

RUNNYMEDE



# Equal Respect

– ASBOs and Race Equality



A Runnymede Report by  
**Sarah Isal**

# Equal Respect

## ASBOs and Race Equality

### Foreword

Runnymede has for many years worked to improve relationships and understanding between the different groups and communities that make up British society. In doing so, it has tried to contribute to a better appreciation of the impact which societal changes and government policies may be having – intentionally or otherwise – on different communities. One of the Labour Government’s major concerns since it came into office has been with tackling anti-social behaviour, and its programme for Respect has become one of its most prominent domestic policies. In the process of putting this report together, we were concerned to find out how that programme, especially the use of Anti-Social Behaviour Orders (ASBOs), might be affecting black and minority ethnic communities.

This research is a direct follow-up to our earlier work on preventing racist violence.<sup>1</sup> At the time (2003/5), we were investigating successful interventions in tackling racial harassment and wanted to find out whether ASBOs were effective in such instances. This work uncovered a noticeable gap in procedures: this kind of information was not being collected by central government sources. It therefore became important to investigate both the potential for using ASBOs in dealing with racist behaviour, and the impact on members of black and minority ethnic communities as recipients of ASBOs. Given the acknowledged over-representation of black and minority ethnic individuals in the criminal justice system, we wanted to assess whether the same could be said for the government’s anti-social behaviour policy.

The major and most critical finding of this report is that there is a lack of monitoring of data on ASBO recipients (and ASBOs generally). Currently there is no way to investigate whether black and minority ethnic communities are affected disproportionately. This raises a real concern amongst those who are worried about the impact of ASBOs on race equality, but our findings are framed within a wider context and they highlight substantial gaps in the way that the effectiveness and impact of ASBOs are measured generally. For this reason, our latest report calls for an overall review of policy on anti-social behaviour – and ASBOs in particular – and strongly urges the government to ensure that the social impact of ASBOs is properly assessed and monitored. It also stresses the ongoing need for alternative mechanisms to address the prevention of anti-social behaviour, as urged in our recent research on preventing racist violence.<sup>2</sup>

This report sets out to inform policymakers of the problems identified with the way in which anti-social behaviour policy is currently being implemented. We would like it to help shape the Respect agenda in a truly inclusive and non-discriminatory way.

**Michelynn Laflèche**  
 Director of the Runnymede Trust  
 October 2006

1 Our recent *Preventing Racist Violence* report (see Isal 2005:1)

2 Isal (2005:1)

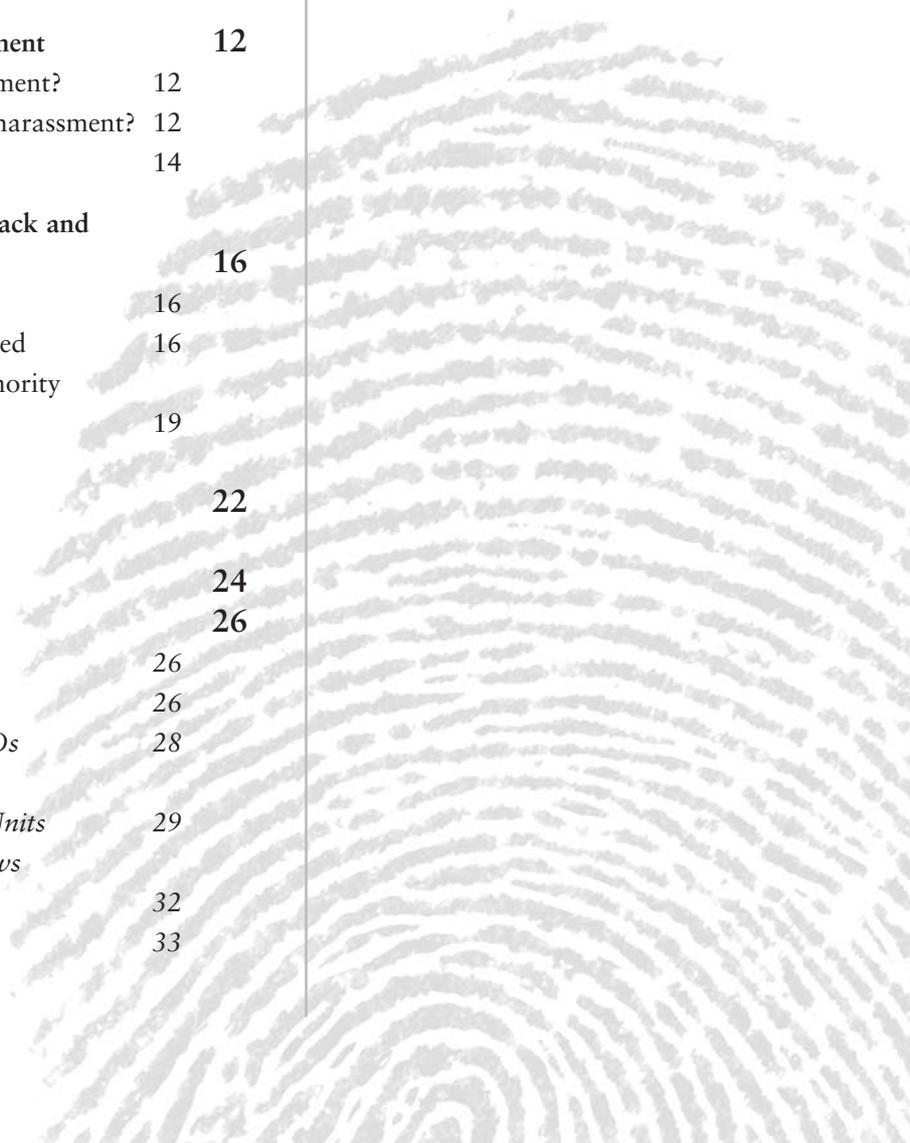
# Equal Respect

## ASBOs and Race Equality – Sarah Isal

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We would also like to thank Maya Sikand and the Legal Action Group for giving us permission to use their list of aggregated guidelines on defending ASBOs, as contained in Moya Sikand's recently published book (*ASBOs: A Practitioner's Guide to Defending Anti-social Behaviour Orders*, London: LAG; Appendix A, pages 281–98). Appearing as Appendix 6 of this report, it collates the relevant law of the Crime and Disorder Act 1998 in respect of Anti-Social Behaviour Orders for ease of reference and use by practitioners.

### Sarah Isal

Senior Research and Policy Analyst  
The Runnymede Trust

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# I. Executive Summary

This report sets out to inform policymakers of the problems identified with the way in which anti-social behaviour policy is currently being implemented. We would like it to help shape the Respect agenda in a truly inclusive and non-discriminatory way.

## Research objectives

Our research has sought to identify what is known about the use of Anti-Social Behaviour Orders (ASBOs), and to pinpoint the gaps in that knowledge which relate to:

1. The possible value and usefulness of ASBOs in tackling racial harassment; and
2. Their potential or actual negative impacts on black and minority ethnic groups.

Most significantly, the research reports that data on ASBO recipients (and ASBOs generally) is not monitored, from which it follows that there is currently no way to investigate whether black and minority ethnic communities are disproportionately represented in the numbers served with an ASBO. This deficiency raises real concerns among those who are worried about the impact of ASBOs on race equality. In addition, when our findings are viewed within the framework of a wider context, they highlight substantial gaps in the way the effectiveness and impact of ASBOs are measured generally.

What this report is calling for is an overall review of policy on anti-social behaviour – ASBOs in particular – and a proper assessment of the social impact of ASBOs at this current stage, plus monitoring of their future use. All three actions are strongly urged on government as a consequence of our research findings. In addition, the report's recommendations support the ongoing need for alternative mechanisms to address the prevention of anti-social behaviour, as advocated in our recent research on preventing racist violence.<sup>3</sup>

## Findings

### Racial harassment and ASBOs

Although racial harassment is listed by the Home Office as one of the anti-social behaviours for which an ASBO can be sought, and anti-social behaviour coordinators have confirmed their use of ASBOs in such cases, their use is generally part of a wider pattern of anti-social behaviour, and the racist element of the behaviour is hard to single out.

Nor is this information monitored, either locally or centrally. Difficulties arise from this lack of monitoring data when it comes to assessing the number of ASBOs served for racial harassment or where racial harassment is one of the factors prompting an application for an ASBO.

Interviews revealed that the local authorities who tended to support the use of ASBOs in cases of racial harassment were those who would generally be in favour of using them for a wide range of behaviours. Divergent views on whether or not an ASBO should be used to counter racial harassment therefore have to be placed within a wider context of ASBO use.

The decision to go for the ASBO is often because it is seen as an alternative to a criminal prosecution. It is

not necessarily justifiable or appropriate in its own right, but within the context of a criminal justice system failing to deal robustly with racism, it is seen by some practitioners as another ‘tool in the toolbox’.

Although the ASBO is considered useful in particular circumstances, the continued lack of research into and monitoring of its impact create difficulties for those wanting to make positive recommendations regarding its use.

### **Black and minority ethnic communities and ASBOs**

As things stand currently, there is no certainty that the levels of institutional racism found in other parts of the criminal justice system, and acknowledged in the Stephen Lawrence Inquiry Report, are not still endemic to local policymaking, and still having an effect on how to tackle anti-social behaviour generally and the use of ASBOs in particular.

Central government currently does not hold a record of ASBOs broken down by the ethnicity of recipients. What the Home Office collects is information supplied by the courts on total numbers of ASBOs served, rather than from the agencies applying for the ASBOs (i.e. local authorities, the police, Registered Social Landlords), where the numbers returned include a breakdown by age and by gender but not by ethnicity.

Because of this, there is as yet no way of assessing disproportionality in the serving of ASBOs. Annual publications of statistics under Section 95 of the Criminal Justice Act 1991 do not currently include ASBOs; and thus far, there is no statement of intent by the Home Office to include such information in future Section 95 publications.

A survey sent to agencies in charge of applying for ASBOs in their locality, as well as the interviews we have carried out ourselves, indicated that the main reason for not recording the ethnicity of recipients was the agencies’ belief that it was not considered to be a statutory requirement. This discovery highlights an alarming lack of awareness by the local anti-social behaviour units within local authorities and other agencies, including the police, of their statutory duties under the Race Relations Amendment Act 2000.

Ethnic monitoring of ASBO recipients is more likely to have taken place when the defendant has been in contact with the police, as there is already an ethnic monitoring system within the Police National Computer (PNC). However, the PNC codes use 6 categories<sup>4</sup> which differ from the 16 + 1 categories of the census. In addition, even if the information is recorded during perpetrator contact with the police, the data does not necessarily get collated by the agency in charge of coordinating anti-social behaviour policy locally (i.e. the Anti-Social Behaviour Unit).

Surveys indicating that local authorities do monitor the ethnicity suggested that they might be trying to conduct this monitoring without the necessary knowledge of how it should be done. As a result ethnicity is often assigned rather than self-defined, and this will have been done on the basis of ambiguous criteria and the perception of the caseworker. Interviews also revealed that, rather than this being a case of refusing to ask the question on grounds that it is not necessary, most practitioners face technical challenges as to how the monitoring might best be done.

Variety and inconsistency in the process leading to an ASBO application, combined with a lack of detailed guidance when ASBOs were first introduced, have resulted in a lack of standard procedures for recording the ethnicity of the recipient, which makes the monitoring a challenge and reflects problems linked to the inconsistent processing of protocols around ASBOs generally.

<sup>4</sup> Afro-Caribbean, Arab, Asian, Dark European, Oriental, Unknown and White European

## Recommendations

### A thorough, general review of ASBOs

1. A thorough review of ASBOs, including Interim ASBOs and ASBOs on conviction, is needed to increase our knowledge of the ways in which they are used, in particular to improve our understanding of the types of behaviour they are intending to curtail and whether or not they are successful.
2. Such a review should also examine breaches of ASBOs.
3. In addition, the review should assess: (a) the type of support mechanisms and measures used other than ASBOs; (b) the stages at which they are used; and (c) how effective these mechanisms are when their outcomes are compared to the results of using ASBOs.
4. An extensive review of other anti-social behaviour measures provided in the legislation, such as Anti-Social Behaviour Injunctions, would also be beneficial.
5. This latter review should include an assessment of the effectiveness or otherwise of ASBOs in combating racial harassment.
6. In order to assess the effectiveness of ASBOs in dealing with anti-social behaviour, information systems need to be put in place to indicate, when needed, the number of ASBOs that are served for which behaviour, both locally and nationally.

### Improved data collection to determine the ethnicity of ASBO recipients

7. As part of their duty under the Race Relations Amendment Act, local authorities and the police should ensure that they monitor the impact of their anti-social behaviour policy on the promotion of race equality. For this purpose, it is essential to monitor the ethnicity of defendants and victims.
8. The Home Office should place a strong emphasis on the requirement for local authorities and other agencies to undertake ethnic monitoring, and prompt them to demonstrate that they are fulfilling their legal requirements.
9. A consistent method is needed for recording ASBOs, with direction and guidance coming from the Home Office on thorough data collection procedures at local level. Such recording, when undertaken by each local authority, police force, Housing Action Trust or RSL, should include the ethnicity of the ASBO recipient.
10. A unique point of contact should be set up in each local authority area so that all ASBOs served would be recorded there, regardless of the point of origin of the application.
11. Building on positive examples, where the recording of ethnicity is successfully carried out by the police and other agencies in the course of other civil or criminal proceedings, the Home Office should develop and support training and guidance for practitioners working on anti-social behaviour to monitor the ethnicity of recipients.
12. Ethnic monitoring statistics should not only be compiled but published, in line with the specific duties contained in the Race Relations Act 1976 (Statutory Duties) Order 2001.
13. Data on the number of ASBOs served, broken down by ethnicity, should be included within the Section 95 Statistics on Race and Criminal Justice.

We urge policymakers to take note of the problems reported by those tasked with implementing anti-social behaviour policy, and to take up our Recommendations in acknowledgement of their capacity to contribute to an inclusive and non-discriminatory agenda for social change.

# II. The Research in Context

## Research objectives

This research assesses the impact of the anti-social behaviour agenda's most important enforcement tool, namely the Anti-Social Behaviour Order (ASBO),<sup>5</sup> on black and minority ethnic communities by examining two aspects of their enforcement:

1. How ASBOs are used to deal with racial harassment
2. How ASBOs impact on black and minority ethnic communities

It seeks to identify what is known about the use of ASBOs, and to pinpoint gaps in that knowledge which relate to their possible value and usefulness in tackling racial harassment, as well as potential or actual negative impacts on black and minority ethnic groups.

## Methodology

### Advisory group

An advisory group of practitioners and researchers in this field of interest was set up at the start of the project with the purpose of advising and supporting us in the development of our research methodology. The group met twice, at the start and the end of the fieldwork, at which point it provided further guidance and feedback on the findings and recommendations presented in the report.

#### *Advisory Group Personnel*

- Barbara Cohen (Runnymede Trustee)
- Claire Cooper (Commission for Racial Equality)
- Martin Davis (Hackney Community Safety Unit)
- David Faulkner (Centre for Criminology, University of Oxford)
- Mubin Haq (City Parochial Foundation)
- John Hedge (Thames Valley Partnership)
- Neena Samota (NACRO)

### Survey questionnaire

A survey questionnaire sent to local authorities in six Criminal Justice Areas – Greater London, Greater Manchester, Leicestershire, Thames Valley, West Midlands, West Yorkshire – aimed to collect data on the:

- number of ASBOs served

and where they were served;

- recipients of ASBOs by racial, ethnic and religious origin, gender and age;
- behaviour for which ASBOs were served, seeking to establish whether racist violence or harassment was the main factor or one of several in those cases where it was noted as a factor at all.

Of the 82 surveys sent out, 35 were returned – a 46.6% return rate. This seemed disappointingly low to us, but we have been reassured that it is in fact a very high return rate for a postal survey. Follow-up phone calls were made to some 20 respondents, in order to clarify and examine in more depth some of the issues raised in the survey responses. Talking things through with practitioners at this initial stage, it became clear that a closer examination of the monitoring practices of ASBOs generally would be valuable and needed to be developed at the interview stages.

### Interviews with practitioners

A survey can answer only some of the questions that apply to why ASBOs are served and how they are implemented locally.

To expand our survey findings we set up a series of in-depth open-ended interviews with a selection of those agencies entitled to apply for ASBOs in the six areas under study. We interviewed:<sup>6</sup>

- 6 representatives of Local Authority Anti-Social Behaviour Units or units responsible for anti-social behaviour;
- 4 representatives of the Police;
- 4 representatives of Registered Social Landlords;
- 7 representatives of racial harassment support groups;
- 2 representatives of the courts system;
- 1 representative of a local criminal justice board.<sup>7</sup>

Interviews were held with groups that work with victims of racial harassment or racist violence (or other relevant community organisations) in order to assess whether they considered ASBOs useful in dealing with racist behaviour and to get a better sense of perceptions of those at the receiving end of racial harassment. Contacts were also made with practitioners from Youth Offending Teams, Mediation Services and Magistrates Courts, as agencies involved in the process of dealing with ASBOs or ASBO recipients at some stage.

The purpose of the interviews was to explore in more detail how these agencies use, or think they could (or couldn't) use, ASBOs to tackle racist violence or harassment. In addition, we explored how they use (or don't

<sup>5</sup> A glossary of terms used in this report can be found in Appendix 1

<sup>6</sup> A copy of our follow-up questionnaire can be found in Appendix 4.

<sup>7</sup> We managed to gain access to these agencies on the basis that the interviewees would remain anonymous and their statements would be confidential; naming the actual agencies who participated in the research would compromise this confidentiality agreement, and we have therefore chosen not to name them.

use) other instruments that are available to tackle racist behaviour, before serving an ASBO (i.e. mediation or Acceptable Behaviour Contracts), to assess their potential as an alternative strategy for preventing racial harassment. In the absence of ethnic monitoring data for ASBOs, these interviews allowed us also to canvass interviewees for their ideas about effective methods of collecting ethnic monitoring data.

## Report structure

Two contextual reviews – of the Legal and Policy and the Research background – focus attention on what is known about ASBOs and their links with the issues that face black and minority ethnic communities. They show that little evidence-based knowledge exists on the impact of ASBOs on black and minority ethnic communities, either as victims of racism or as perpetrators of anti-social behaviour.

