

# LIBERTY

PROTECTING CIVIL LIBERTIES  
PROMOTING HUMAN RIGHTS

## **Liberty's evidence to the Home Affairs Committee on Anti-Social Behaviour**

**September 2004**

## **About Liberty**

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research.

## **Liberty Policy**

Liberty provides policy responses to Government consultations on all issues which have implications for human rights and civil liberties. We also submit evidence to Select Committees, Inquiries and other policy fora, and undertake independent funded research.

Liberty's policy papers are available at

[www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml](http://www.liberty-human-rights.org.uk/resources/policy-papers/index.shtml)

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1. Liberty welcomes this opportunity to give evidence to the Home Affairs Committee. The scourge of ‘anti social behaviour’ is a major preoccupation of politicians and it resonates widely with a population understandably concerned with living in relative safety, peace and harmony. Liberty supports this concern and has represented and supported many families and individuals seeking protection from crime and harassment.

2. Despite the very many key note speeches and column inches devoted to this subject, we as a society are often far from clear about what we mean by “anti-social behaviour”. This lack of precision may be unimportant in ordinary social or family life. Here the concept of behaving in an anti-social manner might well be used to describe the unpleasant guest who begins by dominating the conversation, proceeds to light his cigar during dinner and ends by taking a drunken swing at the host. However, it is our view that in a democracy, if prohibitions and punitive sanctions are to be employed- a greater degree of clarity is required.

For the purposes of this response, we assume that there are essentially two categories of conduct that “anti-social behaviour” policy may legitimately seek to address:

- Criminality (as traditionally covered by e.g. offences against the person, public order offences and criminal damage).
- The kinds of nuisances which the civil law has always been prepared to address (e.g. by the grant of injunctions protecting us from excessive noise or harassment from neighbours, ex-partners etc.)

3 It is not legitimate however, to use an ill-defined idea of anti-social behaviour to attack mere difference in society- even if such difference causes irritation or indeed some anxiety to others. A group of young people congregated around the same street corner every afternoon may cause annoyance or fear to local residents. However it is important to address whether they are actually doing anyone harm (i.e. the rational basis for annoyance and fear) as well as the question of why they are there before seeking to remove them by way of police compulsion.

4 The legislative approaches of recent years may be crudely placed in three categories:

- Amendments to the traditional criminal law (new offences, powers of arrest, fixed penalty procedures etc.)
- Anti-social behaviour orders.
- Broader and blanket powers under which Parliament effectively delegates legislative decision-making to the Police so that whole areas may be “designated” for a regime of far greater compulsory police powers than is allowed under the ordinary law of the land.

We intend to focus on the second two areas for the purposes of the present exercise.

### **Anti-social behaviour orders**

5. These civil orders (ASBOs) may it seems be aimed at both low-level criminality and the types of nuisance traditionally left to be resolved by citizens themselves- if necessary by recourse to the civil courts. Government crime statistics indicate that approximately three quarters of crime goes undetected. Much of this offending relates to low-level crime such as criminal damage arising from vandalism or graffiti. An inability to prosecute will frequently be a consequence of a lack of policing resource or an inability to gather sufficient evidence to prosecute. There will inevitably be pressure upon the police to use non-criminal measures such as an ASBO as an easy alternative to prosecution. ASBOs should not be used as a solution to a situation where the police ‘think he may be up to no good but can’t prove anything’.

6. There are particular concerns about the use of ASBOs when the police do not intend to instigate criminal proceedings. As breaching the terms of an ASBO<sup>1</sup> is a criminal offence punishable by up to five years imprisonment, it is possible to end up with a criminal record without having committed any recognisable offence. As the evidential burden is lower to obtain an ASBO, there is a blurring of the traditional distinctions between the criminal and civil law and a corresponding dilution of the presumption of innocence. That said, we appreciate that the courts have always

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<sup>1</sup> Often an action not an offence in itself such as ‘not entering street X’ or associating with person Y’.

granted civil injunctions to protect individuals from nuisance and harm and that the sparing use of tightly defined and time limited Orders may compliment the criminal law in protecting specific vulnerable and intimidated people who would not otherwise gain access to such protection.

