DTZ Consulting & Research (DTZ) and Heriot-Watt University was commissioned in September 2004 by the Scottish Executive to update the existing research, and to examine in more depth the key issues around the use of Antisocial Behaviour Orders (ASBOs) in Scotland.

Main Findings

- The number of ASBOs has been increasing steadily over the last three years, although the rate of increase now seems to have fallen back slightly. However, ASBO activity remains concentrated in a small number of local authorities (LAs). There remains some question as to whether all LAs are as yet making full use of ASBO powers.
- The process for taking an ASBO application into Court has improved over the period of our review due to the greater expertise among both antisocial behaviour (ASB) staff and Sheriffs about the process. Orders can now be granted within very short periods of time, providing the LA with the means of addressing serious ASB quickly and efficiently.
- LAs have established special multi-agency groups and other procedures to deliberate on appropriate responses to ASB by young people (12-15 year-olds) who might fall within the remit of ASBO powers. However, whereas appreciable numbers of cases are being reviewed under such arrangements, only a very small proportion have as yet led to formal ASBO applications.
- Most ASBO applications relate to ASB in and around the perpetrator’s home. Most cases considered for ASBO applications are triggered by ‘excess noise’ within the home. The majority of perpetrators subject to an ASBO live in the social rented sector, are male and are over the age of 21. Eighty per cent of cases involve ASB committed by a lone perpetrator.
- Of the ASBO cases reviewed, a significant proportion allegedly involved criminal activities. While, in most of these cases, this related to relatively low level crime, in a substantial number of cases the alleged offence was serious.
- ASBOs were sometimes used in exchange for criminal action in relation to cases involving low level crime – for example, vandalism and threats and intimidation which are not described as violent.
- Although our measure was not exact (and further research is currently underway), the proportion of ASBOs breached is estimated at around one in three. The breach rate across individual LA areas varies considerably. Action taken following breach suggests that breach of an ASBO was taken seriously, by housing providers, by the police and by the Courts.
- Further complaints were recorded in 60 per cent of ASBO cases. Where such complaints were made to the LA rather than directly to the police, the matter was normally referred to the police to determine whether it should be investigated as a possible breach of the Order. This reflects the fact that breach of an ASBO is a criminal offence. However, there remains a question mark over the effectiveness of joined-up working and information sharing between the police and LAs in relation to monitoring observance of ASBO conditions and responding to alleged ASBO breaches.
- In 27% of cases reviewed, there was a perceived improvement in perpetrator behaviour following the Order being granted. Just over 20 per cent of cases reviewed resulted in either an eviction or the termination of a tenancy. In 30% of cases examined, it was considered that there had been no marked improvement in perpetrator behaviour at that point (although this is not to say that there would be no change in the future). In 16% of cases progress was either too early to assess or there was insufficient information. In the remaining 6% of cases the perpetrator was removed into some form of custody or the behaviour was otherwise displaced.
- A range of other enforcement-style response may be used by LAs and RSLs prior to, alongside, and following on from ASBO applications. Acceptable Behaviour Contracts (ABCs) are being used increasingly widely as a means of tackling ASB. In only a small proportion of ASBO cases, however, are ABCs used as a precursor to ASBO action. Similarly, very few ASBO applications follow on from unsuccessful attempts at mediation.
Background

DTZ Consulting & Research (DTZ) was commissioned by the Scottish Executive to undertake a review of the use of ASBOs in Scotland. The overall aim of the study, which has run since September 2004, is to update the existing research, and to examine in more depth the key issues around the use of ASBOs in Scotland.

The objectives for this study were as follows.

- To collect up-to-date data on the use of ASBOs by both LAs and housing associations (or RSLs)
- To collect data about the ASBO application process and about ASBO prohibitions, together with an analysis of the circumstances in which the Orders are used
- To investigate LA and RSL experience of using ASBOs to gain a fuller understanding about their effectiveness in resolving ASB
- To collect information about the use and effectiveness of other measures used before, instead of, and alongside ASBOs
- To examine the effectiveness of new measures introduced by part 2 of the Antisocial Behaviour etc. (Scotland) Act 2004, in particular its extension of ASBOs to 12-15 year olds.

