

Anti-social behaviour and disability in the UK

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Summary

Over the last ten years, the UK government has made tackling anti-social behaviour (ASB) a priority in its discourses and through the introduction of a wide range of legislative and policy measures. In the development of the new politics of conduct a number of competing discourses have emerged in which binary oppositions are employed to symbolically differentiate the law abiding from the irresponsible. The focus of this paper is on the way in which disabled people, particularly those with mental health conditions are vulnerable to being constructed as victims and perpetrators of ASB. We explore the tensions and contradictions between policy developments in policing conduct and the requirement for housing authorities to take steps to meet disabled people's needs even if this requires more favourable treatment. Drawing on empirical evidence of the way in which anti-social behaviour measures have had a disproportional impact on disabled people the paper reflects on the failure of policy makers to acknowledge the complex material reality in which the anti-social subject can be constituted as both a victim and perpetrator. The use of regulatory mechanisms such as the ASBO we argue, may not only fail to address the underlying causes of problem behaviour but also can have exclusionary effects that exacerbates discrimination.

Keywords: disability, discrimination, anti-social behaviour, victims and perpetrators.

Introduction

Contemporary approaches to understanding the rise to prominence of ASB as a priority for UK public policy have drawn on theories of governance and governmentality and there is now a growing body of work reflecting on the efficacy of 'new' approaches to the regulation of behaviour (Dillane *et al.*, 2001; Crawford, 2003; Flint, 2003; 2006; Jones *et al.*, 2005; Stephens and Squires, 2005; Carr and Cowan, 2006; Nixon and Parr, 2006). Within this body of work critical attention has focussed on the ever increasing range of legal powers introduced to control conduct – Anti-social Behaviour Orders (ASBOs) Parenting Orders, Dispersal Orders, Curfew Orders, Alcohol Free Zones,

Fixed Penalty Notices, Injunctions and Possession Proceedings. These measures enable a range of agencies to take enforcement action against those acting in a manner likely to cause harassment, alarm or distress (Crime and Disorder Act, 1998). At the same time the Disability Discrimination Act (DDA) 1995 has placed disability rights firmly on the agenda requiring local authorities and registered social landlords to have due regard to:

- Eliminate harassment of disabled people that is related to their disability
- Promote positive attitudes towards disabled people
- Encourage participation by disabled people in public life.

This paper draws on findings from a review conducted by the authors for the Disability Rights Commission to reveal some of the tensions and contradictions between policy developments in policing conduct and the requirement to take steps to meet disabled people's needs even if this requires more favourable treatment (Hunter *et al.*, 2007). In exploring the evidence base on disabled people's experiences of harassment and anti-social behaviour we undertook an extensive and thorough search of both academic and policy literature published after 1996.¹ The review was restricted to articles from the UK, which provided evidence of disabled people's experiences of anti-social behaviour or harassment in the social housing context. In addition, three focus groups were held with housing providers, those with a disability and those caring for people with a disability. Based on findings from our research the paper starts by outlining the critical role that discourse plays in constructing the anti-social subject before presenting the evidence concerning disabled people's experiences as victims of anti-social behaviour and the extent to which a person's impairment or associated behaviour may be interpreted as constituting anti-social behaviour.

The new politics of conduct

A key feature of contemporary governance is the conceptualisation of subjects as active, autonomous and rational agents (Foucault, 1991) in which self-regulation becomes the organising mode to achieve governmental aims (Flint 2006). These technologies of the self reflect the new 'politics of conduct' in which dominant moral discourses are employed to reconstruct subjects as active members of responsible communities (Flint, 2003). Discourses and policy narratives shaped by government and the media establish the rules of conduct, specify what is required, and determine what is appropriate and 'correct' behaviour. Through the application of a normative gaze 'responsible' behaviour is defined in relation to shared values and expectations. As Flint points out in this governance of conduct '*the capacity and behaviour of individuals are observed and classified in a framework that explicitly links conduct to moral judgements of character*' (Flint, 2006:20). Failure to conform to normative standards of behaviour renders the citizen subject to an increasing range of interventions and disciplining, punitive sanctions.

