

The Case Against Anti Social Behaviour Orders

Coalition Against ASBOs

May 2005

What is an ASBO?

An ASBO (in the UK) is a civil order made by the court to protect the public from anti-social behaviour defined as 'behaviour which causes harassment, alarm and distress'. They are applicable to anyone over 10 years old and will involve the court making an open-ended order which restricts the actions and behaviour of the individual with a view to protecting the community from further anti-social acts. Although an ASBO is a civil order, breach is a criminal offence, which on indictment, has a maximum penalty of five years imprisonment.

Do we need ASBOs?

ASBOs are an unnecessary and counterproductive addition to the current framework for dealing with children in conflict with the law. So called 'anti social behaviour' can be tackled using the wide range of measures available under the Children Act 2001 and through support services based in local communities. To be successful, we must fully implement and resource the Children Act and resource support services.

What are the alternatives to ASBOs?

Experience from the UK shows that anti social behaviour orders are frequently made with respect to conduct that was punishable under the criminal law. If young people are committing criminal offences, the police and the DPP have every right to bring criminal proceedings against them for doing so: in such cases, they should bring evidence to court of the alleged conduct and leave the court to decide the young person's guilt beyond a reasonable doubt with all the attendant safeguards. This will allow the Children's Court to determine sanction and, when the Act is fully implemented, choose between diversion to the care of the Health Service Executive or the Probation Service for a family conference, or impose any number or combination of a range of penalties including both community based sanctions and detention orders.

To this end, the Children Act is designed to provide a range of responses that can be tailored by the court to meet the needs and circumstances of individual young people: it should be fully implemented and resourced to allow this to work. Imposing ASBOs on such young people will undermine the objective of the Children Act 2001 to establish a progressive and modern approach to youth justice, which, not yet fully implemented and resourced, has not had the opportunity to prove its effectiveness.

Where the behaviour of young people is difficult to manage or 'out of control' but not criminal in nature, the Children Act 2001 contains measures to address their situation by diverting them to the care of the Health Service Executive who can then, following a family conference, apply to the court inter alia for a special care order. This involves the young person being placed in a special care unit where he/she can receive therapy and treatment in a secure environment. Imposing ASBOs on such young people will not only fail to address their behaviour; it will also seriously risk their placement in a penal custodial environment, which is likely to exacerbate their situation.

1). Garda Juvenile Diversion Programme (formerly Juvenile Liaison Officer Scheme)

The Garda Diversion Programme is a well established community based system, which allows specially trained Juvenile Liaison Officers (JLOs) to work closely with young people who have come to their attention with a view to diverting them away from criminal behaviour. It has an excellent success rate: almost 90% of children admitted to the programme do not come to the notice of the Gardaí again before they reach their 18th birthday. To be admitted to the programme, a child must accept responsibility for the offence. Children are cautioned, either informally or formally. A formal caution involves supervision to a varying degree of intensity and may result in a family conference being convened.

The Programme has been in place since 1963 although it was expanded and placed on a statutory basis by Part 4 of the Children Act 2001. However, there are insufficient JLOs, particularly in the larger urban areas, to maximise the potential of the scheme in diverting young people away from criminal behaviour.

2). Garda Youth Diversion Projects (formerly Garda Special Projects)

There are 64 Garda Youth Diversion Projects around the country. They identify young people at risk of involving themselves in criminal and anti-social behaviour and aim to divert them away from crime through a combination of intervention and prevention programmes.

The Garda Youth Diversion Projects are under resourced. Currently there is only one worker per project. Child protection issues require two workers per project and resources are used to buy in part-time workers.

There is no national strategy in respect of the diversion project scheme. The measure in place needs to be strengthened rather than bringing in new conflicting measures.

3). Conferencing

Three types of conferences are available under the Children Act 2001 all of which bring together the child, his/her parent/s, and other relevant agencies and individuals such as the Gardai, educational and social services and sometimes the victim. While the models have subtle differences, significantly, they all provide an important opportunity to identify the causes of a young person's offending behaviour, and an action plan to be drawn up to prevent its reoccurrence.

