

# **Anti Social Behaviour: Rethinking Definitions and Principles**

## **A Discussion Document**

Professor Simon Hallsworth  
London Metropolitan University

April 2010

# Introduction

---

This paper addresses two issues: First, the issue of developing a definition of Anti Social Behaviour (ASB) in ways that provide practitioners with a robust focus around which intervention effort may be directed. Second, in the context of the growth in the number of authorities mandated to confront ASB and the potentially severe consequences attached to the sanctions they mobilise, the paper examines the principles that might be used to govern their exercise.

As a discussion paper the aim here is to not to offer the final word on what remain a complex set of issues but to proffer some ideas that may provoke useful dialogue and debate. It is accepted from the outset that this is not the final statement on the issues covered and that the ideas presented here may need to be subsequently modified. As such, any response will be appreciated.

# Defining ASB

---

In what follows we begin by looking at some of the recurrent problems associated with attempts to define ASB and conclude by developing an alternative definition which is able to overcome these limitations.

## Problems in definition and attribution

Until recently, the range of acts now defined as Anti Social Behaviour (ASB) would have been considered incivilities. These were acts that lay beneath the threshold of crime and, as such, were not seen to warrant an enforcement response. Addressing such acts was typically delegated through most of the 20th century to the communities in which they occurred to manage. With the advent of New Labour and the wider politicization of law and order from the 1980s onward, this situation changed. Incivilities were redefined as ASB and managing them became increasingly an issue for public authorities and less those for the communities in which they occurred.

While confronting ASB is now recognised as a pressing social problem, defining ASB has proved a difficult task. Like the term 'crime' ASB has no ontological reality. That is, it exists only in so far as we elect to define a specific category of behaviours as such; which is also to say that there is no activity that is inherently anti-social except those we elect to so label. It is also difficult to define because ASB is by nature an elastic and vague concept. It is a vague because what is construed as ASB is highly subjective in so far as what might be considered ASB for one person might not be for another; it is also vague because it is cultural specific in so far as what one cultural group might define as ASB might not be defined as such by another.

As far as the Home Office is concerned this conceptual instability is not necessarily a problem in so far as they recognise that people's perceptions vary and that different individuals and communities may well define ASB in different ways. The task of public authorities, in this sense, is to respond to the ASB as it is defined as such by the community in question. While seemingly democratic in design it could also be observed that in practice what is substantively defined as ASB is not left to the community alone but to the agencies that have been mandated to substantively address it and these typically use pre-established Home Office categories to make sense of it. While these categories include acts most reasonable people may classify as ASB it is also worth noting that, like criminal labels, those that get listed tend to represent the interests of those with the institutional power to make their labels count. And this power differential explains why 'kids hanging around' is considered to fall within the remit of ASB (and the institutional response to it) while the anti social behaviour of more powerful groups, including corporations, do not get labelled and addressed in the same way even if their ASB is arguably more serious.

Another problem arises when we consider the issue of trying to identify what it is about a certain class of behaviour that makes us want to define it as anti-social. Take for example

New Labour's original definition where ASB is defined as:

*“Behaviour which caused or was likely to cause, harassment, alarm or distress to one or more persons, not of the same household as the perpetrator”.*

Here ASB is construed as behaviour that induces a specific set of emotional responses on the part of the victim who experiences them. The problem here is that there are many behaviours that are not classified as ASB which might well provoke such emotive responses (and for good reason) this definition is not particularly useful in distinguishing those harms that should be properly considered Anti Social from those which are not. The same problem is repeated in the definition produced by the Birmingham City Wide Anti Social Behaviour Coordinating Committee which defines ASB as:

*“Behaviour that is repetitive or part of a pattern that caused or is likely to cause significant nuisance, annoyance or distress to a reasonable individual or community”.*

Again ASB is defined by reference to the emotive states it is supposed to induce and by reference to the fact that the act in question repeats itself. The problem here is that the categories of acts that might induce such states are potentially so wide as to empty the definition of any substantive application. Or to put this another way if we were to accept ASB as these kind of definitions define it why are we not also talking about the unacceptable behaviour of MPs or indeed the culture of the financial elite both of which have induced considerable distress to many more people than acts often defined as ASB.

