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## **Challenging Anti Social Behaviour Orders**

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### **Participating agencies:**

Revolving Doors Agency  
Thames Reach Bondway  
Release Drug Advice Agency  
Single Homeless project  
Hungerford Project  
Kaleidoscope Project  
Westminster Drug Project  
Focus Homeless Outreach Team

## **CHALLENGING ANTI SOCIAL BEHAVIOUR ORDERS**

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APPENDIX ONE: SECTION 1 OF CRIME AND DISORDER 1998

## 1. ASBOS AND THE LAW

### a. Rationale

The principle of zero tolerance is at the heart of the thinking behind ASBOs.

### b. The Law in Summary

ASBOs

#### **Came into force**

The Crime and Disorder Act came into force in September 1998 but ASBOs must relate to behaviour occurring **on or after April 1<sup>st</sup> 1999**.

#### **Qualification Age:-**

Ten year old and above therefore includes juveniles.

#### **Who can apply for them?**

The police, British Transport police, local authorities, registered social landlords, housing action trusts and English County Councils are able to apply for Anti-Social Behaviour Orders (ASBOs).

#### **When can they be imposed**

They can be imposed in two situations

- a. On application by one of the Authorities above.
- b. On sentencing for a criminal offence.

The **Police Reform Act 2002** also makes ASBO's available as an adjunct to sentencing following a criminal conviction, irrespective whether an application has been made to the court or not. ASBOs can be imposed only if the court is satisfied that they are "necessary" to protect persons from further anti-social conduct by the defendant.

#### **What is Anti-Social Conduct?**

The Crime and Disorder Act 1998 defines antisocial conduct as:

"that which causes or is likely to cause harassment, alarm and distress to one or more persons not of the same household as the person against whom the order is made."

There is no need to prove that the defendant acted in a manner that caused harassment, alarm or distress. It is enough to show that the defendant's actions were **likely to cause harassment, alarm or distress**.

## Standard of Proof

This is a **two stage test**

Civil Orders and the usual burden of proof is on the “balance of probabilities”. However, situation complicated by decision by The House of Lords in the case of **McCann** [Regina vs. Crown Court at Manchester ex-parte McCann (fc) and others (fc), October 2002] in which they set out the law on the standard of proof as follows:-

### First Limb - Proving Past Acts of ASB

Magistrates’ must apply the criminal standard of proof when considering **past acts** of anti-social behaviour alleged against the Defendant.

This would seem to afford the respondent in an application for an ASBO some protection because it is arguing that the case against him must be proved beyond a reasonable doubt before the first limb of the test will be satisfied.

### Second Limb - Deciding if an Order is Necessary to prevent Future Anti Social Acts

However, the enquiry as to whether such an Order is necessary to protect persons from **further anti-social acts by him**, does not involve the standard of proof; it is an exercise of judgement or evaluation.

## What Evidence is Admissible i.e. allowed in court

### Hearsay evidence

It is allowed when applying for ASBOs under the Magistrates’ Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 due to the fact that these are civil proceedings.

### Powers of the Court:-

The Court has the power to ban basically just about anything as long as it thinks these measures will protect the public from further anti-social acts by the Defendant (subsection 6 of the Act).

Orders will ban association with certain named persons, impose geographical exclusion zones or prohibitions from certain behaviour.

### Duration of Order

Two years or more [can be a life ban].

The Home Office consultation paper, Community Safety Order (published September 1997) stated that the duration of the ASBO should reflect “the period of time necessary to protect the public”.

**Penalties for breach:-**

A breach is an arrestable offence.

Police will bring a prosecution through the CPS in respect of any breach. A breach must be proved **beyond a reasonable doubt** and live witnesses called.

Maximum powers of punishment are 6 months at the magistrates court; 5 years imprisonment at the Crown Court.

**Reasonable excuse defence (subsection 10):-****Subsection (2):-**

Note that it states that a relevant authority shall not make an application without consulting each other relevant authority. A relevant authority means the Council for the local Government area or any Chief Officer of Police only part of whose Police area lies within that area. However, this requirement has now been removed by further legislation. It is now perfectly possible for Camden Council to obtain geographical exclusion zones for Westminster Council and London Borough of Islington without any need to consult them.