In order to relate the findings that emerged from both the survey questionnaires and the interviews:

- First we examine the use of ASBOs for tackling racial harassment, as advocated by practitioners in charge of anti-social behaviour policy locally, and/or community organisations supporting victims of racism and racial harassment.
- Next we look at whether there is a way to assess the impact of ASBOs on black and minority ethnic individuals as recipients, highlighting serious gaps in the monitoring of ASBOs both centrally and locally.
- Finally we include in our appendices the kind of public statistics on ASBOs that are made available, further information on the ASBO process, and the relevant anti-social behaviour legislation usefully collated.

## Legal and policy context

### Anti-social behaviour legislation

Anti-social behaviour is defined in the Crime and Disorder Act 1998<sup>8</sup> as ‘acting in an anti-social manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the complainant’; this definition is also used in relation to anti-social behaviour orders (ASBOs) and is deliberately vague so that it can be applied in a wide range of local contexts. It is generally accepted that anti-social behaviour is a subjective notion and depends largely on the perception of an individual or a locality. It ranges from low-level nuisances such as noise to the more serious criminal behaviour of harassment.<sup>9</sup>

Anti-social behaviour is nonetheless underpinned by a heavy legislative and political framework. In addition to defining anti-social behaviour, the Crime and Disorder Act 1998 introduced ASBOs and parenting orders. ASBOs can be served on any individual who has been the subject of complaints for anti-social behaviour as defined in the Crime and Disorder Act 1998. ASBOs put a number of prohibitions on what a person can or cannot do such as restricting access to specific areas of a town, a street or an estate, or preventing groups of people from associating. ASBOs are served by a Magistrates Court or a County Court and can be served to anyone aged 10 and above. While the ASBO is a civil order, being in breach of an ASBO is a criminal offence, and can lead to a prison sentence of up to five years.

Since 1998, three Acts have included provisions to strengthen anti-social behaviour instruments:

1. The Police Reform Act 2002 extended the powers to serve ASBOs to Registered Social Landlords and the British Transport Police, and created the Interim ASBO that allows for immediate action before going through the full process of applying for the ASBO. It also extended to County Courts the power to serve ASBOs when the court is dealing with an injunction or an eviction.
2. The Anti-Social Behaviour Act 2003 extends the powers of the police and other local authorities. It also provides new tools to tackle anti-social behaviour such as:
  - Powers to close crack houses quickly and easily;
  - Powers to disperse intimidating groups;
  - Powers to tackle flytipping, graffiti, litter and flyposting;
  - Powers to ‘demote’ tenancies and widen the use of injunctions;
  - Expanding the circumstances in which parenting contracts and orders are used.<sup>10</sup>
3. The Serious Organised Crime and Police Act 2005 contains a provision that enables the Secretary of State to name, by order, bodies to whom local authorities can contract functions relating to ASBOs making it possible for a growing number of organisations to be able to apply for ASBOs in future.

ASBOs were not much used initially (323 between 1 Jan and 31 Dec 2001) but numbers started growing significantly in 2003 (1042 by the end of 2003), coinciding with the coming into force of the Police Reform Act 2002.

<sup>8</sup> Section 1 of Crime and Disorder Act 1998 (See Appendix 6). We have included in appendix 6 the extracts of the various Acts relating to ASBOs, to enable the reader to have access to all the relevant legislation in one centralised place.

<sup>9</sup> The Research Development and Statistics Directorate of the Home Office has developed a typology that is available in Home Office (2004a:4)

<sup>10</sup> Local Government Association (2004a:2)

## Recent reports on Community Cohesion

Burnley and Oldham have each recently published a review of the situation of race equality and community cohesion in their localities, in order to take stock of their actions and policies following the disturbances experienced in both areas in the summer of 2001. Although very different in form, both reports aim to assess the progress made in tackling racism and segregation, and achieve better cohesion locally. Both reports refer to safety and confidence of communities as key components of community cohesion. Failure to address how anti-social behaviour impacts on black and minority ethnic communities, as victims in particular, can contribute to a lack of community cohesion in a particular area and therefore needs to be included in any strategy that sets out to combat racist crime and promote cohesion.<sup>15</sup>

## Update on race hate crime figures

Recent information on racist incidents and crime are hard to find. Figures, generally published yearly under Section 95, are currently unavailable for 2005. The Home Office website states that the police recorded 50,000 racially or religiously motivated hate crimes last year and that the British Crime Survey reported 260,000 such offences in the same period. According to the Home Office website, the Metropolitan Police reported 11,799 incidents of racist and religious hate crime in the 12 months to January 2006. The Home Office further quotes the Met on the notion that '[t]he typical hate offender is a young white male (most homophobic offenders are aged 16–20, and most race hate offenders under 30) who lives locally to the victim. The majority of hate crimes happen near to the victim's home while they are going about their daily business, and an offence is most likely to be committed between 3pm and midnight.'

Although racial harassment constitutes anti-social behaviour according to the definition developed by the Home Office, there is no certain way of knowing whether racist incidents, when reported, are recorded as racist incidents or as anti-social behaviour incidents, and if they are recorded as racist incidents, whether all or some will be treated as criminal offences, fully investigated and prosecuted, or whether they will be dealt with by other means.<sup>16</sup>

## Anti-social behaviour policy

In addition to the legislation, the government has embarked on highly visible and high-priority campaigns to tackle anti-social behaviour. Following the establishment of a dedicated unit within the Home Office (Anti-Social Behaviour Unit), the

government launched the Together Action Plan<sup>11</sup> and campaign, which, with its dedicated website,<sup>12</sup> aims to improve the response to anti-social behaviour across the country. The campaign provides roadshows where anti-social behaviour experts highlight best practice examples and offer support on how best to use the anti-social behaviour instruments available (the 'Together Academy'); it set up an action line to support practitioners; and provides further resources to improve the Crime and Disorder Reduction Partnerships (CDRPs) responses to anti-social behaviour.

The anti-social behaviour agenda has taken on a new dimension over the last 18 months with the development of the Respect agenda. The latter signals a shift from legislative and administrative powers to a call for a 'modern culture of respect' with 'central government, local agencies, local communities and ultimately every citizen working together to build a society in which we can respect one another – where anti-social behaviour is rare and tackled effectively, and communities can live in peace together'.<sup>13</sup> The Respect Action Plan also aims to tackle the underlying causes of anti-social behaviour and provide a twin-tracked approach of enforcement and support.

To say that Respect is a key priority of the government would be an understatement, exemplified by the fact that its action plan was launched simultaneously across the country by the Prime Minister himself and at least six other Secretaries of State or Ministers in January 2006. Prior to the launch, a special Respect Taskforce was set up within the Home Office to deliver the Action plan, overseen by a cross-departmental steering group drawn from the Office of the Deputy Prime Minister (now Department for Communities and Local Government), Department for Education and Skills, Department for Culture, Media and Sport, Department of Health, Department for Work and Pensions, and Department for the Environment, Food and Rural Affairs.<sup>14</sup>

## Research context

Although many publications on anti-social behaviour and on Anti-Social Behaviour Orders (ASBOs) have drawn on independent research and Home Office reports and statistics, or those of other governmental agencies, few address the way in which they might impact on black and

<sup>11</sup> Home Office (2003a)

<sup>12</sup> <http://www.together.gov.uk>

<sup>13</sup> Available on: <http://www.respect.gov.uk/about-respect/index.html> accessed 22 September 2006

<sup>14</sup> Home Office (January 2006) RESPECT Action Plan, London: Home Office (pp. 36–9)

<sup>15</sup> Institute of Community Cohesion 2006 and Burnley Action Partnership (2006)

<sup>16</sup> <http://www.homeoffice.gov.uk/crime-victims/reducing-crime/hate-crime/> accessed 22 September 2006

## British Crime Survey

According to the BCS 2003/04, BME groups are more likely to perceive high levels of anti-social behaviour than the average population (24% compared to 16% average).

Concerning racial harassment, 7% of the population regarded racial attacks as a fairly big or very big problem (respectively 5% and 2%)

Looking at the impact of anti-social behaviour, BME groups were more likely to report young people hanging around as having a high impact on their lives than the general population (9% against 6%)

The BCS shows that white people remain most likely to be perceived as perpetrators of all types of anti-social behaviour; 83% of people seen behaving in a drunk or rowdy way were white, as were 70% of offenders in incidents of drug use. It also reveals that groups engaging in anti-social behaviour were perceived to be from different ethnic backgrounds rather than people from any one minority ethnic group. In 23% of incidents of young people hanging around and in 21% of perceived incidents of drug use, the group was made up of people from different ethnic backgrounds – including those from the white group. Only 1% of incidents of young people hanging around involved a group of just Asian people, and in 6% of cases of drug use the offenders were all from the black group.<sup>19</sup>

The BCS also found that white people were generally more likely to experience anti-social behaviour with other white people and BME people were similarly more likely to experience anti-social behaviour with other BME people, although, as highlighted in the findings, this is likely to be a reflection of the ethnicity of the local area.

## Offending, Crime and Justice Survey

The Offending, Crime and Justice Survey includes the experiences of respondents aged 10 to 25 from the different ethnic groups around offending (including involvement in anti-social behaviour). The survey reveals few differences in the rate of involvement in anti-social behaviour across the different ethnic groups of 10- to 25-year-olds, with the exception of the Asian group, which was less likely to report being involved in anti-social behaviour than the white group. In addition, the report analysing the Survey in relation to ethnicity found that the 'ethnic group was not identified as an independent predictive factor [as opposed to being male or having been a victim of crime in the previous year], suggesting that any differences are more likely to be due to other underlying factors'.<sup>20</sup>

minority ethnic communities, either as victims or perpetrators of anti-social behaviour.

It is therefore important to look at the existing literature and assess *how* – if at all – it covers the impact of ASBOs on black and minority ethnic communities and the use of ASBOs in tackling racial harassment. It is also worth looking at what the literature says generally on ASBOs and how they might affect black and minority ethnic communities.

### A – Perceptions of anti-social behaviour by black and minority ethnic communities

Black and minority ethnic communities are rarely mentioned in the literature on ASBOs, and when they are, the focus is on their perceptions of anti-social behaviour as victims, such as in the British Crime Survey reports. New questions designed to assess perceptions of anti-social behaviour have recently been added to the BCS. The BCS 2003/04 found that black and minority ethnic communities were more at risk of perceiving anti-social behaviour (24% compared to 16% average in

England and Wales),<sup>17</sup> but there is no breakdown of differing perceptions between black and minority ethnic groups and no further analysis of which types of anti-social behaviour are perceived to be problematic for black and minority ethnic communities in particular.

Perception of anti-social behaviour by black and minority ethnic groups seems to be the only area covered by the Home Office Race Equality Scheme in its setting of targets and objectives on race equality within the anti-social behaviour policy area.<sup>18</sup> Although the Scheme recognises the need to 'take account of research findings on race issues in ASB [anti-social behaviour]', it refers just to the perception issue, and does not address any potentially disproportionate impact on black and minority ethnic people as recipients of ASBOs, or the way in which ASBOs are used to tackle racial harassment.

### B – Impact of ASBOs on black and minority ethnic offenders

Research is particularly scarce on the impact of ASBOs on black and minority ethnic individuals as perpetrators. Although the BCS 2003/04 does

17 Wood (2005:16)

18 Home Office (2005a:20)

19 Wood (2004: 30) See Table A7.4, available online from: <http://www.homeoffice.gov.uk/rds/pdfs04/rdsolr4904supptabs.xls> accessed 22 September 2006

20 Sharp and Budd (2005: 16)

refer to the perception that white people are most likely to be perceived as being perpetrators of anti-social behaviour, this is based on perception and provides no indication of the potential for a disproportionate serving of ASBOs on black and minority ethnic individuals. The reason for this gap in the research is that there are no statistics available on the ethnicity of ASBO recipients. Although the Home Office, in its guidance on ASBOs, does state that agencies should monitor the ethnicity of both victims and perpetrators of anti-social behaviour for which an ASBO is being sought, it does not include guidance on how to do such monitoring. It is interesting to note, however, that the Home Office guidance on ASBOs does refer specifically to the potential use of an ASBO to ‘help deal with the minority of the travelling community who persistently engage in anti-social behaviour around the country’,<sup>21</sup> thereby singling out a particular ethnic minority group, and creating a propensity for that group to experience a differential impact from ASBOs.

Centrally collected data on the ethnicity of individuals being served with ASBOs is a basic requirement for any research and analysis of ethnicity issues. In the absence of centralised statistics on ethnicity, any measurement of the impact of ASBOs on black and minority ethnic communities has been indirect, relying on other variables. For instance, there are grounds to consider that black and minority ethnic populations will be over-represented in served ASBOs because they are more likely to live in social housing, therefore making them potential recipients of ASBOs, given the powers conferred on Housing Action Trusts or Registered Social Landlords (as opposed to owner-occupiers) to serve them.<sup>22</sup> This is an example of how looking at other socio-economic variables and how they correlate with ethnic categorisations has allowed us room for some speculation on the indirect impact of ASBOs on black and minority ethnic groups. This kind of exercise might forecast whether black and minority ethnic groups were more likely to be recipients of ASBOs. However, no other examples of such indirect impact on black and minority ethnic communities could be found in the literature.

### C – Racial harassment as a main factor

Concerning ASBOs and racial harassment, research is again scarce. Racial harassment is officially recognised as a type of anti-social behaviour,<sup>23</sup> and BCS 2003/04 shows that it consti-

tutes a ‘fairly or very big problem’ for 7% of the respondents. It is picked up by the BCS and is mentioned in some research carried out by the Home Office on young people and anti-social behaviour.<sup>24</sup> Therefore, while there is research highlighting and documenting the fact that people engage in racist anti-social behaviour, there is no research specifically on whether agencies respond to such anti-social behaviour with ASBOs, and, if they do, how effective it might be. There has, however, been some research which highlighted good practice examples of dealing with racial harassment without the use of enforcement measures or ASBOs.<sup>25</sup> In addition, the progress report on the government’s strategy for race equality has highlighted that a ‘Standard for Housing Management’ launched as part of the Respect Action Plan, encourages landlords to provide ‘an effective response to tackling anti-social behaviour, including incidents of racially motivated anti-social behaviour’.<sup>26</sup>

### D – Racial harassment as a secondary factor

The most recent review of ASBOs commissioned by the Home Office in 2002 looked at 94 ASBO case files and found that 1 in 5 cases included racial harassment as one of various behaviours for which the ASBO was requested.<sup>27</sup> It also found that racial harassment was rarely the primary behaviour for which the ASBO was sought. This review was carried out before the substantial rise in the number of ASBOs served throughout the country took place. A fresh review is needed to reassess how ASBOs are used in cases of racial harassment.

### E – ASBO literature in general

Given that there is very little in the literature analysing the impact of ASBOs on black and minority ethnic communities, it is necessary to examine briefly the more general literature on ASBOs, to assess how relevant the ASBO might be to issues of race equality.

In contrast to what is available on ASBOs and ethnicity, there is much written about ASBOs generally: some in the form of guidance and help for practitioners to apply for them, and others as research examining whether ASBOs are successful or not in dealing with anti-social behaviour. What follows is an attempt to encapsulate in a few paragraphs the various discourses and debates raised on ASBOs, from the dual perspectives of supporting and being critical of their use.

21 Home Office (2002:18)

22 Dowty (2004: 17)

23 The typology developed by the Home Office Research Development and Statistics Directorate includes racial harassment and racist abuse as unacceptable anti-social behaviour (Home Office 2004: 4)

24 Hayward and Sharp (2005:3)

25 Thames Valley Partnership (2005:80)

26 Department for Communities and Local Government (July 2006:32)

27 Campbell (2002b:13)

### 1. Research by government and public agencies

Government and public agencies have focused on providing guidance and help for practitioners to apply for and use ASBOs.<sup>28</sup> The Home Office review of ASBOs, mentioned above,<sup>29</sup> covers the period April 1999 to September 2001. There has been no further review by the Home Office on ASBOs, which represents a research gap given the exponential rise in the number of ASBOs since the last review: from 323 ASBOs issued in 2001, to 2679 ASBOs issued between January and September 2005.<sup>30</sup> The Home Affairs Committee of the House of Commons produced a report in 2005 on anti-social behaviour, in which it generally welcomed the introduction of the ASBO and found it a useful tool to reduce anti-social behaviour.<sup>31</sup> The Committee considered the various criticisms of ASBOs (see below) and concluded that most of them were unfounded. ASBOs, according to the Committee's report, are a useful tool that can 'provide much-needed relief for communities suffering from the impact of nuisance behaviour'.<sup>32</sup> The report, however, calls for further research to be conducted to improve knowledge of the use of ASBOs by various agencies, in particular housing agencies. It also highlights the importance of considering ASBOs as one instrument amongst many for tackling anti-social behaviour and the need to investigate further those cases where ASBOs are being used inappropriately.

### 2. Other research reports

Most independent research on ASBOs between 2002 and 2006, however, has been at best wary of ASBOs<sup>33</sup> and encouraging the use of prevention alternatives, or at worst highly critical of ASBOs. The latter viewpoint argues that they are being used in unfair circumstances and more generally that (a) there is insufficient monitoring to conclude that they are effective in reducing anti-social behaviour, and (b) their use has real implications for civil liberties, including protection of the rights of children and other vulnerable communities.<sup>34</sup> Although, as already mentioned, there has not yet been an analysis of ASBOs and their impact on black and minority ethnic communities, one could argue that there is a history of some communities being affected disproportionately in other areas of enforcement (i.e. stop &

search), thus justifying further examination of their treatment in relation to ASBOs.