Method

DTZ used a number of methods to gather evidence for this study.

- A desk research exercise to understand the policy background and lessons from previous studies
- Three annual email surveys issued to all social landlords operating in Scotland
- Analysis of secondary data on ASBO use
- Case studies in four LAs that involved focus group sessions with LA staff, RSL staff and representatives of national stakeholder organisations
- A review of ASBO case files.

Research Findings

ASBO ACTIVITY

There were 344 LA and RSL ASBO applications submitted to the courts in 2005/06. While this represents an increase of 24 per cent on the comparable figure for the previous year, the rate of increase has slowed over the past two years. Activity is largely concentrated in a small number of authorities, with five (North Lanarkshire, Dundee, Edinburgh, Fife, North Ayrshire) accounting for more than half of all 2005/06 ASBO applications nationally.

In some 'low ASBO use' areas, there remains a reluctance to use this mechanism, partly justified by the assertion that the active use of alternative measures reduces or removes the need for ASBOs. There remains a question as to whether all LAs are as yet making full use of ASBO powers.

Just over half of all full ASBO applications involve cases where interim ASBOs have already been awarded by the Courts.

Specific powers to impose ASBOs on young people (aged 12–15) were introduced in 2004. At the end of March 2007, 96 individuals had been considered for an ASBO but only four had been granted.

ASBO PROCESSES

ASBOs have a fairly prominent place within ASB strategy documents, however, they are generally described as tools to be utilised where other measures have been used and failed. There are no specific ‘rules’ associated with the circumstances in which an ASBO should be sought.

Dedicated policies and procedures are increasingly being developed to guide ASBO use in LAs and have helped to develop multi-agency working, e.g. the use of case conferences. Also playing an important role in this area is the creation of specialist teams or dedicated ASB staff.

The process for handling ASB complaints and pursuing an ASBO was broadly similar in the case study areas examined. While each LA aimed to adopt a multi-tenure approach to ASBOs, it was clear that housing officers within LAs and RSLs continue to play a key role in the process, often acting as the lead agency, at least in the initial stages of an investigation.

The process for taking an ASBO application into Court has been assisted by greater expertise among both ASB staff and Sheriffs about the process. Timescales have also improved with applications for interim Orders normally being heard within a matter of days. Orders can now be granted within very short periods of time (interim ASBOs generally take less than a month), providing the LA with the means of addressing serious ASB quickly and efficiently.

ASBOs AND YOUNG PEOPLE

LAs have now established special multi-agency panels and other procedures to deliberate on appropriate responses to
ASBO applications in such cases. Did not necessarily mean a total avoidance of ASBOs. While cases study LAs generally took such factors seriously when considering how to tackle ASB, this difficulties. Where the perpetrator was evicted from their tenancy, such instances brought relief to the communities being affected by the ASB and, in this sense, the ASBO could be called ‘a

ASBO OFFENCES AND PERPETRATORS

The vast majority of ASBO applications relate to ASB in and around the perpetrator’s home. Most cases considered for ASBO applications were triggered by ‘excess noise’ within the home.

Of the cases reviewed due to an ASBO being granted, 63 per cent also allegedly involved criminal activities. While in some cases criminal charges were being brought against persons committing such offences, in other cases ASBOs were being used instead of such action. It is clear then that ASBOs were sometimes used in exchange for criminal action in relation to cases involving low level crime – for example, vandalism and threats and intimidation which are not described as violent. It is possible that, even if these cases had been pursued in the criminal court, they would not have resulted in a conviction due to lack of proof.

Analysis into the background of perpetrators subject to an ASBO, shows that the majority live in the social rented sector, are male and are over the age of 21. 80 per cent of cases involved ASB committed by a lone perpetrator.