- **Garda Conference** – the Garda conference is convened by a JLO as part of the child's involvement in the Diversion Programme;
- **Family Welfare Conference** – this can be convened at the direction of the Health Service Executive or the Children's Court (who can divert the child to the Health Service Executive for that purpose) in respect of a child who appears in need of special care or protection; for example, the child's problem may be perceived as being a need of care or protection which may be

manifesting itself in criminal behaviour or relate to the child's behaviour or emotional problems. The family conference may recommend an application for a care order, including a special care order, under the Child Care Act 1991 as amended.

- **Family Conference** – this is convened by the Probation and Welfare Service at the direction of the Children's Court in respect of a child who is brought before it, but not yet convicted of an offence. The action plan drawn up by the conference is agreed by the child. If the court agrees, the action plan becomes an order of the court, which suspends the proceedings against the child pending his/her implementation of the action plan.

All the provisions relating to conferencing are now fully in force although with the exception of the Garda Conference they were commenced only recently in 2004 and are not yet fully resourced or mainstreamed throughout the system. Their effectiveness remains largely untested, therefore, although they have clear potential to address in a constructive way the causes of anti-social or criminal behaviour.

4). Community Sanctions

Section 115 of Part 9 of the Children Act 2001 introduced Community Sanctions. The child, if convicted of the offence, can be given one of the following community sanctions:

1. Community service order, for 16 and 17 year olds
2. Probation order
3. Day centre order
4. Probation (training or activities) order
5. Probation (intensive supervision) order
6. Probation (residential supervision) order
7. Suitable person (care and supervision) order
8. Mentor (family support) order
9. Restriction on movement order
10. Dual order

Each order involves the child being supervised by a Probation and Welfare Officer: the choice of order will depend on the child's needs and particular circumstances. In general, they provide ways of supporting the child towards more constructive behaviour (such as requiring him/her to undergo sport, training or educational activities), offering him/her a mentor or the close supervision of a relative with positive influence, or removing him/her from negative peer or other influences in his/her community.

All of these measures have clear potential to address anti social behaviour. To date, however, eight of these ten Community Sanctions have not been implemented.

5). Community Policing

Community policing is policing which goes beyond the standard emphasis on law enforcement. It is in essence a problem solving approach to policing based on partnership between the police and the community. The collaboration works at

successfully identifying and solving community problems. Problem-oriented policing recognises that many of the community incidences that police must address (e.g. burglary, vandalism, intimidation by rowdy/loutish gangs) are symptoms of underlying conditions that need to be resolved or they will persist. All community policing programmes confirm that the success of community policing – reduction of crime and fear in communities and reinvigorating communities - depends on the existence and/or building of real trust between the police and the community. Community policing successfully operates in many cities throughout the US and the UK, and there are many community Garda in Ireland who have successfully built up effective partnerships with their communities based on trust.

The Oireachtas Committee on Justice, Equality, Defence and Women's rights is currently taking evidence on the future of community policing in Ireland. The presentations included from the National Council on Ageing and Older People, the National Crime Council, Victim Support and the Probation and Welfare services. All the presenters stressed the importance of community policing to tackling anti-social behavior, the success of community policing approach in reducing fear and anti-social behavior. The "outstanding success" of the restorative justice projects in practice were pointed out.

Measures such as ASBOs undermine community policing as they are not focused on problem solving, but are heavy-handed punitive measures obtained without due process. They will also contribute to building mistrust, division and conflict between police and sections of the communities and between different sections of the communities themselves. This destroys the foundation on which successful community policing is built. This is particularly true of the communities in which there will already be barriers of fear, apathy or mistrust that need to be overcome in order for meaningful partnerships can be forged.

6). Parental Sanctions

Part 9 of the Children Act 2001 introduced Parental Sanctions. Parents of offending children and young people can be

- placed under a Parental Supervision Order – the court order them to, for example, undergo treatment for alcohol or other substance abuse, participate in a parenting skills course;
- ordered to pay compensation for offences committed by their children, or
- bound over to exercise proper and adequate control over their children.

Failure to comply with such an order can lead to a parent being found in contempt of court. Clearly the Act makes considerable provision for dealing with parents of children who are involved in criminal behaviour. These are more than adequate to address the problems associated with anti social behaviour also.

To date Parental Supervision Orders have not been implemented and their potential remains unused.

