorities

Although consultation and partnership was working well in many areas, some police forces voiced concern that their local authority partners were not participating in the problem-

solving process. Problems often resulted where a police force covered a number of different local authority areas. Securing agreement and a good working relationship in one area did not guarantee a good relationship in another. There was little the police could do to compel local authorities to participate.

Another problem arose where the police encountered difficulties in identifying the right person to deal with at the appropriate level within the local authority.

"Getting a lead in the local authority has been difficult – there is a problem there in that people work for departments and no-one will stand up and take responsibility. Getting a unified approach has been difficult."

Police

Some police were keen to quote the statutory obligations local authorities have under the Crime and Disorder Act⁹ and the fact that there is a Best Value Performance Indicator¹⁰ requiring local authorities to establish corporate strategies to reduce crime and disorder.

However, there was some pessimism that this might result in the setting up of meetings and little else.

"Motivation has to be directed towards the conclusion of cases, and not about, 'we've been having these wonderful meetings', or 'we've got our social inclusion officer', or 'our anti-social behaviour co-ordinator'... At the end of the day it's about whether people are delivering to neighbourhoods and to individuals on case work something that is measurable and stops this particular piece of anti-social behaviour."

Local authority

Police

Local authorities were generally very supportive of the police's contribution to the problem-solving process. However, as it is the responsibility of the police to enforce ASBOs, there is

9. Section 17 of The Crime and Disorder Act introduces a number of measures to control crime and disorder. It puts a statutory duty on every local authority to "exercise its various functions... with due regard to ... the need to do all that it reasonably can to prevent ... crime and disorder in its area". It also encourages local crime partnerships to "formulate and implement ... a strategy for the reduction of crime and disorder in [their] area" (sections 6–7).

10. In December 2000 the DETR published Best Value Performance Indicators for 2001/2002. BVPI 173 (which was generated with the LGA) requires all local authorities to establish a corporate strategy to reduce crime and disorder. In order to do this, the local authority must develop Departmental Service Plans with targets to reduce crime and disorder, and identify officers within each department to achieve departmental targets.

a potential difficulty if the police are not fully committed to the process. It is likely that it will be difficult to get problem-solving meetings off the ground unless the police are fully willing to co-operate.

Social services

Of all the agencies invited onto problem-solving groups, the role of social services generated the most controversy. There was a concern, primarily amongst police officers, that there was a natural conflict between social services, with their focus on the offender, and partnerships, which are community and victim focused. In some instances this tension resulted in poor relations between social services and the rest of the problem-solving group. At the same time, there was a feeling that the process was diminished without their support. However, many of those who were concerned with this issue were keen to point out that there was no necessity for consensus within the problem-solving group.

Some groups attempted to tackle differences by discussing in problem-solving groups the likelihood of further social services interventions being effective. If there had been previous unsuccessful interventions, or a history of non-co-operation, partnerships tended to argue for moving directly to the ASBO.

"Research threw up the fact that each of the young people being proposed for ASBOs had been known to the social services for between two and five years. So despite the fact that the social services thought the order draconian, they had done nothing to curb the behaviour over the previous years."

Police

Others attempted to engage social services in the process early, and to consider problem-solving more generally rather than ASBOs specifically.

"They're starting to get a lot more pro-active now and feeling a lot more comfortable about the process and are involved in it much earlier so I think they are starting to feel that they're contributing to it a bit more rather than sort of being wedged into a corner."

Local authority

This is not to say that there are fundamental differences between agencies at problem-solving meetings. Indeed most partnerships agreed that early interventions and diversion away from anti-social behaviour were preferable to ASBOs in many circumstances.

"Intervention should come early making ASBOs unnecessary. Young people should be supported and monitored in the context of the whole family unit. They should be given every opportunity to improve their lot and change their behaviour, but, like a carrot and a stick, if they don't improve there will be an ASBO."

Police

There is also no reason to presume that social service intervention ends if there is an ASBO. Victim centred and offender centred approaches need not be mutually exclusive.

YOTs

The contribution of youth offending teams (YOTs) to the problem-solving process was much commented on by partnerships. YOTs are existing multi-agency teams, also set up under the Crime and Disorder Act 1998, to tackle youth offending. They were welcomed because of the wealth of knowledge they brought to the group, and were well placed to divert young people away from anti-social behaviour.

"Before the YOT was set up... it was very difficult to pull all the agencies together, even though we work for the council and they work for the council, there was a lack of co-ordination."

Local authority

Positive comments were made about YOTs' ability and responsibility to intervene in a coherent fashion with young people, leaving the problem-solving group to concentrate on other matters. The fact that they have a problem-oriented approach themselves – to reduce offending – was also appreciated, as it was felt YOTs were more able to see all sides to problem young people than their predecessors.

"One thing that has certainly helped enormously is the creation of the YOT, because there you have people who were previously involved in the youth justice system...who are seeing a larger picture with regard to the impact of their clients' behaviour on other vulnerable people."

Local authority

Registered social landlords (RSLs)

RSLs¹¹ are frequently invited onto problem-solving groups, and the 2000 guidance recommends that they are included in drawing up the local crime and disorder strategy. However, this is not always the case, and there were a number of instances where the problems experienced by RSLs were not a priority to the problem-solving groups, despite the fact that anti-social behaviour is considered a medium- to-large problem by three-quarters of social landlords (Nixon et al, 1999). In effect, some local authorities were looking at their authority's role as a housing manager, as opposed to their statutory role to reduce anti-social behaviour. There is evidence that there have been instances where an RSL wished to take out an ASBO, but could not persuade their local authority or the police to take up the case on their behalf.

"It's fair to say that the pot of money that we have is not a big pot of money, and basically there are problems within council housing that we need to solve first, because we have legal requirements to the tenants that we have; we need to solve them first before we can look at spending the money elsewhere."

Local authority

However, when RSLs were routinely involved in the problem-solving meetings, both the partner agencies and the RSL seemed very happy with the arrangement. In the case of the multi-agency team, the seconded representatives from RSLs within the team were able to contribute fully to the process, and problems in their housing were given equal priority with problems elsewhere. They felt this speeded up consultation, and it was agreed that problems in estates owned by RSLs who had not contributed staff to the unit were more problematic, and took longer to resolve.

As a solution to RSLs who do not have the co-operation of their local authority, the possibility of RSLs having the ability to take forward ASBO applications themselves has been raised, especially in the Housing Press. When those interviewed were asked whether RSLs should have the right to apply for ASBOs in their own right most replied with ambivalence, answering that they 'didn't see why not', but not feeling strongly about the issue either way.

The advantages of enabling RSLs to apply for an order directly would be to empower RSLs to deal with the anti-social behaviour in the absence of local authority or police support.

11. Registered Social Landlords (RSLs) include Housing Associations and Local Housing Companies that are registered with, and regulated by, the Housing Corporation. Some Housing Associations are not registered and are outside this RSL category.

There are a number of disadvantages, however. If RSLs were able to apply for ASBOs the responsibility for dealing with anti-social behaviour in their housing may then fall solely to them, and for smaller RSLs, this may be far more than they could afford. In addition, local authorities and police can often utilise their in-house legal expertise to develop cases, prepare them and then present them in court.

"Generally an RSL can't afford what a city the size of [X] or a metropolitan police force can afford, which is to have its own in-house lawyer. As soon as you're talking about any legal actions by those bodies, you are talking about them being, I think, seriously ripped off by lawyers who will charge anything between £180 and £300 an hour.

Local authority

Another fundamental issue is that, if RSLs have trouble engaging the police under the current arrangements, there may be trouble enforcing an RSL-led ASBO in the future, as the police are needed to enforce the breach. Some were also concerned because RSLs do not have any statutory responsibilities or powers.

One solution, proposed by more than one person, was to compel partners to participate in the process.

"I think that something else needs to be put in place to facilitate a requirement on the crime and disorder partnerships... There needs to be something that actually directs the crime and disorder partnerships to include RSLs... If that does not happen, then the crime and disorder partnerships, as far as RSLs, will continue to be substantially redundant."

Local authority

Legal advice

As mentioned above, the role of internal solicitors in both the local authority and the police is often crucial to the progress of an ASBO, and should not be underestimated. In areas with a high number of ASBOs they have tended to play a pivotal role.

There were differences among areas as to when an internal solicitor was first consulted. Some involved them at the very earliest stages, either asking a legal officer to attend every problem-solving meeting, or else consulting them beforehand so that their advice could be discussed at the meeting. In some other areas legal advice was only sought when the problem-solving group had agreed that an ASBO was the best route forward.

However, in a few areas individual officers consulted, investigated, gathered evidence and then prepared the file before passing it to their internal solicitors. This was probably the least effective method of preparing a file. Common pitfalls included the collection of unusable or out of date evidence; the file having to be reworked by the solicitor; or the case being rejected by the solicitor because they deemed it inappropriate for an ASBO. This was demoralising for those who had collected the evidence, wasted time and resources and often meant that witnesses had to give evidence on more than one occasion.

Level of legal input

The role of internal police or local authority solicitors in ASBO applications tends to follow one of three models.

First, some are preparing the case themselves and then presenting it in court. This has the advantage of continuity and many solicitors consider it cost-effective, as the costs of external solicitors' time is being saved. It also keeps the agencies close to what is going on and how the case is progressing. A second method of dealing with legal representation is to prepare the case internally, but then pass it on to an external solicitor or counsel to present. This has the advantage of a professional presenting the case, freeing the internal solicitor's time to prepare other cases. A number of areas have found that barristers or solicitors are able to do this job relatively cheaply and reliably for them, so the same person is used a number of times, building up expertise and experience. A third solution is to give all the information to an external solicitor to compile and take forward. However, this is not very common, and is probably the least satisfactory solution.

Whether legal representation in court should be internal or external is a moot point. Many local authority and force solicitors have very little time to devote to ASBOs because of their large workloads. Much of the work on ASBOs is being conducted almost 'on the side', and is not one of their core tasks. Often solicitors cannot afford the time out of the office to present a long case in court. For this reason, a number of solicitors have claimed that it is much more cost-effective to simply prepare a solid case file and a brief to counsel. Most likely the benefit of this depends on the cost of legal representation locally, although some considered it money well spent.

"Although using counsel, a barrister, was expensive, I think it was less expensive than the embarrassment of having one with inadequate training or experience standing up and trying to do it."

Local authority

In practice, the case files revealed there was always some input from either the force or local authority solicitor. In 71 per cent of cases, an external solicitor presented the case in court, compared with only nine per cent of cases that were presented by a force solicitor and 1 per cent by a local authority solicitor.¹² A much smaller proportion of external counsel (23%) actually prepared the case: in most cases the preparation was conducted by the internal solicitor, who then briefed counsel before the hearing.

There is evidence from a number of solicitors that, although they used external counsel for their first few ASBOs, they were more likely to keep the work internal in the future, now that they had experience in putting files together and seeing them progress through court.

Conclusions

In general there have been a few teething problems with partnership working in some areas. Fundamentally there have been frustrations caused by one partner agency refusing to co-operate, resulting in information 'black holes', poor problem solving and resource implications for the remaining agency. The consequences of this failure also have implications for other interested parties in the area, particularly RSLs, who stand little chance of getting partnerships to take an ASBO on their behalf under such circumstances.

There have also been problems in some areas with persuading partners to co-operate, leading to severe delays in the development of the case, particularly between identifying the problem and the first problem-solving meeting. Even when both partners agree on the timeliness and the need to consult, the consultation process itself can be lengthy, unless agreed time limits are in place for each stage.

However, some real benefits have been felt from partnership working in some areas, where the ability to identify, challenge and deal with anti-social behaviour has greatly improved. As discussed in the following chapter, the consultation process alone has been of immense benefit to some, without the need to develop ASBOs further. Others have seen the benefits of information, intelligence and cost sharing and the ability to share the evidence gathering and enforcement processes.

12. In 19 per cent of cases this information was not available.

Problem-solving

Most of the discussion in this report focuses on the processes involved in applying for and obtaining an ASBO. However, this is by no means the only way of tackling anti-social behaviour; it was emphasised in interviews that ASBOs are only one of the tools partnerships can use. This has given rise to some anxiety that partnerships' performance in tackling anti-social behaviour will be measured solely by the number of ASBOs granted. In some areas the lack of ASBOs is not due to antipathy towards them at all. Rather, it has been found that the adoption of a problem-solving approach as a prelude to a possible ASBO has sometimes addressed the problem without needing to take the final step of securing an ASBO.

Indeed in a number of areas problem-solving has been seen as the most beneficial aspect of ASBOs, with some even viewing an ASBO as a failure of the problem-solving approach. Such an approach focuses all the relevant professionals' attention on an individual's situation and can help develop an holistic approach to the problem behaviour.

There have also been cases where problem-solving has identified ways in which the action taken by agencies is deficient.

"There are some embarrassing moments when you see very clearly that service providers have not been providing support services to juveniles."

Local authority

Actions initiated by problem-solving groups have included mediation, intervention and diversion as well as ensuring the appropriate support of key agencies. In some cases groups have realised that changes to the physical environment may help alter some aspects of anti-social behaviour. For example one area had a problem with youths congregating in the car park of a night-club after the club closed. The problem-solving group identified that much of the trouble stemmed from the fact there was very poor lighting, and an illegally parked burger van which made an identifiable landmark to congregate around. By simply improving the street lighting and moving the van on, the problem was greatly improved.

Another method of dealing with drunken individuals causing problems in city centres and town squares was to pass a by-law banning drinking in public places. Such action may be taken alongside other measures, including ASBOs, but can often go a long way in itself to eradicating many of the contributory factors to anti-social behaviour.

However, the focus of problem-solving groups should always be kept clear. The aim of the group is to tackle the anti-social behaviour. There was a danger in some areas of the focus shifting away from discussing a community safety problem towards a case conference for the perpetrator. The role of the chair of the problem-solving group in these situations should be to keep the group on track.

Pre-ASBO measures

Some areas believed there should be a standard progression in anti-social behaviour cases, with set time frames for each stage. The result would be for both the partnership and the perpetrator to know exactly what steps are being undertaken and what the outcome of not co-operating will be. For example, in one area the first stage was to assist, support and monitor the individual, so that they could learn that their behaviour was unacceptable and receive help on how to change it. After, or in parallel with, this came a verbal warning, then a written warning, a challenge meeting (with both the police and the local authority) and then if all else failed, an ASBO application. During this progression, the threat of an ASBO is often successfully used to deter individuals from continuing with their present behaviour.

The benefit of such an approach was that all agencies were engaged in trying to solve the problem from the outset. It also enabled partnerships to make clear in court that the ASBO has not been sought lightly, and that the behaviour is not likely to change without legal interventions. However, such an approach can cause delays, and the need for immediate relief for the community does take precedence in some areas.

Discussions with perpetrators tended to be solely at this pre-ASBO stage: it was uncommon for perpetrators to be interviewed as part of the ASBO application itself. Indeed there was more than one example of an ASBO being applied for without the perpetrator being aware that such action was being taken.

ABCs

A well-reported approach to dealing with anti-social behaviour before it reaches the ASBO stage is to use an acceptable behaviour contract (ABC). These are mentioned in Appendix G of the 2000 guidance and have been used extensively in the London Borough of Islington.¹³

ABCs have been welcomed by many as the answer to some of the problems associated with ASBOs; in particular, the cost of taking an application to court and the related delays. Almost all areas visited were either using ABCs or a different, but related process. In essence, ABCs are very similar to ASBOs, without being legally binding or enforceable. Commonly, representatives from the police and local authority interview young people identified as behaving in an anti-social manner and their parents. A contract is then signed, under which the young person agrees not to behave in a specific anti-social manner, similar to the conditions in an ASBO.

This has been hailed as a great success in some areas, which claim that incidents of anti-social behaviour have decreased at very little cost or effort to the partner agencies. In addition, in the event of failure most hoped that the ABC could be used as evidence in a subsequent ASBO application. However, in practice ABCs have tended to focus on less severe behaviour among youths than that which would normally result in an ASBO application. However, if this lower level problem behaviour can be dealt with in this way, it may leave resources free to deal with individuals at the more serious end of the spectrum.

Alternatives to ABCs

Some officers were slightly wary of the quasi-legal language of the ABC, and steered away from formal warnings in that form.

"They look a little like the entrapment of juveniles to sign up and say, 'yes I did this' without any legal representation."

Local authority

Alternatives to ABCs included warning letters, perpetrator interviews, and formal challenge interviews. One such technique was to have a five-point interview, again with the perpetrator, their parents and the partner agency. The first stage was to explain the statutory framework (Crime and Disorder Act, 1998 and Housing Act, 1996). It is pointed out to the

13. A separate evaluation by the Research Development and Statistics Directorate of the Home Office into the use of ABCs in Islington is currently underway. This is due to report by the end of 2001.

young person both that parents (who are not home owners) and siblings may lose their home as a result of the behaviour and that an ASBO may be applied for. The second point was to explain the consequences of the use of these statutes and what the worst-case scenario would be. The third point was to describe the allegations made against them (while protecting the identity of witnesses) and the fourth was to ask them for their response to the allegations. Finally, a formal warning was given that the anti-social behaviour must stop.

Areas using this approach felt that a combination of the publicity ASBOs receive and the clear and authoritative warning have positive consequences. Thus, whatever form of early challenge is used, areas seem happy with the outcome of such interventions, quoting quite impressive figures suggesting altered behaviour.