**Consultation with multi-party agencies**

The Home Office in November 2002 published "A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts" in which it is stated:-

"A fully coordinated approach is essential if anti-social behaviour is to be tackled. Effective defence of communities depends on all agencies – including housing organisations, Social Services, education authorities and youth services – accepting that promoting safe and orderly neighbourhoods is a priority in working together to agree a response to unacceptable behaviour".

However, it is only mandatory for the Council to consult the Police and vice versa. Question: do other agencies feel that they are being by-passed?

**POLICE REFORM ACT 2002**

Changes brought in by the above Act included the following:-

**(a) Interim Orders**

This is an Order made at an initial Court Hearing held in advance of the full hearing. This temporary Order can impose the same prohibitions and has the same penalties for breach of an ASBO.

The Interim Order can, with leave of the Justice's Clerk, be made ex-parte (without notice of proceedings being given to the Defendant). If the Order is granted ex-parte it should be served personally on the Defendant together with the application for a full Order and a summons giving a date for the Defendant to attend Court. The Order will not take effect until it is served.

- (b) **Now valid throughout the country.**
- (c) Possible for the Court to impose an **ASBO at the same time as passing sentence for a criminal conviction.**
- (d) **Registered social Landlords** and **British Transport Police** can apply for ASBO.

## **ANTI-SOCIAL BEHAVIOUR ACT – 20<sup>TH</sup> JANUARY 2004**

This gives the Police, Council, Landlords and others more means to tackle the problems of anti social behaviour. Specific measures include controversial Police powers to disperse groups of people who have gathered in areas designated as anti-social hotspots.

The worry is that this will victimise children and also ethnic minorities whose cultures traditional involve street gatherings.

### **c. Recent Case Law**

#### **Clingham (formerly C (a minor)) v Royal Borough of Kensington and Chelsea (2002) UKHL39**

In this case the House of Lords held that the proceedings for making an Anti-Social Behaviour Order are civil in nature. Lord Hope at paragraph 8 stated:-

“Section 1.6 of the 1990 Act sets no limits to the prohibitions that may be imposed, except that they must be necessary for the protection of the people in the local Government area against further anti-social acts by the Defendant. Among the range of Orders that might reasonably be thought to be necessary are Orders which may interfere with the Defendant’s private life, his freedom to express himself either by words or conduct and his freedom to associate with other people... the Court must act with scrupulous fairness at all stages of the proceedings. When it is making it’s assessment of the facts and circumstances that have been put before in evidence and of the prohibitions, if any, that are to be imposed, it must ensure the Defendant does not suffer any injustice”.

#### **De Frietas v Permanent Secretary of Minister of Agriculture, Fisheries Land and Housing (1999) 1AC69**

In this case PC Lord Clyde at page 80 identified three criteria for determining the issue of proportionality in the context of statutory restrictions on a fundamental right. The Court should ask (1) whether the legislative objective is sufficiently important to justice limiting a fundamental right; (2) whether the measure designed to meet the legislative objective are rationally connected to it; and (3) whether the means used to impair the right or freedom are no more than is necessary to accomplish that objective.

**R(a) v Leeds MC (204) The Times, 31<sup>st</sup> March 2004**

A number of principles were set out in this case:-

1. An ASBO is available when it was proved to the criminal standard that a prostitute conduct alone or with others was likely to cause harassment, alarm or distress to others even if none had yet been caused and there was no intent so to act.
2. Where an Anti-Social Behaviour Order is sought on conviction of a criminal offence there must be clarity as to the basis for, and the scope of, any Order made.
3. Notice was to be given to the defence that an Order was under consideration.
4. The discretion to make such an Order must be exercised fairly, reasonably and with regard to all the relevant circumstances. Consistency in the exercise of the discretion was an aspect of fairness; Orders must be proportionate and an Order without geographical limit was too wide.

**R v Parkin (2004) The Times, 19<sup>th</sup> February**

This case causes some concern because it approves the practice of including within ASBOs terms that amounted to no more than the Defendant should comply with Section 5 of the Public Order Act that has the affect of turning an offence carrying only a fine into one carrying 5 years' imprisonment. This must clearly be relevant in mitigation should there be a breach. It is suggested that there would have to be a persistent series of breaches to justify a penalty greater than is provided by the Public Order Act.

An ASBO take effect as soon as it is pronounced and not just when a typed record is produced.