Leaving aside its inherent instability, ASB remains a potent label to which potentially serious consequences can follow for those to whom this label is attributed. Being identified as ‘anti-social’, in this sense, is to be identified as an outsider, as someone to whom a measure of pain can be legitimately distributed. Criminal labels, as Becker warned long ago, are powerful things. They affect how people view and treat those to whom these labels are attributed and they can influence, in turn, how those so labelled see themselves. This brings us to another problem with the term and that pertains to the issue of identifying precisely what class of behaviours we want to term ASB given the potentially criminalising consequences that follow from formally attributing the term.

Take, for example, the behaviour of young people often defined by the adult world as ‘anti social’. They fight, they ‘hang around’, they quarrel, they make noise, they take drugs, they smoke cigarettes and many drink whilst underage (and sometimes get drunk and disorderly as a consequence). While it may appear sensible to characterise all of this as ASB and find solutions through mobilising the many ASB sanctions now available to suppress such behaviour (cautions, dispersal orders, ASBOs etc.) a good case can be made for suggesting that prior to attributing such a potent label (with the harsh consequences that might follow), other ways of defining the behaviour in question might be preferable and less criminalising in many instances.

In schools, for example, teachers have expectations of 'good behaviour' on the part of pupils and contrast this with 'bad behaviour' which constitutes reprehensible conduct that must be dealt with - usually through informal means. Technically, it is likely that many of the behaviours identified as 'bad behaviour' and ASB coincide (such as fighting and verbal abuse) but the response to them can take very different forms dependant on which label is allocated by which public authority. In a society that appears to operate on the stark binary 'ASB' and 'Crime', the fine necessary distinctions we need to draw between 'bad behaviour' and 'ASB' runs a real risk of being lost. Given that labels are not infallible and can be misattributed, this is a real issue we need to bear in mind when ASB labels are given and the term defined.

## Redefining ASB

Given the vague nature the term and the problems associated with the existing definitions and attributions, a case could be made for developing a better and more substantive definition of ASB. Rather than attempting to define the term by reference to the emotive states it is supposed to induce in victims, or considering whether it is persistent, it would be more rational to simply accept that we are dealing here with a particular category of social harms that need to be identified and addressed. Rather than simply move in to define what these are as if ASB was some kind of standalone category, it pays dividends to consider what separates ASB from crime on one hand and bad behaviour on the other.

If we consider the nature of the harms we want to include as ASB then the first distinction we might want to make is between the harms formally labelled as 'criminal' and those we might want to define as 'ASB'. Though distinguishing the two categories absolutely is different because they blur together what distinguishes the harms labelled 'ASB' from 'crime' is that those classified as ASB do not typically reach the threshold necessary to be termed 'crime' or which invite criminal justice sanctions. What we are dealing with in the case of ASB are (principally) a class of harms which are of a nature and severity such that they warrant an intervention to prevent them. These harms are distinguished by the fact that they impact negatively on the wellbeing of individuals, the community and the environment; they comprise harms which individuals and communities consequently have a right to be protected from; and are of a severity such that they demand an institutional remedy to address them.

Just as it is necessary to disarticulate those harms we want to label and address as 'ASB' from those we label and address as 'Crime', we also need to distinguish those harms we want to label 'ASB' from the category of harms which constitute the domain of 'bad (reprehensible) behaviours'. It is necessary to do this because, as we have seen, ASB is a potent criminalising label to which severe consequences are potentially attached. As we saw in the case of the problematic behaviour of school children, while their behaviour may well appear anti-social, it is often not appropriate to label it as such when a more sensible and progressive way forward might be simply to see it (as generations of parents and teachers tend to do) as simply bad behaviour to which established remedies such as telling children off, warning them about future consequences and so on are adequate

