

ASBO English: clear or baffling?

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The problem

ASBOs in England and Wales are increasingly being breached¹:

- The Home Office said 47% of all ASBOs had been breached by the end of 2005.
- A National Audit Office study, which analysed 1,000 cases dating from 1999 to April 2006, put the figure at 55%. The study also found that 35% of ASBO holders had breached their order 5 or more times.
- Figures obtained by the Conservative party in May 2008 showed that the number of people breaching ASBOs for the first time was 67% in 2006, compared with 42% in 2003.
- In August 2009, *The Daily Telegraph* reported that breaches were increasing: 'On average, an offender breaks the rules four times. In some parts of the country, eight in 10 offenders ignore them, making a mockery of the initiative.'

The research question

A range of factors is likely to be involved in people breaching ASBOs. Might one of these be that ASBOs are written unclearly, using archaic language, so that recipients don't understand fully what they must or mustn't do or feel alienated from the producing body? We investigated this in 3 stages:

1. analysing 6 ASBOs using readability software and editorial experience
2. seeking views of lawyers who deal with ASBOs
3. rewriting 2 ASBOs in line with plain-language principles.

Stage 1: analysing 6 ASBOs

We analysed 6 ASBOs we were sent by Ed Hall, an ASBO specialist prosecutor at the Crown Prosecution Service in London.

The PROCESS METHOD

On our writing-skills courses, we train authors in the PROCESS METHOD to assess and improve their documents. PROCESS is a mnemonic for the initials of the 5 steps:

1. **Purpose** – why you are writing and what you want the document to achieve.
2. **Content** – what you have to say: your messages and ideas.
3. **Structure** – how you organize your content.
4. **Style** – how you express yourself in language (words and sentences).
5. **Revision of Everything** – checking all your writing to make sure its purpose, content, structure and style work together to make your message clear.

Our analysis looked at the purpose, content, structure and style of the 6 ASBOs.

Purpose

ASBOs seem to have 2 purposes:

- to tell the recipient what they mustn't do
- to record what the court decided.

The formal structure and language required to record the court's decision may well make the documents hard for the recipients to read and understand. It is difficult to write a document that is clear to 2 target audiences, especially if they differ greatly in reading ability and knowledge of legal matters. We usually advise writing separate versions of a

document for each audience. An alternative is to include a plain-English summary at the start of the document.

The rest of this analysis focuses on the first purpose of ASBOs, looking at the appropriateness of their content, structure and style for those who receive them.

Content

The content of the 6 ASBOs was comprehensive and mostly relevant to recipients. Some text was not relevant, often due to the use of a standard form. For example, several ASBOs included instructions to the writer (usually in square brackets), such as:

- '[details of behaviour]'
- '[the Court must her [*sic*] record a finding of fact R-v-W & F [2006] EWCA Crim 686 [final bracket missing]'
- '[Where appropriate, the court must specify whether any of the requirements of the order are suspended until the defendant's release from custody]' (in 5 of the 6 ASBOs).

These would be better deleted before giving the document to the recipient (just as the pronouns in the standard wording – 'he', 'she', 'him' and 'her' – are now changed as necessary). Also, 3 ASBOs contained the section heading 'and imposed the following sentence/conditional discharge', which is then followed by a blank space. Could this heading be removed from ASBOs to which it doesn't apply? Or if it needs to be there, it may be clearer to write in 'None'.

Structure

The 3 main sections in the ASBOs are clearly numbered, paragraphs are short and bullet points are used to good effect. But the most important information – what the recipient mustn't do – is at the end, in section 3. The ASBOs follow a traditional structure, sometimes known as IMRAD (introduction, method, results and discussion). A better structure here would be the top-heavy triangle (also known as the news triangle, since journalists use it). This puts the main message at the start, where it is most likely to be read, followed by the supporting information.

Style

Computerized readability tests have limitations but can give a useful indication of how easy a document is to read and understand.