The strongest criticism of ASBOs has come from civil liberties groups and organisations that represent the rights of vulnerable communities, such as mental health charities, children's charities and those representing the homeless for instance. Concerns about the use of ASBOs fall broadly under four categories: (i) the broad definition of anti-social behaviour and the over-regulation of behaviour by law; (ii) the ease of obtaining ASBOs; (iii) the use of publicity strategies; and finally (iv) the implications of breaching an ASBO.<sup>35</sup>

(i) *Broad definition of anti-social behaviour.* Anti-social behaviour for which an ASBO can be served is defined as acting 'in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself'. As argued by Shami Chakrabarti, Director of LIBERTY, behaviour that is 'likely to cause harassment, alarm or distress' is subject to interpretation.<sup>36</sup> One can relate this concern again to the potential impact on black and minority ethnic communities. How easy is it for someone to be 'alarmed or distressed' by their neighbours, because they are of a different ethnicity from them? Again, there isn't sufficient evidence at this stage to prove that this phenomenon occurs, but this scenario cannot be excluded. Such a concern is all the more justified when one knows that there are cases of young children with diagnosed mental health problems or accepted learning difficulties having been served with ASBOs.<sup>37</sup> Cases of ASBOs served on people with autism and Asperger Syndrome have also been recorded.<sup>38</sup>

(ii) *Ease of obtaining ASBOs.* In addition to the risks linked to a broad definition of anti-social behaviour, the ease with which an ASBO can be obtained has also raised concerns. Between 1 April 1999 and 30 June 2004, out of 3069 applications for ASBOs, only 42 were turned down, representing a 98.6% chance of securing an ASBO when applying for one.<sup>39</sup> The ease with which an ASBO can be obtained, combined with increasing pressure by the Government on local authorities and other agencies to use ASBOs, is particularly alarming given the lack of monitoring or

28 ODPM (2004), Youth Justice Board (2005)

29 Campbell (2002b)

30 Found on [http://www.crimereduction.gov.uk/asbos/asbos2\(cjs\)sept05.xls](http://www.crimereduction.gov.uk/asbos/asbos2(cjs)sept05.xls) accessed 22 September 2006

31 Home Affairs Committee of the House of Commons (2005:125)

32 Ibid, p.4

33 Millie et al. (2005); National Community Safety Network (2005); Thames Valley Partnership (2005)

34 Chakrabarti (2006); National Children's Home (2005); Gil-Robles (2005)

35 Nixon (2005:22-23)

36 Chakrabarti (2006b:23)

37 British Institute of Brain Injured Children (2005:6)

38 ASBO Concern 2005 available on <http://www.asboconcern.org.uk> accessed 22 September 2006

39 Gil-Robles (2005)

effective review of the way that ASBOs are being used, as highlighted by practitioners working in local authorities in a report published by the National Community Safety Network.<sup>40</sup> Again, the impact on black and minority ethnic communities is impossible to assess.

(iii) *Use of publicity strategies.* A third area of concern highlighted in the literature is the widespread practice of publicising the names of ASBO recipients locally, which can create a 'name and shame' effect in the community. Home Office guidelines encourage local authorities to do this, and the justification offered is the need for the community to support effective enforcement of an ASBO, thus 'highlighting the fine line between vigilance and vigilantism', according to Chakrabarti.<sup>41</sup> The Council of Europe Commissioner for Human Rights Alvaro Gil-Robles on his visit to the UK stressed that the impact of such measures not just on the recipient of the ASBO but in some circumstances on the perpetrator's family could be in violation of the right to private and family life under the European Convention of Human Rights.<sup>42</sup>

(iv) *Breaching an ASBO, and the blurring of criminal and civil justice.* A fourth concern is the implication of breaching an ASBO, which is a criminal offence and subject to up to 5 years in prison. Of the ASBOs served before December 2003, 42% were breached, and 55% of these resulted in custody.<sup>43</sup> Many reports have highlighted the dangers of a 'net-widening' effect, which brings an unnecessarily large proportion of individuals within the scope of the criminal justice system, not least young people. Although some research has found that 95% of young people entering custody as a result of breaching their ASBO were known to Youth Offending Teams,<sup>44</sup> this could also be interpreted as an indication of the need to intervene with those young people more appropriately through prevention work, rather than through mechanisms that will accelerate their entry into the criminal justice system.

Conversely, ASBOs have also been used to catch more prolific offenders for behaviour that is criminal and ought to have been prosecuted. However, given the wide-ranging scope of the ASBO and the possibility of using hearsay evidence, it is reasonable to see how the ASBO could be considered a preferable alternative to a criminal conviction that is sometimes hard to secure.<sup>45</sup>

Such a tendency might be found if one researched the use of ASBOs to tackle racial harassment, in cases where the racist behaviour is covered by criminal legislation, a point that will be explored further in the body of this report.

Interestingly, a MORI poll also showed some elements of confusion by respondents. The public generally do not make any distinction between anti-social behaviour and crime. They exhibit the same blurring of perception between criminal and non-criminal behaviour as the authorities.<sup>46</sup>

(v) *Alternatives to ASBOs.* Recent research has also focused on the need to promote alternative measures when tackling anti-social behaviour. Some surveys found that people were more likely to support preventative measures than punitive measures in order to tackle anti-social behaviour and therefore point to a need for preventative strategies to deal with anti-social behaviour,<sup>47</sup> an opinion shared by community safety practitioners themselves.<sup>48</sup> Preventative mechanisms include mediation, restorative justice and the use of Acceptable Behaviour Contracts (ABCs).<sup>49</sup> A recent briefing paper on this matter, produced by a coalition of organisations called the Positive Approaches Group, calls for more funding and attention to preventative and problem-solving approaches and for the ASBO to be used as a very last resort.<sup>50</sup>

40 National Community Safety Network (2005)

41 Chakrabarti (2006)

42 Gil-Robles (2005:39)

43 Nixon (2005:23)

44 Youth Justice Board, quoted in Home Affairs Committee of the House of Commons (2005:67)

45 Nixon (2005:23)

46 'What place for ASBOs in an era of Respect?' Presentation by Ben Page of MORI, available on: <http://www.mori.com/polls/2005/pdf/asbo.pdf> accessed 22 September 2006

47 Millie et al. (2005: 13)

48 National Community Safety Network (2005: 7-8)

49 Thames Valley Partnership (2005: 33-54)

50 Positive Approaches (2006)

# III. The Report's Findings

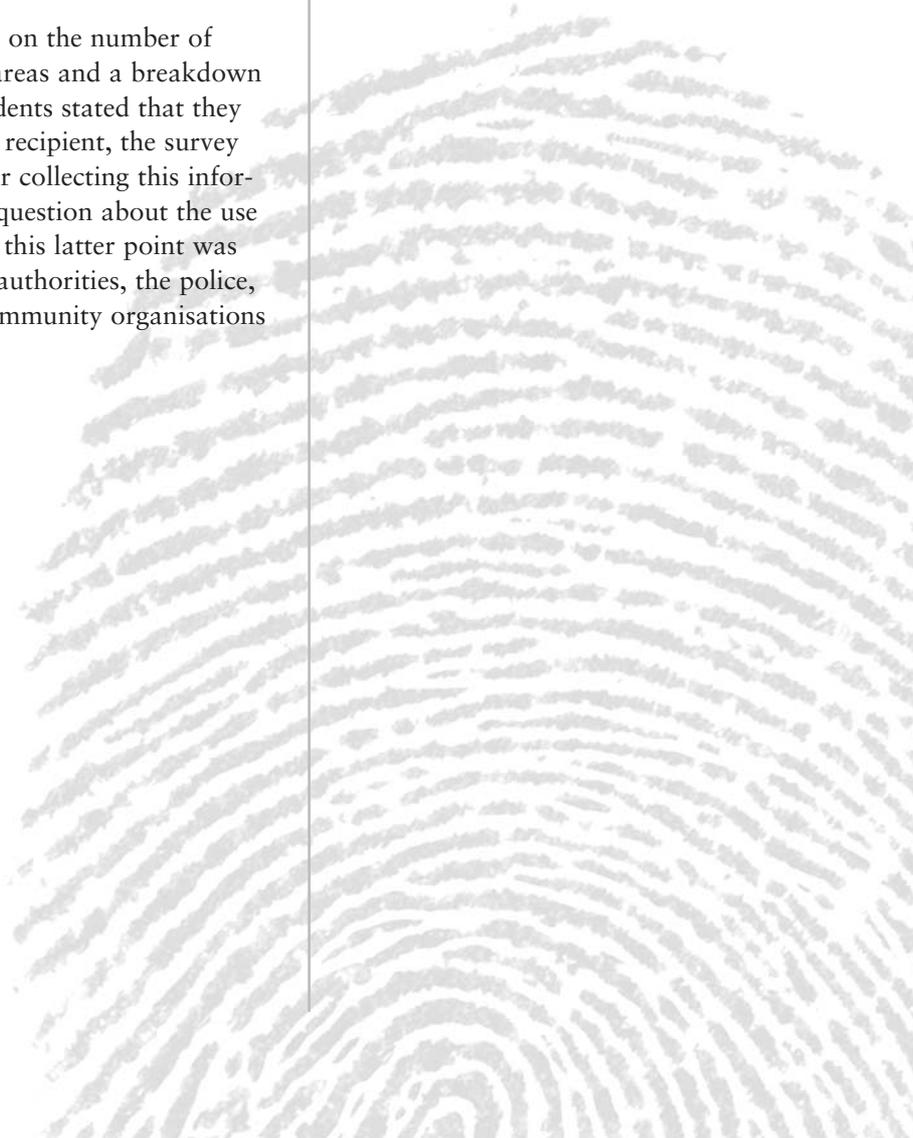
Literature linking ASBOs with ethnicity-related issues is at best anecdotal and mentioned only in passing, or at worst – and in most cases – nonexistent. The issue is being ignored both by government agencies in charge of enforcing ASBOs and policy-makers in charge of regulating, monitoring and developing ASBOs as a mechanism. This makes it impossible to tell whether ASBOs are being used disproportionately to discipline members of black and minority ethnic groups, similarly to the well-documented disproportionate use of stop & search.

The purpose of this report is to fill a research gap highlighted in the previous section and start building an evidence base on the impact of ASBOs on black and minority ethnic communities on two levels:

1. The impact of ASBOs on dealing with racial harassment;
2. The impact of ASBOs on black and minority ethnic individuals as recipients.

Since initial desk research revealed that relevant ethnicity data is not available from central government, the findings that follow are based on the Survey Questionnaires we sent to six Criminal Justice areas.

The survey aimed to collect information on the number of ASBOs served in different local authority areas and a breakdown of the ethnicity of recipients. If the respondents stated that they did not monitor the ethnicity of the ASBO recipient, the survey asked why not and what plans they had for collecting this information in future. The survey also asked a question about the use of ASBOs to tackle racial harassment, and this latter point was developed further in interviews with local authorities, the police, Registered Social Landlords (RSLs) and community organisations supporting victims of racial harassment.



# A. Findings on ASBOs and Racial Harassment

## 1. Are ASBOs used to tackle racial harassment?

Lack of accurate data collection is a problem when looking at the use of ASBOs to tackle racist behaviour and racial harassment. In practical terms, an ASBO used for racial harassment is hard to pinpoint because it is rare that the racist element is the main one.<sup>51</sup> It is generally part of a wider pattern of anti-social behaviour. If an ASBO is sought against the alleged perpetrator, the prohibition might not include the racist element, even if that element were present in the original anti-social behaviour displayed by the individual. For instance, if an ASBO is served on someone for racial harassment, the prohibition might just define an exclusion zone (from where the victim lives for instance) or the instruction not to use abusive language generally. It is therefore difficult to assess the number of ASBOs served for racial harassment or where racial harassment is one of the factors prompting an application.

Again, this information is not collected by the Home Office. Even locally, there seems to be inconsistent practice in the way that agencies monitor the kind of behaviour for which they serve an ASBO. One local authority interviewed does systematically include a reference, in the ASBO itself, to the racist behaviour of the perpetrator, but as yet this is not collated into any database and one would only be able to find out how many such cases exist in a given area by going through its paper files. Other local authorities interviewed did not have specific protocols in place to flag the racist element in each ASBO being applied for and served.

It is therefore not possible to discover the extent to which ASBOs are used to deal with racist attitudes and racial harassment other than via the verbal and anecdotal information collected at the interviews, thus representing a clear gap in the information available on ASBOs.

## 2. Should ASBOs be used to tackle racial harassment?

Interviews with practitioners from a variety of agencies indicated that views were divided on whether the ASBO is adequate for use in cases of racial harassment. Table 1

highlights the arguments given, at interview, by these practitioners on the pros and cons of using ASBOs to tackle racial harassment. For the reasons given in Table 1, clear-cut answers can't yet be provided as to whether ASBOs ought or ought not to be used to deal with racial harassment.

### What kind of racial harassment are we talking about?

The blurring – or sometimes confusion – between criminal behaviour and anti-social behaviour referred to in the literature review (see pp. 8–10) is relevant to the debate on ASBOs and racial harassment. Indeed, there is criminal legislation in place to deal with racially aggravated offences. The Crime and Disorder Act 1998 introduced the concept of racially aggravated offences, where the penalties for an offence will be increased if racial aggravation is proved to be present. The specific racially aggravated offences include harassment, criminal damage, public order and some offences of violence. The court can increase the tariff when sentencing for other offences that are racially aggravated, for example arson or murder. Why would there be a need to use ASBOs in cases of racial harassment? This has been raised by practitioners who were wary about civil remedies being used in cases of criminal behaviour, an issue that goes beyond racial harassment. As mentioned, ASBOs are used differently and inconsistently across the country.

In some areas surveyed, the ASBO is used for behaviour that is criminal. This is not considered problematical by some because they see the ASBO as serving a purpose other than criminal prosecution. In some interviews with agencies in charge of implementing anti-social behaviour policy, the practitioner stated that while the criminal prosecution is there to punish perpetrators, the ASBO's primary use is to protect the community and to control future behaviour, including criminal behaviour. This point of view is not shared by all, however, as in other areas the ASBO would not be used for criminal behaviour and would be advocated, rather, for use against anti-social behaviour which would not on its own constitute a criminal offence (i.e. noise or environmental

nuisance). One could argue that an ASBO may therefore be appropriate to tackle so-called 'low-level' racist behaviour that is not easily prosecuted as a criminal offence. For example, an ASBO might be suitable to deal with 'campaigns' of harassment by a group of

<sup>51</sup> The only review of ASBOs so far by the Home Office states that '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' (Campbell 2002b: 13–14)

**Table 1. Reasons given by practitioners at interview in favour of and against the use of ASBOs to tackle racial harassment**

Reasons in favour of using ASBOs	Reasons against using ASBOs
<p>The ASBO spares the victim from having to go to court and provide evidence, since hearsay evidence is acceptable, thus encouraging victims to come forward and report racial harassment.</p> <p>It is easier to obtain than a criminal prosecution because the standards of proof are lower.</p> <p>It offers the possibility to put an immediate stop to the behaviour (if the ASBO prevents a perpetrator from going near the victim for instance)</p> <p>The ASBO is one instrument in the 'toolbox' to use alongside other interventions, criminal prosecution or other such. It does not necessarily have to be an alternative to criminal prosecution, as it can provide additional support.</p> <p>The ASBO is effective in controlling unacceptable behaviour, including racial harassment, and sends a strong signal.</p> <p>It protects the community and is therefore appropriately used to shield a particular individual or group at the receiving end of racist abuse or harassment.</p> <p>It is an extremely powerful tool, which carries severe penalties, especially if breached. This makes it appropriate in cases of racism for exerting a tighter control over people, and forcing on them a realisation that their behaviour is unacceptable.</p>	<p>There is already criminal legislation to deal with racial harassment, so an ASBO is not appropriate.</p> <p>The ASBO should not be used instead of the criminal law to deal with a particular offence just because it's easier; instead there should be more efforts by CPS and the Police to ensure that criminal cases involving racial harassment are successful.</p> <p>The ASBO is not meant to be punitive, but rather is there to protect the community. In contrast, criminal prosecution is there to punish. An ASBO therefore sends the wrong message to perpetrators of racial harassment, as it might be seen as a soft option.</p> <p>ASBOs displace the problem of racial harassment rather than stopping it.</p> <p>Even if the ASBO makes the behaviour stop, it does not deal with the racial aggravation, which is a symbolically important issue (and the reason why racial aggravation was introduced in criminal law in the first place)</p> <p>There is insufficient information as to whether ASBOs actually reduce racial harassment, and no certainty that an ASBO served for racial harassment can be enforced adequately.</p> <p>Given the lack of information on the impact of ASBOs on black and minority ethnic communities and the implications for civil liberties, ASBOs should not be advocated, even for cases of racial harassment, until better monitoring procedures are in place, capable of providing this information.</p>

teenagers who hang about a housing estate where a large number of Bangladeshi families live, and who shout, whistle and make obscene remarks whenever any of the Bangladeshi women leaves her flat.

However, in many cases, individuals interviewed stressed that they *would* advocate ASBOs to tackle racial harassment because the criminal conviction of racially aggravated offences is extremely hard to obtain. Therefore, the decision to go for the ASBO is often made because it is seen as an alternative to a criminal prosecution; it is not justified in its own right but rather as an alternative to a failing criminal justice system unable to deal robustly with racism. This is compounded by the tendency of CPS to drop the racially aggravated charge.<sup>52</sup>

### Whose job is it to deal with racism?

A worry that came up in relation to using ASBOs and civil remedies in general in dealing with anti-social behaviour was that, in some cases, it replaced the

investigation of the racist incident by the police, and the racist element was thereby subsumed into anti-social behaviour. An interviewee working for an organisation monitoring racist incidents considered this dangerous, because it increased the difficulty of trying to get an accurate picture of the extent of racist violence. A local authority officer also mentioned that local authorities were ill-equipped to deal with these cases, and they should be taken up by the police and Crown Prosecution Service. Another local authority officer, however, highlighted that one reason why they took the ASBO route so effectively in cases of racial harassment was because the police were unable to provide the kind of support their local authority's Anti-Social Behaviour Unit was able to provide to victims. This increased the confidence of victims to report racist anti-social behaviour. In another area, the hate crime officer post was actually attached to the anti-social behaviour unit. It was felt that little could be done to tackle

52 John (2003:13)

hate crime because of the difficulty in collecting evidence, and anti-social behaviour legislation provided an opportunity to do something about hate crime without the stringent evidential package needed to secure a criminal conviction.

### **‘Whatever works...’**

Most reservations concerning ASBOs and racial harassment can be put down to a lack of information on the actual impact of using them, linked to gaps in monitoring as emphasised above. The majority of practitioners interviewed, including black and minority ethnic community groups, welcomed the ASBO as an additional instrument to deal with racism, in principle as an extra ‘tool in the toolbox’ as described by one anti-social behaviour coordinator. In this sense, the ASBO is often advocated in conjunction with other instruments.

In one particular area, for example, a person was first served an injunction to allow immediate action and was then served an ASBO to control the behaviour. In another instance, the perpetrator of racial harassment was served an ASBO pending eviction by the landlord. The ASBO is therefore one instrument amongst many and according to most practitioners it should not be discarded altogether. In other instances, the ASBO was used alongside a criminal conviction. For example, a particular local authority is dealing with a case of racial harassment on an estate by serving an interim ASBO on the perpetrator to protect the victims and witnesses while, in the meantime, the police are taking the perpetrators to court on criminal charges.