If these distinctions are accepted then we have a harm continuum composed essentially of three categories:

- Representing the least severe we have the category of Bad Behaviour. This is behaviour that is reprehensible and which needs to be addressed but which does not require the application of formal ASB sanctions but informal non stigmatising modes and methods of social control. I would also suggest that within this category might also be included inconsiderate conduct which in recent years has been often classified as ASB
- ASB constitutes an intermediate category on the harm continuum and represents harms that fall short of crime but which exceed the category of bad behaviour. These are harms that pose a risk to individuals, the community and the environment to a degree such that a more formal response is justified in order to address the behaviours so labelled.
- The behaviours termed crime are those which exceed ASB in severity, are defined in law as such and to which criminal justice responses are normally applied.

These harms may be allocated on a pyramid of risk

**Figure 1: The Harm Continuum**



It must be accepted and understood that the categories are not mutually exclusive. It must also be recognised that the decision to place any behaviour within a specific category is an act of judgement and requires careful judgement. What makes the decision to allocate so important is that very different social responses (including the social meanings transmitted) are likely to follow from the judgment made.

## Advantages

If this approach is adopted then it a number of potential advantages follow.

- By thinking in terms of a harm continuum so practitioners are provided with a wider conceptual framework than the dualism ASB /Crime allows. This framework also permits a wider variety of intervention strategies between the three categories and within them.
- By including the category 'bad behaviour' the aim is not to invent a new category which previously does not exist it is to remind everyone of an existing category of behaviour that is in wide currency but which runs a real risk of being subsumed by that of ASB
- The term 'harm' is also used by the West Midlands Police and, as such, this way of defining ASB will dovetail neatly with its community policing agenda.
- In classifying ASB as a social harm our aim is to try and mobilise a term that is broader than crime and potentially less stigmatising. The reason for this is that while it may be apposite to treat some social harms by mobilising the language and practices of criminal justice, many situations which involve some degree of ASB are not criminal in so far as they do not possess clear victims and perpetrators; they should not warrant a criminal justice response; or indeed be spoken about using the language of criminal justice (which tends to resolve issues into offenders, victims, blame and punishment). If the overriding aim of the control effort to confront ASB is to reduce it effectively and fairly, practitioners must be given the ability to utilise a variety of intervention practices attached to discourses which do not necessarily invoke blame and punishment and which reduce social relations into victims and offenders. At times it might be more apposite to conceive issues often labelled as ASB as what Luk Hulsman terms 'problematic situations' to which a host of different solutions may present themselves. Arbitration, conflict management and dialogue are examples of practices attached to non criminalising interventions which can and do play an important role in the management of problematic behaviours often labelled as ASB. It should also be remembered that their also exist a range of other legal.
- A further justification for evoking a social harms approach in relation to ASB is that a number of the harms often labelled as anti-social can often lend themselves to very different solutions depending on how they are defined. Drug use may variously be seen as criminal endeavour which warrants a criminal justice approach; as a social health issue, or an issue of education. If the issue is predefined as criminal then this may push what might often be more appropriate solutions into the background whilst also antagonising potential partners who might not want to support what may be perceived as a criminalising agenda.
- It could also be observed that many good institutional remedies to address bad / problematic / inconsiderate behaviour pre-exist the ASB laws now routinely deployed to address them. Many of these, such as tenancy law and environmental health interventions allow for a more balanced and proportionate interventions than many of the sanctions that have recently been developed for confronting ASB. The harms approach adopted here invites us to recognise these as still valid.

## Classifying ASB

However we define ASB the problem of vagueness will still invariably remain. In addition to the general definition of ASB offered above we need to have a more specific grasp of the social harms we would want to include in the category of ASB. While the Home Office has produced a fourfold classification, a case could be made for a simplified framework which reduces ASB to three overlapping but distinct categories: *social harms directed against individuals*; *social harms directed against communities*; *social harms directed against the environment*. In the case of the former the harms in question impact directly on particular individuals or their families but not necessarily the wider community. In the case of the latter we are dealing with harms that impact on more than one individual (and their family) and negatively impact on the well being of a neighbourhood and the population within it. Finally, by environmental harms we mean those that impact negatively on the physical environment. Below we provide some indication of the kinds of social harm that would fall within the two categories.