"We've had a very large number, something over 250 of those interviews. We've probably had to move onto case conferences in around 50, maybe up to 60 cases."

Local authority

However, other areas do not use ABCs or formal warnings at all, or not as a matter of course, as they may again delay the process of securing an ASBO.

"We have decided not to. It's just another factor to delay obtaining the order itself when the order offers real solutions."

Police

Another concern about ABCs is that, if other initiatives have already been tried, such as mediation, challenges, warnings and support, the further step of taking out an ABC will be considered redundant. There was also some concern that the courts would come to expect that an ABC would first have been used, leading them to expect such evidence whenever an ASBO was sought. It was feared that the fact that an ABC had not been given to individuals with extreme anti-social behaviour could count as a factor against the awarding of an ASBO in court.

One advantage of ABCs, challenges or agreements is that they can be modified depending on the needs of the area and the individual. For example, unlike ASBOs, positive elements can be inserted into such a contract, allowing for various interventions to occur alongside more typical conditions, such as attending courses or meetings. ABCs also create a situation where both partner agencies meet with the young person and their parents, allowing for the parents to be aware of the behaviour of the young person and intervene at an early stage.

Interim orders

There was a great deal of frustration amongst areas that had experienced long delays in the process of applying for an order. These delays were considered a waste of resources, and there was concern about the vulnerability of witnesses during the process. For this reason more than one area suggested the development of an 'interim ASBO'; an order which could be applied for immediately, in a similar manner to an injunction. The content of this interim order would be similar to the ASBO itself, and contain similar prohibitions, but would be granted before all the evidence was heard. The interim order would be in place until a full hearing could be scheduled.

The issue of interim ASBOs was discussed with most criminal justice professionals. Some thought that it was a very good idea, and necessary to stop the unacceptable behaviour as soon as possible. It was also thought that it would help avoid delaying tactics by defence solicitors: individuals would be keen to get to the final hearing quickly to lift the order or alter the conditions. Most importantly, practitioners believed that such an interim ASBO would ensure the community had the immediate protection of the court pending the full ASBO hearing, and would demonstrate that partners were taking action.

A few interviewees were less enthusiastic about the idea and doubtful that it was practical. Primarily, the over-riding worry about such a suggestion was the human rights implications: it is imposing restrictions on people's liberty without a proper hearing?

"It would come under the Human Rights situation wouldn't it? Making orders without there being any evidence considered?"

District Judge

Others were concerned that an interim order would simply add more bureaucracy to the process, suspecting that breaching an interim order before the ASBO is granted would create a very messy system. Other partner agencies were concerned that an interim order would have the sum effect of delaying the process even more. There was also a concern that cases would be slipped through without there being a proper evidence gathering exercise or consultation.

The general conclusion was that, if the primary problem was the speed of the application through the system, then this is an issue about listings and adjournments. However, if the problem is the immediate end to the behaviour on application, an interim order should be considered.

Disseminating information

A possible disadvantage of an anti-social behaviour strategy more focused on problem-solving and pre-ASBO measures is that this type of information is much harder to communicate to the community. ASBOs have a simple clear message that, as discussed in Chapter 7, often make popular, positive stories in the local press. Problem-solving, however, are more difficult stories to communicate successfully and will almost always be confidential. It is therefore possible for partnerships to be very active in trying to deal with local problems, but for the community to continue to feel that little is being done and that they are not being listened to.

For this reason, a communication strategy, disseminating information on the ongoing efforts to the local community, would be practical, as well as encouraging community involvement in anti-social behaviour strategies.

Fast track-procedures

It is recognised by some partnerships, however, that sometimes early interventions and problem-solving are not necessarily the best solution. In serious cases the behaviour may be considered too severe to try preliminary interventions. Such delays carry the potential for the behaviour to persist and for the community to continue to suffer. Under these circumstances some lead agencies were inclined to bypass much of the problem-solving process, simply asking each member of the partnership for comments and agreement. The aim is then to get the order to court as soon as possible, although interventions can be tried alongside the application in such circumstances.

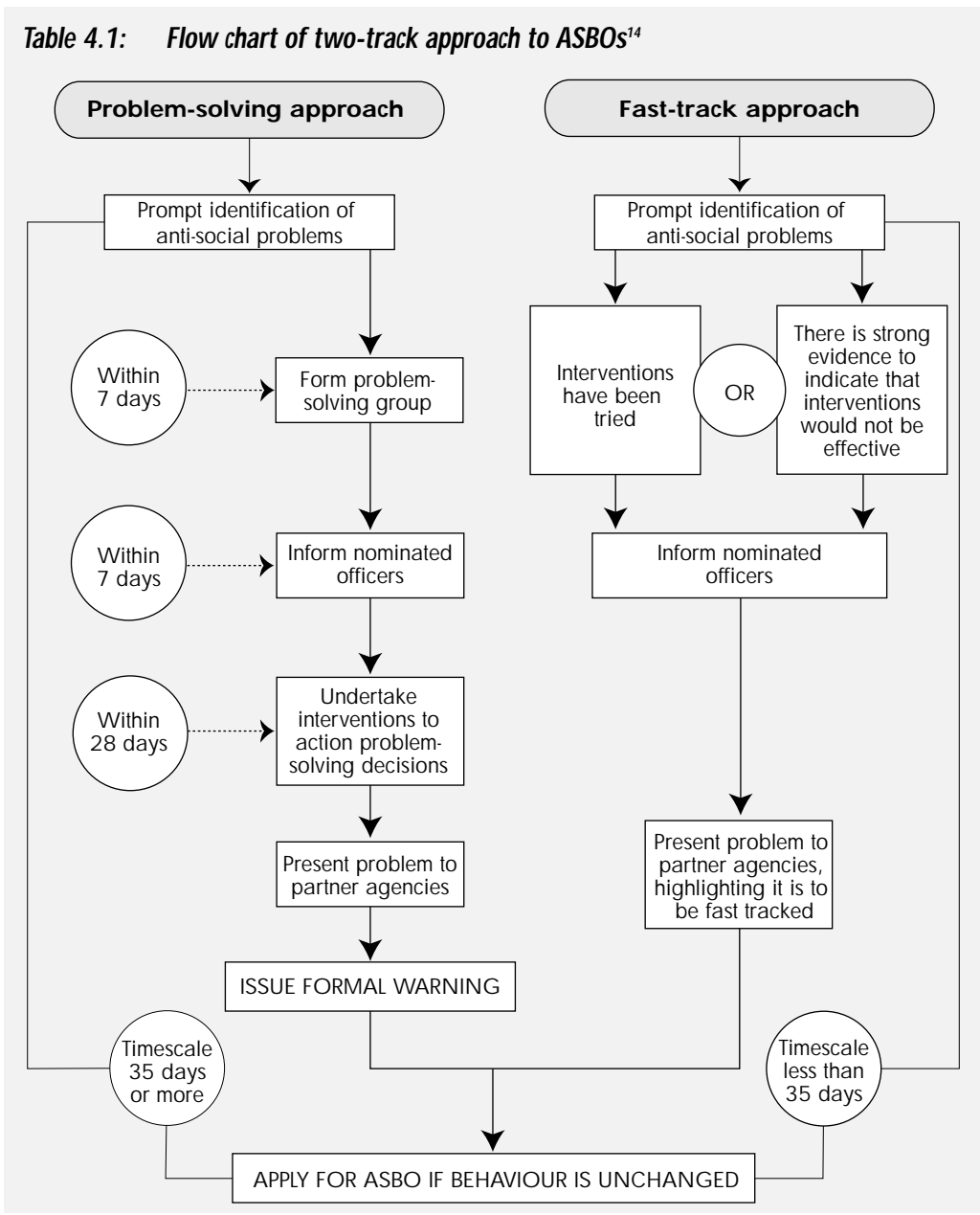
"Very often what we would find is, if we've had to get to the case conference stage we're talking about a persistency of anti-social behaviour where whatever the support and diversions that are needed for this individual and for their family, it is clear by that stage that an anti-social behaviour order is needed to protect the wider community."

Local authority

Areas which have experienced severe behaviour and not tried to fast-track the process have often been frustrated with the length of time the consultation process can take, while all the time the community is suffering. A balance between consulting and intervening and stopping the behaviour has to be struck.

Some areas have developed a two-track approach to progressing cases of anti-social behaviour, depending on the urgency of the need and the likelihood of interventions having a positive outcome. An example of such an approach is illustrated in Table 4.1.

Table 4.1: Flow chart of two-track approach to ASBOs¹⁴



14. This flow-chart has been adapted from one developed by Inspector Graeme Webster, Merseyside Police.

to lead on anti-social behaviour matters as local authorities had experience in dealing with housing matters and the civil courts.

"It was never going to probably be the police forces that are going to be using anti-social behaviour orders, it was probably almost certainly going to be local authorities working together with the police."

Police

However, areas using ASBOs successfully often did not have such clear distinctions between roles, with the most appropriate people for the job collecting statements. Neighbourhood wardens have been successfully used in some areas, with the added benefit that they know the area, the individuals, and are able to keep in regular contact with victims and potential witnesses. A problem in a London Underground Station was tackled through station staff taking down witness statements, freeing up the time of BTP officers and empowering the staff to feel they were dealing with the problem. Another solution used in one area is for retired police officers to be used to collect evidence. This has the benefit of a police officer with experience collecting the evidence, but also one with the time to concentrate on the task at hand.

Some partnerships have developed training, so the skills of one organisation could be shared with the other, including the taking of witness statements. Others have tended to focus on other methods of information collection, such as the development of specialised witness incident diaries, requiring witnesses to record details of anti-social behaviour as they happen. The technique of avoiding the use of live witnesses and relying on contemporaneous diaries and surveillance footage was used more in some areas than others. Such evidence was often very effective in court.

Recording anti-social behaviour

A potential problem identified in a number of areas is that many examples of anti-social behaviour that could potentially be used as evidence go unrecorded.

"In many cases evidence is not secured, information is not captured that could have informed strategies for surveillance, could have informed strategies for speaking to other members of the community, that should have been captured, should have been written down, would have formed the basis of hearsay evidence statements"

Local authority

This might be because the officer at the scene is too busy; the incident is considered too trivial or it seems pointless if no direct action is going to stem from it. However, such information is potentially invaluable.

For this reason some areas have developed strategies in order to ensure such information is recorded. One example is to ensure that the names and brief details are recorded for each incident of anti-social behaviour. This ensures data capture with the minimum of disturbance to the work of officers not involved in the ASBO case, they simply take the names and addresses of all perpetrators and key witnesses. This officer can then carry on with their everyday work, while those working on the ASBO case can revisit the witnesses to get full details. Again, neighbourhood wardens have proved useful in this respect. Whereas they are often not able to respond immediately to calls from witnesses, they do have the time and resources to revisit them to discuss the incident and get a full statement.

Organising evidence gathering

Once the decision to apply for an ASBO was made, the timescale for collecting evidence varied considerably among areas, largely because of the status and resources accorded to ASBO investigations. In a number of areas the work was conducted alongside officers' other duties, often taking second place, or conducted in small windows between other appointments. As can be expected, this often caused delays, frustrations and made the process seem very arduous. There can be knock-on effects for securing community support for the ASBO process, because people were unlikely to have confidence in it if they thought it was not being pursued wholeheartedly.

"We started off I think it was with seven or eight witnesses...in the course of eight/nine months of the process, we lost almost all of them except two and very probably they were not the strongest of witnesses."

Local authority

There is also a likelihood that information will be lost because of the six month rule (see Chapter 1), thereby wasting time and resources. And, of course, if the evidence gathering process is protracted, then victims and potential witnesses will be put at risk for longer.

An alternative approach used in a few areas avoids many of these pitfalls through the individual responsible for gathering the evidence (and any others who may be available to assist) being given a set timeframe free of other tasks in which to gather the evidence. This means that the partnership can concentrate on the case and gather the evidence quickly

In summary, many of the frustrations with the ASBO process have come from the length of time it has taken to progress cases and take them from the stage of deciding to seek an ASBO to the final court hearing. Those who had managed to streamline the information gathering processes were the happiest with ASBOs.

Quantity and standard of evidence

In terms of the evidence collected, there was clear evidence of some areas 'over-egging the pudding'. Especially with the first few ASBOs, cases were being prepared to the standard of proof beyond all reasonable doubt. Indeed a number of lead agencies compared the evidence gathering process with preparing a murder file or a very elaborate criminal case because of the size of the file and the amount of evidence it contained.

Cases were prepared beyond the level of evidence needed for a number of reasons. One frequently voiced concern related to the consequences of having an application refused in court. Such a refusal was thought to send the wrong signals to the perpetrator.

"To lose sends out this incredible message to perpetrators of anti-social behaviour – you can do what you want, we can't touch you."

Local authority

It was also thought to have adverse implications for community relations. Much time will have been spent persuading and reassuring the community that they are right to give evidence, to put their trust in the police and local authority. For the application to then fail could therefore be a step backward in community relations and actually make those strong enough to stand up and give evidence more vulnerable to future incidents of anti-social behaviour or worse. Failure to obtain the order can also result in costs being awarded against the applicant, a high price to pay for what could be slightly too little evidence.

Another possible reason to explain the volume of evidence collected was that, especially in the first few cases, areas were aware that all eyes were on them; they needed to win their first few cases in order to save face and be able to continue with further applications. Once a few ASBOs were made and the positive consequences were demonstrated, the fear of failing diminished.

In addition, although the issue of the burden of proof has now been resolved, there are many solicitors who are still preparing the evidence to the higher, criminal standard to avoid any challenges, and to ease the court process. Especially with the first few ASBOs made in

each area, legal challenges were expected, and no one knew what to expect. A final reason is that solicitors often think that the order is a severe one and should not be entered into lightly.

A problem with producing a large volume of evidence is that, as discussed in Chapter 5, there is more material for the defence to contest. In some areas magistrates have been robust about this; however, others have been less robust in the face of defence challenges. This has sometimes resulted in a harrowing time for witnesses, who may not have been keen to come to court in the first place, and meant that there were substantial delays in the process because a long trial had to be slotted into the court calendar. Undoubtedly, the amount of evidence collected has to be balanced with the 'strength of numbers' approach to witness protection (discussed in Chapter 6).

Other areas are much more relaxed about preparing cases. This has come from experience of successful applications and the confidence which that brings. Some cases have been brought using hearsay evidence alone. Nonetheless, the evidence was so convincing that an ASBO was granted. This proves that the elaborate case files are not necessarily needed in every case.

Conclusions

In the process of securing ASBOs, timeliness is all-important. Delays have caused frustrations and disillusionment in many of the areas studied. One of these frustrations stems from partnerships' inability to ensure the safety of the community over long periods of consultation and evidence gathering. It seems that introducing strong procedures with time-limited processes is one way of ensuring cases are dealt with promptly and effectively. It was also the case that areas that gave resources and time over to the evidence gathering stages of the process were able to build files effectively and at an acceptable cost. Files prepared in an unstructured manner over a long period probably took more resources in the long run.

Police and local authority perceptions of the court process varied considerably around the country, with some applicants for ASBOs considering it relatively straightforward, whereas others found it so problematic they considered it a disincentive to using ASBOs again. There was also considerable difference in views about the type of evidence considered necessary, and in the length of time the process took.

Standard of evidence

Most magistrates, clerks and police and local authority solicitors generally agreed that ASBOs are not difficult to deal with. In their view, the legislation is clear, and all that needs to be demonstrated is that there has been persistent anti-social behaviour and that the order is necessary to stop further behaviour.

"I think the initial application is relatively straightforward given that it is civil, given that hearsay goes you can bring various officers to give hearsay evidence and all sorts, you can get your ASBO."

Justice's clerk

However, there was some controversy when the orders were first being sought about the burden of proof that should be used in deciding these cases. Despite the legislation stating that it was a civil burden of proof, many magistrates insisted that the criminal burden be used and hearsay evidence was disallowed in some courts. However, this issue has since been resolved by the Court of Appeal, which held that ASBOs are indeed civil (*R. v. Manchester Crown Court ex parte McCann* (2001)).¹⁵

The fact that a few magistrates were not accepting the civil burden of proof was frustrating and confusing to some, especially those used to dealing with civil cases in the county courts.

"The civil level has meant whole families being evicted from their homes and it's been perfectly acceptable and has not been challenged."

Local authority

15. The Times, 9 March 2001.

The Court of Appeal verdict, although confirming that the burden of proof was civil, did allow room for flexibility: "Although the civil standard of proof applied, that was a flexible standard to be applied with greater or lesser strictness according to the seriousness of what had to be proved." (R. v. Manchester Crown Court ex parte McCann (2001)). This has led to some magistrates developing their own criteria as to what evidence they will and will not accept.

"I decided that because they were criminal offences in the main that were being alleged as the anti-social behaviour that I would adopt the criminal standard of proof in fairness to them even though they were civil proceedings. To have adopted a lower standard really, when one alleges a robbery for instance, makes a nonsense of it."

District Judge

While others remain confused.

"The authorities still say it's civil proceedings and yet they've told us that although applying the civil burden of proof it's flexible and therefore in effect we should still apply something that is akin to the criminal burden of proof...it's not easy and I think it is impossible for lay magistrates to get a grasp of."