## ASBOs IN PRACTICE

### a. The Statistics

**Costs?** In the year 2000 an average ASBO cost costs more than £5,000.00 and takes over three months to obtain.

#### How wide spread?

They **came into force on April 1<sup>st</sup> 1999**. By **December 31<sup>st</sup> 2001 588** ASBOs had been made and 19 refused. NB. Note how few are refused.

By November 30<sup>th</sup> 2002 **917** ASBOs had been made and by June 30<sup>th</sup> 2003 **1,623** ASBOs had been issued. By 31<sup>st</sup> March 2004 **2,455** ASBOs had been obtained in England and Wales and only 42 refused.

- Greater Manchester was actually leading the country with 422 ASBOs granted and 5 refused. In the Greater London area 199 ASBOs were issued and 9 ASBOs refused. Over 80 of the ASBO's were actually obtained by London Borough of Camden. Camden have a website which publishes all the Orders they obtain. [[www.crackcocaineincamden.co.uk](http://www.crackcocaineincamden.co.uk).] The **London Borough of Camden are being very pro-active:-** Richard Gruet acting Head of Law at Camden Council, has **visited a number of Council's to pass on information** on how to successfully obtain ASBOs. He is joined on those trips by Camden's Anti-Social Officer Ian Walker as well as PC Dylan Belt from the Drugs and Vice Unit Operation Welling in Kings Cross.
- A Home Office review of ASBOs found that 36% of the Orders were breached within 9 months of being granted (some up to five times). Much lower rate than the one that I have encountered as a Criminal Defence Lawyer [Indeed, the first client I dealt with who beached an order went on to breach her order 9 times in 7 months.]
- In the year 2000, over half of those sentenced in Court for a breach of an ASBO received a custodial sentence. Again, my experience would suggest that these are surprising figures because a breach almost inevitably results in a custodial sentence. Indeed, in the example of the woman who breached in 9 times in a 7 month period she received a custodial sentence on each and every occasion the only distinction being that these prison sentences got longer as we went along.

## b. Case Studies

**Manchester** as we have seen leads the country on ASBOs – some 422 (in the space of 5 years) but not only do they lead the country in terms of the number of ASBOs obtained but also have obtained some rather imaginative ASBOs. [Examples..]

The Director of **Shelter** Adam Sampson has expressed his concerns that there are too many hard line measures to deal with anti-social behaviour. These include the threats to cut the benefit of tenants accused of anti-social behaviour – which is currently under consultation – and new initiatives to arrest and move on people who are begging. The following is an example of a case study that was included in a press release of 13<sup>th</sup> October 2003 included the following:-

A woman was threatened with eviction on the grounds of nuisance. It emerged from the evidence that almost all the incidents involved her partner threatening, beating and, one in instance, raping her (this was witnessed by neighbours). She decided not to fight the possession action and left the neighbourhood instead.

### 3. APPEALING ASBOs

#### a. Routes of Appeal

##### 1. Application to Vary/Discharge

**Section 1(8) of Crime and Disorder Act 1998** gives a right to vary the terms of the Order at any time. You can only apply to discharge the Order after a period of two years has elapsed.

NB. Under **Rule 6(2)** of the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002 there is a requirement that any such application to vary specifies the reason why the Applicant believes the Court should vary the Order.

**Rule 6(3)** provides that where the Court considers that there are no ground upon which it might conclude that the Order should be varied it may determine the application **without hearing representations** from the Applicant for variation. Accordingly, until the Court received reasons for applying for variation it might well be of the view that there is no duty to list the matter for an application to vary.

Another departure from normal rules.

**Examples of reasons** to vary may include the following:-

- (a) Circumstances have now changed e.g. has a boyfriend who lives in the area (helps if he is not addicted to heroin, and an alcohol or someone who is living in temporary accommodation).
- (b) The rate of offending had dropped significantly.
- (c) The person is no longer on drugs or has completed a residential rehabilitation course etc.

##### 2. Appeal to the Crown Court

**Section 4 of the Crime and Disorder Act 1998** provides the offending with the right of appeal against the making of an Order. Appeal is to the Crown Court. **Rules 74 and 75 of the Magistrates' Courts' Rules 1981** and 6 to 11 of the Crown Court Rules 1982 apply to appeals against Orders. Both parties may provide additional evidence.

By virtue of **Section 79 (3) of the Supreme Court Act 1981**, an appeal is by way of a re hearing of the case. In determining an appeal, the Crown Court should have before it a copy of the original application for an Order (if applicable), the full Order and the Notice of Appeal.