7 It is tempting for local authorities to see ASBOs as a magic bullet solution. We do not accept that using orders to move prostitutes from a particular location will have any impact other than displacement<sup>2</sup>. Similarly we believe that introducing a city wide ASBO<sup>3</sup> will inevitably result in a breach. The effectiveness of ASBOs are increasingly being scrutinised in the press<sup>4</sup>. Making ASBOs effective and limiting them to appropriate restrictions necessary not only helps to satisfy human rights requirements but will also deflect such criticism.

### **Blanket Powers**

8. The Anti Social Behaviour Act 2003 (ASBA) extended notions of how anti social behaviour can be defined. It removed the need for those who face legal sanction to have been involved in any 'wrongdoing'. ASBA restricts freedom of movement and action. However, there is no need for any anti social act. Two main areas of concerns are in part 4 of the act. This introduces curfews for under 16s and creates dispersal powers. What makes these powers distinct from existing law is that there is no need to link an individual to an action for powers to be used. Dispersal powers allow the police to move on<sup>5</sup> groups if they believe that a group (or any single individual in a group) are likely to intimidate people. In order for an area to be subject to dispersal powers a Police Superintendent needs to believe there is a problem with anti social behaviour and that groups are intimidating people in the locality. There is no need for any particular group to have acted improperly and no individual needs to be 'doing' anything. While people might find the *presence* of a group of young men with hoods partly covering their faces intimidating, this does not necessarily justify

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<sup>2</sup> Stoke City Council among others has introduced ASBOs on prostitutes operating in particular locations

<sup>3</sup> For example the order in 2002 banning Gordon Shepherd from entering Manchester City Centre for an indefinite period

<sup>4</sup> See for example the Daily Mail article 'Two fingers to your ASBOs' Tom Rawstorne, September 10 2004

<sup>5</sup> And makes it an offence punishable by three months imprisonment if they fail to do so or return.

the police taking action. Curfews for under 16s allow the police to pick up anyone under that age unaccompanied by an adult and return them to their homes. Again there is no need for them to be acting in an anti social manner.

9. These powers are a consequence of the Government's 'blank cheque' policy on policing. The Prime Minister makes no attempt to pretend otherwise as demonstrated when he said, 'We asked the police what powers they wanted and gave them to them'<sup>6</sup>. We appreciate the police will request all possible tools that they believe may assist them in fighting crime. However, we believe that Parliament should legislate according to principles of proportionality and necessity. The United Kingdom has a tradition of consent based policing. Citizens accept the state is entitled to exercise control through policing. In return the state does not use those powers to excess or when unjustified. Our concern is that this consensus is being undermined by empowering the police to take action against those who are not acting in an antisocial or criminal manner.

10. The Government's response to criticism that policing powers are being too widely drawn is that the public should trust to an appropriate use of discretion. This is also part of the justification behind proposals to make all offences arrestable<sup>7</sup>. Allowing unfettered discretion presents problems. Recent figures show that use of stop and search powers without reasonable suspicion (permitted under S.44 Terrorism Act 2000) have been unfairly and disproportionately used against Muslims. These powers, which the Home Secretary told Parliament would only be used where there is a terrorist threat, have also been used against anti war and arms fair protestors. The Metropolitan Police Authority has admitted excessive use of S.44 powers. Wide discretion places too much emphasis on an individual officer's assessment as to whether he is using the powers available to him proportionately. This is impractical, as it effectively requires the officer to make constant high level policy assessments (as opposed to more immediate practical judgements) of proportionality under the Human Rights Act 1998. Statute should limit powers so that those who exercise them retain discretion only within tightly defined parameters.