Four local authority interviewees emphasised that the ASBO is actually ideally suited to cases of racial harassment, given the fact that the behaviour can be controlled quickly, through an interim ASBO if needed, the victim does not have to go to court, since hearsay evidence is permissible, and the prohibitions imposed in the ASBO can be long-term and ‘creative’ enough to protect the victim effectively. For instance, if a person has been racially harassing a family and the prohibition in the ASBO is an exclusion zone where the victim lives, then the only proof of breach needed is that the perpetrator went into this zone (regardless of whether he/she approached the victim) and the likelihood of the victim being in contact with the perpetrator is even more remote, thus preventing the latter from committing further racial harassment.

### **But does it work?**

Although in principle the ASBO could therefore prove appropriate in cases of racial harassment, including so-called ‘low level’ harassment, the

question that remains largely unanswered is whether the ASBO actually works in reducing racist behaviour and harassment, which brings us to the lack of effective monitoring of ASBOs and their impact.

Enforcement is an issue raised by a number of ASBO sceptics and, again, it is currently impossible to assess the actual impact of ASBOs on tackling racial harassment. As put by one practitioner – we don’t know what it is about the ASBO that actually works, or what is not currently working, whether some prohibitions are more effective than others, etc... The question is what kind of prohibition should be in an ASBO to put a stop to racist behaviour.

Using the example provided earlier, if you prevent a perpetrator from going into an area where the victim lives, this will not prevent the former abusing the latter if they encounter each other in another location. Similarly, an ASBO can also be seen as just displacing the problem rather than actually dealing with it. The consensus amongst those interviewed is that the ASBO is useful in particular circumstances, but that there continues to be a lack of research and monitoring of its impact, without which it is difficult to advocate its use. Another issue is the fact that racist incidents and racial harassment take on many different forms that call for different responses, and the ASBO might not be appropriate for all of them.

## **3. A stronger focus on prevention**

The position of practitioners concerning the use of ASBOs in cases of racial harassment was rarely inconsistent with their position on dealing with anti-social behaviour generally. Interviews revealed that the local authorities who tended to support the use of ASBOs in cases of racial harassment were those who would generally be in favour of using them for a wide range of behaviours. Diverging views on whether an ASBO should or should not be used against racial harassment therefore have to be placed within a wider context of ASBO use: if the ASBO in a particular area is used widely as a behaviour-controlling mechanism, against either criminal behaviour or repeat offending, racial harassment will likely be one of the issues dealt with by an ASBO. Racial harassment, in this context, is seen as part of a wider range of ‘bad behaviours’ that need to be controlled and the ASBO is therefore advocated as an instrument to deal with racial harassment, as it is for other bad behaviour.

In addition, most black and minority ethnic community groups who work with victims of racial harassment, whether they were for or against the use of ASBOs in cases of racial harassment, nevertheless advocated prevention work and education alongside enforcement and punitive measures to deal with racism and racial harassment. The use of ASBOs, if seen as a last resort, is not incompatible with calling for racial harassment to be dealt with before it escalates and reaches the point where an ASBO or another equally powerful enforcement instrument is necessary.

Runnymede's previous report provides numerous examples of prevention initiatives, which have already been proved to work successfully in reducing racial tension.<sup>53</sup> This work, if supported with adequate resources, could prove an effective tool to tackle racial harassment in place of ASBOs.

However, the call for an alternative in the form of preventative measures points to the differing views about the very purpose of the ASBO: its supporters do not see the ASBO as a punitive mechanism. They believe it is there to protect the community – as part of a strategy to prevent anti-social behaviour rather than to punish the perpetrator.

53 See Isal (2005). Eleven case studies are described in the main report text between pages 18 and 38.

## B. Findings on the Impact of ASBOs on Black and Minority Ethnic Communities

### 1. Why collect data on ethnicity?

Ethnic monitoring is now accepted practice in almost all aspects of justice. For the last 15 years the Secretary of State has had a statutory duty under s.95 of the Criminal Justice Act, 1991 to publish information and statistics assessing the impact of its policies and practices on different ethnic groups, including the ethnic breakdown of stop & search and arrests procedures and the ethnic make-up of the prison population.<sup>54</sup> The fact that ASBOs are technically civil orders does not alter the principle behind ethnic monitoring. Monitoring is important for the dynamics of the system to be visible and understood, and consequently the nature, quality and ultimately the legitimacy of the outcomes that emerge from it. If monitoring indicates that one group seems to be treated more or less severely than another, an explanation must be sought. The explanation may lie in different behaviour or in different reactions to similar behaviour. If the former, preventive or remedial action may need to be taken; if the latter, discrimination or prejudice may be present, and will need to be corrected. Monitoring is an essential part of the system's accountability.

Central government currently does not hold a record of ASBOs broken down by the ethnicity of recipients. What the Home Office collects is information supplied by the courts on total numbers of ASBOs served, rather than from the agencies applying for the ASBOs (i.e. local authorities, police, RSLs); the numbers include a breakdown by age and by gender but not by ethnicity.

Consequently, there is as yet no way to assess whether there is disproportionality in the serving of ASBOs. Annual publications of statistics under Section 95 of the Criminal Justice Act, 1991 do not currently include ASBOs, and so far there is no statement of intent by the Home Office to include such information in future Section 95 publications.

54 Section 95 states '(1)The Secretary of State shall in each year publish such information as he considers expedient for the purpose of (a) enabling persons engaged in the administration of criminal justice to become aware of the financial implications of their decisions; or (b) facilitating the performance by such persons of their duty to avoid discriminating against any persons on the ground of race or sex or any other improper ground. (2) Publication under subsection (1) above shall be effected in such manner as the Secretary of State considers appropriate for the purpose of bringing the information to the attention of the persons concerned' [[http://www.opsi.gov.uk/ACTS/acts1991/Ukpga\\_19910053\\_en\\_6.htm#mdiv95](http://www.opsi.gov.uk/ACTS/acts1991/Ukpga_19910053_en_6.htm#mdiv95)] accessed 22 September 2006

55 Afro-Caribbean, Arab, Asian, Dark European, Oriental, Unknown and White European

### 2. How data on ASBOs is (or isn't) collected

Questionnaires returned to us by the local authorities highlighted a number of issues in relation to the collection of data on ASBOs.

Ethnic monitoring of ASBO recipients is more likely to have taken place when the defendant has been in contact with the police, as there is already an ethnic monitoring system within the Police National Computer (PNC). However, the PNC codes use 6 categories<sup>55</sup> which differ from the 16+1 categories of the census. In addition, even if the information is recorded during perpetrator contact with the police, the data does not necessarily get collated. In general, especially in cases where the local authority is applying for an ASBO, there is no systematic ethnic monitoring. What the survey tells us is that:

1. Agencies applying for the ASBO do not think that this information is required of them by local or central government.
2. Agencies would like to monitor ethnicity but do not know how to technically conduct the monitoring. In particular they face a challenge around accessing the perpetrator and knowing when and how to ask for his/her ethnicity.

A closer look at the reasons for lack of data on the ethnicity of ASBO recipients highlighted two further points that go wider than the initial remit of this research but which need to be addressed in order to eventually achieve accurate ethnic monitoring of ASBOs. These are:

3. The general inconsistency that affects data collection on ASBOs.
4. The dangers of inaccurate data collection.

### Are local authorities required to monitor the ethnicity of ASBO recipients?

Under the Race Relations Act 1976 (RRA 1976), it is unlawful for employers, schools, colleges and universities, landlords and other housing

providers, large and small businesses, local authorities, health service providers, government departments, local government, the police, and other law enforcement agencies to discriminate against someone on grounds of race, colour, nationality or ethnic or national background.

In addition, under the Race Relations (Amendment) Act 2000, public authorities (including local authorities,

## Replies by Practitioners to the question: ‘How do you collect the ethnicity of the ASBO recipient in your area?’

### Example 1

A caseworker determined the ethnicity of an alleged perpetrator by ‘eyeballing’ his mother and, assuming that she was white and seeing that the perpetrator was not, it was therefore inferred that he was of mixed ethnicity. **The ethnicity is assigned.**

### Example 2

A particular local authority collects the information at the consultation meeting stage by asking for the ethnicity of the alleged perpetrator, wherever this might have been recorded in the past, i.e. if it is a young person, by asking the Youth Offending Team; or if it is someone with a criminal record, by asking the police. **The ethnicity might be self-defined, but the information is not depersonalised and anonymous, since a particular agency is able to provide the ethnicity of a given individual.**

housing action trusts and the Housing Corporation) also have a positive duty when carrying out their functions to have due regard to the need to eliminate unlawful discrimination, to promote equality of opportunity, and to promote good relations between people of different racial groups. This includes not just their enforcement functions but any action they might take in relation to seeking and serving ASBOs. To comply with this statutory duty, these bodies are expected to put mechanisms in place to be able to demonstrate that they do not discriminate against people from black and minority ethnic communities. In the present case, in order to satisfy themselves and the public that they are not in breach of the duty, they would need to monitor their use of ASBOs.

When asked in the survey and interviews to explain why they do not record the ethnicity of recipients, respondents frequently stated their belief that it was not considered to be a statutory requirement and consequently ethnic monitoring was not carried out. This highlights an alarming lack of awareness by the anti-social behaviour units within local authorities and other agencies, including the police, of their statutory duties in relation to race equality – a lack that needs to be addressed with urgency both by the executive teams of local authorities and the Home Office.

## How should the monitoring be done?

Although the majority of Anti-Social Behaviour Units surveyed stated that they do record the ethnicity of ASBO recipients, practice varies greatly across the country, and is incomplete and inadequate (see the information box opposite). Follow-up phone calls to the practitioners we surveyed suggested that they might be trying to conduct monitoring without the necessary knowledge of how it should be done. As a result the ethnicity is often assigned rather than self-defined, and this will have been done on the basis of ambiguous criteria and the perception of the caseworker. Follow-up calls made to local practitioners indicate that, in some cases, they do not feel comfortable about asking the ethnicity of a defendant. They claim they have little contact with the defendant and, when they do, it is generally in a hostile situation. This reflects a lack of knowledge about how to deal with what is considered by them to be a really sensitive issue. Rather than this being a case of refusing to ask the question on grounds that it is not necessary, they face technical challenges as to how the monitoring could be done. In addition, during our interviews with them, the vast majority of local authority practitioners stressed that they are keen to undertake such monitoring and are aware of the necessity to do so, but are asking for guidance on how to carry it out.

### (i) Challenge 1 for practitioners: Asking the question.

The first challenge practitioners mention is how and when, in a conflict situation, to ask the person for his/her ethnicity. A number of practitioners also anticipated the reluctance of the alleged perpetrator to answer such a question. There is now considerable experience within the police service of asking people about their ethnicity, and officials from local authorities and RSLs can draw on this for guidance.

It is perhaps useful to look at other examples of guidance and training for asking a person about his/her ethnicity in a law enforcement situation, how this is being dealt with by frontline officers and the guidance provided by the agencies in charge. In stop & search cases officers are asked to use their ‘day-to-day communication skills’ to ask the ethnicity question. The Commission for Racial Equality suggests the formulation: ‘*How would you describe your ethnic background?*’

The stop & search manual produced by the Association of Chief Police Officers explains that:

Where concerns are raised, [officers should explain to members of the public] that this information is required to obtain a true picture

of stop & search activity and to help improve ethnic monitoring, tackle discriminatory practice, and promote effective use of the powers. If the person gives what appears to the officer to be an ‘incorrect’ answer (e.g. a person who appears to be white states that they are black), the officer should record the response that has been given. Officers should also record their own perception of the ethnic background of every person stopped and this must be done by using the PNC/Phoenix classification system. If the ‘Not stated’ category is used the reason for this must be recorded on the form.<sup>56</sup>

The manual mentions research on stop & search, which suggested that black and minority ethnic respondents did not mind the police asking them to define their ethnicity. There are clearly issues about training that need to be addressed; asking the ethnicity of someone in a hostile environment without confidence and the right training is less likely to yield a relevant answer. Practitioners advise that the earlier in the process the question can be asked, the better.

Waiting until the person is being informed that they will

56 ACPO et al. (2005:73)

be served an ASBO, and that legal action is under way, before asking the ethnicity question would have safety implications for the officers, we were told – though there is insufficient empirical evidence to verify such a claim at this time.

*(ii) Challenge 2 for practitioners: Access to the perpetrator.* The second practical difficulty highlighted by practitioners regarding the recording of information about ASBO recipients is that in some cases the local authority officer applying for the ASBO will not have met the perpetrator beforehand. For instance, in cases of an Interim ASBO being served, the agency will have taken legal action without ever seeing the perpetrator – hence the suggestion by most anti-social behaviour case workers and practitioners interviewed that the ethnicity question be asked at the early stages of the process (when an officer or case worker meets the defendant or the person subject to an anti-social behaviour complaint). However, this involves more individuals, as the alleged perpetrator can be in contact with a

variety of agencies at an early stage (i.e. Youth Offending Teams, Police, RSLs etc.) and

### Difficulties of collecting data on ASBO recipients

Even a task as basic as trying to get hold of the total numbers of ASBOs served proved to be a challenge. The numbers published by the Home Office did not match total numbers provided by those who sent in their survey responses, for a number of reasons:

- Local areas collect data on ASBOs differently. In some areas an Interim ASBO and a Final ASBO served on the same individual will count as two ASBOs, in other areas they will count as one.
- As mentioned, many agencies have the powers to apply for an ASBO, and while in some areas there is a certain level of information-sharing, in others there will be agencies who are unaware of the ASBO already applied for by organisations in the same locality.\*

It would make good sense to have a particular point of contact (within the local anti-social behaviour unit for instance) in each area where all ASBOs served would be recorded, regardless of the agency applying for it, whether the serving of the ASBO came from the Police, a Housing Association or the Local Authority. However, this would require proper protocols to be put in place across the country whereby all local authorities would apply the same practices. Currently, even in a single criminal justice area there are variations, and although most local authority areas have an anti-social behaviour unit, it is sometimes located within the local authority, sometimes with the police.

There is a sense amongst anti-social behaviour coordinators themselves – in relation to anti-social behaviour legislation – that the whole idea of how ASBOs should be dealt with and used was rolled out with only minimal guidance to the police and the local authorities, who were left to devise their own procedures as they went along. Although the base legislation was there, by the time the template protocols had been produced by central government, most agencies had devised their own. It is not possible, therefore, to comprehensively compare the implementation practices of one local authority with another on the subject of their ASBO policy because one would not be comparing ‘like with like’, at least not at this point in time.

Another source of frustration for local agencies is that there is no specific guidance about provision of statistics on ASBOs to the Home Office. At present the Home Office requires only total numbers, and it is now collecting these from the Courts in a bid for more accuracy. In the view of many practitioners working to reduce anti-social behaviour locally, this is unhelpful and reductive as they feel that data collection on ASBOs should also take into account other instruments available within the anti-social behaviour legislation (i.e. injunctions, ABCs, etc.) to provide a better picture of dealing with the issue locally. This would also shed light on the country-wide disparity in practices surrounding ASBOs.

\* For more data on this see Appendix 3 where a table contrasts the numbers provided by the Survey with those available from the Home Office for the same areas.

### Challenges for ethnic monitoring

Another issue that anti-social behaviour agencies have to grapple with, and in which they are not alone, is the issue of collecting data on ethnicity more generally. While ethnic monitoring is clearly indispensable in order to demonstrate that a local authority is meeting its legal duty to eliminate unlawful racial discrimination, to promote equal opportunities and to promote good race relations, the question raised by practitioners is how they might undertake the monitoring in a way that is depersonalised and anonymous. Most guidance published on ethnic data collection relates to employment practices. For example, the CRE guidance on ethnic monitoring states:

‘You must choose reliable staff and draw up security procedures that restrict access to the data to authorised staff. Wherever possible, you should also use IT systems that are designed to protect the privacy of data subjects. For example, a system that lets you use anonymous data to analyse recruitment and progression of staff according to ethnic origin will be better than one which always displays the names of staff linked to ethnic origin. In other words, wherever possible, you should hide the links between individuals and their ethnic background. Of course, if you can carry out an analysis using permanently anonymous or combined data, then you should. For example, you can make data on ethnic origin on unsuccessful applicants anonymous – by removing the link to named individuals – after a set period of time.’<sup>57</sup>

Monitoring data on anti-social behaviour policy raises issues and challenges that are different from those that affect employment. This emerged during our interviews with anti-social behaviour practitioners, who face a practical problem requiring guidance from central government to ensure consistency and to prevent any abuse of practice in relation to ethnic monitoring. There is a clear demand from practitioners for guidance on such an issue which, as highlighted in the interviews, they are keen to address.

results in more hurdles for achieving consistent practice.

Indeed the variety of actors involved in the process poses a challenge: since a number of agencies have the power to apply for ASBOs, there is generally no single contact person in a particular area who meets all of those against whom an ASBO is being applied. Given the variety of agencies dealing with anti-social behaviour complaints, there is no **specific protocol** in relation to recording ethnicity.

Variety and inconsistency in the process leading to an ASBO application, combined with a lack of detailed guidance when ASBOs were first introduced, has also resulted in a lack of **standard procedures** for recording the ethnicity of the recipient. Although consultation amongst agencies who can apply for an ASBO in a particular local authority area is a statutory duty, this takes different forms depending on the area. In some, each prospective ASBO application will be discussed in a consultation meeting between different agencies, which would allow for the ethnicity information to be gathered, since at least one person in that meeting will have met the perpetrator at some stage. In other areas, however, the consultation consists of a brief phone call, advising the various agencies that a particular agency is planning to apply for an ASBO against a particular individual. This makes the monitoring a challenge and reflects the problems linked to the inconsistent process of protocols around ASBOs generally.

### 3. How ASBOs could affect black and minority ethnic people disproportionately

Given the lack of reliable ethnic monitoring data, there is not enough information from which to assess whether ASBOs are imposed disproportionately on members of black and minority ethnic communities. A number of findings have nonetheless emerged from the questionnaires and interviews we conducted with practitioners. All these need to be investigated further and should be revisited when the data are available.

*ASBOs on conviction* are increasingly sought by some local authorities instead of stand-alone ASBOs because they are, as emphasised by one interviewee, ‘cheaper and quicker to obtain’. Since these are additional to an existing criminal conviction, and since available data suggests that black and minority ethnic communities are disproportionately convicted, it might be the case that ASBOs are added by the court following certain types of offences which may, or may not, be offences more frequently committed by black and minority ethnic defendants. Again, however, there is no way of knowing whether this results in any disproportionality based on ethnicity as CPS do not monitor the ethnicity of recipients of ASBOs served on conviction.