District Judge

Witnesses' evidence

There was a general consensus among partnerships and courts that it was important to have witnesses give evidence. Although hearsay evidence was often used, along with video evidence and witness diaries, having someone who could give direct evidence and be cross-examined was considered important, and strengthened the case.

"I personally, as a clerk and perhaps as a lawyer, more than the magistrate would actually prefer to see some direct evidence. Because no matter what the higher courts say about it's civil proceedings, I think, because of the punishments that can flow from breach you want the best evidence."

Justice's clerk

In general, witnesses were asked during the evidence gathering stage whether they would be willing to give evidence in court or not. When the case was ready to go to court, three or four witnesses would generally have been chosen to give evidence in person, often by

the solicitor presenting the case in court. The choice of witness usually depended on the quality of their evidence and their vulnerability, with the least vulnerable being used where possible. Witness statements from other witnesses were then used as secondary evidence.

It is possible for the defence to challenge the witness statements that have been submitted as hearsay evidence. Due to the 'strength in numbers' approach to witness protection (see Chapter 6) there are often numerous witness statements for each application. Of the 58 case files analysed in which the information is known, the average number of witness statements presented in court was 21, ranging from just 2 to 70.

If all these witness statements are challenged there is a potential problem in court. This occurred in only one of the areas visited, where almost 40 witness statements were challenged and their authors called to give evidence. This resulted in very lengthy hearings and related delays. For their part, witnesses may feel let down if they have been reassured that they would not be needed in court. To overcome this possibility partnerships have been ensuring that witness statements corroborate each other and are also supported by other forms of evidence. The latter included photographs, video footage, incident diaries, letters, newspaper articles, and PNC and intelligence printouts.

The preference for direct evidence does not mean that live witnesses are always used. One ASBO partnership, which used ASBOs widely, found that cases where there was extreme witness intimidation – to the extent that none would come forward to give evidence – were often the most convincing in court. The fact that no one was willing to attend (and the fact that the partnership usually does call witnesses to court) vividly illustrated the extent of the problem. Other areas have applied for orders using nothing but hearsay and video footage. However, this is the exception rather than the rule. In addition one area that had lost cases then tended to shy away from such techniques, only taking clear-cut cases forward.

Professional witnesses were used, and were considered better than nothing in the absence of direct witnesses.

"...if I was defending a case I simply wouldn't want written statements to be read out which can't be challenged because you are not there. I think the gist of the legislation is to ensure that an officer comes along to confirm that this is what they've been told, and at least it gives the defence opportunity to chip away at the quality or credibility of that evidence."

Justice's clerk

Despite the problem of witness vulnerability, most applicants and courts agreed that full disclosure at the time of serving the papers is the most appropriate way of releasing details about witnesses. However, some partnerships are calling for this to be formalised.

Use of District Judges and lay magistrates

There were differences in practice among courts as to who heard ASBO applications: some courts relied on using District Judges, others the lay benches.¹⁶ Using District Judges meant that there were individuals in court who were building up expertise on ASBOs and their legal training put them in a better position to deal with any legal arguments put forward.

Others courts were adamant that lay magistrates were equally able to deal with ASBO cases and that expertise should be shared, as all would be hearing breaches. There was no particular time advantage either way: it is often easier to schedule a hearing date with a lay bench than District Judges, who are often on a circuit. However, District Judges are more able to hear a long trial.

Defence solicitors

Several people from partnerships commented on the negative influence of defence solicitors, with many of the tactics used in the criminal courts being brought to the civil case. The nature of the anti-social behaviour, and the typical characteristics of individuals committing such acts, often meant that they had been through the courts on a number of occasions and have defence solicitors with whom they were well acquainted. Being used to criminal cases, they were seen as making the hearing much more confrontational and adversarial than was originally envisaged. There was also some concern that they did not understand the civil burden of proof, leading to more delays in the process.

One district judge was also concerned that the young people being given ASBOs were not adequately represented by their solicitors because of their unfamiliarity with the Order, resulting in young people agreeing to terms the magistrates considered too severe.

There is concern by both witnesses and some partners that defence solicitors are abusing the system for their own ends. Some believed that they were trying to build their reputation by spearheading case law. Others believed that they were trying to drag the process out in

16. Because most areas contracted out the task of presenting the case in court, details about the court process were often not available in the case files examined. The proportion of cases heard by either the District Judge or a lay bench is, therefore, unknown.

order to milk as much money as possible out of the process. This led some to propose changes to the way in which legal assistance is given in such cases, for example by giving a fixed sum of aid per case, rather than by time.

Contested orders

The speed of ASBOs through the courts also crucially depends on whether the application is contested. Uncontested cases naturally moved more quickly through the court system. Contested cases are often more time consuming and complicated. It was difficult to establish the proportion of contested and non-contested cases from the case files analysed in each area. However, evidence from interviews suggests that, although a large proportion of applications progress through initial hearings with the understanding they are going to be contested, many are in fact accepted at the final hearing (the civil equivalent of a 'cracked' trial). Thus the final hearing is both simpler and speedier than expected, but the time lag between application and final hearing remains the same. In addition, court time is often wasted as a number of days are set aside for a contested trial.

It was often the case that the defence stated early on that they would be contesting the order under the Human Rights Act 1998 (or on human rights grounds in anticipation of the Act coming into force in October 2000). This is perhaps because there was little other scope for opposing the Order due to the overwhelming evidence against the alleged perpetrator. However, in practice, few applications were eventually opposed on this basis.

In one partnership that had lost cases, there was a feeling that the only reason that they had won subsequent cases was because they were not contested. There is no evidence to support this in other areas, but such perceptions can again act as deterrents to applying in the future.

There are no 'usual' points that are contested. Often, the evidence was so overwhelming that there was little to challenge. This led to either the defence solicitor admitting the case or to very hostile questioning of witnesses.

"During the court case it didn't feel like a civil case – I felt that the questions the defence lawyer was asking were trying to trip me up... It's frightening giving evidence."

Witness

There is some anxiety about this trend among local authorities and police, as it is often very difficult to encourage witness participation in the first place.

Contents of the order

Once the case has been proven or accepted, there is often negotiation about the contents of the order. Draft prohibitions are prepared by partnerships and submitted to the court as part of the document bundle. Most local authorities and police are happy to negotiate with the defence solicitor on the content of the order, although there has been some uncertainty on the part of magistrates as to what their role is in this process. With an uncontested order, some magistrates have felt unable to intervene when the conditions have been agreed between the respondent and the complainant, whereas others on hearing the evidence have gone further than was originally asked and put in place more stringent conditions. In practice, magistrates make the ultimate decision about the content of the Orders, which should be proportionate to the behaviour, reasonable and enforceable.

Many partner agencies commented that they learned a great deal from their first few orders, enabling them to draft subsequent orders to make them more enforceable and more likely to change the problem behaviour. Areas that have not drafted conditions may well benefit from the experience of those in other areas who have.

There was some concern amongst some applicants that magistrates were only agreeing to very narrow conditions, lessening the possible benefit of the ASBO.

"Because we were only able to demonstrate anti-social behaviour in a very small area, the last two orders we got were confined literally to a small part of the estate. And our previous experience has shown that the anti-social behaviour order stops the problem in the area, but didn't stop the problem in general, it just moved it on... Again, this is different to what we are finding with Housing Act injunctions. Judges are often going for quite a big locality... Circuit judges apply a much wider discretion and a much wider view in terms of geographical location."

Local authority

This is against the spirit of the 1999 guidance which states, "...any prohibitions contained in the order must be only those necessary for the purpose of protecting persons in the *local government area* from further anti-social acts of the same kind as the defendant. This is likely to be restricted to a prohibition on the kind of behaviour that led to the order being sought" (para 6.10). The restrictions should be able to stop the anti-social behaviour, while striking a balance between what is necessary to protect the community and what is proportionate. There is also a potential problem caused by an individual moving outside the area covered by the ASBO and continuing their anti-social behaviour. There is currently no way of overcoming such problems short of applying for a new ASBO.

Granting/refusing the order

In practice, the courts have granted most ASBO applications. However, what the statistics discussed in Chapter 2 do not reveal is that there is evidence of a number of cases dropped at the final stages of an application. This is because either the complainant has doubts as to whether the order is going to be granted or a compromise is made in situations where the defence solicitor is defending more than one individual. If the defence agrees to accept the order on the ringleader it may be worth sacrificing the order on one of the other members of the group.

The high proportion of successful applications is also due in part to the fear amongst partnerships of failing. Costs were awarded against only one partnership visited for this research. This did not act as a disincentive for them, but did result in them being doubly cautious with subsequent applications.

Appeals

There have been a number of ASBO appeals across the county, although the exact numbers are not known.¹⁷ There does seem to be a pattern to appeals, however, with some areas having all but their uncontested orders appealed, whereas others have a high level of ASBO use but are yet to experience an appeal.

The appeal process caused a great deal of concern to both partners and witnesses. Partner agencies were frustrated with the ability of the defence to appeal by way of rehearing without needing to state reasons, resulting in them being compelled to go through the whole process again with all that entailed: staff time, legal costs, witness support and witness protection. Even areas who managed the process in a streamlined manner found that appeals involved many extra expenses, in one case simply because the internal solicitor did not have the right of audience in the Crown Court.

In most cases, the frustration stemmed from the fact that partners believed that there were no grounds for the appeal, other than to simply drag out the process. Partners felt that respondents in receipt of civil legal aid had nothing to lose by appealing, and there was also some concern that defence solicitors were trying to deplete council resources by appealing each case.

17. Monitoring forms returned to the Home Office do not indicate whether the order was appealed or not.

Witness frustration often resulted from being told that they would have to give evidence once, only to be told that they were required at court again. One witness who had gone through the appeals process reported that hearing about the appeal had dispelled the initial community confidence that the granting of the order had given. A number of witnesses commented on the money 'wasted' by this process.

Court delays

As noted throughout this report, one of the major concerns about ASBOs is the time that it can take to obtain one. As with other parts of the application process, there can also be severe delays in the court process. It was not uncommon during this research to hear examples of it taking six months from summons to final hearing; indeed, the monitoring forms indicate that it is taking on average 13 weeks.

These delays are despite the strong direction in the 1999 guidance which states, 'It is essential that there should be no unnecessary delay in hearing these cases and adjournments should only be allowed in exceptional circumstances.' (para 6.5, original highlighting).

Sources of delay

One of the most common reasons for delays at court was the lack of preparation by the respondent. Despite the fact that most summons were served with a letter advising the respondent to seek legal advice as soon as possible, many respondents arrived in court without a solicitor, or with a solicitor who had not received copies of the papers or who had only just received a copy. Few magistrates were happy to continue under such circumstances and the case was usually adjourned.

"[Defence solicitors]...have got young people who probably don't exactly see their defence solicitor as being their representative, just sees them as another problem they have to deal with so don't keep their appointments, they don't turn up, they don't give decent instruction. So it is probably not the defence solicitor's fault but, you know, there seems a general lack of preparedness in the cases."

Deputy District Judge

A second hurdle was ensuring legal advice and assistance was paid for; cases would not proceed until this issue was resolved. It seems that applying for legal aid is time consuming, with some court staff stating that civil legal aid is far slower than criminal legal aid.

Other procedural issues are also causing a delay and necessitating a number of hearings in some courts.

"A lot of the problems are taken up with hearsay notices and preliminary issues...the matter may come into our lists but it takes several months before it's actually listed for final hearing. Because they require a lot of preliminary arguments...it's not perhaps as speedy as I imagine a local authority would like it to be."

Deputy District Judge

Others find the process so complex they assume a number of hearings will always be necessary.

However, it is the time between application and listing that is causing most consternation for the courts. Delays are occurring here because certain cases are being heard by District Judges who are on a circuit and so not there all the time. Others are having problems prioritising ASBOs in a busy court.

Fast track

Most of the courts visited were attempting to fast-track ASBO applications, although with the workload of the courts this was not always possible. Courts that were managing to fast-track ASBOs often found that other hearings were suffering.

"There has been some priority put on ASBOs by the courts, but this can be to the detriment of other things."

Justice's clerk

Some courts managed to list preliminary hearings on the first Monday after the application. Others listed them within three weeks, on the basis that they were trying to minimise the number of hearings and ensure a sufficient amount of time was allowed for legal advice to be sought.

Minimising court delays

Successful arrangements for early listing of ASBO cases were helped by a number of measures. A close relationship between the courts and the lead agency helped the process, ensuring that the courts were warned of an imminent application. Courts that were seeing a lot of applications were also more prepared for applications and knew what to expect when they arrived. Areas using a number of ASBOs felt they benefited from using a standard approach to preparing court files.

Related to speeding up the process is an argument for not applying for orders against too many individuals at one time. Whereas groups of as many as four have been dealt with together at a two day hearing, larger numbers will often require longer and create greater scheduling difficulties. In practice decisions on whether or not to apply for ASBOs against a number of individuals will depend on past experience and local practices, but the potential for delay should be borne in mind.

Some areas conduct plea and directions hearings or pre-trial reviews in order to establish what the issues in the case are, whether the case as a whole or particular aspects of the order are going to be contested and what witnesses are going to be called. This gives the defence and the complainant an opportunity to discuss these aspects of the case, and also helps the magistrate or District Judge hearing the case to try and avoid adjournments. Areas that carried out pre-trial reviews felt that they helped speed up the process while at the same time ensuring a fair hearing.

Training

As with the local authorities and the police, very few magistrates or clerks had received any formal training on ASBOs or if they had, it had been contained within generic training on the Crime and Disorder Act. Others had been given documentation to read, but it was generally accepted that ASBOs were not a priority for the courts in any area – a result of the relatively small number of ASBOs applied for and the fact that ASBOs are not a sentence of the court.

It is clear that dealing with ASBOs involved a learning process for the courts, and not just the partnership agencies. Many magistrates and district judges were learning 'on the job'. In one case there was a six-week adjournment so that a district judge could study the legislation before hearing the case.

However, there was concern amongst some court staff that there was not enough training on the issues associated with ASBOs, which perhaps compromised magistrates' ability to deal with the cases presented to them.

"I think there is a hole in training on ASBOs. I don't think the purpose, the intention, the legislation and the mechanisms have been made very clear."

Deputy District Judge

There was also a concern among some partnership agencies that magistrates were unaware of what they were trying to achieve, and why applications were being made. They felt that it was important that magistrates knew that ASBOs were part of a larger anti-social behaviour strategy, and were not being used lightly.

To deal with this possible misunderstanding some partnerships have been offering training to magistrates on how they are dealing with anti-social behaviour and on their use of ASBOs, including strategies and protocols. In some cases this has been accepted and has proved useful; in others the magistrates have been reticent about being seen to be influenced by the police and local authority.

"... we have to be very careful because we can't be seen to influence magistrates, so actually the whole thing of opening the dialogue is very difficult."

Local authority

Another possible forum to inform magistrates about the local anti-social behaviour strategy is the local Court User Group.

Conclusion

There were frustrations in some areas about how magistrates were dealing with the orders. However, magistrates themselves were generally positive about ASBOs, and were curious as to why there had not been more applications, although they did realise that the preparation by partnerships was often laborious. Any doubts magistrates had about the process seemed to focus on the types of behaviour that were being used as examples of anti-social behaviour, for example their use on prostitutes.

There seems to be a great difference between courts in different parts of the country as to how ASBOs are being treated. This has resulted in very positive views in some areas:

"There has been a consistency of quality...in the response of the magistracy, they've been excellent, very well informed, very assured, very good indeed, very impressed with them. We didn't do anything special, we didn't sort of go down there and say, 'we'll do a training session for you' or anything like that, they had clearly either worked the business out for themselves or brought something in."

Local authority

However, in other areas there is a strong sense that the partnerships and the courts are pulling in different directions.

"The failure of the courts is pushing us into only considering orders and against what you might call fairly hardened criminals... Nobody is even dreaming about using them against sub-criminal behaviour. [the courts] are actually pushing us away from using the Act in the way it was intended."

Local authority

Areas that were high users of ASBOs were more likely to report a good relationship with their local courts.

A fundamental concern amongst many of those considering applying for an ASBO is the safety and worries of those who have been at the receiving end of the behaviour. Witnesses were interviewed for the current research to gauge the attitudes of those who have experienced anti-social behaviour and the ASBO process. A process which both the police and local authority are happy with is of little use if it is perceived as unsuccessful or traumatic by those it is designed to help.

There is evidence of widespread intimidation in many areas, with potential witnesses too scared to give evidence at the outset, or in fear of their safety once involved in the ASBO process. It is therefore important to develop successful strategies to encourage witness participation, and to support witnesses through the process. These concerns and strategies are discussed in this chapter.

Thirty-three witnesses in ASBO cases were interviewed about their experiences and concerns¹⁸. Many had appeared as live witnesses in the case, although more were willing to do so, but were not required because the order was not contested. In all cases, the ASBO was successfully granted.

Of all individuals interviewed for this report, witnesses voiced the most dissatisfaction with the process. This is not to say that their feelings were overwhelmingly negative; indeed most considered ASBOs to be a welcome innovation that had, to varying degrees, helped their situation. However, there were a number of respects in which those who had been on the receiving end of anti-social behaviour thought there could be improvements.

Attitudes before the order

Before an ASBO was suggested, many of those interviewed, especially those who had a problem near their home address, had felt frustrated at the inability of the local authority and the police to deal with the problem behaviour they were experiencing. Many felt they were being ignored, and that their problems were low priority.