We analysed the 6 ASBOs using 3 tests:

- Flesch Grade Level – we included this as it is well known (available in Microsoft Word, though we use Micro Power & Light Co's Readability Calculations as there are flaws in Word's version)
- SMOG – most formulas predict the grade level necessary for 75–85% comprehension, but SMOG aims for 100%, which is important in a critical document such as an ASBO
- FORCAST – we included this test since, unlike most others, it is designed to evaluate documents not in narrative form (such as questionnaires, forms and tests).

All 3 tests give results as American grade levels. Adding 5 to them gives the equivalent British reading ages. Here are the results:

Test	British reading age (deduct 5 for US grade level)						Average (mean)
	ASBO 1	ASBO 2	ASBO 3	ASBO 4	ASBO 5	ASBO 6	
Flesch	17.7	16.3	17.4	16.6	15.3	18.0	16.9
SMOG	19.4	18.5	18.3	19.6	17.8	19.4	18.8
FORCAST	16.6	16.0	16.3	14.2	15.5	14.6	15.5
Average (mean)	17.9	16.9	17.3	16.8	16.2	17.3	17.1

We generally pitch text for adults at a level of around 14–15 years. If the audience is likely to include many people with weak reading skills, then we aim for a level of 12–13. It follows that younger readers may need even simpler text. But the reading age required to understand ASBOs, even using FORCAST, ranges from 14.2 at best to 16.6, with an average of 15.5 – almost certainly too high.

Looking at the text more qualitatively, the ASBOs contain a number of linguistic features likely to cause difficulty for less able readers, for example:

- long words (such as ‘residential premises’ and ‘misrepresenting his intentions, actions or identification’; and ‘charitable donations’ and ‘paraphernalia’)
- long sentences (for example one bullet point with 65 words, and another with 67) and complex sentences (such as the first in each ASBO, split over many lines)
- formal or archaic terms – such as ‘persons’ (in all 6 ASBOs), ‘without the prior permission of an occupier’ and ‘alms’
- use of the third rather than second person (eg ‘the defendant had acted’ rather than ‘you had acted’ – again in all 6 ASBOs)
- unexplained technical terms – eg ‘fail to surrender to custody’ (AMH), ‘Schedule 13 to SI 2002/2783 (L13)’ (JJC) and ‘Community Order with Work Requirement’ (FA).

Stage 2: Seeking views of lawyers who deal with ASBOs

We wrote to the Law Society, London Criminal Courts Solicitors’ Association and the Criminal Law Solicitors’ Association with a letter for publication in their newsletters. This explained the background to our project and asked how well lawyers believe recipients understand ASBOs, and how far they have to explain them to recipients.

We received several responses that suggested some ASBOs were unclear:

I have very strong views on this. The language used is beyond many clients – ‘not to loiter’ is common. Try explaining ‘loiter’.

A common term in many ASBOS is ‘not to congregate in a group of more than n people’. I believe it means that a person must not consciously and deliberately join with others in a group. But police will find a breach in the absence of any such purposeful behaviour, as though ‘congregate’ were synonymous with ‘be’.

I act for a client who is mentally unwell and has an ASBO term which prevents him from talking/shouting at a level in his house which would be audible to those outside. Needless to say, he is alleged to have breached this term on several occasions and I am defending him on the basis that how could he possibly know what level would need to be reached for him to be audible outside of the house? How vague could a term possibly be?

I have had a client on this ASBO: ‘you are forbidden from not entering [listed shops in Crawley].’ Naturally, when the prosecution considered his conduct in comparison to that clause, they dropped the allegation of breach.

We represent a number of children who have been made the subject of ASBOs and [we] are always conscious of the wording and unnecessarily complicated terms. Where possible we have argued with the Court to amend the wording, but we are not always successful. We note that the following words are common and often meaningless to many children – especially as those who have ASBOs imposed on them have often not had the benefit of schooling and their basic comprehension skills are very poor: prohibit, congregate, conduct, loitering, associating and conceal.