Notice of Appeal must be given in writing to the Clerk of the Court and the applicant body **within 21 days** of the Order (Crown Court Rules, Rule 7). However, the Crown Court does have **discretion to give leave to appeal out of time** (Rule 7 (5)).

The Crown Court **may vary the Order or make a new Order**.

It is **important** that the potential Appellant is **fully warned of this possibility**.

### 3. County Court Appeal

Any appeal against an ASBO made in the County Court must be made in accordance with **Part 52 of the Civil Procedure Rules**. Appeals against Orders made by District Judges will be to a Circuit Judge and against Orders made by Circuit Judges to the High Court.

### 4. A Judicial Review

Section 29 (3) of the Supreme Court Act 1981.

NB. **Three month time limit** although can be granted leave to appeal out of time.

### 5. By way of Case Stated

Section 28 of the Supreme Court Act 1981.

## b. Grounds of Appeal

### 1 Violation of the European Convention on Human Rights

**Article 8** of the Convention guarantees right to private life.

**Article 11** guarantees freedom of movement/association.

The argument would be that the ASBO places English Law **in contravention** of the European Convention of Human Rights and is **therefore illegal under Section 6 of the Human Rights Act 1998**.

In a case that I worked on, **identified the following interference with both private life and freedom of movement**.

- Not able to access the **mainline stations** at Kings Cross, St Pancreas and Euston which is the gateway to the North.
- The prohibited area included **stretches of the Northern, Metropolitan, Central, Victoria, Jubilee and Piccadilly underground** stations as well as part of the North London over ground line running through Camden and Kentish Town.
- Also not able to take **taxis or drive through the area or travel underground**.

Basically this makes travelling around London or out of London either **difficult, time consuming and expensive or simply impossible**.

NB. **Scope for challenging** the terms of the Order under a **reasonable excuse defence?**

- Not able to meet **friend** in the locality including her **new boyfriend** who lived in the area.
- A condition **not to associate with a named person** who was her ex boyfriend.

- Barred from using **Local Support Agencies**.
- **Barred from visiting many buildings of important cultural significance** e.g. The British Library, Major Theatres, Cinemas, Museums, etc.
- Cannot take up employment opportunities in the area; even if obtained work in other areas in London too time consuming and expensive to travel to work (convoluted journey etc).
- Barred from **major entertainment and shopping facilities**; in one clients case from his **local newsagent**.
- **Even** in a situation when released from prison and has a **defence of reasonable excuse** when encountering the Police this **does not stop** the person from **being arrested** and then kept in the police station and most probably having bail refused and therefore being kept in custody for the next available Court.
- Made this **person effectively homeless**.
- Covers an area which is **unnecessarily wide** including Primrose Hill, Belsize Park, Regents Park etc – debate as to why a wide exclusion zone is required when the person is prohibited from carrying out the offending behaviour in any event.

## 2. Subverting the Criminal Justice System

Most of the banned behaviour will be **straightforwardly criminal** and should therefore be dealt with through the Courts and by the Police. Instead, it could be argued that the **Criminal Justice System is being subverted** by tempting to tackle criminal behaviour and impose criminal level penalties through the Civil Courts. The civil standard is being applied to obtain Orders which lead to criminal penalties. It is a **shortcut that undermines the quality of justice**. There is an argument that criminal matters should be dealt with by the Criminal Justice System and not as a result of applications by democratically unelected bodies such as Housing Action Trusts.

## 3. Hearsay Rules Apply

**Lose opportunity to cross-examine.**

Of particular concern because often the justification for ASBOs are based on **vague assertions and hearsay evidence**.

The LBC for instance place reliance upon their **Crime and Disorder Audit 2001 in identifying local drug/crime hotspots**.

The argument put forward to support a wide exclusion area is based on the “**displacement theory**”. In other words, an offender will simply move to another area and continue the anti-social behaviour. However, the Courts are simply granting the wide exclusion areas without considering the evidence. The Home Office Guidelines mention that the following evidence should where applicable be included should be submitted with the application file:-

- a. Itinerant nature of the Defendant’s lifestyle.
- b. Evidence that the individual may move to another area.
- c. Wide geographical spread of offending behaviour.

Even then, the **Applicant does not have to prove that anti-social behaviour will occur elsewhere, just show that it is likely to.** The more serious the behaviour, the more likely that the Court will grant a geographically wide Order.