Critical discourse analysis is commonly deployed to understand the way in which key actors exercise power within the urban policy implementation process (Jacobs, 2006). While recognising the analytical limitations of discourse, as a methodological tool it provides a valuable framework within which to explore the political rationalities, which inform the construction of both the anti-social subject and technologies introduced to control conduct. In political and media discourses, ASB is presented as a

plaguing, degenerative and urgent problem that must be tackled in order to control crime and regenerate the most deprived neighbourhoods:

Anti-social behaviour blights people's lives, destroys families and ruins communities. It holds back the regeneration of our disadvantaged areas and creates the environment in which crime can take hold. (Home Office, 2003:2)

These families can cause untold misery to those who have to live along side them and destroy entire neighbourhoods with their frightening and disruptive behaviour. (Louise Casey Co-ordinator of the Government Respect Task Force 2007 HO Press Release 11/04/07).

As the above extracts from the 2003 White Paper *Respect and Responsibility* and a recent report by the Respect Task Force illustrate anti-social acts are often described in emotive terms as 'blighting' lives and 'destroying' communities. Those responsible for such acts are constructed as a 'frightening', 'disruptive' minority who cause untold 'misery' and 'ruin' the lives of the law abiding majority. Such discourses are based on an appeal to a consensus that individuals are responsible for their behaviour and if perpetrators 'choose' to transgress strict rules and norms of behaviour they must be punished.

The employment of binary oppositions enables the 'responsible' to be distinguished from the 'anti-social' who are commonly labelled in both policy and media narratives as the 'neighbour from hell'. Through the adoption of simple pathological codes the anti-social subject is 'essentialised' which in turn serves to justify a focus on punishment, retribution, and treatment (Young, 1999). An advantage of this simplistic approach is that it conveniently enables politicians and policy makers to side step the more complex issue of social exclusion which as Young argues has its roots in '*the material and moral reality in which individuals seek to live their lives*' (Young, 1999:78). It is the material reality in which disabled people seek to live their lives that this paper is centrally concerned. First, however it is useful to briefly explore what is meant by the term anti-social behaviour.

What is anti-social behaviour?

It is clear that within government and media texts anti-social behaviour is constructed as a pressing and urgent problem but despite all the attention given to the issue there is no clear definition of what the term means (Carr and Cowan, 2006:59). Within policy narratives ASB discourses are both ambiguous and unequivocal incorporating a multiplicity of diverse, low and high level deviant and criminal behaviour. Carr and Cowan (2006) suggest that it is precisely due to the lack of clear parameters that the term is invested with power. As a 'vehicular concept' its potency lies in the fact it can be employed and manipulated at the discretion of different types of intellectual or expert. Support for this view is found within policy texts which acknowledge there can be no single definition of the term as it covers such a wide range of behaviour from litter to serious harassment.

Anti-social behaviour means different things to different people – noisy neighbours which ruin the lives of those around them, 'crack houses' run by drug dealers, drunken 'yobs' taking over town centres, people begging by cash points, abandoned cars, litter and graffiti, young people using airguns to threaten or intimidate people or people using fireworks as weapons. (Home Office 2003, p. 4.)

As a way of overcoming the difficulties caused by the lack of a clear definition government publications resort to providing ever longer lists of conduct that may be deemed to be anti-social. What defines this new territory for control is the subjectivity of the definition, a blurring of boundaries between criminal and civil behaviour facilitating the introduction of flexible tools of social control such as ASBOs which can be used against widely differing groups in different parts of the country. The underlying causes of ASB, including mental health conditions do not form part of the political or policy discourses. Why is there silence on such a critical issue? The answer may lie as Carr and Cowan suggest in the fact that obscurity is a powerful tool of governance (Carr and Cowan 2006) and it is to the unspoken and unexamined experiences of disabled people to which the paper now turns.

Evidence of harassment and victimisation of disabled people

Lack of systematic monitoring and recording of complaints about ASB combined with the failure of national crime surveys to collect data, which can be disaggregated by disability means the evidence base on disabled peoples' experiences of harassment victimisation and other forms of more subtle discrimination, is limited. A number of studies have attempted to measure the extent of harassment and victimisation of disabled people but with only partial success. Some work has relied on the use of self-completion postal questionnaires, which can result in distortions in levels of reporting. In other studies, the type of behaviour and period over which incidents have taken place are not clearly specified. A further difficulty in evidencing the material reality of anti-social behaviour as experienced by disabled people arises as a result of the lack of conceptual clarity regarding the precise nature of the exact behaviour involved. For example, in many studies the terms 'harassment' 'bullying' and 'victimisation' are used interchangeably. As Perry points out this lack of clarity can serve to mask:

the assaults, harassment, criminal damage, thefts and batteries – many times aggravated by hate - that people with learning difficulties experience on a daily basis. (Perry, 2004:45)

Notwithstanding these methodological problems and the inadequacy of the current evidence base, scrutiny of 10 studies examined as part of the review provides an indication of the very high levels of harassment and anti-social behaviour that disabled people, particularly those with mental health conditions, are routinely subject to.