7). Social Services

The Child Care Act 1991 places considerable duties on Health Service Executive to identify children at risk and meet their needs through the application of a range of measures of care and protection. However, it is widely accepted that this legislation, implemented gradually over the 1990s, has never been properly resourced.

The chronic under resourcing of social services is made most evident through the substantial waiting lists for children and families to access support through counselling, family therapy, psychological support and social worker intervention.

In addition, there will clearly be cases in which children in the care of Health Service Executive under the Act will become the subject of anti social behaviour orders if they are introduced, resulting in a serious conflict of interests for social workers.

Chronic under resourcing of social services

8). National Education Welfare Board Officers

The Education Welfare Board has a hugely important role to play in keeping children in school and preventing drop-out and truancy. This work is clearly of enormous significance to young people in danger of getting involved in anti-social or criminal behaviour. It is vital therefore that the Education Welfare Board be fully resourced – there are currently no officers in two counties and the Board received only half of the funding it sought in Budget 2005.

Furthermore it is necessary to ensure that the work of the NEWB, of Home School Community Liaison Officers and of other local ESL preventative programmes delivered by youth and community organisations are coordinated and adequately resourced if we are to counteract the alarming rates of school drop out numbers, which showed that 38% of children in the most disadvantaged of schools were absent for 20 days or more per school year according to the NEWBs own school attendance data for 2003/04.

This legislative initiative is well thought out, but inadequately resourced and its potential to address anti social behaviour is clearly untested.

Child Protection issues

While acknowledging that a small minority of children are presenting many challenges to society in general, through anti social behaviour, addressing this issue by further alienating these children from society and criminalizing them does not serve to meet the needs of these children in any structured, protective way. The proposed introduction of ASBO's presents many child protection issues.

UN Convention on the Rights of the Child states that "Children suspected of committing a crime and child convicted of crimes shall be treated in a way that promotes their sense of dignity and worth and aims at reintegrating them into society" (Dept of Education & Science Child Protection Code of Good Practice for the Youth Work Sector)

Furthermore Article 3 states, “ All actions concerning the child shall take account of his or her best interests. The state shall provide the child with adequate care where parents or others charged with that responsibility fail to do so”

There are serious concerns re any use of photographs of children, which is totally contrary to Child Protection safety procedures at present.

Making children who are already extremely needy and vulnerable even more vulnerable is not going to promote any positive change of behaviour of these children. International consensus on the prevention of offending behaviour suggests that any attempt to address prevention and intervention should be child centred, based on the individual needs of the child and should seek to promote the inherent strengths of the child. Posting children’s photographs in public places is a clear infringement of their rights and has led to series child protection issues in the UK. Communities should be supporting children and young people who are vulnerable not demonising them. Placing an ASBO on a child makes communities aware of who these children are and can lead to communities using this knowledge to further alienate, label and “abuse” children.

Advantages of these Alternatives over ASBOs

Avoiding criminalising children:

- It will enable a range of supports, diversion and early intervention measures to be put in place, which are specifically aimed at preventing the child’s anti social behaviour in a constructive and effective manner
- The focus is to divert children from the criminal justice system in an approach widely supported throughout the drafting of the Children Act 2001 over a twenty year period and consistent with Ireland’s international obligations

Multidisciplinary Approach

- Earlier intervention by Health Service Executive ensures that children at risk can be promptly identified and their needs meet in an appropriate manner which does not label or criminalize their behaviour.

Solution focuses on the Family as well as the Child/Young Person

- All conferencing places a valuable and important emphasis on partnership between the child, his/her family and the community represented by the social, educational and police authorities. They also offer the child the opportunity to meet with and attempt to recompense the victim of their crime and thus have important restorative justice qualities.

Reduce Cost

- Detention of children is an extremely costly (as well as an ineffective and counter-productive) way to prevent them from reoffending - a year in a children’s detention centre such as Oberstown or Trinity House costs approximately €250,000 per young person - it should thus be limited to those from whom society needs protection and not be used to take those responsible for anti social behaviour out of communities.
- It will avoid the cost of publicising the ASBO among the local community

Ensure Best Practice:

- Due process exists thus protecting the individual's civil liberties
- It will uphold our commitments under the UN Convention on the Rights of the Child and the European Convention on Human Rights