When asked during our interviews whether they thought that ASBOs affected black and minority ethnic people differently, practitioners would often respond that it is their

57 Commission for Racial Equality (2002: 70)

perception that ASBOs are used mainly to deal with stereotypical ‘white, working-class, yob behaviour’. If true, this would suggest a disproportionate use of ASBOs towards white people. This also raises an issue of stereotyping a type of behaviour along ethnic lines. If white working-class people are allegedly seen as the main perpetrators of anti-social behaviour, what kind of behaviour are black and minority ethnic people seen to perpetrate?

These questions need further investigation. They go beyond the debate on anti-social behaviour but are nevertheless relevant. Even if there is no way to confirm differential treatment at this stage, these findings do point to a racialised discourse by the practitioners in charge of using ASBOs, once more making the case for monitoring to be carried out.

Another question is that of differential treatment for similar behaviour. How can we assess whether black and minority ethnic people are treated the same way as white people when it comes to anti-social behaviour? Because of the broad definition of anti-social behaviour, reactions to it differ substantially from one area to another. In some, ASBOs might be predominantly used to deal with drug-taking or drug-dealing, in other areas the ASBO is advocated mainly to tackle alcohol-related anti-social behaviour or environmental nuisance. Similarly, in some instances the ASBO will be promoted as a useful tool for reducing criminal behaviour, while in others it will be thought particularly useful for dealing with non-criminal behaviour deemed to be causing a nuisance within the community. There is no centrally collected or analysed information on the types of anti-social behaviour for which ASBOs are served in different areas. The information we obtained is therefore based on what practitioners said in the various local areas we researched. One might hypothesise as a result that such a loose definition of anti-social behaviour, combined with the lack of any review of the way ASBOs are used, creates the kind of circumstances in which people would be able to treat perpetrators of similar anti-social behaviours differently depending on ethnic origin.

#### 4. The need for a complete review of ASBO policy

The last review of ASBOs undertaken by the Home Office goes back to 2002 (looking at ASBO figures from 2001). A fresh review is therefore long overdue. This is all the more important given the change in both the scope and numbers of ASBOs as well as the policy on the use of ASBOs and other anti-social behaviour instruments made available between 2002 and today. Since the last review, numbers of ASBOs have risen exponentially: from 323 ASBOs issued in 2001, to 2523 ASBOs issued between January and September 2005.<sup>58</sup>

The number of ASBOs served is not the only reason why the need for a thorough review is indicated: since 2001, a series of legislative Acts have provided more powers to agencies already able to apply for ASBOs. They allow a wider range of organisations to apply for ASBOs and have made provisions for the list of agencies entitled to apply for ASBOs to be expanded in future.

These changes, added to the introduction of new ‘varieties’ of ASBO (interim ASBOs and ASBOs on conviction), means that although the purpose and definition of the ASBO remain the same, its usage may now be very different from what it was at the time of the last review. The new provisions and legislative changes have led to a variety of creative ways for the police and other agencies to use the ASBO compared to its initial use in the early years of anti-social behaviour legislation.

Since there have been reports of the abuse of ASBOs (see the Research Context section, pp. 8–10), a review is absolutely necessary to assess the extent of these instances of inappropriate use of all types of ASBO, including interim ASBOs and ASBOs on conviction.

While a recent shift in the political discourse, through the Respect agenda, has placed a stronger focus on support measures to accompany enforcement mechanisms such as ASBOs (i.e. Individual Support Orders for young people),<sup>59</sup> without appropriate monitoring of the impact of ASBOs, it is not clear how effective support

measures to tackle anti-social behaviour can be developed. The latest Respect Report highlights that only 23 ISOs were issued between May 2004 and June 2005,<sup>60</sup> whereas 1632 ASBOs were reported to have been served on young people in the same

58 Found on [www.crimereduction.gov.uk](http://www.crimereduction.gov.uk) accessed on 25 May 2006

59 See Glossary

60 Home Office (March 2006: 4)

61 ASBOs served between April 2004 and June 2005 found on the Crime Reduction Website: <http://www.crimereduction.gov.uk/asbos2.htm> accessed 22 September 2006

period.<sup>61</sup> Similarly, other enforcement mechanisms provided by anti-social behaviour legislation, such as Anti-Social Behaviour Injunctions, are not monitored either, so there is no way to assess the effectiveness of one instrument over another, and what works for which behaviour. Finally, with no proper monitoring of breaches of ASBOs and their impact, there can be no real assessment of the success of using ASBOs for different behaviours.

The government has so far been vague when asked questions on the monitoring of ASBOs generally and the impact of ASBOs on black and minority ethnic communities in particular. A parliamentary question in the House of Lords in December 2005 asked '[h]ow many anti-social behaviour orders have been issued in the past year for which figures are available; and whether those figures are disaggregated on the basis of faith and ethnicity'. The Minister, Baroness Scotland, responded that '[w]ithin England and Wales and Scotland, information is not collected centrally on the religious beliefs or ethnicity of ASBO recipients'.<sup>62</sup> There has been no specific response as to how the government intends to fill this gap, contributing to this general perception that the monitoring of ASBOs, and ascertaining whether they really do work, is not yet a priority for government.

62 <http://www.publications.parliament.uk/pa/ld199697/ldhansrd/pdvn/lds05/text/51207w01.htm> accessed 22 September 2006

# IV. Recommendations

Through the medium of our thirteen main recommendations, listed below, we urge policymakers to take note of the problems reported by those tasked with implementing anti-social behaviour policy, and to take up our recommendations in anticipation that the improvements they represent are likely to contribute significantly to an inclusive and non-discriminatory agenda for social change in this sensitive sector.

## **A thorough, general review of ASBOs**

1. A thorough review of ASBOs, including Interim ASBOs and ASBOs on Conviction, is needed to increase our knowledge of the ways in which they are used, in particular to improve our understanding of the types of behaviour they are intended to curtail and whether or not they are successful.
2. Such a review should also examine breaches of ASBOs.
3. In addition, the review should assess (a) what type of support mechanisms and measures other than ASBOs are used, (b) at what stages they are used, and (c) how effectively their outcomes compare to those of using ASBOs.
4. An extensive review of other anti-social behaviour measures provided in the legislation, such as Anti-Social Behaviour Injunctions, would provide the information needed to assess how these measures complement each other.
5. A review as recommended above should include an assessment of the effectiveness or otherwise of ASBOs in combating racial harassment.
6. Information systems that can convey, on demand, the number of ASBOs that are served for which behaviour, both locally and nationally, are essential in order to assess the effectiveness of ASBOs in dealing with anti-social behaviour.

## **Improved data collection to determine the ethnicity of ASBO recipients**

7. As part of their duty under the Race Relations Amendment Act, local authorities and the police should ensure that they monitor the impact of their anti-social behaviour policy on the promotion of race equality. For this purpose, it is essential to monitor the ethnicity of defendants and victims.
8. The Home Office should place a strong emphasis on the requirement by local authorities and other agencies to undertake ethnic monitoring in order to demonstrate that they are fulfilling their legal requirements.
9. A consistent method for recording ASBOs is needed, with direction and guidance coming from the Home Office, on setting up and maintaining thorough data collection procedures for ASBOs at local level. Such recording, when undertaken by each local authority, police force, Housing Action Trust or RSL, should include the ethnicity of the ASBO recipient.
10. A unique point of contact (within the local anti-social behaviour unit for instance) should be set up in each area so that all ASBOs served would be recorded there, regardless of the agency applying, or whether the ASBO originated with the Police, a Housing Association or the Local Authority.
11. Building on positive examples, where the recording of ethnicity is successfully carried out by the police and other agencies in civil or criminal proceedings, the Home Office should develop and support training and guidance in monitoring the ethnicity of ASBO recipients so that it can be carried out consistently and effectively by practitioners who work on anti-social behaviour problems.
12. Ethnic monitoring statistics should not only be compiled but published, in line with the specific duties contained in the Race Relations Act 1976 (Statutory Duties) Order 2001.
13. Data on the number of ASBOs served, broken down by ethnicity, should be included as information in the Section 95 Statistics on Race and Criminal Justice.

## Closing observations

The government continues to promote the use of ASBOs as an effective tool to tackle anti-social behaviour. While the overall numbers of ASBOs served are constantly on the increase, it can be seen from this report that little is known about the impact of ASBOs on certain communities, in particular black and minority ethnic communities, and on whether ASBOs impact differently depending on the community one comes from.

The extent to which ASBOs are or could be used to tackle racial harassment is not well documented. The last comprehensive review of ASBOs, conducted by the Home Office in 2002,<sup>63</sup> refers to racial harassment as one component of anti-social behaviour and as being a factor in the serving of a number of the ASBOs reviewed. However, there is no detailed, consistent or comparable analysis of how they have been used for such behaviour – in particular, whether racism constituted the primary anti-social behaviour by the perpetrator or was only a part of it. Nor has there been any investigation of what practitioners working to reduce racial harassment think about using ASBOs in their work.

The Anti-Social Behaviour Unit at the Home Office still does not record the serving of ASBOs by the behaviour of the offender or the type of offence. Consequently, there is no knowledge of how frequently ASBOs are used to tackle racial harassment, whether such use is an effective or useful mechanism in countering racist behaviour, and whether its use should be encouraged or extended across police forces and local authority areas in cases of racial harassment. As we continue to see such behaviour taking place on our streets and in our neighbourhoods, new tools for intervention need to be found, and the usefulness of ASBOs must be explored in this context.

Our research shows a similar lack of information in relation to the impact of ASBOs on black and minority ethnic recipients and their communities. We had hoped that the survey data would provide us with the first set of evidence available on this matter, from which an impact baseline could be established. The data has been disappointing as regards our objective of assessing the impact of ASBOs on black and minority ethnic communities, but has raised other important issues on the subject of ethnic monitoring and ASBOs, namely that all local authorities investigated are failing in their duty to demonstrate that they do not discriminate in carrying out their anti-social behaviour policy. All the anti-social behaviour practitioners interviewed indicated that they are willing to monitor ASBO recipients, but are in dire need of guidance from central government to undertake such monitoring. Government has a responsibility to ensure that these practitioners are provided with adequate support and the protocols that will make it possible to assess if black and minority ethnic communities are adversely affected by anti-social behaviour policy. This would be one more step along the way to demonstrating that respect is truly given to all the communities that make up British society today.

63 Campbell (2002b:13)

# Bibliography

**ACPO et al. (2005)** *Stop and Search Manual*. London: CJS. Available at: [www.police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/stopandsearch-intermanual1.pdf](http://www.police.homeoffice.gov.uk/news-and-publications/publication/operational-policing/stopandsearch-intermanual1.pdf)

**Audit Commission (May 2006)** *Neighbourhood, Crime and Anti-Social Behaviour: Making places safer through improved local working*. Wetherby: Audit Commission Publications.

**British Institute for Brain Injured Children (November 2005)** *Ain't Misbehavin: Young people with learning and communication difficulties and anti-social behaviour*. London: BIBIC.

**Burney, E. and Rose, G. (2002)** *Racist Offences – How is the Law Working? The implementation of the legislation on racially aggravated offences in the Crime and Disorder Act 1998*. Research Study no. 244. London: Home Office.

**Burnley Action Partnership (2006)** *Burnley 2006: The Real Story*. Burnley: Burnley Action Partnership.

**Campbell, S. (2002a)** *Implementing Anti-social Behaviour Orders: Messages for Practitioners*. Research Study no. 160. London: Home Office.

**Campbell, S. (2002b)** *A Review of Anti-social Behaviour Orders*. Research Study no. 236. London: Home Office.

**Chakrabarti S. (2006a)** *“Asbomania” – From social and natural justice to mob rule?*, BIHR Lecture 10.01.06, London.

**Chakrabarti S. (2006b)** *‘Blurring the lines between civil and criminal law’*, in *Social Justice: Criminal Justice*, pp. 16–26. London: Smith Institute.

**Commission for Racial Equality (2002)** *Ethnic Monitoring: A Guide for Public Authorities (Non-Statutory)*. London: CRE

**Crown Prosecution Service (2005)** *Bringing Back Quality of Life to Our Communities: A review of the performance of the Crown Prosecution Service in relation to dealing with social impact crime and anti-social behaviour*. London: CPS.

**Department for Communities and Local Government (July 2006)** *Improving Opportunity, Strengthening Society – One Year On: A progress report on the Government's strategy for race equality and community cohesion*. London: DCLG.

**Dowty, T. (2003)** *‘The antisocial behaviour bill – a case of ministers behaving badly’*, *Black to Black* (winter): 17.

**Esmée Fairbairn Foundation (2004)** *‘What do the public really think about non-custodial sentences?’*, in *Rethinking Crime and Punishment*. London: Esmée Fairbairn Foundation.

**Fletcher, H. (2005)** *Anti Social Behaviour Orders: Analysis of the first six years*. London: NAPO.

**Hayward, R. and Sharp, C. (2005)** *Young People, Crime and Antisocial Behaviour: Findings from the 2003 Crime and Justice Survey*. Findings 245. London: Home Office.

**Home Office (2002)** *A Guide to Anti-social Behaviour Orders and Acceptable Behaviour Contracts*. London: Home Office (November).

**Home Office (2003a)** *Together: Tackling anti-social behaviour*. Action plan. London: Home Office.

**Home Office (2003b)** *Respect and Responsibility – taking a stand against anti-social behaviour*. Norwich: Home Office.

**Home Office (2004a)** *Defining and Measuring Anti-social Behaviour*. London: Home Office.

**Home Office (2004b)** *Working Together: Tackling, not tolerating anti-social behaviour*. London: Home Office, available at: [www.together.gov.uk/cagetfile.asp?rid=732](http://www.together.gov.uk/cagetfile.asp?rid=732)

**Home Office (2005a)** *The Core (non-IND) Home Office Associate Race Equality Scheme*. London: Home Office.

**Home Office (2005b)** *Root and Branch Review of Race and the CJS Statistics: Final Report*. London: Home Office

**Home Office (2006a)** *Respect Action Plan*. London: Home Office (January).

**Home Office (2006b)** *Tackling Anti-Social Behaviour: The Story so Far and the Move to Respect*. London: Home Office (March).

**Home Office (2006c)** *A Guide to Anti Social Behaviour Orders*. London: Home Office (August).

**Hunter, C., et al. (2004)** *What Works for Victims and Witnesses of Anti-Social Behaviour*. Sheffield Hallam University Research Report. London: Home Office.

**The Institute of Community Cohesion (2006)** *Review of Community Cohesion in Oldham: Challenging Local Communities to Change Oldham*. Coventry: Oldham MBC.

**Isal, S. (2005)** *Preventing Racist Violence: Work with actual and potential perpetrators. Learning from practice to policy change.* London: Runnymede.

**John G. (2003)** 'Executive Summary, *Race for Justice: A review of CPS decision making for possible racial bias at each stage of the prosecution process.* Worthing: The Gus John Partnership Limited.

**Local Government Association (2004a)** *Guidance for Councillors on Tackling Anti-social Behaviour Locally.* London: LGA.

**Local Government Association (2004b)** *Sustainable Solutions to Anti-social Behaviour: Local government's joined-up approaches to tackling anti-social behaviour.* London: LGA.

**Lucas, R. (2002)** *Tackling Anti-social Behaviour: Information and case studies about local authority work.* London: LGA.

**Millie, A., et al. (2005)** *Anti-social Behaviour Strategies: Finding a balance.* York: Joseph Rowntree Foundation.

**National Community Safety Network (2005)** *Anti-social Behaviour: Key Issues and Recommendations. A practitioner's perspective.* Chester: NCSN.

**National Children's Home (2005)** *Tackling Anti-social Behaviour: Have we got it right?* London: NCH. Available under: [www.nch.org.uk/uploads/documents/Tackling\\_anti\\_social\\_behaviour.pdf](http://www.nch.org.uk/uploads/documents/Tackling_anti_social_behaviour.pdf).

**Nicholas, S., et al. (2005)** 'Crime in England and Wales 2004/2005', *Home Office Statistical Bulletin*, no. 11/05. London: Home Office.

**Office of the Commissioner for Human Rights: CommDH (2005)** Report by Mr Alvaro Gil- Robles on his visit to the United Kingdom, 4–12/11/2004 (8 June). Available under: [www.coe.int/T/E/Commissioner\\_H.R/Communication\\_Unit/Documents/By\\_country/United\\_Kingdom/index.asp#TopOfPage](http://www.coe.int/T/E/Commissioner_H.R/Communication_Unit/Documents/By_country/United_Kingdom/index.asp#TopOfPage)

**Office of the Deputy Prime Minister (2004)** *Anti Social Behaviour: Policy and Procedure – Code of Guidance for local housing authorities and housing action trusts.* London: ODPM.

**Phillips, C. and Bowling, B. (2002)** 'Racism, Crime and Criminal Justice', in M. Maguire et al. (eds), *The Oxford Handbook of Criminology.* Oxford: Oxford University Press.

**Positive Approaches (2006)** *Positive Approaches to Anti-Social Behaviour: A 10-point plan for change.* Parliamentary Briefing Paper. Chilton: The Thames Valley Partnership

**Rolands, M. (2005)** 'The State of ASBO Britain – The Rise of Intolerance', *Essays for Civil Liberties and Democracy in Europe*, ECNL Essays no 9. London: ECLN.

**Sadler, J. E. (2004)** *Implementing the youth anti-social behaviour agenda: policing the Ashton estate.* Thesis (PhD) at University of London.

**Scottish Executive (2003)** *Putting Our Communities First: A strategy for tackling anti-social behaviour.* Edinburgh: Scottish Executive.

**Scottish Executive (2003)** *Tackling Anti-social Behaviour: An audit of Scottish Local Authorities practice 2001–2002.* Edinburgh: Scottish Executive.

**Sharp, C. and Bud, T. (2005)** *Minority Ethnic Groups and Crime: Findings from the Offending, Crime and Justice Survey, 2<sup>nd</sup> edn.* Home Office Online Report 33/05. London: Home Office.

**Sikand, M. (2006)** *ASBOs: A Practitioner's Guide to Defending Anti-social Behaviour Orders.* London: LAG.

**Thames Valley Partnership (2005)** *Mending Fences: The development of a problem solving and community oriented approach to anti-social behaviour: project work book.* Chilton: The Thames Valley Partnership.