### Social harms directed at individuals (examples)

- Harassment
- Threats
- Racial abuse
- Noisy neighbours
- Stalking
- Bullying

### Social harms directed at communities (examples)

- Public drunkenness and disorder
- Pollution from factories leaching into the environment
- Young people behaving aggressively
- Open sex markets and their detritus
- Criminalisation of young people who have not misbehaved
- Open drug markets and their detritus
- Inappropriate play (i.e. skateboarding in crowded public settings)
- Closure of universal public amenities
- Selling of cigarettes and alcohol by retailers to young underage children

### Social harms directed against the environment (examples)

- Fly-tipping - dumping household or commercial rubbish in private or communal areas
- Illegal advertising
- Littering - deliberately dropping litter on the streets

- Graffiti - spray-painting or otherwise marking private property or communal areas like the sides of bus-shelters and houses
- Vandalism

It could be observed here that this simplified typology can easily be made compatible with that produced by the Home Office as the following table indicates.

<i>Home Office Classification</i>	<i>Reclassification</i>
Misuse of public space	Social harms directed at communities
Disregard for the community / personal wellbeing	
Acts directed at people	Social harms directed at individuals
Environmental damage	Social harms directed against the environment

As to why ‘misuse of public space’ and ‘disregard for the community’ is included in the same category, this occurs because the two Home Office categories cannot easily be distinguished. What both share in common is that they both comprise harms against the community

# Principles

---

Given that interventions used to suppress ASB can be (as ASBOs are) quite punitive; given the proliferation of sanctions that have been created to confront ASB; and given the proliferation of agents and agencies that are now involved in delivering them, a case could also be made to suggest that the exercise of these sanctions need to be subject to a set of agreed principles that ought to be mutually binding on all agents involved in their delivery and which should govern their use. Principles, in effect define the operational philosophy that ought to pertain to and inform ASB suppression policy, while standards pertain to issues of performance and accountability of those charged with delivering it.

Rather than seeking to reinvent wheels the principles that ACPO have identified in order to ensure that police officers and police action more generally is compliant with the Human Rights Act (the Act) provide a useful beginning from which to develop the unifying principles that ought to govern the delivery of ASB legislation.

According to ACPO there are six principles that the police must comply with in order to ensure that police action remains compliant with the Human Rights:

- LEGALITY - is there a legal basis for police actions? Is that legal basis in; statute, regulations, case law and is it available to a member of the public.
- PROPORTIONALITY - can the police demonstrate that actions taken were "proportionate" to the threat or problem it sought to prevent.
- RELEVANCE/NECESSITY - was the police action strictly relevant to the particular threat/problem.
- SUBSIDIARITY - was the police action the least "force/intrusive" available.
- EQUALITY OF ARMS - in any trial process did the defendant have the same information and access to information as the police / prosecution.
- REMEDY - is there an independent public remedy available to the citizen.

As ACPO also note the Human Rights Act (the Act) 'makes it unlawful for a public authority to act in a way which is incompatible with a convention right'. As police officers are 'public authorities' in the sense that their role 'includes certain public duties' ACPO conclude that 'police officers will have individual liability and therefore are under a legal obligation to act in a way which is compatible with the convention'.

Apart from specifying principles which work to ensure that police action is consistent with the Act it could also be noted that the principles in and of themselves provide a framework for action that not only governs how the police respond, but which establish in so doing the basis for a response that both respects the rights of the individual, which aspires to ensure that police

action is appropriate to the threat it is directed to address, while also functioning to preclude the use of unnecessary force.