Across three studies, examining the experiences of people with mental health conditions between 47 per cent and 60 per cent of respondents reported that they had been harassed or abused in public because of their health problems (Read and Baker, 1996: 778 respondents; Wood and Edwards, 2005: 40 respondents; Kelly and McKenna, 1997: 100 respondents). In studies where comparators with non-disabled persons were used it becomes clear that harassment occurs more frequently for those with mental health conditions than for those without (Berzins *et al.*, 2003, Wood and Edwards, 2005). For example, Berzins found that 60 per cent of those with mental health problems had experienced some form of harassment as compared to 44 per cent of the general population (Berzins *et al.*, 2003).

Read and Baker draw on individual testimonies to reveal in greater depth the distressing and often criminal behaviour that disabled people were subject to including burglary, having lit matches, dogs' excrement, used condoms and abusive letters put through the letterbox and such like. The comments of one respondent who had been

diagnosed with manic depression illustrate the unremitting nature of attacks associated with these types of hate crime:

I've had paint on my front door, windows broken, verbal abuse, stones thrown at me by kids on the street, dirty clothes put on my door step and I've had lit newspaper through my letter box. (Read and Baker, 1996:8)

Not surprisingly, a common theme reiterated through out the literature was the adverse impact such behaviour had on respondents' mental health with this feature identified as the most distressing aspect of harassment. Such experiences left over half (57 per cent) of respondents feeling threatened or afraid of physical attack, with a further quarter (25 per cent) afraid in their own home and 34 per cent in the immediate neighbourhood. Further there was some evidence that stigmatisation of those with mental health conditions was fuelled by sensational media reporting (Glasson, 1996).

Two studies focused on those with learning difficulties. A study by Mencap (1999) based on a large-scale study of 904 respondents found extremely high levels of bullying with 9 out of 10 (88 per cent) respondents saying they had been bullied within the last year, and in 66 per cent of cases the bullying was reported to happened frequently (i.e. at least once a month). In a smaller study undertaken by Thurgood and Hames (1999) it was found that one in six respondents (16 per cent) had been physically assaulted by neighbours. The relentless nature of such attacks directly affected every day activities.

Simple activities such as leaving the house, walking to work or catching the bus to the shops are often upsetting and distressing experience. (Mencap, 1999:3)

Further evidence of the propensity for those with mental health conditions to be victims of ASB is provided in a study commissioned by the Disability Rights Commission (DRC, 2004). This study involving participants across the range of impairments, found that 73 per cent of respondents reported being verbally attacked and 35 per cent physically attacked with the highest prevalence of attacks (82 per cent) found to affect those with mental health problems. The study concluded that for many disabled people 'hate crime is a feature of their day-to-day lives':

I got head butted on my way home...and ever since then, whenever I see a group of youth coming towards me, I cross the street and try not to make eye contact with them. I avoid the situation now. (Participant with mental health problems DRC, 2004:24)

None of the studies examined the experiences of those suffering from multiple sources of discrimination, for example, disability and race, although a focus group conducted as part of the critical evaluation of the evidence revealed disturbing evidence of the impact of multiple discrimination with one black disabled person graphically outlining her experiences:

When an ambulance comes to pick me up to go to hospital some neighbours shout at me saying, 'asylum seeker, our tax money' and all sorts of bad stuff. I really feel vulnerable and I can't even report it. This other time when I got pregnant they picked on me and were saying all sorts of things like 'bitch' and asking me when I would go back to Africa. It made me feel sick really. I could not report [them] because they threatened me that if they saw the police coming, they

would know that it would have been me, and will therefore put myself in further danger. (Focus group respondent, Hunter *et al.*, 2007:45)

As the above testimony indicates, many disabled people are reluctant to report attacks because of a fear of reprisals and a lack of confidence in statutory agencies to provide protection from further attack. There was some evidence that this lack of confidence was well founded. In one study as many as three quarters (75 per cent) of those who reported an incident to the police reported that this action had failed to stop the attackers (DRC/Capability Scotland, 2004). While the existing literature on the extent to which disabled people are victims of ASB is not conclusive there is growing and convincing evidence that those subject to mental health conditions are particularly vulnerable to attacks of harassment and victimisation.