18. Seventeen of the 33 witnesses interviewed came from just two of the areas visited. Thus, although witness issues were discussed with all those interviewed, there may be some bias in the representation of witnesses' opinions.

Witnesses accepted that the behaviour of which they were complaining might be considered trivial when looked at in isolation, but experienced daily it was often unbearable. This opinion was supported by comments from the local authority and the police who sometimes felt powerless to help those suffering from anti-social behaviour. Put simply, they responded to calls on a priority basis, and many were more urgent. Partnerships were also frustrated because they did not have the powers to adequately deal with the behaviour once they did attend incidents, resulting in the public interpreting their lack of action as apathy. In addition there was also a fear amongst some police officers that their inability to deal adequately with problem behaviour would result in vigilante action by some residents.

However, some witnesses felt that, because of their proximity to the problem behaviour, they were being tarred with the same brush, and considered to be no different from those causing problems in the community.

"Originally we were labelled the same as the [X's]. it was only once we had been petrol bombed that we were treated seriously."

Witness

This resulted in many communities and individuals feeling that they were not being recognised and treated seriously.

The perceived inability of any of the local agencies to help deal with the problem behaviour also gave witnesses a feeling that the perpetrators of the anti-social behaviour were untouchable, and that nothing could be done to stop them; a feeling that witnesses considered was largely shared by the perpetrators themselves.

Because of the perceived lack of action in these circumstances, many individuals had tried other routes to deal with their problems. Some had contacted their head of housing, or had gone to local MPs' surgeries or talked to local councillors. Others had set up community groups or residents associations. They hoped that measures such as these would get the problems in the community attended to. They also hoped to explore whether there were any measures residents themselves could take to deal with the problem behaviour. There were some limited successes from these approaches, such as obtaining grants to change the physical layout of the area to deter people loitering. However, individual members of the community were rarely able to target the problem directly, and were looking for support from either their landlords or the police.

Once an ASBO was decided on, the situation was perceived differently, with many witnesses feeling involved and listened to.

"Once an ASBO was decided on, the police pulled out all the guns."

Witness

Witness intimidation

Witnesses interviewed indicated that they had experienced significant levels of intimidation throughout the process; from before the order was considered to after the order was granted. This fear was believed by many in both local authorities and the police to have resulted in an under-reporting of incidents both criminal and sub-criminal, and an unwillingness to assist with the ASBO process despite wanting 'something done'.

Before the order

The nature of the anti-social behaviour in many of the cases observed has meant that a small group of individuals, or even one individual, has had an incredibly large influence on the lives of the community. These individuals often instilled such fear into those living nearby that the majority of the crimes they committed went unreported, and the individuals could effectively do as they pleased – in effect, they ran the community. Complaints about the behaviour would sometimes come through third parties such as the local MP or local councillors who had heard about these problems through numerous complaints, but complaints had not been made to the police or local authority directly.

A number of individuals mentioned feeling like prisoners in their own houses, with many fearing to go out, especially after dark. Locally businesses also suffered considerably in many areas, with staff intimidation and a huge loss of earnings.

During the process

As stated above, there is an understanding amongst partnerships that there is a great deal of intimidation during the process of taking ASBO applications forward. Many, therefore, have thought carefully about who they would ask to give witness statements and who was most vulnerable.

One attempted solution, which has often been adopted, is to ask people working in the local community, such as shop managers, station staff and local health workers, to give witness statements and evidence in court instead of residents. They are considered less vulnerable because they are only in the area during the day and the perpetrators do not know where they live. Most people who have taken this role have been happy to do so:

"I think it is much better to use [people working in the area] because...he probably wouldn't know me...I'm not often involved in his direct care but I know exactly what goes on...so he probably doesn't know where the information came from...and when there's a lot of staff it's more difficult to actually say than if it's a neighbour – it must be very threatening."

Witness

Other partnerships have stressed to witnesses that there is strength in numbers, and have encouraged many witnesses to come forward at once. This may be one of the reasons that some applications have a great many witness statements: no one individual will be targeted. Some areas have built into their witness support package meetings and conferences with different agencies where fellow victims can meet and support each other. They have found these meetings help witnesses and have the added benefit of getting witnesses on board and doing more than they initially agreed.

However, there will always be cases where agencies have no option other than to use one of the few residents who are willing to speak out.

"If everyone had come forward that had a complaint against [X] then the court would have been full. However, they were all frightened to come forward."

Witness

This is often traumatic for the individuals concerned, but usually very much appreciated by the wider community, with many being thanked after the order is granted. However, it is often important to have at least one such witness, as only a few of the areas visited would go ahead with a case if there were not witnesses willing to come forward.

In order to overcome witness intimidation, some partnerships have delayed releasing witness statements as long as possible. However, as discussed earlier there is a general consensus amongst the solicitors dealing with ASBO application that there should be full disclosure when the documents are served, making this a more impractical solution. Others blank out the name of the witnesses, releasing the names only on request of the defence solicitor, or else use anonymised witness statements as supporting evidence only. However, it will often be the case that even without names being given, the respondent would be able to identify the witness from the statement itself.

Finally, many areas have understood that there is an advantage in pursuing a number of ASBO cases to a successful conclusion as an example to potential witnesses in future cases. These cases can illustrate both that the orders are successful and can help, and that witnesses

will be genuinely protected and valued through the process. This is one of the few ways doubts such as *"The council say they will protect you, but can they?"* can be overcome.

Engaging witnesses

One problem faced by many areas is to persuade the community to become involved in the first place. In some areas there is a very strong anti-police feeling, and a culture of not 'grassing', which includes not complaining to the local authority. They may also have no faith in partnerships' ability to change anything.

"Following the eviction, because we had taken action [and nothing had happened] they didn't have an element of confidence in us so they didn't come forward."

Local authority

In many ways both the police and local authority are having to change their approach and try to engage the community enough for them to want to help with the process and feel that helping will make a real difference to their everyday lives.

A summary of the ways to involve the community in ASBO applications include:

- open meetings
- involving key players in face-to-face meetings
- arranging meetings for all witnesses, including those who did not wish to give a statement or attend court
- leaflet drops (although these tended to be expensive and less successful)
- advertise positive results

Ultimately, as was generally acknowledged in most areas, witnesses needed to feel engaged, protected and valued in the ASBO process. There was genuine concern about the safety of individual witnesses.

Tactics to support witnesses

There are varying levels of support in place for witnesses both before and after the ASBO hearing. All areas visited were very conscious of their responsibility to witnesses, but adopted different tactics to deal with it.

Witness support is an area where the benefit of partnership working can be clearly seen: local authorities and the police have different skills and resources available to them and can combine them to give well-rounded support to their witnesses. Tactics used included:

- enclosing a letter with the summons advising the respondent to stay away from witnesses¹⁹
- a higher police presence in the vicinity
- giving witnesses the personal mobile telephone number of a named police officer they can call if they feel threatened
- giving witnesses mobile telephones
- visits from neighbourhood wardens at pre-arranged times (sometimes daily)
- phone calls from the local authority at pre-arranged times
- security cameras
- surveillance cameras
- panic alarms in their home
- offering to move them into different accommodation.

Most areas were aware of the need to support witnesses from the first meeting, and the value that can be gained from simply listening to what they have to say.

"Never begin your relationship with a potential witness by asking them, 'are you prepared to be a witness?'. If you are doing anything, you are turning them into a victim... if you sit down and begin to listen to what they've got to say, you will be, by the process that you are involved in, convincing them that you're someone who is serious about what it is that they are about and an appropriate point will come. In any case, you may not want to go down the legal road so what's all this business about being a witness anyway?"

Local authority

Areas most successful in supporting witnesses were those who had a systematic approach and had plans in place for each stage of the process and the possible vulnerabilities of witnesses. Such systems, when used, were appreciated by witnesses who reported that it had made a real difference. Witnesses who felt engaged by the process were then able to pass on the message to other local people that if they came forward the partnership would look after them.

19. The language of this letter was very important, as, at the time of interview, there were no legal powers to stop respondents approaching witnesses during the application process. There are now powers under Section 48 and 49 of the Criminal Justice and Police Act 2001.

Different approaches

Most areas were aware of the vulnerabilities of witnesses before the order was given and had put some measures in place to deal with this issue. However, the impact and cost-effectiveness of the action taken appeared to vary between areas. Some areas have expended a great deal of resources protecting witnesses, whereas others have succeeded but in a less costly way. New powers under the Criminal Justice and Police Act 2001 will be welcomed by all those applying for ASBOs, because as one local authority representative put it, "sustaining witnesses... If you can't do that using the law, you've got to use cash to do it".

Aftercare

It is apparent that witness satisfaction with the process is greater in areas with a well thought through strategy, especially for aftercare. The need for aftercare and continued support for witnesses was thought essential by some areas, but given little attention by others.

"We made sure that we found out when he was due out, indeed when he was out, and we made sure that every piece of information we had we made available to the witnesses and made it clear to them that if they had any difficulty whatsoever then they were to get hold of us. We also made sure the police knew exactly what was going on and committed them to respond to witnesses with priority. So there has been a consistency of the service provider with regard to witnesses, there has to be continuity."

Local authority

Such aftercare is not easy. There are many factors which would facilitate this such as a case management approach to dealing with ASBOs, whereby one member of the partnership is responsible for that case and the witnesses associated with it, and keeps track of the behaviour even after the order has been granted. A good working relationship between the police, the local authority, the Crown Prosecution Service, social services and Probation Service is therefore essential. According to some, the benefits of such an approach are well worth it. In addition, such an approach could easily fit in with monitoring the orders, as discussed in Chapter 7.

Attitudes after the order was granted

After the Order had been granted, there was a general perception amongst witnesses that the anti-social behaviour experienced by the community had been reduced, although in a few places this was not the case.

Some witnesses were delighted with the outcome.

"Before I thought it was all lip-service, now I think we have made some positive action, it is a victory for the city. I hope there will be more."

Witness

"Since the orders have been put on them...as soon as their name is mentioned [the police] come and take them away. The staff know where they stand, the police know where they stand. It makes it much easier."

Witness (hospital employee)

In contrast, others were more conditional about their experience, admitting that the anti-social behaviour had decreased, but there were still problems.

I haven't seen him since in my shop – it has solved the problem for me...even the rest of the gang must have realised that something similar might happen to them, so they don't damage now, but they still hang around... but if it works to a certain degree then it is good enough."

Witness

And still others were very negative, thinking that the act of securing an ASBO had been an empty gesture and that little had changed since the granting of the order.

"The ASBO, has it worked? Quite simply the answer is no. [X] has defied every point of the order... Since the order his behaviour has been more extreme and the interference in our lives more intolerable."

Witness

There a number of reasons for these different perceptions, with views differing according to the nature of the case, its outcome and the conditions attached to the orders. However, some central themes ran through the statements of those who voiced dissatisfaction with the outcome.

It did not change the behaviour of the individual

Primarily, witnesses were unhappy if the order did not seem to alter the behaviour. Their participation was premised on the fact that the behaviour that was disrupting their lives would end. If this did not happen, then naturally the witnesses felt that the process has failed.

In some cases anti-social behaviour continued after the order but the evidence was not strong enough to take it to court. There was also at least one case where the anti-social behaviour continued, but in a modified form, so the terms of the order were not in fact breached. An example of this is a man who was given a condition not to make unreasonable noises in his garden, as his tendency to make loud animal and bird noises was severely disrupting the lives of his neighbours. In response to this condition the individual merely bought the animals he used to impersonate, causing an equal nuisance, but not breaching the terms of his order.

There were also examples of the anti-social behaviour order not being followed through, where breaches and further acts of anti-social behaviour were not acted upon by the relevant authorities. It seemed that in these cases the partnership closed their books on the case and did not have any strategy for follow-through.

"Since the ASBO has been granted, no-one has come round...it has been a sheer waste of time, the council has done sod-all about it and they don't want to know."

Witness

It did not change the behaviour of the group

As previously discussed, in situations where there are groups of people committing anti-social behaviour, partnerships will often try to deal with the behaviour of the entire group by targeting the supposed ringleaders of the group, in the hope that this alters the group's behaviour in the most cost-effective way. This tactic may not always be effective, especially when there is no clear hierarchy in the group, or in the absence of other initiatives designed to support the ASBO and deal with the behaviour of the group as a whole. In such cases the ASBO might have no effect on either the individual or the group or both. Indeed, the cover of the group may even be able to disguise the anti-social behaviour of the individuals who have been given ASBOs. Bearing in mind that breaches must be proved beyond reasonable doubt, being able to prove that an individual within a group was responsible for the behaviour of the entire group is potentially very difficult. This situation can again lead witnesses to believe the process has failed.

"The problem is there is still a big group of kids hanging round and it is probably other kids who are doing the damage now...we want to get rid of them."

Witness

Individuals can rightfully feel very frustrated at going through the process of giving witness statements and attending court, only for the end result to be little different from the pre-existing situation.

Time delays

In common with other interviewees, witnesses were not happy about the length of time it took to obtain ASBOs. The time between giving a statement and the final hearing seemed incredibly long for some witnesses. Others were very conscious of their vulnerability once their names were released.

"It's a shame it takes so long...I know you need a lot of evidence and six incidents in six months... It was an awfully long time for us – sometimes I was afraid to sleep."²⁰

Witness

"It's too long to get a court hearing. If they have been set up for intolerable behaviour then you have to move quickly, and six weeks isn't quickly."

Witness

Lack of information

Another area of frustration for individuals was that they felt 'out of the loop': they were not kept informed about the progress of the case either before or after the ASBO was granted and did not feel that they knew what their role was or understand the outcome of the order.

"As far as I'm concerned I have no say in what happens. By the time the police get here they're gone...the council have a total disinterest."

Witness

Indeed, one witness said that the young people concerned were taken to court but then 'let off' with nothing but a 'telling off'. In fact they were both given ASBOs. It is possible that she had forgotten being told about the order, but it did seem the message had not got

20. The criterion of six incidents in six months procedure was developed locally by the internal solicitor. It was used as a rule of thumb to ensure that there was enough evidence in each case to satisfy the courts. However, this lack of flexibility may have caused problems with evidence gathering in this case.

through. She was not aware of what to do or who to call if she saw the young people breaching their order, and felt exactly as she had before the order was made and was very disappointed in the process.

There were also examples of those who heard of important decisions such as appeals through the press or by other means, resulting in them feeling undervalued and mistrusting the process.

The result of breaches

In common with others interviewed for this research, witnesses often expressed dissatisfaction if they felt that breaches were not dealt with adequately. Many had been led to believe that breach would automatically lead to custody. This may relate to the fact that the maximum sentence of five years custody is often used when describing the order to potential witnesses.

"One [prostitute] was given a community sentence for breach of an ASBO – what kind of signal is that sending out?...it's a joke."

Witness

Disparity between what was said and what was done

Finally, a number of witnesses were upset because they had been told a number of things would happen, which, in the end, did not. For example, a number of partnerships told potential witnesses, probably following Home Office guidance, that it would be a quick and easy process. They were also told that if the individual breached their order, they would go to prison, and were given the impression that the ASBO would end all anti-social behaviour in their area. Some were told they would not have to give evidence in court, or that they only had to go to court once and all their problems would be solved, only to find that there was an appeal and that they were needed again, or were summoned to court for witnessing a breach.

"We weren't kept informed about the process, how it worked, what was happening etc. it was months after giving evidence before we heard that there would be a court case. However, this isn't what we were told it was going to be like when we were originally talked to. We were told it was fast, and if they breached then they would be locked up."

Witness

There is a very great need for partnerships to be honest with witnesses, even when trying to encourage their participation and 'sell' ASBOs. Some partnerships acknowledged their responsibility in managing the expectations of witnesses, and kept this in mind during all their victim contact.

Conclusion

Overall there was a mixed response from those willing to be witnesses in the process. Not surprisingly, those who seem to have had the least to do with the process seemed the most satisfied.

"...the police came to take a statement from me...and then a few weeks later it went to court and they just questioned me about his behaviour, and then it was the same day they decided and they let us know from that... Certainly from the result we've had it was worth it at no kind of extra hardship to me."

Witness

In contrast those who felt vulnerable and as if they were bearing the responsibility for the case alone were often far less pleased with the process.

However, partnerships who have acknowledged these potential problems have managed to overcome these issues to a large degree. Possible methods of dealing with potential intimidation and fear in the future include:

- Keeping the process as short as possible
- Managing the expectations of witnesses
- Keeping witnesses informed throughout the process. The level of information given should be agreed with the witness, and their level of involvement may differ depending on their individual situation
- Developing a strategy for witness support/protection
- Witnesses need to know that their participation does have a purpose and is appreciated
- Using professional witnesses, hearsay evidence or evidence from those working in the area where possible and only using neighbours where absolutely necessary.

It is important to ensure that preparation has been made before the order for the way in which it will be dealt with afterwards. Many have fallen into the trap of concentrating solely on ensuring the order is granted, with little thought to publicising, enforcing and monitoring it.

"It's not just about getting it, it's about what's going to happen if you actually break it as well, because the responsibility that we have to the community is still there, it doesn't stop just because we've been in court and everybody claps their hands."

Local authority

Press

Publicity surrounding ASBOs has generally been supportive, especially local press coverage. Locally, such stories are very newsworthy because they are community based and often focus on highly visible and recognisable problems. Press coverage has on the whole praised the local authority and the police and encouraged more such orders. It was not uncommon for some discussions in local papers to continue for over a week after orders were granted.