Obtained a **report from criminologist Tim Hope** that undermines displacement theory: challenges theory that would automatically be displaced eg study of prostitutes in Finsbury Park-attempt to control street-prostitution in 1980s not only reduced prostitution in that area but also did not result in the displacement of many prostitutes to other areas.

#### 4. **Prison Sentences for previously non imprisonable offences**

Prison sentences are now available for offences which were previously non-imprisonable.

At page 21 of the Home Office Guidelines it is mentioned that “the sentence given should be **proportionate and reflect the impact of the anti-social behaviour**”.

I have already stated that the **majority of breaches I have encountered have resulted in a custodial sentence.**

We already have approximately **75,000 in prison.** [43,000 in 1993] This translates as **139 prisoners per 1,000** of the population which is the highest rate in the European Union. With Tony Blair’s 5 year plan this is obviously going to rise considerably. Is this an **effective use of resources?**

#### 5. **Proportionality**

The **issue of proportionality** could be challenged by relying upon the statements of principle contained in authorities of long sentence of **disqualification** from driving where it is being held that excessively long bans are counterproductive and illegal. In underline case **Thomas (1983)** 1 WLR 1490, Lord Lane CJ said (at page 1491):-

“With persons like the present Appellant, who seemed to be incapable of leaving motor vehicles alone, to impose a period of disqualification which will extend for a substantial period after their release from prison may well, and in many cases certainly will, invite the offender to commit further offences in relation to motor vehicles. In other words a long period of disqualification **may well be counterproductive and so contrary to the public interest**”. An indefinite ban means that there is no **“light at the end of the tunnel”**. The Order **pays no regard to the rehabilitation principle** and assumes that the problem behaviour will persist for a very long time. It **can not** be said that the **Order is no longer than necessary to achieve it.**

#### 6. **Discrimination**

It is my belief that the ASBOs **target the most vulnerable in society.** Many or most will have a history of mental health problems, drug and alcohol addiction and have suffered abuse or violence. Tougher measure focusing solely on punishing offenders will **exacerbate these problems.** Furthermore, it does **nothing to deal with the more serious offenders** such as dealers or those committing street robberies etc.

**Zero tolerance in America has shown** that persons of low income or minorities are subjected to increased harassment. We all remember the suss laws contributing to the Brixton riots in the 1980's.

## 7. Measures already in place

We already had legislation in place such as the Housing Act, Noise Act, Public Order Act, Protection from Harassment Act and criminal offences such as Criminal Damage which dealt with much of the anti-social behaviour being referred to.

- (a) **The Housing Act 1996** introduced a number of measures to help Local Authorities address anti-social behaviour. **Firstly** the Act requires Local Authorities to set up local housing registers and offer permanent housing only to applicants on the register. The Act permits Local Authorities to **seek injunctions to prevent anti-social behaviour, both by and against their tenants, where violence had occurred or is threatened.** The Act also allows Local Authorities to use **introductory tenancies** which enables tenancies to **be ended within the first 12 months** without having to prove grounds for possession. The Housing Act also provides **social landlords with more power against anti-social behaviour through strengthening the grounds for possession to include behaviour likely to cause nuisance, anti-social behaviour in the locality of a tenant's property.** The anti-social behaviour of visitors and conviction for an **arrestable offence** within the vicinity of the property.

Registered social landlords (**RSL**) can also use **“starter tenancies”** which, as with introductory tenancies allow the RSL to terminate the tenancy after a 1 year period if the tenancy has not been deemed to be satisfactory.

- (b) Under the **Environmental Protection Act 1990**, Local Authorities have a **duty to investigate a complaint of noise or other nuisance** from premises (land and buildings). If the noise or nuisance is considered to amount to a statutory nuisance then the Authority must serve an **Abatement Notice** on the person responsible or the owner of the property. The Notice may require that the nuisance be stopped all together or limited to certain periods of the day or night. **A failure to comply with the Embayment Notice can result in a fine.**
- (c) **The Noise Act 1996** introduced a **Night Noise** offence for excessive neighbour noise occurring between the hours of **23.00 and 07.00.**
- (d) **Police Action.**

Criminal prosecutions for offences such as criminal damage or breach of the peace and public order offences.

Alternatives to prosecution?

(e) **Social Services Action.**

Supervision/Probation Orders.

Care Orders.

Mental Health Act Orders.