**Thorp, A., et al. (1998)** *The Crime and Disorder Bill [HL], Bill 167 of 1997–98: Anti-social neighbours, sex offenders, racially motivated offences and sentencing drug-dependent offenders.* Research Paper 98/44. London: House of Commons Library. Available under: [www.parliament.uk/commons/lib/research/rp98/rp98-044.pdf](http://www.parliament.uk/commons/lib/research/rp98/rp98-044.pdf)

**Wainwright, M. (2005)** 'Gypsies plan court fight to beat Asbos', *The Guardian*, 2 June.

**Wedlock, E. (2006)** *Crime and Cohesive Communities.* London: Home Office.

**Wood, M. (2004)** *Perceptions and Experiences of Antisocial Behaviour.* Home Office online Report 49/04. London: Home Office

**Youth Justice Board (2005)** *Anti-Social Behaviour – A guide to the role of Youth Offending Teams in dealing with anti-social behaviour.* London: YJB

# Appendices

## Appendix 1 Glossary of terms

**Acceptable Behaviour Contract:** A written, voluntary agreement between a person engaging in anti-social behaviour and his/her local authority, Youth Inclusion Support Panel (YISP), landlord or the police. ABCs are often called Agreements, as they are not set out in law.

**Anti-Social Behaviour:** Defined in section 1(1) of the Crime and Disorder Act as acting 'in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household' as the perpetrator.

**Anti-Social Behaviour Order (ASBO):** A civil order granted in a civil court, made against a person engaged in anti-social behaviour. Its purpose is to protect those whose lives are disrupted by persistent anti-social behaviour by placing restrictions on the perpetrators. Although a civil order, breach of an ASBO is a criminal offence.

**Anti-Social Behaviour Injunction (ASBI):** Under section 153A of the Housing Act 1996, social landlords (local housing authorities, Housing Action Trusts and registered social landlords) can apply for an ASBI to prevent conduct which is 'capable of causing nuisance or annoyance to any person, and which directly or indirectly relates to or affects the housing management functions of a relevant landlord'.

**Anti-Social Behaviour Unit:** A unit under the Home Secretary, established by the government in 2003, ASBU works with other government departments, local authorities, businesses, tenants, residents and the public to tackle anti-social behaviour.

**ASBO on conviction:** An ASBO working in tandem with a conviction for a criminal offence. It is separate from the sentence received by an offender, but may attach additional prohibitions, such as barring a shoplifter from entering certain shops.

**Breach of ASBO:** Should a perpetrator breach the conditions of his/her ASBO, he/she is effectively committing a criminal offence, and criminal penalties apply. The maximum penalty for a summary conviction is six months imprisonment and/or a fine of £5000; for a conviction on indictment it is five years imprisonment and/or a fine.

**Individual Support Order:** Civil orders which impose additional, positive conditions to ASBOs served on young people aged 10–17. Designed to address the behaviour that led to an ASBO being granted, such as counselling on drug misuse issues, they are supervised by Youth Offending Teams.

**Interim ASBO:** An interim order which is made at the initial court hearing on the application for an ASBO in order to provide immediate protection for the community until the full hearing is held. This temporary order carries the same weight as a full order, and can be made without prior notice to the perpetrator.

**Police National Computer:** A national information system holding comprehensive details of people, vehicles, crimes and property. It is available to the police, criminal justice agencies and a variety of other non-policing organisations.

**Respect:** A government initiative aimed at tackling anti-social behaviour and encouraging respect in communities. Its agenda is set out in the Respect Action Plan (<http://www.homeoffice.gov.uk/documents/respect-action-plan?view=Binary>).

**Stand-alone ASBO:** An ASBO which is not linked to any other legal action, but is applied for on its own.

## Appendix 2 ASBO process

The following describes the step-by-step process for anti-social behaviour orders and orders on conviction, as outlined in the Home Office's 'Guide to Anti-Social Behaviour Orders' (Home Office, August 2006: 65–7).

### *Process for Anti-social Behaviour Orders*

#### **Collect evidence**

Agencies applying for orders should strike a balance and focus on what is most relevant and necessary to provide sufficient evidence for the court to arrive at a clear understanding of the matter.

#### **Undertaking statutory consultation**

Documentary evidence of consultation, not agreement, is required although it is not a statutory requirement for orders on conviction.

#### **Partnership Working**

Lead agencies should liaise with other agencies which can add value to the application. Involve the youth offending team and social services at the start of the process if the subject of the application is a child or young person, in order to ensure that any assessment required is carried out in parallel with the application process. If the perpetrator is aged between 10 and 17, the court is obliged to consider making an individual support order (ISO). Consideration needs to be given at an early stage to the positive interventions which could be included in such an order to address the individual's anti-social behaviour.

#### **Identification of the need to protect the community**

An order is necessary to protect person(s) from further anti-social acts by the perpetrator.

#### **Identification of anti-social behaviour**

Behaviour that is causing, or likely to cause, harassment, alarm or distress to one or more person(s) not of the same household as the perpetrator.

**The hearing**

The lead officer in charge of the case should ensure that all the evidence and witnesses are available at the hearing, including any evidence in support of the need for the court to make an immediate order. The defendant(s) should attend but an order can be made in their absence.

**Applying for an interim order**

Where there is an urgent need to protect the community, an application for an interim order may be made with the application for the main order. An application for an order without notice to the defendant may be made subject to agreement of the justices' clerk or other court clerk with delegated authority. The clerk shall grant leave for an application for an interim order to be made where they are satisfied that it is necessary.

The hearing for a without-notice interim order will take place without the presence of the defendant. Where the hearing is made on notice, the defendant should be summoned to attend the hearing.

If an interim order is granted, the application for the main order (together with a summons giving a date for the defendant to attend court) should be served on the defendant in person as soon as practicable after the making of the interim order. The interim order will not take effect until it has been served on the defendant. If the interim order is not served on the defendant within seven days of being made, then it shall be set aside. The interim order shall cease to have effect if the application for an anti-social behaviour order is withdrawn or refused.

**Making an application to the magistrates' court**

Application for an ASBO is to be made by complaint to the magistrates' court. The complaint must be made within six months from the time when the matter of the complaint (the behaviour) arose. A complaint may be made on the basis of one incident if sufficiently serious. Earlier incidents may be used as background information to support the case and show a pattern of behaviour. The application may be made to any magistrates' court.

A summons together with the application, as set out in the Rules, should either be given to the defendant in person or sent by post to the last known address.

**Draw up prohibitions**

The order should be drafted in full, including its duration, and a court file prepared.

**Process for an Order Made on Conviction****Verdict**

If found guilty of breaching the order, the offender is convicted or given a conditional discharge.

**Criminal hearing**

This is to establish guilt of the criminal charge only.

**Signal intention to seek an order**

Prior to, or at the start of, the criminal stage or hearing, the police, Crown Prosecution Service or local authority involved in the case may advise the subject and court that an order will be sought on conviction. This is not a requirement; the issue can be raised for the first time post-conviction.

**Draw up prohibitions**

The police or other agency involved in the case may draw up the prohibitions necessary to protect the community from the subject's anti-social behaviour for consideration by the court post-conviction. This is not a requirement.

**Collect evidence**

Evidence may be collected for presentation to the court post-conviction. This is not a requirement as the court may make an order on conviction on its own initiative.

**Other matters**

Application for variation or discharge by either the applicant or the defendant is to the same magistrates' court that made the order. Appeal is to the Crown Court. Breach of the order will go to the magistrates' court, which may refer it to the Crown Court in the more serious cases. Mode of trial decision determines whether any breach of an ASBO is dealt with in the magistrates' court or the Crown Court.

**Immediate post-order procedure**

Where an ASBO is granted, it is preferable for a copy of the order to be served on the defendant in person prior to their departure from court. If this is not possible, personal service should be arranged as soon as possible thereafter. In the case of a child or young person, the order should also be served on the parent, guardian or an appropriate adult. In all cases, service should be recorded.

The lead agency, if not the police, should ensure that a copy of the order is forwarded immediately to the police. Copies should also be given to the anti-social behaviour coordinator of the local crime and disorder reduction partnership, the other partner agencies, and to the main targets and witnesses of the anti-social behaviour.

An order comes into effect on the day it is made. But the two-year period during which no order shall be discharged starts from the date of service.

**Other matters**

Where the order is made on conviction in the magistrates' court, application for variation or discharge by either the applicant or the defendant may be made to any magistrates' court within the same local justice area as the court that made the order. Appeal is to the Crown Court. Breach of the order will go to the magistrates' court, which may refer it to the Crown Court in the more serious cases.

Where the order is made on conviction in the Crown Court, application for variation or discharge by either the applicant or the defendant is made to the same Crown Court which made the order. Appeal is to the Court of Appeal. Breach of the order will go to the magistrates' court, which may refer it to the Crown Court in the more serious cases.

**Immediate post-order procedure**

If the offender is given a custodial sentence, the court may make provision for the requirements of the order to come into effect when the offender is released from custody.

**Post verdict – hearing for order on conviction**

The hearing for the order post-conviction is civil.

The issue of an order may be raised by the magistrates or judge without any request from the prosecution or the police or local authority; the Crown Prosecution Service may make an application for an order on conviction. Additional evidence relating to the request for the order and the need for the prohibitions may be produced.

## Appendix 3

### Total figures publicly available on ASBOs

Figures provided by those responding to our Survey Questionnaires compared with figures provided by the Home Office

Questionnaires returned = 35 out of 82 (46.2% Returns)

	Public figures on ASBOs	Figures collected through questionnaires
Aylesbury Vale District Council	1	3
Barnet London Borough Council	5	7
Bexley London Borough Council	4	1
Birmingham City Council	48	42
Bolton Metropolitan Borough Council	22	32
Bracknell Forest Borough Council	not recorded	1
Bromley London Borough Council	2	10
Bury Metropolitan Borough Council	16	41
Camden London Borough Council	19	69
Charnwood Borough Council	16	21
Cherwell District Council	1	13
Chiltern District Council	2	3
City of Bradford Metropolitan District Council	16	36
Croydon London Borough Council	1	10
Ealing London Borough Council	2	14
Enfield London Borough Council	9	18
Greenwich London Borough Council	8	12
Hammersmith and Fulham	8	4
Harrow London Borough Council	1	4
Islington London Borough Council	4	11
Lambeth London Borough Council	9	18
Leeds City Council	35	79
Leicester City Council	13	5
Merton London Borough Council	4	3
Oxford City Council	9	13
Rochdale Metropolitan Borough Council	15	20
Royal Borough of Windsor and Maidenhead	1	2
Solihull Metropolitan Borough Council	11	3
South Bucks District Council	1	2
Vale of the White Horse District Council	1	2
West Berkshire District Council	not recorded	2
West Oxfordshire District Council	not recorded	3
Wigan Metropolitan Borough Council	8	16
Wokingham District Council	2	3
Wycombe District Council	1	3

# Appendix 4

## Survey Questionnaire sent out to Local Authorities and Anti-social Behaviour Units

Dear Colleague

### ASSESSING THE IMPACT OF ASBOS ON RACE EQUALITY

We are writing to ask you to participate in a new piece of research currently undertaken by the Runnymede Trust. Runnymede is a policy and research organisation focusing on race equality (more information can be found about our organisation on our website noted at the bottom of this page). This research aims to assess whether ASBOs affect black and minority ethnic communities disproportionately and how ASBOs are or might be used to tackle racial harassment.

We would be very grateful if you could take a few minutes to fill out this questionnaire. Although our initial contacts with practitioners indicates that the information on ASBOs and ethnicity is available locally, there is currently a lack of centrally collected data on this issue. We understand that this data might not be easily available but your involvement will help us greatly in our research of the impact of ASBOs on black and minority ethnic communities.

We are focusing our research on the following six areas: Greater Manchester, London, Leicestershire, Thames Valley, West Midlands and West Yorkshire. Although we will be mentioning the areas we are studying in our final report, all information provided in this survey will remain confidential. This first page will be stored separately from the rest of the survey and individuals, or individual agencies will not be named.

After consulting with the heads of a number of CDRPs in putting this questionnaire together, we anticipate that filling it out will take anywhere between 5 minutes and 20 minutes, depending on how your data is stored. Please return the completed questionnaire to the address or fax number shown at the bottom of this page. If you have any further questions or comments, please do not hesitate to contact me by phone or email (s.isal@runnymede-trust.org). We thank you in advance for taking the time to help us.

Yours sincerely

**Sarah Isal**  
Senior Research  
& Policy Analyst

**1 To help us follow-up on the data that we receive we would be grateful if you could provide us with your contact details.**

Name .....

Position .....

Email .....

Telephone .....

Address .....

.....

Post Code .....

Date: .....

Signed: .....

**2 Which local authority do you work in?**

.....

**3 What is the name of your agency or unit?**

.....

**4 How many ASBOs were served in your local authority area?**

Number of ASBOs served

1 Jan 04 –  
31 Dec 04

1 Jan 05 –  
31 Dec 05

**4.1 Please complete the total number of ASBOs served by the agency that has applied.**

Agency that applied  
for the ASBO

	Police	Local Authority	British Transport	Registered Social Landlords	TOTAL
--	--------	-----------------	-------------------	-----------------------------	-------

Years served	1 Jan 04 – 31 Dec 04	<input type="text"/>				
--------------	-------------------------	----------------------	----------------------	----------------------	----------------------	----------------------

	1 Jan 05 – 31 Dec 05	<input type="text"/>				
--	-------------------------	----------------------	----------------------	----------------------	----------------------	----------------------

**5 Do you monitor the ethnicity of the ASBO recipient?**  Yes  No *Please circle*

If YES go to question 5.1      If NO go to question 5.3

**5.1 How many ASBOs were served to the following groups?**  
Please fill in the *total number served* for each group.

	White	Mixed	Asian or Asian British	Black or Black British	Chinese or other ethnic group	Ethnicity not recorded
Number of ASBOs Served 1 Jan 04 – 31 Dec 04	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
1 Jan 05 – 31 Dec 05	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**5.2 Is the ethnicity of the recipient?**

Self-defined?  Yes  No *Please circle*

assigned?  Yes  No

Now go to question 6

**5.3 If you do not monitor the ethnicity of the ASBO recipient, could you briefly explain:**

**5.3.1 Why you do not collect this data.**

*Continue on separate sheet if necessary*

**5.3.2 What goals you have set for collecting data of this sort in the future.**

*Continue on separate sheet if necessary*

**6 Do you monitor the faith/religion of the ASBO recipient?**  Yes  No *Please circle*

If YES go to question 6.1      If NO go to question 6.3

**6.1 How many ASBOs were served to the following groups?**Please fill in the total *number served* for each group.

	Number of ASBOs served								
	Christian	Buddhist	Hindu	Jewish	Muslim	Sikh	Any other religion	No religion	Religion not recorded
1 Jan 04 – 31 Dec 04	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
1 Jan 05 – 31 Dec 05	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**6.2 Is the religion of the recipient?**

Self-defined?

*Please circle*

assigned?

Now go to question 7

**6.3 If you do not monitor the faith/religion of the ASBO recipient, could you briefly explain:****6.3.1 Why you do not collect this data.**


Continue on separate sheet if necessary

**6.3.2 What goals you have set for collecting data of this sort in the future.**


Continue on separate sheet if necessary

**7 Do you monitor whether the type of anti-social behaviour prohibited by the order included racial harassment/abuse?***Please circle*

If YES go to question 7.1

If NO go to question 8

**7.1 How many orders have been served where racial harassment/abuse was a factor?**Please fill in the *number served*.

Number of ASBOs served

1 Jan 04 – 31 Dec 04

1 Jan 05 – 31 Dec 05

**8 We are interested in learning how ASBOs are used in your Local Authority.**Please *attach a copy* of your anti-social behaviour strategy for intervention.**CHECKLIST** Please complete the following checklist before returning this form to ensure we have all the relevant information:

- ✓ I have named the local authority I work in
- ✓ I have named the agency or unit I work for
- ✓ I have attached my Strategy for Intervention to this document
- ✓ I have provided my contact details

**THANK YOU VERY MUCH FOR YOUR TIME**

# Appendix 5

## Topic Guide for Interviews

### Questionnaire – ASBO research

Name:

Title:

Organisation/Unit:

Local Authority Area:

#### Data Collection

1. How many ASBOs were served in your area in 2005?
2. Are the majority of them stand-alone ASBOs or ASBOs on conviction?
3. What would you say are the 2 main offending behaviours for which ASBOs are served in your area?
12. Do you have specific training needs?
13. From your experience, do you think that some stereotyping might lead to black and minority ethnic individuals being treated differently when being served ASBOs (refer to other parts of CJS with disproportionate impact – is that applicable to ASBOs?).

#### Ethnic Monitoring

4. Do you record the ethnicity of the individual being served an ASBO?
5. Is the recording assigned or self-defined?
6. How do you feel about recording the ethnicity of ASBO recipients?
7. If you are recording it, what prompted you to do it?
8. If not, why do you not feel the need to record it?
9. How do you record the ethnicity of the ASBO recipient?
10. Are you finding this difficult to do? Do you have problems with recording such information?
11. What kind of support would you need from central government to help you monitor ethnicity?

#### Racial Harassment and ASBOs

14. Do you know whether ASBOs are used in your area to tackle racial harassment?
15. If yes, are these ASBOs mainly stand-alone or on conviction?
16. If yes, what made you choose an ASBO as a way of tackling racial harassment, as opposed to seeking a criminal conviction?
17. Would you say that ASBOs are useful for tackling racial harassment?
18. Please talk me through the process of dealing with racial harassment if it is part of the ASB reported? Would you consider an ASBO the immediate appropriate measure? Do you try other intervention mechanisms before applying for an ASBO? If yes, what are they? (Mediation, ABCs etc...)
19. Do you work with other agencies, in particular black and minority ethnic community organisations, in your daily work?

# Appendix 6<sup>1</sup>

## ASBOs in legislation

### Crime and Disorder Act 1998

#### Crime and disorder: general

##### 1 Anti-social behaviour orders

(1) An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 10 or over, namely –

- (a) that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and
- (b) that such an order is necessary to protect relevant persons from further anti-social acts by him.

...