Evidence of disabled people as 'perpetrators' of harassment and anti-social behaviour

In undertaking a critical review of the evidence of the association between disability and ASB we were interested to establish whether as well as having a greater propensity to be victims of ASB disabled people were also more likely to be constructed as 'perpetrators' of ASB. Exploring this issue revealed a diverse range of literature within two divergent disciplinary fields. The first has its history in legal and policy developments within housing, crime prevention and community safety, while the second has been driven by psycho-medical interests fuelled by clinical diagnoses and academic research. In neither fields however, have any studies² specifically examined how control mechanisms may disproportionately affect disabled people across the impairment spectrum. There is reliable evidence however, which suggests that disabled people living in social housing, particularly those with learning difficulties or mental health problems, comprise a significant proportion of those individuals who are subject to interventions designed to tackle anti-social behaviour (Dillane *et al.*, 2001; Jones *et al.*, 2005; Stevens and Squires, 2003; 2005; Nixon *et al.*, 2006; BIBIC, 2007). The link between use of ASB measures and the propensity for 'perpetrators' to have a physical or mental health impairment was corroborated by housing staff and other stakeholders interviewed during the consultation phase of the review. In particular, focus group participants recounted several anti-social behaviour cases that involved people with mental health problems and learning difficulties including ADHD, AS, schizophrenia, autism, brain injuries, and OCD. Drawing on this data and the wider literature the following section of the paper briefly elaborates on two specific control mechanisms – Family Intervention Projects and Anti-social Behaviour Orders.

Family Intervention Projects

Family Intervention Projects (FIPs) represent a new approach to the most challenging families providing families who are homeless or at risk of eviction as a result of anti-social behaviour with intensive 'support' to address the often multiple and complex needs of which ASB is a manifestation of. Three separate evaluations of FIPs (Dillane, 2001; Jones *et al.*, 2005; 2006; Nixon *et al.*, 2005; 2006) provide evidence about the characteristics and support needs of adults and children referred to Family Intervention Projects. The findings from these studies are remarkably similar indicating that a significant proportion of families working with FIPs have a range of impairments that fall with the legal definition of disability.

Nixon *et al.* (2006) found that depression affected 59 per cent of adults with adults while in a further fifth of families adults suffered from other mental health problems such as schizophrenia, obsessive-compulsive disorder, anxiety and stress. This study

also reported compelling evidence of high levels of child mental health impairment with children in 19 per cent of families affected by depression or other mental health problems while young people or children in a further 18 per cent of families were affected by ADHD.³ Despite this compelling evidence linking child anti-social behaviour with mental health conditions many parents reported that prior to their referral to the FIP they had been unable to access appropriate specialist support to address their child's needs. A number of participants felt this was in part at least, a result of local agencies reluctance to undertake educational or mental health assessments with all the associated resource requirements. Evidence to support this view is provided by Dillane et al's evaluation of Dundee Families Project in which difficulties in accessing appropriate medical or psychological services were cited as causing problems for a number of families as one respondent explained:

I think that there are difficulties in getting assessment of mental health- getting the problem defined as a mental health issue. The health service does not want to know. They will say it is a personality disorder or a result of substance abuse - that it is not defined as a mental health problem. That's down to the way that psychiatric services assess these things. I suspect that there are a number of cases where it's not being addressed because it's a tortuous route to get them to see someone. (Dillane *et al.*, 2001:90)

In this context, it appeared that agencies favoured a reliance on ASB interventions in which the problem was framed not as mental health impairment but as a 'parenting problem' with the focus on parents failing to 'take responsibility' or being 'unable to cope.'