Negative publicity has tended to occur more in the national press. This has related to the ability for orders to be granted against very young people; the use of exclusion areas; and the length of some orders. Local bad press has concerned strategies in general rather than particular orders.

"We don't really have the support of the press when it comes to prostitutes."

Justice's clerk

Use of the press

Many partnerships indicated the press was a vitally important part of the order, helping to inform the community and encourage future support.

"We seek the maximum amount of publicity we can, because we want complainants to feel confident that if they come forward, there will be positive consequences for them."

Local authority

In addition, partnerships have relied on local publicity surrounding a specific order to ensure the community knew who the individual was and what the conditions of the order were, aiding subsequent enforcement. This was also important because it spread the responsibility of enforcement around the community, rather than partnerships continuing to rely on the witnesses in the application. Publicity was also thought to be a deterrent for others committing anti-social behaviour in that area, especially if they recognised or admired the perpetrator.

However, there were also dangers of over enthusiasm from the local press. One local paper was so moved by the example of one ASBO they started a 'Shop a job' campaign. Managing the expectation such a campaign may create is potentially problematic for partnerships.

Lifting reporting restrictions

As all ASBO applications are heard in the magistrates court, including juvenile cases, there are no automatic reporting restrictions as there are in the youth court. However, commonly magistrates imposed restrictions under section 39 of the Children and Young Persons' Act 1933 for the duration of the application. At the end of the final hearing, either partnerships or the local press can then apply for these restrictions to be lifted.

The lifting of reporting restrictions on juveniles was a moot issue, although on the whole, partnerships agreed that it would usually be preferable to name juveniles.

"The arguments we have made for the lifting of the reporting restrictions are so that people who live in the neighbourhood can see 1) that something has been done; 2) that there are consequences possibly for the perpetrator if he continues and that they can, in a proper fashion, effectively police the order themselves. ...They need to know that there is a value in the capture of information that could become evidence for a breach. ...It makes no sense to have an order in place if people cannot know that this individual should not be doing this."

Local authority

Magistrates were more reserved on the issue, stating that such decisions should be decided on a case by case basis. In many areas the magistrates were considering the issue in the same way they would in a criminal case. There is evidence that some magistrates were not allowing the naming of juveniles because they thought those who were affected by the behaviour already knew who the individuals were.

"I didn't grant the order on either occasion...I didn't think it appropriate to give wide publicity to a problem that was pretty localised, given the age of the respondents."

Deputy District Judge

However, there is anecdotal evidence to suggest that conditions of exclusion from an area are often successful, resulting in the individual being displaced to an area nearby. To overcome the problem of anti-social behaviour simply being displaced, conditions prohibiting the individual from committing harassment, alarm or distress in the local government area can often be successful. However, in order for such conditions to be enforced, many partnerships argue that the neighbouring community must also know about the terms of the order.

All told, the decision to release juveniles' names remains a very contentious issue, even meriting discussion in the national press (The Guardian, 24 October 2001).

Breaches and re-offending

As a follow-up exercise to the statistics reported in Chapter 2, those receiving ASBOs in the 3rd quarter of 2000 (July – September) were followed up in July 2001. The courts that had granted the original order were contacted to see if the individuals had reappeared in court since receiving the order.²¹

In total 40 individuals were given ASBOs in the specified timeframe. Of these 36 per cent (14 cases) had breached their order. Fewer (30%) had committed further offences during that time. In only four cases had the individual been taken to court for both breach and a further offence.

Thus, just over one-third of this sample of ASBOs were known to have been breached in this very short time-frame. This assumes that a breach of an ASBO, being a local order, will be heard at the original court. The figure of 30 per cent re-offending, however, may be an underestimate, as there was evidence to suggest that a number of people given an ASBO then moved away from the original area, possibly committing offences which were then heard in different courts.

21. Because of the short time-span for which ASBOs have been available, the relatively small number of ASBOs granted overall, and the lack of monitoring in local areas it was not possible to conduct a full-scale reconviction study at this time. The data reported here should allow a provisional estimate of the proportion of people given an ASBO who then breach it. However, the figure of 36% reported here does concur with another estimate of 38% based on 29 orders (Sheffield Hallam University, 2001)

It must also be noted that counting the number of breaches is not the only way of measuring the success or otherwise of the order. There is evidence from some areas that although the ASBO did not stop an individual's offending behaviour, it did significantly reduce it, resulting in what the partners considered a successful outcome, despite the breach.

Sentences for breach

As proceedings for many of the breaches in the above sample were still pending, it was not possible to gain an overall impression of how they were sentenced. In order to follow up breaches more fully, therefore, information from the Home Office Court Proceedings database was analysed. This revealed there were 85 incidents of breach brought before the courts in 2000, which involved 51 individuals and 75 breach hearings. The average number of charges for breach per individual was nearly two, but ranged from one to five.

Of the 85 incidents of breach, 46 per cent resulted in a custodial sentence. This was by far the most common sentence to be given (Table 7.1). Twenty-seven of the 51 individuals who breached their ASBO and were taken to court received a custodial sentence (53%), half of whom were juveniles (13) and half adults (14). The custodial sentences for adults ranged from 7 to 180 days, with an average of 79 days. Juveniles tended to receive detention and training orders (although two received secure training orders). The average length of sentence was 139 days, ranging from 120 to 180.

Twelve breaches resulted in a fine. The average fine was £54, ranging from just £5 to £200. However, for five of the eight juveniles receiving a fine there was an additional requirement for their parents to pay a fine, compensation or costs. There were no cases of an individual receiving a fine on more than one occasion.

Other sentences included some quite intense community sentences, such as a punishment and rehabilitation order of 100 hours community service and one year probation or attendance centre orders with parents to pay a fine or compensation or costs. However, compared with custody or fines, it was not very common to receive a community sentence in response to breach (Table 7.1).

There were a number of cases not sentenced in the magistrates' court for various reasons. Four cases were committed to the Crown Court for sentence, one for trial. One in ten cases of breach were dismissed for one reason or another, commonly being discharged or

dismissed under Section 6 Magistrates' Courts Act 1980.²² Others were acquitted either after a contest, or because no evidence was offered, or the charge was not proceeded with or withdrawn. Seven breaches were not separately dealt with through any additional penalty. In one case this was evidently because five breaches were brought before the court at the same time and three resulted in no separate penalty. In another two cases there were other substantive offences. There was one conditional discharge.

Excluding those not sentenced in the magistrates' court, the percentage of breaches resulting in a custodial sentence is greatly increased. Almost two third of all breaches that were successfully prosecuted and sentenced led to custodial sentences (Table 7.1).

Table 7.1: Sentences give in response to breach

	Number	Percentage	Percentage of those sentenced
Custody	39	46	62
Fine	14	16	22
Dismissed	9	11	–
Not separately dealt with	7	8	–
Committed to Crown Court	5	6	–
Attendance centre order	3	4	5
Supervision order	2	2	3
Probation order	2	2	3
Action plan order	1	1	2
Punishment and rehabilitation order	1	1	2
Community service order	1	1	2
Conditional discharge	1	1	–
Total	85	100	100

In interpreting this pattern of sentencing it should be noted that many individuals receiving ASBOs have had a long criminal history and have often received a number of previous sentences (see Chapter 2).

22. Under Section 6 Magistrates' Courts Act 1980 the Examining Justices may decide that there is insufficient evidence on which to commit the defendant for trial.

View on breaches

The way in which breaches were dealt with was a contentious issue in many areas and a common source of discontent.

Enforcement

Some victims were concerned that partnerships were not adequately enforcing the order or prosecuting the breaches they found. In some cases victims felt that they had been empowered to report breaches, but then felt let down when these reports were not acted on. The need for a clear strategy under these circumstances is vital in order to sustain good relations with the community and forestall further anti-social behaviour.

There are a number of reasons why breaches were not always acted on by partnerships. It is possible that although resources are released to apply for the ASBO, none is available to enforce the order. In an environment where police work is largely response driven, breaches may be far down their list of priorities. Others may consider behaviour such as entering an exclusion zone in breach of a condition in an ASBO, but not actually committing acts of anti-social behaviour, as too trivial to prosecute. Others were waiting for a number of breaches to occur before they prosecuted in order to take a 'strong' case to court. There was also at least one instance in which the main witness in the ASBO application was also the sole witness to breach. In this case the police were reluctant to charge without corroborating evidence. Finally, breaches, unlike the original order, have to be proved to the criminal standard. Reluctant witnesses in an ASBO application may still be reluctant in a breach hearing.

Importantly, there is also potential for local authority led ASBOs to suffer from a lack of police commitment to the orders. If the police are unwilling to enforce the order after it is made, then there is a very real danger of the ASBO not delivering on expectations.

"If the police turn a blind eye to it because they have other priorities then it will just go by the board."

District Judge

There is a definite need, even after the ASBO is granted, for partner agencies to continue to work closely together and ensure from the outset that they are both aware of how breaches are to be dealt with, and what their individual responsibilities are.

23. The behaviour which led to a prosecution of breach is detailed in Table B.2.

Courts

As stated in Chapter 5, some courts were very aware of what partnerships were trying to achieve, and were very supportive of these aims. The support was evident at all stages of the process, including dealing with breaches. Some magistrates gave strong messages during ASBO hearings about the consequences of breach.

"One of the things that [magistrates] do is to make clear to people that a breach is a phenomenally serious piece of business and that they should not be doing it casually."

Local authority

At interview, a large proportion of partnerships expressed dissatisfaction about the way the court had handled breaches. One reason for discontent with the sentencing for breaches was the view that the courts were not treating ASBOs seriously, thereby diminishing their impact in the community. Indeed some partnerships were seriously considering not using the orders in the future because of this.

More than one area mentioned that the threat of the ASBO and the application itself had had an impact on the anti-social behaviour. After the order was given, the deterrent value continued up to the point that the order was breached, taken to court and resulted in a nominal sentence. At this point the behaviour then escalated amongst both the individual given an ASBO and others in the group.

However, as Table 7.1 shows, the issue surrounding sentencing is not simple. The figures from the Courts Proceedings Database indicate that almost half of all breaches reaching court are resulting in custody. Even those individuals receiving a fine were unlikely to receive another if they were to breach the order again. It is possible that it is the high proportion of cases that are dismissed for one reason or another that is causing concern.

Most magistrates were keen to point out that each case is decided on its merits, and there will be reasons for each sentence. However, partnerships were genuinely concerned about the impact of light sentences on both the behaviour and the community.

Although, generally, partnerships and witnesses seemed keen for breach to result in a custodial sentence, this is not necessarily always the case. One commented that a young boy subject to an ASBO was doing very well, and that a breach was a mere lapse. In this instance they were happy that the boy received a relatively light sentence.

However, some magistrates were concerned with the apparent focus on custody when it came to breaches. They were keen to treat each case on its merits and not be forced into certain sentencing options.

"[Custody for ASBO] tends to go against all the other training that we would have had which for me is generally that you tried everything before you end up with a prison sentence."

Lay magistrate

Delay in breach hearings

Another concern was the length of time it was taking for breaches to be heard. Even in areas that had established fast-track ASBO applications, breaches were being held up through the usual delays experienced in the magistrates courts.

This was causing serious problems in some areas because additional breaches were being perpetrated while the first breach was waiting to be dealt with, thereby leading to further delay. This was causing obvious frustration amongst those enforcing the order, and there were fears that circumstances in which six or seven breaches were heard at once would dilute the impact of the sentence for the breaches. Some were trying to insist that each breach case (which may include a number of individual incidents) was heard separately in order to ensure this did not happen.

However, many appreciated the pressures the courts were under to prioritise cases and accepted that delays were not necessarily of their making. They were aware, for example, of the tactics used by some defence solicitors to delay verdict and sentence.

CPS

There was some concern, particularly among local authorities, regarding the role of the Crown Prosecution Service (CPS) in the prosecuting of breaches. It was uncommon for partnerships to have had much contact with the CPS prior to the order being breached. However, there is evidence in some cases of breach that the CPS were not informing partners of the dates of breaches, were dropping breaches in favour of prosecuting a linked substantive offence and, in at least one case, not allowing the local authority into the youth court.

"There have been a number of occasions where we have not been able to get into the youth court to witness the prosecution and this is in spite of the fact that we were the applicants for the order."

Local authority

There was also some evidence that partnerships felt the CPS was not highlighting to the court that breach of an ASBO is a serious matter.

For those who had taken a very close case management approach to the ASBO application, losing control at the end of the process was a frustration.

"In terms of the prosecution of breaches I think that I want our solicitors here to undertake prosecution. Once again it is a witness protection issue, it's because we cannot be absolutely confident that what goes on in the youth court will be something that is brought to our attention."

Local authority

It is fair to say that most partnerships would appreciate a closer relationship with the CPS during breach hearings, not least to ensure that the breach of the order is treated seriously.

Monitoring

Much of the information about the impact of ASBOs remains anecdotal. Very few of the areas visited were monitoring the use and impact of ASBOs, although many agreed that this was a good idea and necessary, especially if the number of ASBOs used in their area increased. Other research has also found very little monitoring by social landlords (Nixon et al, 1999), with only a third of local authorities and just over half of RSLs not keeping records of the complaints they received.

A number of individuals voiced concern about the possible use of ASBOs as a measure of how well Crime and Disorder Partnerships are tackling anti-social behaviour. Although some areas were using ASBOs prolifically as a main strand of their strategy against anti-social behaviour, others had broader strategies in place, of which ASBOs were only one element, used more as a threat if behaviour did not improve. In these situations counting the number of ASBOs granted would be a very poor indication of the work conducted.

However, measurement of the reduction of anti-social behaviour is very difficult. There is widespread agreement that it is difficult to define, and even more difficult to measure (Bland and Read, 2000; PAT 8, 2000). What is considered anti-social by one person, or in one area, may not be considered as such in another. Perception of anti-social behaviour over time is also problematic, because as the level of disorder falls perceptions of what is unacceptable may actually rise. How to overcome these difficulties, and objectively monitor anti-social behaviour, is an area much discussed by PAT 8. However, in practice each area currently chooses how to monitor anti-social behaviour in its own way.

Monitoring anti-social behaviour

For those using the problem-solving approach, there were a number of different ways of monitoring cases. One practical approach was to follow up cases discussed at problem-solving groups over a set period. Cases would be discussed at each problem-solving group, with each agency bringing any information they had obtained since the previous meeting. If no problem behaviour occurred again during a specified period, then the case was closed. In this way problem-solving groups can monitor both the number of cases successfully and actively being dealt with.

A problem with this approach, however, is that it is less obvious to the community that partnerships are dealing with problems of anti-social behaviour. Confidentiality results in individual examples not being released to the public. However, this approach does give an indication of how successfully partnerships are dealing with anti-social behaviour without simply counting the number of ASBOs granted. Developing a communications strategy in parallel with this approach seems essential.

Monitoring ASBOs

In order for ASBOs to be used successfully within an anti-social behaviour strategy it is important to monitor their use and how they are impacting on the community.

"We need a volume of casework behind us to begin to understand the kind of impact that it will have, and I think we certainly need to be using the orders with much more facility."

Local authority

As important and interesting as this would be, very few areas have managed to monitor their ASBOs successfully. One reason is that there is not the time or resources for either

partnership agency to revisit cases. In addition, because the number of ASBOs obtained in each area is relatively small, many have managed to keep track of the ASBOs granted without formal monitoring procedures in place.

However, in many areas partnerships were unable to say accurately what the outcome of their ASBOs has been. Many could say anecdotally that there had been an improvement to the quality of life of the community, but had little evidence to back this up.

"..to follow families and see if the strategy is working as hoped needs a dedicated unit or person. Because we combine possession and ASBOs it is difficult to trace whether the criminal behaviour has stopped."

Police

Those who were monitoring outcomes in some way used a number of means. One measured the number of calls complaining of disorder in that area both before and after the order was granted. However, this may not necessarily be a successful monitoring strategy as communities, buoyed by the success of an ASBO, may begin to report more disorder because of their renewed faith in the authorities. In addition, a number of witnesses interviewed discussed not reporting incidents of anti-social behaviour, either through fear or because they felt that there was no point. Indeed, the British Crime Survey indicates only one-third (34%) of people interviewed for the 2000 BCS who had experienced vandalism reported it to the police (Kershaw et al, 2001).

Another area measured the number of incidents of disorder in which the individual subject to the ASBO was involved in the year preceding and the year following the granting of the order. In one case the individual in question was involved in 133 incidents of disorder in the year prior to the order, and only 29 in the year after.²⁴ This graphically illustrates the effect of this ASBO, but would not be an efficient measure of individuals who had not previously been through the criminal justice system.

If the number of ASBOs does increase substantially, then there need to be monitoring systems in place. Such information is essential to decisions about whether an order is appropriate for similar kinds of behaviour in future, to establishing which conditions work best and to answer general questions about effectiveness.

24. The period after the order included 186 days in custody for breach of the order. After the individual was released, he was involved in only 8 incidents of disorder compared with 48 in the corresponding period 12 months previously.

Monitoring is also important so that witnesses can continue to be protected and informed throughout the process.