Section 47 National Assistance Act Order.

**8. Media Coverage**

The naming and shaming policy has been enthusiastically adopted by newspapers.

The Anti-Social Behaviour Act has **lifted a media ban on naming children subject to two ASBOs**. Usually, there is protection under **Section 39 of the Children and Young Persons Act 1933 to prevent** the identification of a child or young person concerned in the proceedings. However, these reporting restrictions are lifted in the case of ASBOs to allow the name, picture and address of the young person concerned to be published.

The **rationale behind** this is that if there is no publicity surrounding a person who is been ordered to comply with an ASBO then it **would reduce its effectiveness**. Indeed, in **Manchester** they take a very proactive approach and have published 200,000 leaflets and delivered them through neighbour's doors listing persons subjected to ASBOS and encouraging residents to report any breaches.

**"Not wanted" posters** have been put up on streets and the local press have assisted by publishing on its front pages the names and photographs of the local "yobs".

## 4. ALTERNATIVES TO ASBOS

### 1. Acceptable Behaviour Contracts (ABC)

These are **written agreements** typically between unruly teenagers and the police and other public agencies banning anti-social behaviour. The contracts are **not legally binding but if breached they can lead to tougher sanctions** which are.

The **first** ever ABC's were **introduced by the London Borough of Islington** in 1999.

### 2. Parental Control Agreements (PCA)

These are **identical** to ABC's **except** that there are for cases of anti-social behaviour by **children under 10 years old**. In this instance, the parents rather than the child would sign the agreement.

### 3. Agreements in School

These are developed in much the same way, and apply to the child's, or the parent's, **behaviour within schools**. The conditions within this contract can be **positive as well as negative** as well as the threat of enforcement, recipients can be encouraged through incentives such as youth activities throughout the school holidays.

### 4. Mentoring

The **Bridges to Inclusion Programme** was set up by Knowsley Metropolitan Borough Council to reduce offending by vulnerable young people.

The programme links community mentors (recruited from the local community, Knowsley Borough Council and local businesses) with young people who have been referred through the Youth Offending Team, local schools, Education Welfare Team, Social Services, children's homes and the Council's Youth First Programme. **Goals are set in three key areas**. These are **habits** (e.g. drugs or violence), **education, training and employment** and **relationships** (e.g. parents teachers and peers).

### 5. Diversionary Activities

The **London Borough of Tower Hamlet Graffiti Project** has been operational since 1997. It involves offering incentives such as abseiling and rock climbing to those who participate in removing graffiti from selected areas. The project employs **a full time Project Coordinator who has made links with local agencies** to develop sound engineering and video workshops, drama classes and IT training.

## 6. Tackling Anti-Social Behaviour through Education

### (a) Working with excluded children.

For instance the Middlesbrough Education Network which works with pupils in years 10 and 11 who have either been excluded or have experienced difficulties within school. The Network offers individually designed courses to suit the needs of individual students.

### (b) Informal educational activity.

For example, the Lincolnshire County Council Escape Project aims to involve 11 to 16 year olds in a range of informal educational opportunities that are both challenging and fun. More than 1,500 young people took part in the scheme in the year 2000 and of those who attended the scheme, 72% expressed the opinion that the course had “kept them out of trouble”. Crime statistics supported this finding showing a 62% fall in crime committed by young persons throughout the period in which the scheme took place.

## 7. Multi Agency Partnership

The London Borough of Camden **mission statement** is as follows:-

“We will make a positive impact on the lives of all our tenants and residents by actively stamping out and preventing all forms of nuisance and anti-social behaviour by working in strong partnership with other key agencies, forums, registered social landlords and individuals in the London Borough of Camden”.

When we deal with people who are subjected to ASBOs, the first thing as Lawyers we should be **asking is whether an alternative has been explored**. In my opinion, there has to be a good reason why this has not taken place.

**Allows an opportunity to make representations** that alternatives should be explored first and should be aiming to persuade the Council's to withdraw their applications for ASBOs until the alternatives have been entertained.

Quite likely that the Council's will not respond favourably to representations but in which case can use this as **part as submissions that** the Court cannot be satisfied that the Order is **really “necessary”** to protect the public when ignoring alternatives.

Indeed, I read an **article in the Guardian from the Director of Shelter Adam Sampson who states that Councils should work more closely with the voluntary sectors rather than see them as a threat**. Could avoid the need for ASBOs. For example, in Rochdale the Shelter's inclusion project resulted in them working with anti-social tenants to change their behaviour.