(1A) In this section and sections 1B, 1CA, 1E and 1F 'relevant authority' means –

- (a) the council for a local government area;
- (aa) in relation to England, a county council;
- (b) the chief officer of police of any police force maintained for a police area;
- (c) the chief constable of the British Transport Police Force;
- ...
- (d) any person registered under section 1 of the Housing Act 1996 as a social landlord who provides or manages any houses or hostel in a local government area; or
- (e) a housing action trust established by order in pursuance of section 62 of the Housing Act 1988

(1B) In this section 'relevant persons' means –

- (a) in relation to a relevant authority falling within paragraph (a) of subsection (1A), persons within the local government area of that council;
- (aa) in relation to a relevant authority falling within paragraph (aa) of subsection (1A), persons within the county of the county council;
- (b) in relation to a relevant authority falling within paragraph (b) of that subsection, persons within the police area;
- (c) in relation to a relevant authority falling within paragraph (c) of that subsection –
  - (i) persons who are within or likely to be within a place specified in section 31(1)(a) to (f) of the Railways and Transport Safety Act 2003 in a local government area; or
  - (ii) persons who are within or likely to be within such a place;
- (d) in relation to a relevant authority falling within paragraph (d) or (e) of that subsection –
  - (i) persons who are residing in or who are otherwise on or likely to be on premises provided or managed by that authority; or
  - (ii) persons who are in the vicinity of or likely to be in the vicinity of such premises.

(2) . . . .

(3) Such an application shall be made by complaint to a magistrates' court.

(4) If, on such an application, it is proved that the conditions mentioned in subsection (1) above are fulfilled, the magistrates' court may make an order under this section (an 'anti-social behaviour order') which prohibits the defendant from doing anything described in the order.

(5) For the purpose of determining whether the condition

mentioned in subsection (1)(a) above is fulfilled, the court shall disregard any act of the defendant which he shows was reasonable in the circumstances.

(6) The prohibitions that may be imposed by an anti-social behaviour order are those necessary for the purpose of protecting persons (whether relevant persons or persons elsewhere in England and Wales) from further anti-social acts by the defendant.

(7) An anti-social behaviour order shall have effect for a period (not less than two years) specified in the order or until further order.

(8) Subject to subsection (9) below, the applicant or the defendant may apply by complaint to the court which made an anti-social behaviour order for it to be varied or discharged by a further order.

(9) Except with the consent of both parties, no anti-social behaviour order shall be discharged before the end of the period of two years beginning with the date of service of the order.

(10) If without reasonable excuse a person does anything which he is prohibited from doing by an anti-social behaviour order, he is guilty of an offence and liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding the statutory maximum, or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding five years or to a fine, or to both.

(10A) The following may bring proceedings for an offence under subsection (10) –

- (a) a council which is a relevant authority;
- (b) the council for the local government area in which a person in respect of whom an anti-social behaviour order has been made resides or appears to reside.

(10B) If proceedings for an offence under subsection (10) are brought in a youth court section 47(2) of the Children and Young Persons Act 1933 has effect as if the persons entitled to be present at a sitting for the purposes of those proceedings include one person authorised to be present by a relevant authority.

(10C) In proceedings for an offence under subsection (10), a copy of the original anti-social behaviour order, certified as such by the proper officer of the court which made it, is admissible as evidence of its having been made and of its contents to the same extent that oral evidence of those things is admissible in those proceedings.

(10D) In relation to proceedings brought against a child or a young person for an offence under subsection (10) –

- (a) section 49 of the Children and Young Persons Act 1933 (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the child or young person against whom the proceedings are brought;
- (b) section 45 of the Youth Justice and Criminal Evidence Act 1999 (power to restrict reporting of criminal proceedings involving persons under 18) does so apply.

(10E) If, in relation to any such proceedings, the court does exercise its power to give a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999, it shall give its reasons for doing so.

(11) Where a person is convicted of an offence under subsection (10) above, it shall not be open to the court by or before which he is so convicted to make an order under subsection (1)(b) (conditional discharge) of section 12 of the Powers of Criminal Courts (Sentencing) Act 2000] in respect of the offence.

(12) In this section –

- 'British Transport Police Force' means the force of constables appointed under section 53 of the British Transport Commission Act 1949;
- 'child' and 'young person' shall have the same meaning as in the Children and Young Persons Act 1933;
- 'the commencement date' means the date of the commencement of this section;
- 'local government area' means –
  - (a) in relation to England, a district or London borough, the City of London, the Isle of Wight and the Isles of Scilly;
  - (b) in relation to Wales, a county or county borough.

...

**Power of Secretary of State to add to relevant authorities**

**1A** (1) The Secretary of State may by order provide that the chief officer of a body of constables maintained otherwise than by a police authority is, in such cases and circumstances as may be prescribed by the order, to be a relevant authority for the purposes of section 1 above.

- (2) The Secretary of State may by order –
- (a) provide that a person or body of any other description specified in the order is, in such cases and circumstances as may be prescribed by the order, to be a relevant authority for the purposes of such of sections 1 above and 1B, 1CA and 1E below as are specified in the order; and
  - (b) prescribe the description of persons who are to be 'relevant persons' in relation to that person or body.

**Individual support orders**

**1AA** (1) Where a court makes an anti-social behaviour order in respect of a defendant who is a child or young person when that order is made, it must consider whether the individual support conditions are fulfilled.

(2) If it is satisfied that those conditions are fulfilled, the court must make an order under this section ('an individual support order') which –

- (a) requires the defendant to comply, for a period not exceeding six months, with such requirements as are specified in the order; and
  - (b) requires the defendant to comply with any directions given by the responsible officer with a view to the implementation of the requirements under paragraph (a) above.
- (3) The individual support conditions are –
- (a) that an individual support order would be desirable in the interests of preventing any repetition of the kind of behaviour which led to the making of the anti-social behaviour order;
  - (b) that the defendant is not already subject to an individual support order; and
  - (c) that the court has been notified by the Secretary of State that arrangements for implementing individual support orders are available in the area in which it appears to it that the defendant resides or will reside and the notice has not been withdrawn.
- (4) If the court is not satisfied that the individual support conditions are fulfilled, it shall state in open court that it is not so satisfied and why it is not.
- (5) The requirements that may be specified under subsection (2)(a) above are those that the court considers desirable in the interests of preventing any repetition of the kind of behaviour which led to the making of the anti-social behaviour order.
- (6) Requirements included in an individual support order, or directions given under such an order by a responsible officer, may require the defendant to do all or any of the following things –
- (a) to participate in activities specified in the requirements or directions at a time or times so specified;
  - (b) to present himself to a person or persons so specified at a place or places and at a time or times so specified;
  - (c) to comply with any arrangements for his education so specified.
- (7) But requirements included in, or directions given under, such an order may not require the defendant to attend (whether at the same place or at different places) on more than two days in any week; and 'week' here means a period of seven days beginning with a Sunday.
- (8) Requirements included in, and directions given under, an individual support order shall, as far as practicable, be such as to avoid –
- (a) any conflict with the defendant's religious beliefs; and
  - (b) any interference with the times, if any, at which he normally works or attends school or any other educational establishment.
- (9) Before making an individual support order, the court shall obtain from a social worker of a local authority . . . or a member of a youth offending team any information which it considers necessary in order –
- (a) to determine whether the individual support conditions are fulfilled, or
  - (b) to determine what requirements should be imposed by an individual support order if made, and shall consider that information.

(10) In this section and section 1AB below 'responsible officer', in relation to an individual support order, means one of the following who is specified in the order, namely –

- (a) a social worker of a local authority . . . ;
- (b) a person nominated by a person appointed as chief education officer under section 532 of the Education Act 1996 (c 56);
- (c) a member of a youth offending team.

**Individual support orders: explanation, breach, amendment etc**

**1AB** (1) Before making an individual support order, the court shall explain to the defendant in ordinary language –

- (a) the effect of the order and of the requirements proposed to be included in it;
  - (b) the consequences which may follow (under subsection (3) below) if he fails to comply with any of those requirements; and
  - (c) that the court has power (under subsection (6) below) to review the order on the application either of the defendant or of the responsible officer.
- (2) The power of the Secretary of State under section 174(4) of the Criminal Justice Act 2003 includes power by order to –
- (a) prescribe cases in which subsection (1) above does not apply; and
  - (b) prescribe cases in which the explanation referred to in that subsection may be made in the absence of the defendant, or may be provided in written form.
- (3) If the person in respect of whom an individual support order is made fails without reasonable excuse to comply with any requirement included in the order, he is guilty of an offence and liable on summary conviction to a fine not exceeding –
- (a) if he is aged 14 or over at the date of his conviction, £ 1,000;
  - (b) if he is aged under 14 then, £ 250.
- (4) No referral order under section 16(2) or (3) of the Powers of Criminal Courts (Sentencing) Act 2000 (referral of young offenders to youth offender panels) may be made in respect of an offence under subsection (3) above.
- (5) If the anti-social behaviour order as a result of which an individual support order was made ceases to have effect, the individual support order (if it has not previously ceased to have effect) ceases to have effect when the anti-social behaviour order does.
- (6) On an application made by complaint by –
- (a) the person subject to an individual support order, or
  - (b) the responsible officer,
- the court which made the individual support order may vary or discharge it by a further order.
- (7) If the anti-social behaviour order as a result of which an individual support order was made is varied, the court varying the anti-social behaviour order may by a further order vary or discharge the individual support order.

**Orders in county court proceedings**

**1B** (1) This section applies to any proceedings in a county court ('the principal proceedings').

- (2) If a relevant authority –
- (a) is a party to the principal proceedings, and
  - (b) considers that a party to those proceedings is a person in relation to whom it would be reasonable for it to make an application under section 1,
- it may make an application in those proceedings for an order under subsection (4).
- (3) If a relevant authority –
- (a) is not a party to the principal proceedings, and
  - (b) considers that a party to those proceedings is a person in relation to whom it would be reasonable for it to make an application under section 1,
- it may make an application to be joined to those proceedings to enable it to apply for an order under subsection (4) and, if it is so joined, may apply for such an order.
- (3A) Subsection (3B) applies if a relevant authority is a party to the principal proceedings and considers –
- (a) that a person who is not a party to the proceedings has acted in an anti-social manner, and
  - (b) that the person's anti-social acts are material in relation to the principal proceedings.

- (3B) The relevant authority may –
- (a) make an application for the person mentioned in subsection (3A)(a) to be joined to the principal proceedings to enable an order under subsection (4) to be made in relation to that person;
  - (b) if that person is so joined, apply for an order under subsection (4).
- (3C) But a person must not be joined to proceedings in pursuance of subsection (3B) unless his anti-social acts are material in relation to the principal proceedings.
- (4) If, on an application for an order under this subsection, it is proved that the conditions mentioned in section 1(1) are fulfilled as respects that other party, the court may make an order which prohibits him from doing anything described in the order.
- (5) Subject to subsection (6), the person against whom an order under this section has been made and the relevant authority on whose application that order was made may apply to the county court which made an order under this section for it to be varied or discharged by a further order.
- (6) Except with the consent of the relevant authority and the person subject to the order, no order under this section shall be discharged before the end of the period of two years beginning with the date of service of the order.
- (7) Subsections (5) to (7) and (10) to (12) of section 1 apply for the purposes of the making and effect of orders made under this section as they apply for the purposes of the making and effect of anti-social behaviour orders.

### Orders on conviction in criminal proceedings

**1C** (1) This section applies where a person (the ‘offender’) is convicted of a relevant offence.

- (2) If the court considers –
- (a) that the offender has acted, at any time since the commencement date, in an anti-social manner, that is to say in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself, and
  - (b) that an order under this section is necessary to protect persons in any place in England and Wales from further anti-social acts by him,

it may make an order which prohibits the offender from doing anything described in the order.

- (3) The court may make an order under this section –
- (a) if the prosecutor asks it to do so, or
  - (b) if the court thinks it is appropriate to do so.
- (3A) For the purpose of deciding whether to make an order under this section the court may consider evidence led by the prosecution and the defence.
- (3B) It is immaterial whether evidence led in pursuance of subsection (3A) would have been admissible in the proceedings in which the offender was convicted.
- (4) An order under this section shall not be made except –
- (a) in addition to a sentence imposed in respect of the relevant offence; or
  - (b) in addition to an order discharging him conditionally.

(4A) The court may adjourn any proceedings in relation to an order under this section even after sentencing the offender.

(4B) If the offender does not appear for any adjourned proceedings, the court may further adjourn the proceedings or may issue a warrant for his arrest.

(4C) But the court may not issue a warrant for the offender’s arrest unless it is satisfied that he has had adequate notice of the time and place of the adjourned proceedings.

(5) An order under this section takes effect on the day on which it is made, but the court may provide in any such order that such requirements of the order as it may specify shall, during any period when the offender is detained in legal custody, be suspended until his release from that custody.

(6) . . .

(7) . . .

(8) . . .

(9) Subsections (7), (10), (10C), (10D), (10E) and (11) of section 1 apply for the purposes of the making and effect of orders made by virtue of this section as they apply for the purposes of the making and effect of anti-social behaviour orders.

(9A) The council for the local government area in which a person in respect of whom an anti-social behaviour order has been made

resides or appears to reside may bring proceedings under section 1(10) (as applied by subsection (9) above) for breach of an order under subsection (2) above.

(9B) Subsection (9C) applies in relation to proceedings in which an order under subsection (2) is made against a child or young person who is convicted of an offence.

(9C) In so far as the proceedings relate to the making of the order –

- (a) section 49 of the Children and Young Persons Act 1933 (c 12) (restrictions on reports of proceedings in which children and young persons are concerned) does not apply in respect of the child or young person against whom the order is made;
  - (b) section 39 of that Act (power to prohibit publication of certain matter) does so apply.
- (10) In this section –
- ‘child’ and ‘young person’ have the same meaning as in the Children and Young Persons Act 1933 (c 12);
- ‘the commencement date’ has the same meaning as in section 1 above;
- ‘the court’ in relation to an offender means –
- (a) the court by or before which he is convicted of the relevant offence; or
  - (b) if he is committed to the Crown Court to be dealt with for that offence, the Crown Court; and
- ‘relevant offence’ means an offence committed after the coming into force of section 64 of the Police Reform Act 2002 (c 30).

### Variation and discharge of orders under section 1C

**1CA** (1) An offender subject to an order under section 1C may apply to the court which made it for it to be varied or discharged.

(2) If he does so, he must also send written notice of his application to the Director of Public Prosecutions.

(3) The Director of Public Prosecutions may apply to the court which made an order under section 1C for it to be varied or discharged.

(4) A relevant authority may also apply to the court which made an order under section 1C for it to be varied or discharged if it appears to it that –

- (a) in the case of variation, the protection of relevant persons from anti-social acts by the person subject to the order would be more appropriately effected by a variation of the order;
- (b) in the case of discharge, that it is no longer necessary to protect relevant persons from anti-social acts by him by means of such an order.

(5) If the Director of Public Prosecutions or a relevant authority applies for the variation or discharge of an order under section 1C, he or it must also send written notice of the application to the person subject to the order.

(6) In the case of an order under section 1C made by a magistrates’ court, the references in subsections (1), (3) and (4) to the court by which the order was made include a reference to any magistrates’ court acting in the same local justice area as that court.

(7) No order under section 1C shall be discharged on an application under this section before the end of the period of two years beginning with the day on which the order takes effect, unless –

- (a) in the case of an application under subsection (1), the Director of Public Prosecutions consents, or
- (b) in the case of an application under subsection (3) or (4), the offender consents.

### Interim orders

**1D** (1) This section applies where –

- (a) an application is made for an anti-social behaviour order;
- (b) an application is made for an order under section 1B;
- (c) a request is made by the prosecution for an order under section 1C; or
- (d) the court is minded to make an order under section 1C of its own motion.

(2) If, before determining the application or request, or before deciding whether to make an order under section 1C of its own motion, the court considers that it is just to make an order under this section pending the determination of that application or

request or before making that decision, it may make such an order.

(3) An order under this section is an order which prohibits the defendant from doing anything described in the order.

(4) An order under this section –

- (a) shall be for a fixed period;
- (b) may be varied, renewed or discharged;
- (c) shall, if it has not previously ceased to have effect, cease to have effect on the determination of the application or request mentioned in subsection (1), or on the court's making a decision as to whether or not to make an order under section 1C of its own motion.

(5) In relation to cases to which this section applies by virtue of paragraph (a) or (b) of subsection (1), subsections (6), (8) and (10) to (12) of section 1 apply for the purposes of the making and effect of orders under this section as they apply for the purposes of the making and effect of anti-social behaviour orders.

(6) In relation to cases to which this section applies by virtue of paragraph (c) or (d) of subsection (1) –

- (a) subsections (6) and (10) to (12) of section 1 apply for the purposes of the making and effect of orders under this section as they apply for the purposes of the making and effect of anti-social behaviour orders; and
- (b) section 1CA applies for the purposes of the variation or discharge of an order under this section as it applies for the purposes of the variation or discharge of an order under section 1C.

### Consultation requirements

**1E** (1) This section applies to –

- (a) applications for an anti-social behaviour order; and
- (b) applications for an order under section 1B.

(2) Before making an application to which this section applies, the council for a local government area shall consult the chief officer of police of the police force maintained for the police area within which that local government area lies.

(3) Before making an application to which this section applies, a chief officer of police shall consult the council for the local government area in which the person in relation to whom the application is to be made resides or appears to reside.

(4) Before making an application to which this section applies, a relevant authority other than a council for a local government area or a chief officer of police shall consult –

- (a) the council for the local government area in which the person in relation to whom the application is to be made resides or appears to reside; and
- (b) the chief officer of police of the police force maintained for the police area within which that local government area lies.

(5) Subsection (4)(a) does not apply if the relevant authority is a county council for a county in which there are no districts.

### Contracting out of local authority functions

**1F** (1) The Secretary of State may by order provide that a relevant authority which is a local authority may make arrangements with a person specified (or of a description specified) in the order for the exercise of any function it has under sections 1 to 1E above –

- (a) by such a person, or
- (b) by an employee of his.

(2) The order may provide –

- (a) that the power of the relevant authority to make the arrangements is subject to such conditions as are specified in the order;
- (b) that the arrangements must be subject to such conditions as are so specified;
- (c) that the arrangements may be made subject to such other conditions as the relevant authority thinks appropriate.

(3) The order may provide that the arrangements may authorise the exercise of the function –

- (a) either wholly or to such extent as may be specified in the order or arrangements;
- (b) either generally or in such cases or areas as may be so specified.

(4) An order may provide that the person with whom arrangements are made in pursuance of the order is to be treated as if he were a public body for the purposes of section 1 of the Local Authorities (Goods and Services) Act 1970.