"Those that brought the initial application do have a sense of ownership, and are often trying to get a sense of continuity with their witnesses and the community. They need to know what has happened subsequently, for monitoring purposes and for witness protection and satisfaction... They also want to be aware when people are getting out of prison, and what sentences they are getting in court – you have people popping up back in the community all over the place."

Local Authority

Magistrates also indicated that they too would be interested in finding out the outcome of ASBOs.

"I'm sure benches would like to know what has happened after they make an ASBO because the chances are you don't get to hear about it, until it is breach time...but there might be some benefits in a reporting mechanism...it is a good way to draw people's attention to them and remind them that they are there."

Lay magistrate

In practice it is likely that a combination of these different methods – monitoring complaints, monitoring criminal behaviour, and gathering intelligence from partner agencies – would be the most practical solution to measure anti-social behaviour in general. As the problem-solving team is a multi-agency team, it would seem practical if they were responsible for collecting and discussing this information and storing it in a consistent manner.

Impact

There are a number of ways in which ASBOs can affect communities and their relationship with the police and the local authority. ASBOs were applied for by partnerships precisely because they believed that they would reduce anti-social behaviour and perhaps even reduce re-offending.

Frequently, where groups of individuals were concerned (usually juveniles), it was hoped that the ASBO would also stop, or ameliorate, the behaviour of the group. While ASBO conditions relate to individuals, they are also used with the aim of instilling in the community a sense of safety and deterring others from committing similar behaviour. This was not

always successful. Careful targeting of individuals and careful thought about the conditions are needed for such a policy to be effective.

The over-riding aim in seeking ASBOs was to deliver a better quality of life to the community. Although this is an extremely difficult concept to measure, in many areas with successful ASBOs both partnerships and witnesses seemed to consider that the ASBO had delivered an improvement in this respect.

In many cases it was also noted that the ASBO and the process of applying for it had helped build a relationship between the community and the police or local authority - a relationship some noted had been in trouble for a long time.

"There was a great deal of mistrust by locals – they no longer had a police station and felt let down by the police. This exercise helped rebuild the bridges that the police felt have been breaking down for the last 20 years – they wanted to restore the villagers' faith in them and in what they could do."

Police

In many cases it also gave some good publicity to the partnership. ASBO stories are often high profile in the local press, and in simple terms, the local press like stories about how the community is beating 'yobs'.

In sum, those seeking ASBOs did so for a number of reasons. These aims were sometimes met, sometimes not. However, in all but a few cases, those interviewed mentioned at least a few of these aims as being a successful aspect of the order.

Outcomes

Although there are few partnerships formally monitoring the outcome of ASBOs, many are pleased with the orders, with professionals and witnesses alike noting their contentment with the outcome.

"I haven't seen or heard of him since. I haven't seen or heard of his friend either... it sent the right shock waves through and I think while he stays off the estate it'll continue to send those shock waves through."

Police

"I think the legislation is both positive and necessary – there is behaviour out there that needs a method of dealing with it."

Justice's clerk

"The [X's] were untouchable, and since the order crime has gone down...the young people in the crowd also know there are powers now."

Witness

Despite the problems in obtaining orders, many areas felt that ASBOs are successful and a useful tool in tackling local disorder. Against the backdrop of reduced anti-social behaviour and offending there is a related reduced demand on partners' resources. For this reason many feel ASBOs are cost effective.

However, there was some negativity. Many felt the process not worth the outcome.

"We've had to travel through an awful lot of hoops and hurdles and it's not been cheap to get and our disappointment of the five orders that we've had is the geographical limitation of the order. We've found with the first three that we've simply moved the problem outside of the area..."

Local authority

Conclusion

Interviews revealed that there is a need to develop a strong strategy to deal with the ASBO after it has been granted. Far from the granting of the order being the final hurdle, it is merely a stage in successfully dealing with local anti-social behaviour problems.

Local press interest was nurtured in some areas in order to aid with the enforcement of the order and advertise local success stories. Such local support was often not difficult to mobilise, as these are stories of community interest.

Enforcement also needed a strong strategy, especially if the police were not the lead agency. Once in court, however, there is evidence to suggest that, contrary to opinion in many areas, the courts are treating ASBOs seriously, with custody a common sentence for those coming before the courts.

Overall ASBOs have been shown potentially to have a number of different positive outcomes, including:

- reducing anti-social behaviour in an individual
- reducing anti-social behaviour in a group
- increasing public confidence in the partner agencies, their commitment to the community and their ability to deal with anti-social behaviour
- building relationships between partner agencies and also between partnerships and the community
- increasing the quality of life in communities
- aiding future attempts to deal with anti-social behaviour through the example of the successful ASBO and the threat of using it again.

These outcomes are often considered worth the costs in terms of time and effort in obtaining the order.

It has been suggested that the costs associated with ASBOs, in terms of both employing external solicitors or purely in staff time and effort, are a disincentive to applying for them.

Questionnaires were given to all police and local authority contacts in the 14 areas visited asking for information on their first and most recent ASBO (to see whether there has been any change in costs over time). Twenty-one of the 36 questionnaires issued were returned, fewer from local authorities (4) than the police (15). Two were returned from a multi-agency unit, representing both the local authority and the police. Costs associated with each agency are treated separately, despite the fact that they may or may not have been involved in partnership working.

The information presented here is based on 13 responses from lead agencies and six responses from non-lead agencies. There are two cases where the local authority and police information was submitted in one document (the multi-agency unit).

Because there are more responses from the lead agency, the estimates of costs quoted below may be exaggerated. In addition, because some local authorities and police did not work in partnership, taking on the burden of resources themselves, simply doubling the overall figure to calculate the cost to the partnership as a whole would be misleading.

Overall costs

To put the discussion of the costs of ASBOs in context, the questionnaire asked if costs are a significant factor or consideration in bringing an ASBO. Most of the respondents who answered (10 out of 12) thought that they were a significant factor (Table 8.1). However, the costs involved had only deterred one respondent, suggesting that costs do not outweigh other considerations for these respondents. Respondents' views of the cost effectiveness of ASBOs will be discussed later.

Table 8.1. The importance of costs in bringing ASBOs

	Yes	No
Do you think costs are a significant factor/consideration?	10	2
Have costs ever deterred you from taking an ASBO forward?	1	11
Do you think ASBOs are cost effective?	9	3

Overall, the average cost associated with ASBOs to either the local authority or the police was £5,350. This includes work involved in preparing the case, attending the related problem-solving meetings and dealing with appeals and breaches. However, there is a great difference in the costs incurred in each case, ranging from £380 in an area which let their partner agency do most of the ground work to £18,000 in an area which was highly involved in the whole process. If the cost of appeals and breaches are excluded, and the cost of applying for the order alone is considered, the overall cost is £4,800.

Staffing costs

Those engaged in trying to find solutions for anti-social behaviour in their neighbourhood had a number of concerns about costs. One of these related to the extra staff time involved, especially in evidence gathering.

"In this case I think costs were significant. A lot of time and effort (hence cost) went into the preparation."

Local authority

"It would be nice to disregard the costs vs. reward aspect of ASBOs, however, they take many police hours to investigate and obtain."

Police

Estimating costs including the cost of breaches or appeals, can be misleading. The staffing costs considered here include only the cost of obtaining an ASBO, which was calculated by summing the estimated costs of internal solicitors' time, the cost of other internal legal work, the cost of gathering evidence, attending problem solving meetings and any other incidental costs. The actual staff preparation costs of ASBOs ranged from as little as £380 to £17,800 (Table 8.2). Very low staffing costs were primarily due to some non-lead agencies not committing much staff time to the process. In general the average spent on staffing was £3,600.

Table 8.2: The cost of ASBO applications throughout the country

Agency	Area	Total cost	All Staffing costs	Staffing costs - preparation only	Problem-solving meetings only	Internal Solicitor	External Solicitor	External counsel costs per hour
Police	5b	380	380	380	280	-	-	-
Police	6a	1,150	1,150	1,000	140	460	-	-
Police	6b	1,160	1,160	1,000	-	-	-	-
Police	5a	1,570	1,570	330	110	-	-	-
Police	3b	1,800	1,800	1,250	120	640	-	-
LA	4a	2,630	2,630	2,630	1,410	1,220	-	-
LA	7a	2,860	2,860	2,460	20	2,050	-	-
Both	9b	2,860	2,860	1,310	340	640	-	90
Police	3a	3,450	3,450	2,440	40	430	-	-
LA	6b	3,800	3,450	2,910	-	780	350	-
Both	9a	4,550	2,590	2,590	1,010	370	1,960	200
Police	2a	4,710	4,120	3,020	100	730	590	50
Police	10a	4,780	4,370	3,890	830	610	410	50
LA	6a	5,420	5,070	4,900	-	410	350	-
Police	10b	5,440	4,240	3,870	130	180	1,200	40
Police	2b	5,490	4,490	1,120	180	890	1,000	40
LA	7b	5,570	5,570	2,870	100	2,400	-	-
Police	8b	9,420	6,990	5,670	280	-	2,430	80
Police	1a	13,660	13,660	4,340	410	90	-	-
Police	4a	13,670	10,880	9,780	490	460	2,800	160
LA	4b	18,060	18,060	17,760	1,040	610	-	-
	Average	5,350	4,830	3,600	330	760	1,230	30
	Minimum	380	380	330	20	0	350	90
	Maximum	18,060	18,060	17,760	1,410	2,400	2,800	200
Police	4b	Unknown, at least 187,730	60,100	57,220	260	Unknown	30,360	200

Note: Area 4b was an anomalous case in which the case was taken to the Crown Court, the High Court and then the Court of Appeal. For this reason it is considered separately.

In most areas where staff costs were comparatively high, partnerships wanted to be sure that their case was watertight and there was no chance of losing in court. This was especially true of the first few ASBOs that were applied for. There is some evidence of staffing costs decreasing between the first ASBO applied for and the most recent. However, because different local authority and police teams were involved in many of the second ASBO cases so little expertise was passed on, this was not always the case.

Partnership working

One staffing cost, mentioned in questionnaires, was the time involved in attending all the meetings required of partnership working. Although many areas felt this was a valuable and productive way of working, it was mentioned as a large drain on resources.

"Consulting is... a time consuming and costly exercise."

Police

Overall the cost of problem-solving meetings in staff time ranged from £20 to £1,400, although this does disguise very different ways of consulting. One police force now only writes letters to their local authority counterpart and requests an acknowledgement. This is then taken as proof of them fulfilling their consultation requirements. On the other hand, the area in which there was a very high cost to the consulting process had five problem solving meetings and had used this approach to deal with many more cases, very few of them needing to progress as far as an ASBO. The average cost in staff time of the problem solving meetings required in each ASBO case was £330 for each partner agency.²⁵ As with other staff costs, the costs of consulting decrease with experience. The first problem solving meetings cost on average £360 but this went down to £270 for later ASBOs.

The way resources and costs are divided between the local authority and the police differs greatly. Each model has its supporters, with the financial burden dictated by where the perceived expertise lies.

"The police usually have to foot the cost. Police legal services are processing the cases because the LA solicitors are not able to turn the cases around quickly enough and don't have the skills/experience to prosecute."

Police

25. The calculation of the average cost of problem solving meetings used half the figure given by the multi-agency unit. This is because the figure given included the cost to both the police and the local authority. To obtain an estimate of the cost to a single agency, the figure had to be halved.

"Police incur minimal costs - council take the lead and foot the expenses for legal and court costs."

Local authority

Use of internal solicitors

The cost per ASBO of the internal solicitor ranged from nothing (because the partner agency dealt with the legal work) to £2,400 where the internal solicitor was very involved with the whole case and spent a large amount of time on it. The average cost to an agency in internal solicitor time is £760 per order (or group of orders if a number of cases are proceeded with at the same time).²⁶

This cost was mentioned in many interviews. One police force has recently employed a new solicitor purely on the strength of the work that ASBOs have created for their legal team. They consider that having an internal solicitor with the time and expertise to deal with ASBOs will be cost-effective in the long term, but they are concerned that no money has been made available to support this new employee or deal with the legal work ASBOs have created.

Use of external solicitors

The cost of external solicitors has also been the cause of some worry. Although the average cost of hiring an external solicitor was £1,230, the cost varied greatly depending on whether the case was contested. Thus the costs of hiring an external lawyer on an uncontested case could be as little as £350. However, in contested cases in which there were a number of hearings, the costs could go up to nearly £2,800.

One area not using external solicitors found that, once the case was taken to appeal, they were forced to use external solicitors as the in-house solicitors did not have rights of audience in the Crown Court. They thereby incurred costs that were not originally anticipated. In this instance the costs went from nothing to £1,090 for the external solicitor to present the appeal.

The cost of external solicitors differed greatly between areas. Some areas paid for a local solicitor solely to present the case; others hired barristers or extensively used external advice, resulting in a great difference in costs. However, looked at on a cost per-hour basis,

26. Costing solicitor time did not take into consideration those agencies that did not pay for legal services because their partner agency did. This estimated cost, therefore, is most likely slightly higher than the true cost to any one partner agency.

there was a great difference in the amount paid for external assistance. The estimated cost of hiring external legal expertise ranged from £40 per hour to £240 per hour. The average was £90.

Worst-case scenarios

The experience of Greater Manchester has been the most costly so far. Their case was taken to the Crown Court, the High Court and then the Court of Appeal. Prior to this, a whole year of evidence gathering and multi-agency working had been conducted. Their overall costs have been estimated at £187,700. Much of this expense was due to very large staffing costs (800 hours of police constable time, 800 hours of sergeants' time), and very large external counsel costs (£30,400). Three police constables were also employed full-time for three months protecting witnesses. The staffing costs alone of the preparation of the case in Greater Manchester were £57,200 compared with the average of only £3,600.

This fear of the unknown and the possible cost was evident in a number of comments. Generally, those areas that expressed concern about the cost of the proceedings were worried about the consequences of things going wrong.

Cost effectiveness

There were mixed views as to the cost effectiveness of ASBOs in the fight against anti-social behaviour. However, views of the majority were positive, with nine out of the twelve who answered the questionnaire stating that they thought ASBOs were cost effective. On the whole, comments to support this opinion centred round the fact that, if successful, the costs involved in obtaining an ASBO should be countered by savings in staff costs in the future.

"Long-term the cost of not dealing would cause far more significant costs, not only to the police but to others e.g. insurance pay-outs."

Police

This point was supported during the research interviews, with one area stating that they had under-spent their repairs budget since the ASBO was granted and had started to use the money on more cosmetic aspects of the estate, such as painting fences. Comments were also made on the savings that can be made by reducing the number of vacant properties in an estate and by reducing the number of times officers are called out to the same individual.

Others have highlighted the fact that much of the work involved in preparing evidence for an ASBO would have to be carried out anyway. Some stated quite strongly that, if ASBOs work in reducing anti-social behaviour, then the cost of securing them should not be a major consideration.

"I don't believe we can place a cost or quantify the improvement in people's standard of living by quelling the fear of crime."

Local authority

However, some were more sceptical about the overall worth of ASBOs, stating that the amount of work involved in securing an ASBO is not worth the end result.

"I believe we can now do them quicker and easier, BUT, they do not guarantee the desired outcome despite the effort."

Police

Finally, there was some concern that, although some areas are now using ASBOs quite extensively, without adequate resources this may not continue. There was also concern as to whether local authorities would foot the cost of applications if they no longer had any housing stock left.

"Just now the local authority are paying for all the legal work, but there is a massive transfer of housing stock planned. Once these are gone, who will pay? The local authority won't because they don't have the money and technically it isn't their problem anymore."

Police

Indeed most local authority representatives interviewed were based in housing departments, and a review of ASBOs in Scotland has indicated that out of 42 ASBO applications (all ASBO applications are local authority led in Scotland), 25 were funded from the Housing Revenue Account (Corbett, 2001). This leads to the conclusion that there may be problems with local authority funding of ASBOs in the future in the absence of their own housing stock.

A suggested solution to this problem has been to secure a commitment from all interested parties – i.e. the local authority, police and registered social landlords - to help pay for ASBOs.

Conclusions

All told, ASBOs are considered cost-effective if they meet their aim of reducing anti-social behaviour and improving quality of life. However, the costs associated with obtaining an ASBO differ greatly among areas. This is primarily due to different practices and focuses between areas and also differences in the behaviour and the individual concerned. However, as most of the costs associated with obtaining an ASBO are staffing costs (£3,600 of the £4,800 total associated with applying for an order) it does seem that if areas manage to streamline their processes, the associated costs could be reduced quite considerably.

When considering the overall effectiveness of ASBOs, the costs not included in these calculations must also be considered. In one area, the local store's profits increased immeasurably as soon as the ASBO was granted. Likewise, anti-social behaviour can affect insurance premiums and repairs budgets. These issues must all be considered if the costs of obtaining and not obtaining ASBOs are to be considered in a wider context.

The overall opinion of ASBOs amongst those who have actually used them is generally positive. Many reiterated that the legislation was very much needed to deal with persistent anti-social behaviour. They stressed that if a local authority or a police force want to take out an ASBO they can: all they need is motivation. It was widely accepted that, when used effectively, ASBOs are a useful tool to deal with anti-social behaviour and can deal effectively with particular groups, such as juveniles and private tenants.

"It's a very, very useful order, and we're frustrated by the idea that it might be brought into disrepute in some way, we're very concerned that we might lose it."