Mr Sampson would state that the roles should be complimentary and not competitive.

He states **“we are on the back foot on anti-social behaviour**. If we had worked together better we could have headed off some of the more serious proposals; we did not act fast enough. We could have been a **more powerful voice for change”**.

**It is disappointing to note in the guidelines** issued by the Home Office in November 2002 on page 7 it states that ASBOs and ABCs **should not be seen as competing** and goes on to state “it is particularly important to **dispel any impression** that Anti-Social Behaviour Orders should be regarded as **measures of last resort**, only to be tried when other interventions such as acceptable behaviour contracts have already failed”.

## 6. THE FUTURE OF ASBOs

This Government has just announced a **5 year plan** to fight crime and anti-social behaviour. David Blunkett has stated that the aim is to reduce crime by 15%. It seems clear that they want to achieve that through the criminal justice system.

When announcing the law and order strategy, Tony Blair stated that it would deliver a society built around “rules, order and proper behaviour”. He stated that it marked “the end of the 1960’s liberal, social consensus on law and order”.

The stated aim within the 5 year plan is to increase the number of areas given “**trailblazer**” status. In 2003 ten areas were given such status including London. These areas receive increased funding and support from the Government’s Anti-Social Behaviour Unit. The extra support was aimed at problems that effect communities, such as intimidating behaviour, nuisance neighbours and street begging. A further forty areas are to be given trailblazer status.

The **5 year plan intends to introduce the following:-**

- Satellite tracking of offenders
- Doubling of electronic tagging to 18,000 (despite electronic tagging having no appreciable affect on crime over the last ten years)
- Extending of fixed penalty notices – children as young as ten can be handed on the spot fines to tackle yobbish behaviour.
- Focus on 5,000 most prolific offenders.
- Increase in number of community Police Officers – an extra 20,000.
- Travellers to UK to have photograph taken – facial mapping (one suspects this is likely to be followed by the National Identity Card Scheme in due course)
- A rise in areas targeting anti-social behaviour.

Critics would say that this law and order strategy is **more to do with politics than the fight against crime**. Many people believe that the solution to crime is more through social and economic policy than increasing the powers of a criminal justice system. Many would rather see the same amount of focus on education, health and welfare issues as well as expanding community based intervention.

## 7. OPEN FORUM

### How can you help us and vice versa?

- Look for the most **draconian cases** encountered. We are looking for cases with merits to take to the Appeal Court.
- Cases where arguable they have a “**reasonable excuse defence**”.
- Looking for examples where **agencies are unable to continue working with their clients because of the restrictive nature of the ASBOs** and in particular the geographical exclusion zones.

## APPENDIX ONE

### CRIME AND DISORDER ACT 1998

#### 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:-
  - (b) That the person has acted, since the commencement date, in an anti-social manner, that it 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

- (c) That such an Order is necessary to protect persons in the local Government area in which the harassment, alarm or distress was caused or was likely to be caused from further anti-social acts by him;

And in this section “relevant authority” means the Council for the local Government area or any Chief Officer of Police any part of whose Police area lies within that area.

- (2) A relevant authority shall not make such an application without consulting each other relevant authority.
- (3) Such an application shall be made by complaint to the Magistrates’ Court whose commission area includes the place where it is alleged that the harassment, alarm or distress was caused or was likely to be caused.
- (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 describes 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 of the purpose of protecting from further anti-social acts by the Defendant:-
  - (a) Persons in the local Government area;

AND

- (b) Persons in any adjoining local Government area specified in the application for the Order;

And a relevant authority shall not specify an adjoining local Government in the application without consulting the Council for that area and each Chief Officer of Police any part of his Police area lies within that area.

- (7) An Anti-Social Behaviour Order shall have effect for a period (not less than 2 years) specified in the Order or until further Order.
- (8) Subject to subsection (9) below, the applicant of the Defendant may apply by complaint to the Court which made an Anti-Social Behaviour Order for it to be varied or discharged by 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 2 years beginning with the date of service of the Order.
- (10) If without reasonable excuse the person does anything which he is prohibited from doing by an Anti-Social Behaviour Order, he shall be liable:-
  - (a) On summary conviction, to imprisonment for a term not exceeding 6 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 5 years or to a fine, or to both.