The case file review demonstrated that a number of these cases were long-running, suggesting that ASBOs were being used as a ‘last resort’ measure for difficult cases.

Analysis of actual ASBOs shows that the prohibitions contained in the ASBO are generally a close match to the related offence. One of the main characteristics of the ASBO is that there is, typically, a high level of detail in the restriction imposed on the offender.

There were vulnerability issues and mitigating circumstances in a number of cases involving persons subject to ASBOs, e.g. substance misuse, mental health issues and learning difficulties. While cases study LAs generally took such factors seriously when considering how to tackle ASB, this did not necessarily mean a total avoidance of ASBO applications in such cases.

1 Unfortunately we cannot say in how many of the cases (involving some form of criminal activity) the ASBO was the only action taken. This is because we did not ask systematically if criminal charges were being pursued.

ASBO OUTCOMES AND EFFECTIVENESS

Legal aid was granted in around one in ten cases across 2004/05 and 2005/06. The 2005/06 survey data reveals that legal aid applications were made in 29 per cent of all ASBOs applied for. The case file review showed a number of cases where actions were initially defended only for the defence to be withdrawn due to refusal of legal aid.

Appeals to the court are rare. No appeals were notified in returns to the 2003/04 survey. The total number of appeals fell between 2004/05 and 2005/06 despite a rise in the overall number of Orders granted.

Over 2004/05 and 2005/06, the estimated proportion of ASBOs breached rose slightly across Scotland: from 26 per cent to 31 per cent. The breach rate across individual LA areas varied between 0 per cent and 100 per cent in each of those two years. The method used to estimate breach rate could not provide an exact measure on breach rate (the number of orders breached in each year was expressed as a proportion of the number of orders in force at the end of that year). For this reason further research is currently underway which will track a sample of ASBOs to completion to identify the exact proportion that are breached. This research is expected to report towards the end of 2007.

It was found that further complaints were recorded in 60 per cent of cases. Where such complaints were made to the LA rather than directly to the police, the matter was normally referred to the police to determine whether it should be investigated as a possible breach. This reflects the fact that such breach of ASBO is a criminal offence.

Breach of ASBO was taken seriously, by housing providers, by the police (who make the report to the Procurator Fiscal) and by the Courts (who determine the sentence).

The review found that in 27 per cent of cases, those participating in an interview as part of the case study research perceived an improvement in perpetrator behaviour following the Order being granted.

Over one-fifth of the cases considered resulted in either an eviction or the termination of a tenancy. In all of these cases, the original ASBO application had been triggered by ASB taking place either within or near the perpetrator’s own home.

Where the perpetrator was evicted from their tenancy, such instances brought relief to the communities being affected by the ASB and, in this sense, the ASBO could be called ‘a

2 These interviewees were drawn from the following professional areas: ASB Strategic Officer; ASB Operational Officer; Frontline staff; Legal Officer; Social Work; Young persons social work; Senior Police Officer; Sheriff; Children's Reporter.
success’. However, household movement can mean that the problems associated with the ASB are not being adequately addressed and may be displaced elsewhere.

In 29 per cent of cases examined, it was considered that there had been no marked improvement in perpetrator behaviour at that point, although this is not to say that there would be no change in the future. In around one-third of cases where there has been an overall improvement in behaviour, these had been subject to further complaints or a breach. Breached ASBOs, therefore, do not necessarily imply no positive impact.

**OTHER ENFORCEMENT MEASURES**

A range of other enforcement-style response may be used by LAs and RSLs prior to, alongside, and following on from ASBO applications.

Acceptable Behaviour Contracts (ABCs) are being used increasingly widely as a means of tackling ASB on those aged 21 and under. In only a small proportion of ASBO cases, however, are ABCs used as a precursor to ASBO action. Similarly, very few ASBO applications follow on from unsuccessful attempts at mediation.

ASB-triggered eviction actions have been declining in recent years, possibly, in part, as a consequence of the availability of ASBOs as an alternative response to ASB involving social renting households.