Local authority

ASBOs were also rarely described as difficult to obtain: in fact, a number of police or local authority solicitors found the actual processes relatively easy and even 'boring' in their lack of complexity. However, many officers complained of the bureaucracy and 'red-tape' it took to prepare them.

The outcomes of ASBOs were also regarded by the majority of those interviewed as positive, with a marked reduction in anti-social behaviour within the communities targeted and a perception that there had been a rise in the community's 'quality of life'. Indeed, there were also many success stories from the problem-solving meetings alone.

Those unhappy with ASBOs either complained about the length of time they took to prepare and then obtain from the court or else were unhappy with their relationship with one of the links in the ASBO chain – the local authority, the police or the courts. They pointed to failures in partnership working, collecting information, supporting or granting orders, and enforcing or prosecuting breaches. For some, these failures were enough for them to state that ASBOs were not worth applying for.

In practice, it will take experience and time for the process of working in partnership effectively to tackle local problems of anti-social behaviour. Co-operation is needed from all agencies involved, as well as support at a strategic level from all partnership agencies. Lessons relating, for example, to the pit-falls of partnership working and the conditions in ASBOs that are effective are only learned through experience.

A number of specific issues and concerns highlighted during the research are discussed below.

Delays

The time between first considering and actually applying for ASBOs is the primary area of concern. The reasons for these delays are many, but include:

- problems engaging partner agencies
- partner agencies stalling the process
- problems convening problem-solving meetings
- local protocols resulting in cumbersome consultation structures
- officers not being given time to investigate the behaviour independently of other duties
- problems engaging witnesses
- collecting alternative evidence if witnesses fail to co-operate
- collecting evidence to a standard above the civil standard and above the standard used for other civil cases such as possession
- delays in the listing of court hearings
- delays in obtaining civil legal aid
- frequent adjournments.

Many of these causes of delay can be tackled, although not all can be predicted. However, unchecked, they can lead to further related problems such as:

- extra resources having to be expended to keep information current
- the community continuing to suffer for extended periods of time
- witnesses continuing to be vulnerable
- extended periods of witness support and protection, which can be resource intensive
- witness support being lost.

This can be demoralising, and led some partnerships to feel that the process was too much trouble. However, there are a number of ways in which areas successfully using ASBOs are preventing such delays.

Although many areas considered the process of applying for an ASBO complicated and bureaucratic, this was often due to their own, locally drawn up, protocols. Those areas which had attempted to translate the 2000 Home Office guidance into simple flow-charts, developed workbooks simplifying the process or had broken the procedures down into more manageable sections, often found applications easier. Instead of following the protocol guidance to the letter, local problems that caused delays were worked round to streamline the process.

Other strategies included setting timeframes for each stage of the application to keep the process focused. This often committed statutory and non-statutory partner agencies to arranging problem-solving meetings within very short timeframes or else consulting by phone or fax.

One successful solution has been to allow key staff time to concentrate on the ASBO process. They are released from their other day-to-day tasks to concentrate on evidence gathering, allowing this to be done quickly and easily. Areas with this approach have often also released other staff to help with this process. Using other staff such as railway station workers or neighbourhood wardens to help collect evidence can also help streamline the process.

In almost all cases where there have been serious delays to the process prior to an application, there has been a lack of clear guidance, support and advice within the lead organisation. Within the organisation there needs to be backing for the process, an identifiable figure who can give advice on it, and support from an internal solicitor. Without one of these three things, the application stands more chance of floundering and, if it is developed, being seriously delayed.

In the case of the courts, there was little that partnerships could do to influence the speed of applications. All areas that were high ASBO users felt they had a good relationship with the courts, whereas those disillusioned with the process found the relationship difficult. New Judicial Studies Board training may help this process, but other things local agencies can do include ensuring that both the courts and the partnerships understand one another's concerns. This may be achieved through training and consultation or feeding information about their anti-social behaviour strategies into Court User Groups.

Some partnerships have felt the benefit of liaising closely with the courts before an application is made to ensure that the application is expected, and that they can list it quickly. Others have felt they benefited from inserting the relevant pages of legislation and guidance into the document bundle to highlight issues such as the civil burden and the use of adjournments. Others try to ensure that magistrates have read the full document bundle

before the beginning of the hearing. A further initiative would be to feed back the outcome of ASBOs to the courts, so that they can receive details of orders not breached and understand what conditions are successful.

Although beyond the power of partnerships, many of those interviewed, including magistrates, have found the use of pre-trial reviews or plea and direction hearings very useful. These help successfully estimate the length of the final hearing and establish what aspects of the orders are going to be contested.

Numbers

There has been concern, within parliament and amongst local practitioners and the housing press, that the number of ASBOs applied for across the country is not as great as expected. There are several reasons for this.

Fundamentally, there is a great difference between areas in whether or not they use ASBOs as part of their strategy to deal with disorder. Some have used many - for example one local partnership had used over 30 - whereas others have used few or none. The reasons for not using ASBOs are often related to a lack of strategic policy within the agencies. Thus, even if officers are motivated to use an ASBO to tackle anti-social behaviour, for the reasons discussed above (such as a lack of support and knowledge within the organisation) this may be very difficult. It might also be that lack of experience means that those having to deal with anti-social behaviour think of ASBOs as 'too hot to handle'. Those seeing the size of previous files may also think the same thing.

Some areas have also become disillusioned with the process and do not now think ASBOs will work in their area. This can be for a number of reasons, but most commonly because of the length of time applications have taken, and dissatisfaction with the courts' treatment of ASBO applications, appeals and breaches. Part of this problem, however, may also stem from poor communication between partner agencies, resulting in an ineffective order, or poorly prosecuted breaches.

In some areas, the work and resources which it is felt are involved in applying for ASBOs discourages partnerships from using them again other than in exceptional circumstances. However, as noted earlier, some areas appear to adopt a policy of overkill in the amount of evidence which is accumulated. Others have managed to streamline the process and following their example could lead more areas to use ASBOs successfully.

Finally, the small number of ASBOs used in some areas is not necessarily due to failures in the system. Some areas have greatly benefited from the partnership approach to anti-social behaviour. In these areas problem-solving, which would not have been developed without ASBOs, has often managed to reduce the level of anti-social behaviour without the need to take the final step of obtaining an ASBO. These areas are willing to take ASBOs, but attempt to divert people away from that course of action if possible, using the threat of an ASBO as one of their tools. Many felt that obtaining one or two ASBOs in an area was enough to prove the partnership was serious and able to use ASBOs, and be used as an example to others without the necessity of taking out more.

There is also concern that a greatly increased number of ASBOs may ultimately lead to them being unenforceable, and weaken their impact both as a threat and in practice. It is for consideration how they would be policed if there were thousands in force throughout the country.

Resources

Although the cost of ASBOs has been frequently quoted as one of the down sides of the order, the issue is not clear-cut. Some areas believed that one of the reasons there have been fewer ASBOs than expected was because partnerships did not have the resources to cope with these new orders. Local authorities and police were already over-stretched, and could not release the staff time or money to tackle anti-social behaviour through this means.

Others believed that work to apply for an ASBO is work that both the local authority and the police should be doing anyway. They have a statutory responsibility to tackle disorder, and should be visiting problem areas, taking statements and attempting to stop the anti-social behaviour as a matter of course. From this point of view, therefore, ASBOs do not represent any additional costs. However, a counter argument was that interventions designed to tackle anti-social behaviour do cost, and that even modest funds to support these initiatives would help partnerships' ability to reduce anti-social behaviour.

It is true to say that, if an ASBO is successful in reducing anti-social behaviour, both partnership agencies and others stand to save a great deal of resources in policing, support and repairs. In local authority or RSL housing there should also be fewer vacant properties and therefore an increase in available funds. However, this is not true for the legal departments, who have taken on extra work but are not making any savings in other places. On average 20 hours of internal solicitor time is being spent on each ASBO application, and £1,200 on external legal costs.

Some have claimed ABCs are a far more cost-effective means of dealing with anti-social behaviour, with little staffing costs and no legal costs. However, there is reason to believe that there are differences in the types of behaviour dealt with by these two means. ASBOs are primarily used on the most intractable problems that cannot be tackled by other means, whereas ABCs are primarily used as a first resort for behaviour which partners believe they can nip in the bud.

Partnership working

There have been some problems concerning partnership working, resulting in frustrations and an uneven spread of resources. Some agencies are content to continue alone in leading on ASBOs, feeling the problem-solving side of ASBOs has been the biggest distraction, resulting in more problems than benefits. However, many have called for partner agencies to be compelled to co-operate, and produce timely responses to anti-social behaviour problems in their neighbourhood. Timeliness is an issue because there are examples of partners agreeing to co-operate, but in practice delaying to such a degree that ultimately they do not contribute to the process.

The functioning of partnerships also raises the issue of the status of RSLs, and whether they should be able to apply for an ASBO in their own right. Generally, there was ambivalence on this issue. Most saw no reason why they should not, citing examples of local authorities' reticence in dealing with problems in RSLs' housing.

However, concerns were raised as to how such an order would be enforced if the police and local authority were not actively co-operating in the RSL's application. There was also concern that the police and local authority may wash their hands of such issues of anti-social behaviour in the future if RSLs had the powers themselves. However, RSLs may not have the resources to take ASBOs forward. Another suggestion was again to compel partnerships to include RSLs in their problem-solving meetings. Splitting resources between the local authority, police and RSLs in such a scenario was also considered a reasonable suggestion.

County court

There was also ambivalence as to whether ASBOs should be heard in the County Court. Some felt that this would be a good idea as possession orders and ASBOs could be taken out simultaneously. Such a method would relieve the burden on community members who could

conceivably be witnesses in both the eviction and ASBO cases, and would produce a more cost-effective method for partners to deal with their anti-social behaviour problems as it would only require one trial. Others believed it would speed up the process. However, this was not a unanimously held view, with some believing that the County Court was equally slow in dealing with cases and that this would be liable to lead to more legal complications than at present.

There were also some suggestions that the County Court has more experience than the magistrates' court in dealing with civil cases such as possession hearings and injunctions. Those who supported this opinion considered that difficulties over the burden of proof would be lessened if ASBOs were heard in the County Court.

There is no clear conclusion here, although ASBOs available in both courts may increase the chance that the order is made in conjunction with other court orders or sentences.

Burden of proof

Despite the High Court ruling, different areas seemed to be working to different burdens of proof. This was sometimes down to the interpretation of officers leading the case, their legal advice or the courts. However, it was generally agreed that most were working to a higher burden of proof than they would in the County Court for issues such as possession and injunctions, which many believe put equal restrictions on individuals. This has led to more work being needed for ASBOs than if the civil burden was generally adopted and greater delays.

Areas using a great number of ASBOs tended to gain confidence in their applications, resulting in the volume of evidence collated falling over time. Most agreed that they had 'over-egged the pudding' for their first few applications, but were confident that this would decrease in the future. In addition, recent JSB guidance should have smoothed out this issue in the courts.

Enforcing the order

There is evidence to suggest that some areas have put little consideration into enforcing the order once it is granted. Orders which are not enforced can result in further, unchecked misbehaviour by that individual and the group, thereby disappointing witnesses. Overall, failing to enforce the order once granted is a waste of the resources that went into obtaining the order and can send very negative signals to the community that participated in securing it.

Sentencing breaches

There was much discontent in some areas about court sentencing practice in relation to breaches. Although some very robust sentences were occurring in some areas, others felt breaches were not being treated seriously, sending the wrong signals to the offender and the community. Many found this demoralising, and it made them think that the ASBO had been a waste of effort when there was an apparent resurgence of the anti-social behaviour.

Analysis of the actual sentencing of breaches in court, however, painted a different picture, with almost half of breaches resulting in a custodial sentence. These diverging perceptions point again to the need for a greater understanding between partnerships and the courts, and a greater communication and understanding between partnerships and the CPS.

Interim orders

Some partnerships were very vocal in their support for the idea of interim orders. They considered them necessary to protect witnesses and deal with the behaviour immediately on entering court.

Others were less keen on the idea, wondering how this would work legally, and whether it could be proved that the individual had had a fair trial if restrictions had already been put on them.

In practice, it seems that the greatest concern is the speed of the application through the court system. However, in the absence of speedy court processes, interim orders may be the only way to ensure witness protection and community satisfaction.

The conclusions contained within this chapter have implications for both partnerships and the courts, but do suggest that ASBOs can and do work successfully in areas with the motivation and successful procedures in place. However, there are also suggestions that may be relevant to both practitioners and policy makers to ensure maximum benefit to those who need it most: the community.

Key issues and recommendations

ISSUE	WHAT PROBLEMS DOES THIS CAUSE?	WHAT ARE THE POSSIBLE SOLUTIONS?	RECOMMENDATIONS
Partnerships	Delays in process/bureaucracy	<ul style="list-style-type: none"> • Frustration • Loss of witness support • Loss of witnesses • Loss of evidence because of the 6 month rule • Loss of motivation amongst key officers • Increased costs 	<ul style="list-style-type: none"> • Developing local protocols which simplify/streamline the process • Setting clear timescales for each stage of the application • Giving key officers dedicated time to gather evidence and prepare the case • Problem-solving and consultation used appropriately – delays and unproductive meetings should be avoided • Fast-tracking severe cases <p>Local areas need to develop clear time-limited strategies to deal with anti-social behaviour. These should be developed with the local area in mind, taking into consideration what is and is not possible. The strategies should balance attempts to intervene early to stop an individual's anti-social behaviour developing, and the right of the community to live free from harassment, alarm and distress.</p>
Lack of organisations' commitment to dealing with anti-social behaviour	Officers on the ground realise there is a problem and want to deal with it, but feel they can't because of lack of organisational support	<ul style="list-style-type: none"> • There needs to be strategic support from within the organisation • Key players need to support the process (this will be easier if there is strategic support) • ASBOs are most effective if individuals within partnerships are committed to them. Support encouraging these individuals and assistance with procedural aspects of ASBO applications might be helpful 	<p>An information resource or network should be provided to give support and encouragement to individual agencies' attempts to tackle anti-social behaviour and troubleshoot potential problems.</p>

<p>Failures in partnership working</p>	<ul style="list-style-type: none"> • Delays • Information ‘black holes’ • Poor problem-solving • Increased costs for the remaining agency/agencies 	<ul style="list-style-type: none"> • Ensuring commitments to local protocols, stating timeframes and level of commitments, are required • Requiring each partner agency to audit their anti-social behaviour strategies and demonstrate that they are tackling the problem 	<p>Compelling partnerships to work together is an unsatisfactory solution: a coerced relationship is unlikely to be a productive one. Instead each partner agency should be able to demonstrate their commitment to tackling anti-social behaviour (either alone or in partnership) by demonstrating strategies and their outcomes.</p>
<p>Failure to engage other agencies</p>	<ul style="list-style-type: none"> • Processes can be hindered because agencies such as social services cannot be engaged 	<ul style="list-style-type: none"> • Early involvement in the process can help engagement • Focus on ending the problematic behaviour rather than on ASBOs per se can help engagement 	<p>Outside agencies should be invited onto problem-solving groups and given training by partners on their anti-social behaviour strategy.</p>
<p>No post-ASBO strategy to enforce breaches</p>	<ul style="list-style-type: none"> • Breaches are not being prosecuted • Witnesses are unaware what to do if they witness a breach • Witnesses are not aware of the terms of the order • Community goodwill gained from the granting of the order can diminish • There is a danger the behaviour begins to escalate again 	<ul style="list-style-type: none"> • Part of the local protocol should deal with the drawing up of strategies for after the order is granted • This strategy should be communicated to witnesses • This strategy should be communicated to offenders 	<p>All partnerships should have clear procedures in place to ensure ASBOs are enforced and breaches prosecuted.</p>
<p>Lack of internal motivation</p>	<ul style="list-style-type: none"> • Areas which have been unsuccessful in applying for ASBOs or experienced difficulties can become disillusioned 	<ul style="list-style-type: none"> • Disseminating good practice that ASBOs can be successful • Central help could be given to support their problem issues 	<p>Central Government should set up an information resource or network in order to support attempts to tackle anti-social behaviour and troubleshoot potential problems.</p>

<p>The ability of non-statutory partners to make ASBO applications</p> <ul style="list-style-type: none"> • Some RSLs are unable to engage partnerships to apply for an ASBOs on their behalf • Some RSLs are substantial in size, manage much ex-local authority housing stock and feel they need the local authority's powers to deal with this • The British Transport Police do not have the ability to make ASBO applications at present, despite the need, the motivation and the internal legal capacity to do so. 	<ul style="list-style-type: none"> • Giving RSLs the power to apply for ASBOs in their own right • Compelling statutory partnerships to work with RSLs and deal with their anti-social behaviour problems on an equal basis • Giving the British Transport Police the power to apply for ASBOs in their own right <p>RSLs should be equally able to deal with their anti-social behaviour problems in a timely manner as statutory agencies, either through using ASBOs as part of a multi-agency team or if necessary, alone. The British Transport Police should be granted the authority to apply.</p>
<p>Effective evidence gathering Courts</p> <ul style="list-style-type: none"> • Many incidents of anti-social behaviour go unrecorded • Evidence gathering can be arduous • It can be resource intensive in staff time • It is common for too much evidence to be collected 'to be on the safe side' 	<ul style="list-style-type: none"> • Developing local strategies to record and cross-reference all information • Someone is given 'ownership' of the case, and the time to collect evidence • A number of people are used to collect evidence: e.g. neighbourhood wardens and retired police officers • A number of different sources of evidence are used: e.g. witness incident diaries and covert cameras <p>Partnerships need to develop an awareness of what resources are available locally and what strategies are likely to be effective in order to streamline their evidence gathering process and minimise delays.</p>