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<sup>6</sup> Speech 19 July 2004

<sup>7</sup> See current Home Office consultation 'Policing: Modernising Police powers to Meet Community Needs' para 2.7

11. The Codes of Practice to the Police and Criminal Evidence Act 1984 demonstrate awareness that consent based policing requires there can be no presumptions as to criminality<sup>8</sup>. What was apparent twenty years ago no longer holds true. The PACE Codes still apply. However, they are now more easily bypassed through the use of Section 44, the application of Part 4 ASBA powers and by proposed extensions of arrest powers. The consequence of recent developments will be a further blurring of the line between ‘anti social behaviour’ and criminality.

### **Efficacy**

12. Our concerns over Government policy on anti social behaviour would be more difficult to justify if there were demonstrable societal benefits. It is likely that individual uses of ASBOs are indeed effective and we believe there is justification for the use of these within defined parameters. However, there are underlying efficacy issues that need to be addressed.

13. We have previously touched upon the problems arising from excessive use of ASBOs. Displacement of aggressive youths from one estate to a neighbouring estate does not address the cause of their behaviour. ASBOs and indeed the many other legislative responses may have their place, but they are not a panacea for all of society’s ills.

14. We are aware of anecdotal evidence of ASBOs being treated as a badge of honour. If this is so then what must be the principle purpose of ASBOs, deterrence from anti social behaviour, is undermined. Their effect will be limited to punishment for breach. This may provide a short term ‘solution’ through the likely imprisonment of the person who has committed the breach. Bearing in mind the cost of maintaining someone in prison and links between imprisonment and re-offending rates, wholesale imprisonment for breach will not result in any real benefit to society.

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<sup>8</sup> For example Code A at para 2.2 Reasonable suspicion (allowing stop and search) cannot be based on generalisations or stereotypical images of certain groups or categories of people as more likely to be involved in criminal activity.

15. ASBOs are expensive. Home Office figures of an average of £5, 300 each may be conservative. Certainly some orders have cost far more<sup>9</sup>. Before the government commits itself to increased use of ASBOs there should be a cost and effectiveness analysis. The allocation of resources to policing must be the most effective way of combating crime. Sufficient police resources are also required to investigate alleged breaches of the ASBOs that are in place. ASBOs can only be effective if they are seen as ancillary to policing, not an alternative to policing.

16. There is no lack of criminal law that can be used to prosecute anti social behaviour. The Public Order Act 1986 criminalises the use of ‘threatening, abusive or insulting words or behaviour, or disorderly behaviour’<sup>10</sup> and there are a wide range of other low level offences against person, property or relating to protest. Prosecuting the existing criminal law should be at the heart of government policy. The creation of new offences, criminalising the breach of civil orders and the continuous increase of police powers simply casts the net wider without addressing cause. If more and more people are labelled as ‘yobs’ then they are likely to react as such. Treating all under 16s as potential criminals by allowing the police to pick them up after 9pm will not have any significant impact on crime rates but will undermine respect for the rule of law.

## **Conclusion**

16. The primary focus of what defines ‘Anti Social Behaviour’ should be acts that breach the criminal law. At the heart of the criminal law is the presumption of innocence. The Government has an understandable desire to address societal concerns about low-level criminality. However, we are concerned that increasing reliance on ASBOs does not provide a realistic solution. Indiscriminate and excessive use of ASBOs is undermining any benefit they might bring.

17. It is telling that the Anti Social Behaviour Act 2003 covered many acts not normally associated with criminality. As well as curfews and group dispersal, there are increased powers that can be used against protestors and travellers. We are

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<sup>9</sup> Metropolitan Police estimates go up to £100, 000

<sup>10</sup> S.5 PAO

concerned that what is described as ‘anti social’ is increasingly becoming ‘what is not the norm’. A desire to reduce anti social behaviour should not result in state penalisation of non-conformity.

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