Stage 3: Rewriting the ASBOs

We therefore decided to go ahead and rewrite 2 of the 6 ASBOs into plain English. Appendices 1 and 3 show the originals of ASBOs 1 and 4, and Appendices 2 and 4 our rewritten versions. All names of places and people have been removed.

Stage 4: Evaluating the rewritten ASBOs

We ran the same battery of tests as described in Stage 2 on the 2 rewritten ASBOs; the results suggest that our rewriting significantly improved their clarity:

	British reading age (deduct 5 for US grade level)			
Test	ASBO 1 original	ASBO 1 rewritten	ASBO 4 original	ASBO 4 rewritten
Flesch	17.7	10.0	17.4	9.8
SMOG	19.4	10.8	18.3	11.7
FORCAST	16.6	10.5	16.3	10.1
Average (mean)	17.9	10.4	17.3	10.5

The next step would ideally be to seek views of lawyers and others on our rewritten versions, including testing the original and rewritten versions on members of the target audience, but this is not straightforward without support and funding from the relevant authorities.

Further work

Other work that we believe would be valuable in this area includes:

- research to build a broader and more detailed picture of the clarity of ASBOs – for example by scoring the readability and other aspects of clarity of a larger number of ASBOs, and assessing whether there’s any correlation between their clarity and whether they are breached
- designing practical solutions to improving the clarity of ASBOs, for example training (face to face or by distance learning) for those who write ASBOs, and a template for writing ASBOs, perhaps with drop-down options for the most common types of ASBO, ready-worded in plain English.

Appendix 1: ASBO 1 (original version)

Order on Conviction (Crime and Disorder Act 1998, s.1C)

In the [place name] Youth Court –

1. On the [date]

the Magistrates' Court sitting at [place name] convicted

Name: [name]

Address: [address]

Date of Birth: [date]

of the following Offence(s) :

Going Equipped for Burglary

and imposed the following sentence/conditional discharge
Community Order with Work Requirement
– later varied to 4 month Detention and Training Order

2. The court found that:

(i) the defendant had acted in an anti-social manner, which caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself,

and that

(ii) an order was necessary to protect persons in England and Wales from further anti-social acts by him

3. It is ordered that the defendant [name]

is prohibited from:

- 1 Entering the clearly marked area in RED on the attached map. This includes the MacDonald's premises and grounds on the junction of [road name] and [road name], both Subways running North/ South under the [road name], [road name] and the [place name] Town Station Area. All hotspots for local Crime and Anti Social Behaviour
- 2 Associating with: -
[list of 6 names, addresses and dates of birth]

3. contacting, directly or indirectly [name], [name] or any other member of their immediate family.

[Where appropriate, the court must specify whether any of the requirements of the order are suspended until the defendant's release from custody]

Until further order.

Justice of the Peace

[By order of the clerk of the court]

NOTE: If without reasonable excuse the defendant does anything which she is prohibited from doing by this order, she shall be liable on conviction to a term of imprisonment not exceeding five years or to a fine or to both.

Appendix 2: ASBO 1 (rewritten version)

[Place name] Youth Court

Order on Conviction (Crime and Disorder Act 1998, s.1C)

1 Purpose

The purpose of this order is:

- to record the court's decisions
- to tell the defendant what he must or must not do.

2 Conviction

On [date] the Magistrates' Court sitting at [place name] convicted the defendant [name] (date of birth [date]) of [address] of the following offence(s): going equipped for burglary.

3 Sentence

The court imposed the following sentence/conditional discharge: Community Order with Work Requirement – later varied to a 4-month Detention and Training Order.

4 Reason for the conviction

The court found that the defendant had acted in an anti-social way, which caused or was likely to cause harassment, alarm or distress to one or more people not of the same household as him. The court also decided that an order was needed to protect people in England and Wales from further anti-social acts by him.

5 What the defendant must not do

The court orders the defendant not to do the following things until a further order is made:

- Enter the area clearly marked in RED on the attached map. This includes the MacDonald's premises and grounds on the junction of [road name] and [road name], both subways running north and south under the [road name], [road name] and the [place name] Station Area. These are all hotspots for local crime and anti-social behaviour.
- Associate with:
[list of 6 names, addresses and dates of birth].
- Make direct or indirect contact with [name], [name] or any other member of their immediate family.