<p>Courts</p>	<p>Delays in the courts</p>	<ul style="list-style-type: none"> • Frustration • Loss of witness support • Loss of witnesses • Increased costs • Some have found that the courts have required evidence of an ongoing problem, resulting in more work the longer the case goes on • Witness protection is needed as soon as there is full disclosure. 	<ul style="list-style-type: none"> • ASBOs are treated as priorities in the scheduling of cases • Magistrates' training reinforcing that adjournments are just as much to be avoided as in criminal cases • There is full disclosure to the defence at the time of application • Restricting face-to-face evidence to only that which is essential • Allowing for ASBO applications in the county court would permit joint ASBO and eviction hearings, speeding up both, and reducing the legal burden 	<p>Local attempts need to be made to develop a two-way understanding between the courts and partnerships. In most cases this will practically be undertaken by partnerships by raising the issue of ASBOs at Court User Groups. Central government should look into the possibility of allowing ASBO applications in the County Court.</p>
<p>Delays in obtaining civil legal aid</p>	<ul style="list-style-type: none"> • The time between applying for civil legal aid and receiving a response can result in severe delays 	<p>Those responsible for administering the civil legal aid system should pay urgent attention to speeding up the process of obtaining legal aid in ASBO cases.</p>		
<p>Consistency in approach between courts</p>	<ul style="list-style-type: none"> • Some consider the courts are treating ASBOs differently throughout the country 	<p>More training and feedback on sentencing patterns to magistrates would result in a demonstrably more consistent approach.</p>		
<p>Delays in prosecuting breaches</p>	<ul style="list-style-type: none"> • Momentum of public support can be lost • Behaviour can begin to escalate again 	<ul style="list-style-type: none"> • Attempts are currently underway to speed up the criminal justice system 		

<p>Breaches not being taken seriously by the courts</p>	<ul style="list-style-type: none"> • It is not seen as worthwhile taking all but the most serious (i.e. criminal) cases to court • The efficacy of ASBOs as a way of dealing with anti-social behaviour is called into question • The behaviour of individuals may begin to escalate 	<ul style="list-style-type: none"> • This report reveals that, in fact, over half of individuals taken to court for breach do receive a custodial sentence for at least one of their charges. Accurate dissemination of such information may be important. • A mutual understanding between the courts and partnerships would also be beneficial 	<p>Feedback on sentencing should be provided to courts, partnerships and witnesses in order to dispel preconceptions. Courts and partnerships should liaise regularly to increase mutual understanding of issues surrounding breaches.</p>
<p>Breaches not being taken seriously by the Crown Prosecution Service</p>	<ul style="list-style-type: none"> • ASBO breaches are being dropped in favour of substantive offences • The CPS are failing to take on and prosecute ASBO breaches • Dissatisfaction with the outcome of breach hearings may stem from here rather than the courts 	<ul style="list-style-type: none"> • Relationships with the CPS should be improved. This is especially true of the relationship between local authorities and the CPS. • Engaging with the CPS early in the process/conducting training 	<p>Information about ASBO applications and breaches should be shared between partnerships and the CPS as early in the process as possible.</p>
<p>Disclosure of evidence</p>	<ul style="list-style-type: none"> • There is some confusion as to when and what evidence should be disclosed 	<ul style="list-style-type: none"> • The general consensus is that there should be full disclosure of evidence when the papers are served 	<p>Guidance giving the correct protocols for disclosing evidence should be produced.</p>
<p>Monitoring</p>			
<p>Lack of local information about the use of ASBOs</p>	<ul style="list-style-type: none"> • Local areas are unable to demonstrate the success or otherwise of the orders • Most local information on ASBOs tends to be anecdotal 	<ul style="list-style-type: none"> • Information collection strategies should be developed • Information capture and information sharing should continue after the ASBO is granted • A number of different data sources should be used to account for possible inadequacies in each system. 	<p>Strategies should be developed centrally to assist local areas to monitor the use and effectiveness of ASBOs and other anti-social behaviour initiatives.</p>

<p>Lack of local information about the extent of anti-social behaviour generally</p>	<ul style="list-style-type: none"> As above – local areas are unable to demonstrate the success or otherwise of their strategies to tackle anti-social behaviour As problem-solving tends not to elicit press coverage, there is a greater need to be able to quantify and advertise this work <p>Perception that ASBOs are not being used in the numbers envisaged</p> <ul style="list-style-type: none"> A perception of under-use could discourage partnerships from using them because they suspect there is some drawback. The potential efficacy of ASBOs is shadowed by discussion of their numbers. 	<ul style="list-style-type: none"> Information capture can include the number of complaints about disorder; the activity of individuals; and the criminal records of individuals Talking to the community about their fears and worries <p>In many ways this is a faulty perception, many areas throughout the country are tackling anti-social behaviour, but ASBOs are only one of the tools they use. Outcomes should be monitored rather than process</p> <ul style="list-style-type: none"> Because of problems with many of the potential measures of success a variety of data collection measures should be used 	<p>Local areas should consider how they might best disseminate information to inform the community and develop a mutually supportive relationship.</p> <p>Mechanisms should be developed for monitoring the full-range of measures being used to tackle anti-social behaviour. The measures covered should include ABCs, problem-solving meetings, early interventions and their outcomes, whether or not the result is a successful ASBO application.</p>
<p>Costs</p>	<p>Costs can be a disincentive to apply for an ASBO</p> <ul style="list-style-type: none"> Many agencies feel they don't have the resources to target anti-social behaviour in this way There is a fear that the costs may grossly inflate if there is an appeal There is a fear of costs being awarded against the agency should they lose the application 	<p>Costs are on average £5,350: £3,600 in staff time and £1,230 in external counsel costs. The rest are costs that may arise from appeals and breaches.</p> <ul style="list-style-type: none"> A great deal of staff time would have been spent dealing with the behaviour even in the absence of an ASBO application There are long-term savings to be made if the application is 	<p>A cost-benefit analysis should be conducted of successful ASBOs, balancing the initial outlays with the longer-term savings.</p>

<p>successful: less staff time spent on call-outs to incidents of anti-social behaviour; fewer repairs; fewer vacant properties; increased local business revenue</p> <ul style="list-style-type: none"> • Very few ASBO applications fail 	
<p>Legal costs</p> <ul style="list-style-type: none"> • Although much officer time is spent dealing with anti-social behaviour anyway, this cannot be said for internal solicitor time 	<p>Partners should ensure funds are available to assist internal legal departments with ASBO applications. Agencies over a wide area can also pool the costs of a solicitor who will then also develop an expertise in the field. A small sum should be made available to pay for diversion initiatives as a means of increasing the range of options available to those engaged in problem-solving.</p>
<p>Costs of early interventions</p> <ul style="list-style-type: none"> • Problem-solving and intervening early with anti-social behaviour can be effective, but can also be costly 	<p>Some areas have benefited from having a small amount of money available to them to spend on early interventions where it is considered necessary</p>
<p>Witnesses</p> <p>Witness intimidation and fear during the process</p> <ul style="list-style-type: none"> • Witnesses can feel vulnerable, especially if they live close to the perpetrator • Some feel like prisoners in their own home 	<p>Local areas should develop clear strategies to protect witnesses both before and after the order is granted. Consideration should also be given to the possibility of applying for an interim order, given witnesses immediate relief from the problem behaviour.</p>

<ul style="list-style-type: none"> • New powers under sections 48/49 of the Criminal Justice and Police Act 2001 help protect witnesses in civil cases 	<p>Local areas should develop strategies to inform witnesses about the ASBO process and its outcome, while not raising their expectations unrealistically.</p>
<ul style="list-style-type: none"> • Despite the need to encourage participation of potential witnesses from an early stage, their expectations need to be managed • There should be a strategy to keep witnesses informed, even after the order has been granted 	
<p>Witness disappointment</p> <ul style="list-style-type: none"> • Witnesses are called to court when they were reassured they would not be • Witnesses are called back to court because of an appeal • Witnesses feel ill-informed about the process • Witnesses feel that the order has been ineffective • Witnesses feel that breaches are not being treated as they should 	

Methodology

The information within the report draws on a number of sources.

1. Monitoring forms returned to the Home Office from MCCs. Each MCC in the country sends back monitoring forms every quarter to the Home Office. These detail the date of application, date of determination and the date of birth of the offender. They give details of the Magistrates Court which heard the application and the result. A copy of the resulting ASBO is also attached. These monitoring forms are used by the Home Office to monitor how many ASBOs there are in the country and location. The data is frequently used to answer questions in Parliament relating to ASBOs.
2. Interviews with local authority representatives and the police. Interviews with those responsible for dealing with anti-social behaviour were conducted. Nine police force areas in the country were visited: Cleveland, Cumbria, Cambridgeshire, Greater Manchester, Merseyside, West Mercia, West Midlands, South Wales along with the London boroughs of Newham and Haringey. In addition a shorter visit was made to Derbyshire Constabulary. Areas visited were chosen either because they had considered a large number of ASBOs or the British Crime Survey revealed that they had a high level of self-reported disorder, but had considered very few ASBOs. The interviews focused on experience of ASBOs, how they dealt with various aspects of applying for an order, such as evidence gathering and ensuring the safety of witnesses.
3. Interviews with solicitors. The solicitors responsible for preparing the background legal work and advising on the application were also interviewed.
4. Interviews with magistrates. Where possible, magistrates and/or clerks were interviewed to find out the court's perspective on ASBOs.
5. Interviews with witnesses/victims. Again where possible, interviews were conducted with those who had been at the receiving end of the anti-social behaviour.

6. Case files. When visiting each of the areas listed above an analysis was conducted of their case files to obtain in more detail information about the offender, the process and the order.
7. Costings questionnaire. A questionnaire was sent out to both the local authority and the police in each of the areas. This asked questions about the time it took to gather evidence and whether any other resources were used to obtain an ASBO.
8. Breach follow-up. A follow-up was conducted of the 40 individuals given ASBOs between 1 July 2000 and 30 September 2000. This involved phoning the courts that heard their ASBOs to see if they had been before the court again either for breach of ASBO or another offence. Offences and sentences were noted.

Table A.1. The 111 interviews by area

	LA	Police	Magistrate/ Clerk	Solicitor	Victim	Other	Case files
Newham	2	1	2	0	3	0	0
Haringey	1	1	2	0	0	0	0
Birmingham	2	4	1	1	9	0	10
Walsall	1	1	0	1	1	0	31
South Wales	0	3	2	0	1	0	1
West Mercia	2	5	2	1	8	0	29
Liverpool	2	5	0	1	4	0	1
St Helens	4	2	0	0	0	1*	0
Manchester	3	2	0	1	1	0	13
Cleveland	0	4	0	1	1	0	0
Cumbria	1	2	0	1	0	0	2
Cambridge	2	3	0	0	4	2**	0
Peterborough	1	2	0	0	1	0	0
Derby	1	1	0	1	0	0	7
BTP	–	1	–	–	–	–	–
Total	22	37	9	8	33	2	94

Note In some cases areas were visited on the police-force level, whereas in others, especially those with different practices across local authorities within the police force area or with a great number of ASBOs, areas were visited at a local authority level.

* YOT manager

** Youth and community workers

Appendix B

Additional tables

Table B.1. Number of ASBOs by date granted and area

	Apr 99 to May 2000	Jun to Sep 2000	Oct to Dec 2000	Jan to Mar 2001	Apr to Jun 2001	Jul to Sep 2001	Total
Avon and Somerset	9	2	1	3	10	3	28
Bedfordshire	0	0	0	2	0	0	2
Cambridgeshire	5	0	1	2	0	0	8
Cheshire	0	0	0	0	0	0	0
Cleveland	1	5	0	0	4	0	10
Cumbria	1	0	1	0	0	0	2
Derbyshire	3	1	6	1	1	0	12
Devon and Cornwall	1	0	0	3	4	2	10
Dorset	0	2	0	0	1	1	4
Durham	0	2	2	3	2	1	10
Essex	0	0	0	0	0	0	0
Gloucestershire	0	0	1	0	0	3	4
GLMCA	9	10	9	4	4	4	40
Gt Manchester	10	2	1	3	1	7	24
Hampshire	1	0	2	0	1	0	4
Hertfordshire	1	0	1	4	1	2	9
Humberside	0	2	7	1	0	1	11
Kent	0	1	2	10	1	1	15
Lancashire	5	2	3	3	3	0	16
Leicestershire	1	0	4	0	0	0	5
Lincolnshire	0	0	0	0	1	0	1
Merseyside	8	0	3	2	4	0	17
Norfolk	6	0	0	7	0	4	17
Northamptonshire	0	1	1	0	1	0	3
Northumbria	8	0	5	0	2	0	15
North Yorkshire	4	0	0	0	0	6	10
Nottinghamshire	1	4	0	0	8	3	16

South Yorkshire	3	0	1	0	0	2	6
Staffordshire	0	0	4	2	2	2	10
Suffolk	3	0	0	0	2	0	5
Surrey	0	1	1	0	0	2	4
Sussex	3	1	3	0	0	0	7
Thames Valley	1	0	1	2	3	0	7
Warwickshire	0	1	0	1	0	1	3
West Mercia	5	6	1	10	21	4	47
West Midlands	11	17	6	5	17	9	65
West Yorkshire	4	1	1	5	1	3	15
Wiltshire	0	0	0	0	0	0	0
Dyfed Powys	0	0	0	0	0	0	0
Gwent	0	0	0	1	0	0	1
North Wales	0	1	0	0	0	0	1
South Wales	0	1	0	0	0	1	2
TOTAL	104	63	68	74	95	62	466

Table B.2. Details of 18 breaches: the breach behaviour and the sentence

Sex	Age	Terms of original order	Breach	Sentence
Female	34	Exclusion zone; To not harass, or cause alarm, harm or distress to residents in specified area.	Entering the exclusion zone	90 day custody
			Entering the exclusion zone	£200 fine
Female	40	Exclusion zone; Soliciting or loitering on any road for the purpose of prostitution; Committing any lewd or obscene act in any public place.	Loitering for the purpose of prostitution	84 day custody
			Loitering for the purpose of prostitution	84 day custody
Male	36	Exclusion zone in which he is not allowed to: solicit or beg for money or alcohol; consume intoxicants; have a bottle or other vessel with intoxicating liquor; be intoxicated; use threatening words or gestures; enter any public park or public bench; enter licensed premises	In exclusion zone in an inebriated state	30 day suspended sentence
Male	33	As above	In exclusion zone in an inebriated state	£75 fine
Male	38	As above	In exclusion zone in an inebriated state	£100 fine
Male	44	Unknown	Entering exclusion zone	60 day custody
			Entering exclusion zone	Committed to the Crown Court – 90 days custody

			Contacting prohibited person	Committed to the Crown Court – 90 days custody
Male	35	Entering exclusion zone while under the influence of intoxicating liquor; entering licensed premises within this area; remaining on hospital, LA, church, commercial, and university premises within area when asked to leave; misusing the 999 service	Intoxicated within exclusion zone	30 days custody
			Intoxicated within exclusion zone	60 days custody
			Entering licensed premises within zone	60 days custody
			Refusing to leave casualty department	120 days custody
Male	19	Exclusion zone; engaging in contact which is likely to cause distress or inciting it; causing or attempting to cause CD; engaging in threatening, abusive or insulting behaviour or inciting others to.	Entering exclusion area	90 days custody in a YOI
			Entered exclusion zones on 5 occasions	Probation – 1 year
Male	17	Exclusion zone; threatening behaviour; verbal abuse; physical abuse; criminal damage	Repeatedly swearing at police officers	Reparation order + supervision order
Male	24	Unknown	Entering exclusion zone	90 days custody

			Entering exclusion zone	Probation – 1 year
Male	29	Wilfully obstructing females in any public place	Intimidation by abusive language	120 days custody
			Non-consensual physical contact	120 days custody
Male	18	Exclusion zone	Entering exclusion zone x2	£50 fine
Male	14	Driving a mechanically propelled vehicle in Nottingham	Aggravated vehicle taking	120 days secure training order*
			Driving while disqualified	150 days secure training order
Male	15	Exclusion zones, using or inciting the use of threatening, abusive or insulting words or behaviour	Using abusive language	12 hours attendance centre order
Male	15	Exclusion zone	Entering exclusion zone	8 months detention and training order
Male	17	Exclusion zone, not associating with certain individuals, not being involved in previous named antisocial behaviour	Entering exclusion zone and associating with prohibited individuals	4 month detention and training order
Male	14	Exclusion zone, climbing on roofs; 10pm-7am curfew; not to commit or incite abusive behaviour in borough.	Climbed on a roof and behaved in an antisocial manner in an exclusion zone	£50 fine
			Unknown	6 months DTO

Male	50	Shouting and swearing in an insulting or threatening manner in a specific area; knocking on neighbours' doors; appearing undressed in view of neighbours; carrying knives	Shouting and swearing in a threatening manner in a prohibited place	28 days custody
			Shouting and swearing in a prohibited place	21 days custody
			Shouting and swearing in a prohibited place	Committed to the Crown Court for sentence

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