(5) The Secretary of State must not make an order under this section unless he first consults—

- (a) the National Assembly for Wales, if the order relates to a relevant authority in Wales;
- (b) such representatives of local government as he thinks appropriate;
- (c) such other persons as he thinks appropriate.

(6) Any arrangements made by a relevant authority in pursuance of an order under this section do not prevent the relevant authority from exercising the function to which the arrangements relate.

(7) The following provisions of the Deregulation and Contracting Out Act 1994 apply for the purposes of arrangements made in pursuance of an order under this section as they apply for the purposes of an authorisation to exercise functions by virtue of an order under section 70(2) of that Act –

- (a) section 72 (effect of contracting out);
- (b) section 73 (termination of contracting out);
- (c) section 75 and Schedule 15 (provision relating to disclosure of information);
- (d) paragraph 3 of Schedule 16 (authorised persons to be treated as officers of local authority).

(8) For the purposes of subsection (7), any reference in the provisions specified in paragraphs (a) to (d) to a person authorised to exercise a function must be construed as a reference to a person with whom an arrangement is made for the exercise of the function in pursuance of an order under this section.

(9) Relevant authorities and any person with whom arrangements are made in pursuance of an order under this section must have regard to any guidance issued by the Secretary of State for the purposes of this section.

(10) An order under this section may make different provision for different purposes.

(11) An order under this section may contain –

- (a) such consequential, supplemental or incidental provisions (including provision modifying any enactment), or
  - (b) such transitional provisions or savings,
- as the person making the order thinks appropriate.

(12) Each of the following is a local authority –

- (a) a local authority within the meaning of section 270 of the Local Government Act 1972;
- (b) the Common Council of the City of London;
- (c) the Council of the Isles of Scilly.

### Intervention orders

**1G** (1) *This section applies if, in relation to a person who has attained the age of 18, a relevant authority –*

- (a) *makes an application for an anti-social behaviour order or an order under section 1B above (the behaviour order),*
- (b) *has obtained from an appropriately qualified person a report relating to the effect on the person's behaviour of the misuse of controlled drugs or of such other factors as the Secretary of State by order prescribes, and*
- (c) *has engaged in consultation with such persons as the Secretary of State by order prescribes for the purpose of ascertaining that, if the report recommends that an order under this section is made, appropriate activities will be available.*

(2) *The relevant authority may make an application to the court which is considering the application for the behaviour order for an order under this section (an intervention order).*

(3) *If the court –*

- (a) *makes the behaviour order, and*
- (b) *is satisfied that the relevant conditions are met,*

*it may also make an intervention order.*

(4) *The relevant conditions are –*

- (a) *that an intervention order is desirable in the interests of preventing a repetition of the behaviour which led to the behaviour order being made (trigger behaviour);*
- (b) *that appropriate activities relating to the trigger behaviour or its cause are available for the defendant;*
- (c) *that the defendant is not (at the time the intervention order is made) subject to another intervention order or to any other treatment relating to the trigger behaviour or its cause (whether on a voluntary basis or by virtue of a requirement imposed in pursuance of any enactment);*
- (d) *that the court has been notified by the Secretary of*

State that arrangements for implementing intervention orders are available in the area in which it appears that the defendant resides or will reside and the notice has not been withdrawn.

- (5) An intervention order is an order which –
- (a) requires the defendant to comply, for a period not exceeding six months, with such requirements as are specified in the order, and
  - (b) requires the defendant to comply with any directions given by a person authorised to do so under the order with a view to the implementation of the requirements under paragraph (a) above.
- (6) An intervention order or directions given under the order may require the defendant –
- (a) to participate in the activities specified in the requirement or directions at a time or times so specified;
  - (b) to present himself to a person or persons so specified at a time or times so specified.
- (7) Requirements included in, or directions given under, an intervention order must, as far as practicable, be such as to avoid –
- (a) any conflict with the defendant's religious beliefs, and
  - (b) any interference with the times (if any) at which he normally works or attends an educational establishment.
- (8) If the defendant fails to comply with a requirement included in or a direction given under an intervention order, the person responsible for the provision or supervision of appropriate activities under the order must inform the relevant authority of that fact.
- (9) The person responsible for the provision or supervision of appropriate activities is a person of such description as is prescribed by order made by the Secretary of State.
- (10) In this section –
- 'appropriate activities' means such activities, or activities of such a description, as are prescribed by order made by the Secretary of State for the purposes of this section;
  - 'appropriately qualified person' means a person who has such qualifications or experience as the Secretary of State by order prescribes;
  - 'controlled drug' has the same meaning as in the Misuse of Drugs Act 1971;
  - 'relevant authority' means a relevant authority for the purposes of section 1 above.
- (11) An order under this section made by the Secretary of State may make different provision for different purposes.
- (12) This section and section 1H below apply to a person in respect of whom a behaviour order has been made subject to the following modifications –
- (a) in subsection (1) above paragraph (a) must be ignored;
  - (b) in subsection (2) above, for 'is considering the application for' substitute 'made';
  - (c) in subsection (3) above paragraph (a), the word 'and' following it and the word 'also' must be ignored.<sup>2</sup>

#### Intervention orders: explanation, breach, amendment etc

- 1H** (1) Before making an intervention order the court must explain to the defendant in ordinary language –
- (a) the effect of the order and of the requirements proposed to be included in it,
  - (b) the consequences which may follow (under subsection (3) below) if he fails to comply with any of those requirements, and
  - (c) that the court has power (under subsection (5) below) to review the order on the application either of the defendant or of the relevant authority.
- (2) The power of the Secretary of State under section 174(4) of the Criminal Justice Act 2003 includes power by order to –
- (a) prescribe cases in which subsection (1) does not apply, and
  - (b) prescribe cases in which the explanation referred to in that subsection may be made in the absence of the defendant, or may be provided in written form.
- (3) If a person in respect of whom an intervention order is made fails without reasonable excuse to comply with any requirement included in the order he is guilty of an offence and liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (4) If the behaviour order as a result of which an intervention

order is made ceases to have effect, the intervention order (if it has not previously ceased to have effect) ceases to have effect when the behaviour order does.

- (5) On an application made by –
- (a) a person subject to an intervention order, or
  - (b) the relevant authority,
- the court which made the intervention order may vary or discharge it by a further order.
- (6) An application under subsection (5) made to a magistrates' court must be made by complaint.
- (7) If the behaviour order as a result of which an intervention order was made is varied, the court varying the behaviour order may by a further order vary or discharge the intervention order.
- (8) Expressions used in this section and in section 1G have the same meaning in this section as in that section.<sup>3</sup>

#### Special measures for witnesses

- 1I** (1) This section applies to the following proceedings –
- (a) any proceedings in a magistrates' court on an application for an anti-social behaviour order,
  - (b) any proceedings in a magistrates' court or the Crown Court so far as relating to the issue whether to make an order under section 1C, and
  - (c) any proceedings in a magistrates' court so far as relating to the issue whether to make an order under section 1D.
- (2) Chapter 1 of Part 2 of the Youth Justice and Criminal Evidence Act 1999 (special measures directions in the case of vulnerable and intimidated witnesses) shall apply in relation to any such proceedings as it applies in relation to criminal proceedings, but with –
- (a) the omission of the provisions of that Act mentioned in subsection (3) (which make provision appropriate only in the context of criminal proceedings), and
  - (b) any other necessary modifications.
- (3) The provisions are –
- (a) section 17(4),
  - (b) section 21(1)(b) and (5) to (7),
  - (c) section 22(1)(b) and (2)(b) and (c),
  - (d) section 27(10), and
  - (e) section 32.
- (4) Any rules of court made under or for the purposes of Chapter 1 of Part 2 of that Act shall apply in relation to proceedings to which this section applies –
- (a) to such extent as may be provided by rules of court, and
  - (b) subject to such modifications as may be so provided.
- (5) Section 47 of that Act (restrictions on reporting special measures directions etc) applies, with any necessary modifications, in relation to –
- (a) a direction under section 19 of the Act as applied by this section, or
  - (b) a direction discharging or varying such a direction, and sections 49 and 51 of that Act (offences) apply accordingly.

#### Appeals against orders

- 4** (1) An appeal shall lie to the Crown Court against the making by a magistrates' court of an anti-social behaviour order, an individual support order, an order under section 1D above, . . .
- (2) On such an appeal the Crown Court –
- (a) may make such orders as may be necessary to give effect to its determination of the appeal; and
  - (b) may also make such incidental or consequential orders as appear to it to be just.
- (3) Any order of the Crown Court made on an appeal under this section (other than one directing that an application be re-heard by a magistrates' court) shall, for the purposes of section 1(8), 1AB(6). . . , be treated as if it were an order of the magistrates' court from which the appeal was brought and not an order of the Crown Court.

<sup>2</sup> In force as of 1 October 2006 by Crime and Disorder Act 1998 (Intervention Orders) Order 2006 SI No 2138.

<sup>3</sup> In force as of 1 October 2006 by Crime and Disorder Act 1998 (Intervention Orders) Order 2006 SI No 2138.

## Youth crime and disorder

### Parenting orders

**8** (1) This section applies where, in any court proceedings –

(a) a child safety order is made in respect of a child or the court determines on an application under section 12(6) below that a child has failed to comply with any requirement included in such an order;

(aa) *a parental compensation order is made in relation to a child's behaviour;*<sup>4</sup>

(b) an anti-social behaviour order or sex offender order is made in respect of a child or young person;

(c) a child or young person is convicted of an offence; or

(d) a person is convicted of an offence under section 443 (failure to comply with school attendance order) or section 444 (failure to secure regular attendance at school of registered pupil) of the Education Act 1996.

(2) Subject to subsection (3) and section 9(1) below . . ., if in the proceedings the court is satisfied that the relevant condition is fulfilled, it may make a parenting order in respect of a person who is a parent or guardian of the child or young person or, as the case may be, the person convicted of the offence under section 443 or 444 ('the parent').

(3) A court shall not make a parenting order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area in which it appears to the court that the parent resides or will reside and the notice has not been withdrawn.

(4) A parenting order is an order which requires the parent –  
(a) to comply, for a period not exceeding twelve months, with such requirements as are specified in the order, and  
(b) subject to subsection (5) below, to attend, for a concurrent period not exceeding three months, such counselling or guidance programme as may be specified in directions given by the responsible officer.

(5) A parenting order may, but need not, include such a requirement as is mentioned in subsection (4)(b) above in any case where a parenting order under this section or any other enactment has been made in respect of the parent on a previous occasion.

(6) The relevant condition is that the parenting order would be desirable in the interests of preventing –

(a) in a case falling within paragraph (a), (aa)<sup>5</sup> or (b) of subsection (1) above, any repetition of the kind of behaviour which led to the child safety order, *parental compensation order*,<sup>6</sup> anti-social behaviour order or sex offender order being made;

(b) in a case falling within paragraph (c) of that subsection, the commission of any further offence by the child or young person;

(c) in a case falling within paragraph (d) of that subsection, the commission of any further offence under section 443 or 444 of the Education Act 1996.

(7) The requirements that may be specified under subsection (4)(a) above are those which the court considers desirable in the interests of preventing any such repetition or, as the case may be, the commission of any such further offence.

(7A) A counselling or guidance programme which a parent is required to attend by virtue of subsection (4)(b) above may be or include a residential course but only if the court is satisfied –

(a) that the attendance of the parent at a residential course is likely to be more effective than his attendance at a non-residential course in preventing any such repetition or, as the case may be, the commission of any such further offence, and

(b) that any interference with family life which is likely to result from the attendance of the parent at a residential course is proportionate in all the circumstances.

(8) In this section and section 9 below 'responsible officer', in relation to a parenting order, means one of the following who is specified in the order, namely –

(a) an officer of a local probation board;

(b) a social worker of a local authority . . .; and

(bb) a person nominated by *a person appointed as director of children's services under section 18 of the Children Act 2004 or by* a person appointed as chief education officer under section 532 of the Education Act 1996;

(c) a member of a youth offending team.

## The Crime and Disorder Act 1998 (Relevant Authorities and Relevant Persons) Order 2006 SI No 2137

The Secretary of State makes the following Order in exercise of the powers conferred by section 1A(2) of the Crime and Disorder Act 1998:

### Citation and commencement

**1** This Order may be cited as the Crime and Disorder Act 1998 (Relevant Authorities and Relevant Persons) Order 2006 and shall come into force on 1 September 2006.

### Relevant authority and relevant persons:

#### Environment Agency

**2** (1) The Environment Agency is to be a relevant authority for the purposes of sections 1, 1B, 1CA and 1E of the Crime and Disorder Act 1998 in the cases and circumstances prescribed by paragraph (2).

(2) Those cases and circumstances are where a person has acted in an anti-social manner on, or in relation to, any land and the Environment Agency has a statutory function in relation to that land.

(3) The relevant persons in relation to the Environment Agency are –

(a) persons who are on, or likely to be on, the land referred to in paragraph (2); or

(b) persons who are in the vicinity of, or likely to be in the vicinity of, that land.

### Relevant authority and relevant persons:

#### Transport for London

**3** (1) Transport for London is to be a relevant authority for the purposes of sections 1, 1B, 1CA and 1E of the Crime and Disorder Act 1998 in the cases and circumstances prescribed by paragraph (2).

(2) Those cases and circumstances are where a person has acted in an anti-social manner on, or in relation to, any land or vehicles used in connection with, or for the purposes of, the provision of a relevant transport service.

(3) The relevant persons in relation to Transport for London are –  
(a) persons who are on, or likely to be on, any of the land or vehicles referred to in paragraph (2); or  
(b) persons who are in the vicinity of, or likely to be in the vicinity of, such land or vehicles.

(4) In this article –

(a) the references to Transport for London are references to the body established by section 154 of the Greater London Authority Act 1999 ('the 1999 Act'); and

(b) 'relevant transport service' means a bus, tramway, river transport or train service provided by Transport for London or any of its subsidiaries, or by any other person, in pursuance of –

(i) an agreement entered into by Transport for London under section 156(2) or (3)(a) of the 1999 Act;

(ii) a transport subsidiary's agreement within the meaning given by section 169 of the 1999 Act; or

(iii) an agreement which was entered into by London Regional Transport under section 3(2) or (2A) of the London Regional Transport Act 1984 and which, by virtue of section 300 or section 415 of the 1999 Act, has effect as if made by Transport for London.

**4** Words in italics inserted by SOCPA 2005 s144, Sch 10, Pt 1, paras 1, 3(1), (2). Not yet in force.

**5** Words in italics inserted by SOCPA 2005 s144, Sch 10, Pt 1, paras 1, 3(1), (3)(a). Not yet in force.

**6** Words in italics inserted by SOCPA 2005 s144, Sch 10, Pt 1, paras 1, 3(1), (3)(b). Not yet in force.

**7** Words in italics inserted by the Children Act 2004, s18(9), (10), Sch 2, paras 5(1), (2). Not yet in force.

# Preventing Racist Violence

**Work with Actual and Potential Perpetrators  
- Learning from Practice to Policy Change  
A Runnymede Report by Sarah Isal  
published October 2005**

Racist violence remains a serious problem within the UK. All violence is a matter of concern. Violence that also denies the humanity of its subjects, destroys relationships between communities, and corrupts our ability to function together as a society is a cause for even greater concern. In 2004 over four thousand of the cases that came before our courts were deemed to have a racist motivation. This is likely to be the tip of the iceberg, and activities designed to challenge this trend are the subject of this research report.

Two years of research on projects that take on the challenge of preventing racist violence provided Runnymede with an insight into what needs to be done to reduce racist violence. The recommendations of the report encapsulate where we think schemes to tackle racist violence should be going and the kind of policy reform necessary for making effective change happen.

Current work that challenges attitudes in attempting to prevent racist violence is surprisingly scarce given the scale of the problem. Rather than finding, as we had anticipated, an existing network of activities directed towards a single aim, we found many layers of endeavour, with varying degrees of connectedness and success. While many sectors of practice and policy are, directly or indirectly, involved with tackling racist violence and harassment through changing the perpetrators' attitudes, their efforts are not being maximised or widely shared.

The recommendations contained in this report address action that should be taken by central government, local authorities, practitioners (across a range of sectors, including those working with the community cohesion and crime reduction agendas), the research community and funders. Some represent the thinking and conclusions that arise from the practices we have examined; others express the thoughts and wishes of practitioners whose work in these fields is widely respected for all the right reasons. Some are drawn from examples of good practice encountered in the course of the research; others reflect the lessons that should be learned and the challenges faced by groups and individuals trying to tackle racist violence through work with potential perpetrators. All, we think, are crucial in raising the profile, effectiveness and success of this work.

Findings are discussed under the following principal headings:

- Government policy must also be tough on the causes of *racist* crime
- Good crime prevention includes prevention of *racist* crime
- Preventing racist violence should be embedded in policy
- Agencies must work together to prevent racist violence
- Preventing racist violence should involve the whole community
- Practitioners need more support in order to effectively prevent racist violence
- Effective and innovative work challenging racist attitudes needs secure and consistent funding
- We need to know more about what works in challenging racist attitudes and preventing racist violence

*The full report can be read on the Runnymede website [[www.runnymedetrust.org](http://www.runnymedetrust.org)] and printed out as a pdf. It is also available in a printed version, and can be purchased from Central Books at £9.95 [[mo@centralbooks.com](mailto:mo@centralbooks.com)].*

## About Runnymede

The Runnymede Trust is an independent policy research organisation focusing on equality and justice through the promotion of a successful multi-ethnic society. Founded as a Charitable Educational Trust, Runnymede has a long track record in policy research, working in close collaboration with eminent thinkers and policymakers in the public, private and voluntary sectors. We believe that the way ahead lies in building effective partnerships, and we are continually developing these with the voluntary sector, the government, local authorities and companies in the UK and Europe. We stimulate debate and suggest forward-looking strategies in areas of public policy such as education, the criminal justice system, employment and citizenship.

Since 1968, the date of Runnymede's foundation, we have worked to establish and maintain a positive image of what it means to live affirmatively within a society that is both multi-ethnic and culturally diverse. Runnymede continues to speak with a thoughtful and independent public voice on these issues today.



RUNNYMEDE

### The Runnymede Trust

7 Plough Yard  
London EC2A 3LP  
T: 020 7377 9222  
F: 020 7377 6622  
E: [info@runnymedetrust.org](mailto:info@runnymedetrust.org)  
W: [www.runnymedetrust.org](http://www.runnymedetrust.org)

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