The principles that ACPO have identified for the police also apply to the governance of the various 'public authorities' who are vested with the function of confronting ASB. These are after all, also 'public authorities' whose actions must also be consistent with the Act which is one reason why these principles might be adopted. Another reason is that they also provide a framework that ensures that the action directed to confront ASB also respects the rights of the individual; which aspires to ensure that the action taken to confront ASB is appropriate to the threat it is directed to address; and which works to preclude the use of unnecessary force in so doing. A good case could also be made to suggest that these principles also correspond to and are consistent with what would pass in a liberal democratic society such as the UK as natural justice

If this argument is accepted then it would appear that the adoption of these self same principles would provide the basis for a viable framework which would govern the way ASB legislation is delivered by the authorities which are authorised to deliver it. This would mean substantively that, when confronting cases of ASB, the response that is directed to address it must be grounded in the principles of:

- LEGALITY in so far as the action taken must have a legal basis in statute, regulations, case law and is it available to a member of the public.
- PROPORTIONALITY in the sense that those charged to address ASB can demonstrate that the actions taken were "proportionate" to the threat or problem it sought to prevent.
- RELEVANCE/NECESSITY in so far as the action taken was strictly relevant to the particular threat/problem.
- SUBSIDIARITY in so far as the action taken to confront ASB was the least "force/intrusive" available.
- EQUALITY OF ARMS - in so far as in any judicial process arising from action directed to address ASB the defendant has the same information and access to information as the public authorities bringing action against them
- REMEDY – in that there remains an independent public remedy available to the citizen.

While these principles are necessary the question that then needs to be asked is whether in and of themselves they are sufficient. What they do is make action directed to confront ASB consistent with law while also ensuring that action taken is appropriate to the scale of the problem posed. To these we suggest four other principles also need to be adopted to ensure that intervention to confront ASB is fit for purpose.

- IMPACT AWARENESS Action taken to address ASB must be preceded by an assessment of its likely impact and consequences

- **HOLISTIC** Action taken to address ASB ought to address where possible the causes that give rise to it and not only address its manifest symptoms
- **VALUE FOR MONEY** Action taken to address ASB must be cost effective and offer value for money
- **COLLECTIVE RESPONSIBILITY** all public authorities (and not only those directly mandated to address ASB) must consider how the decisions they take may impact on ASB, its production and its reduction.

The principle of impact *awareness* is necessitated by the fact that the decision to apply the sanctions that may be applied to confront ASB can potentially have severe consequences, and these may impact both on the individual targeted but also on their family. These consequences need to be considered as a matter of course because if they are not, far from resolving a problematic situation it could potentially escalate or fail. Ill thought out interventions can also be costly in terms of resources expended.

The principle of *holism* no more than places within a formal context a principle which ought already to inform institutional good practice in confronting ASB more generally. ASB is often the symptom of harms that have deeper causes. Effective practice ought, as a matter of course, to target the deeper causes that give rise to ASB. By recognising this principle formally so the social response to ASB recognises both the need to develop an effective reactive intervention strategy with up-stream effort directed at preventing it.

In a society where most public authorities are likely to face quite severe fiscal constraints the principle of developing responses to ASB that demonstrate *value for money* remain important. Given the associate costs in terms of labour and money in mobilising sanctions such as ASBOs, ensuring that these are only mobilised when necessary is an important consideration in considering how effort is expended and allocated.

Confronting ASB is not only something which those public agencies which have a formal mandate to confront it need to pay attention. Confronting it is also the responsibility of citizens and communities and all other public authorities. As such, the principle of *collective responsibility* is also important. It could also be pointed out that the principle itself is not new it merely restates a principle enshrined in Section 17 of the 1998 Criminal Justice Act which enjoined all public authorities to place a concern with reducing crime at the centre of their agenda.

These principles if adopted ought to apply at a number of different levels. They ought to provide the organising framework for action directed to address specific cases of ASB on the part of practitioners; they should help inform the underlying philosophy for confronting ASB more generally; and they should inform the way ASB strategy is developed.

Best practice in relation to confronting ASB is practice that is consistent with principles.