6 Warning to the defendant

If without reasonable excuse you do anything that this order says you must not do, you are liable on conviction to be sent to prison for 5 years (or less) or to be fined, or both.

Justice of the Peace

(By order of the clerk of the court)

Appendix 3: ASBO 4 (original version)

Order on Conviction (Crime and Disorder Act 1998, s.1C)

In the [place name] Youth Court

1. On the [date]

the Youth Court sitting at [place name]

convicted

Name: [name]

Address: [address]

Date of Birth: [date]

of the following Offence(s) :
Robbery on [date]

and imposed the following sentence

Young Offenders Institution: 4 MONTHS DETENTION and TRAINING ORDER

2. The court found that:

(i) the defendant had acted in the following anti-social manner, which caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself:

Street robbery, possession of an offensive weapon, criminal damage, racially aggravated assault

and that

(ii) an order was necessary to protect persons in England and Wales from further anti-social acts by him

3. It is ordered that the defendant [name]

is prohibited from:

- Entering any part of the area of [place name] shaded in red on the attached map (bounded by the west side of [road name], and including the whole of the [estate name], [road name], [road name] as far east as the junction with [road name], [road name], and portions of [road names] east of the junction with [road name].)
- Being in company of the following anywhere in a public place in the [place name]; a) [name], b) [name], c) [name], d) [name]
- Being part of any group of four or more people in any public place within the [place name], except where [name] or [name] are also part of that group
- Engaging in any behaviour which causes, or is likely to cause, harassment, alarm or distress to any person not of the same household as herself, within England and Wales

[Where appropriate, the court must specify whether any of the requirements of the order are suspended until the defendant's release from custody]

For a period of two years.

Justice of the Peace

[By order of the clerk of the court]

NOTE: If without reasonable excuse the defendant does anything which he is prohibited from doing by this order, he shall be liable on conviction to a term of imprisonment not exceeding five years or to a fine or to both.

Appendix 2: ASBO 4 (rewritten version)

[Place name] Youth Court

Order on Conviction (Crime and Disorder Act 1998, s.1C)

1 Purpose

The purpose of this order is:

- to record the court's decisions
- to tell the defendant what he must or must not do.

2 Conviction

On [date] the court convicted the defendant [name] (date of birth [date]) of [address] of the following offence(s): robbery on [date].

3 Sentence

The court imposed the following sentence: Young Offenders Institution:

4-month detention and training order.

4 Reason for the conviction

The court found that the defendant had committed the following anti-social acts: street robbery, possession of an offensive weapon, criminal damage, racially aggravated assault.

These acts had caused or were likely to cause harassment, alarm or distress to one or more people not of the same household as him. The court also decided that an order was needed to protect people in England and Wales from further anti-social acts by him.

5 What the defendant must not do

The court orders the defendant not to do the following things for a period of 2 years:

- Enter any part of the area of [place name] shaded red on the attached map. (The area is bounded by the west side of [road name], and includes the whole of the [estate name], [road name], [roadname] as far east as the junction with [road name], [road name], and portions of [road names] east of the junction with [road name].)
- Be in the company of any of the following people in a public place in the [place name]:
 - a) [name], b) [name], c) [name], d) [name]
- Be part of a group of 4 or more people in a public place in the [place name], except where [name] or [name] is also part of that group.
- Behave in a way that causes, or is likely to cause, harassment, alarm or distress to any person not of the same household as him, within England and Wales.

6 Warning to the defendant

If without reasonable excuse you do anything that this order says you must not do, you are liable on conviction to be sent to prison for 5 years (or less) or to be fined, or both.

Justice of the Peace

(By order of the clerk of the court)

¹ *BBC News*, 7 December 2006; *The Daily Telegraph*, 27 May 2008; and *The Daily Telegraph*, 19 August 2009