The failure to acknowledge the impact of mental health conditions on behaviour also featured in some adults' accounts of the way in which they had been treated as one woman who suffered from Schizophrenia explained:

I hear voices and sometimes, I used to put me music on to distract myself but sometimes I'd have it banging out, because it has to be overpowering and obviously someone on this toad who knew about my illness has put in a complaint in and said that, I use my illness as a, that I play on it. (Nixon and Parr, 2008:26 forthcoming)

Such examples provide evidence of the powerful role of normative discourses. Once behaviour is labelled as 'anti-social' failure to conform to normative standards justifies punitive action. Inadequate account is taken of the underlying causes of the problem behaviour or the ability of the anti-social subject to modify their behaviour. Disabled people with learning difficulties and mental health conditions may be particularly powerless to control behaviour that could cause alarm and distress and yet they are compelled to comply with normative standards (Stephens and Squires 2003:83). Indeed the very process of being labelled 'anti-social' may serve to obscure the underlying health conditions that may contribute to complaints.

ASBOs

Over the last few years, the Government has introduced a broad range of civil orders designed to combat low-level crime and general nuisance by obliging or banning specified behaviour by a given individual. These include Dispersal Orders, Parenting Orders and most, notably, the Anti-Social Behaviour Order (ASBO). ASBOs were created under the Crime and Disorder Act 1998. They are civil orders most commonly made in the Magistrates Court or Crown Court which place tailor-made, prohibitions on named individuals from entering certain areas and/or carrying out specified acts. Orders are

effective for a minimum period of two years with no maximum and if breached, can on conviction, result in a custodial sentence of up to five years. They can be used against any person aged 10 or over deemed to be acting 'in a manner that caused or was likely to cause harassment, alarm or distress' (Crime and Disorder Act 1998 s.1 (i) (a) (b)).

Given the breadth of ASBOs it is not surprising that emerging evidence suggests that people with particular impairments are particularly vulnerable to this form of behavioural intervention. By 2005 a number of national pressure groups and civil liberties organisations including Gil-Robles the European Commissioner for Human Rights, were sufficiently concerned to begin documenting instances in which the granting of an ASBO appeared to be a disproportionate and inappropriate response to problems arising as a result of mental and physical impairments (Liberty 2004, Statewatch 2005, NAPO 2005; Gil-Robles 2005). Two notable cases reported by NAPO illustrate the potential misuse of ASBOs:

Case 1

In 2005, thirteen-year-old triplets from Kent, who had been born prematurely, and suffer from severe developmental delay, were each given a two year ASBO. All three teenagers have ADHD, two have epilepsy, and one has a speech impediment. The ASBOs contained restrictive conditions and they were quickly breached and as a result the three young people were given two year supervision orders. (NAPO, 2005)

Case 2

A 14-year-old from Lincolnshire with ADHD was given a 2 year ASBO with multiple conditions. As an alternative to the ASBO the Youth Justice Team proposed a package of support to deal with the underlying problems. This offer was declined by the Court. (NAPO, 2005)

Stephen and Squires' work on the role of the community safety team in East Brighton New Deal for Communities raises an important question regarding the extent to which young people with Attention Hyperactivity Deficit Disorder (ADHD) can be attributed responsibility for their behaviour. This study revealed that some practitioners are deeply suspicious of the authenticity of the condition and tend to disregard it when determining the most appropriate form of intervention to take:

[Community Safety Officer] asked if [he] had ADHD, but I think that's an excuse, all mothers round here say their kids have ADHD, but its just trying to put a medical name on bad behaviour. ADHD? [he's] got learning difficulties that's all. (Stephens and Squires, 2003:56)

Amongst other groups of professionals however, there appears to be a growing recognition of the danger of an inappropriate use of ASBOs to discipline young people. In 2006 the British Institute for Brain Injured Children (BIBIC) commissioned a study to explore the extent to which those with learning difficulties and mental health disorders were vulnerable to such interventions. The study based on a national survey of Youth Offending Teams (YOTs) and Anti-social Behaviour Officers revealed that YOT officers reported that in as many as 37 per cent (127 out of 345) cases ASBOs were issued to children under the age of 17 who had a diagnosed mental health disorder or an accepted learning difficulty. Interestingly in the same survey ASB officers reported that only 5 per cent (10 out of 218) cases involved subjects with mental health impairments (BIBIC, 2007). The disparity between these reported levels raises important questions about disability awareness and how organisations monitor for disability.

While the review of the empirical evidence of disabled people's experiences of anti-social behaviour is not conclusive, it is clear that there are grounds for serious

concerns about the way in which ASB interventions are being used against people with mental health disorders and learning difficulties.

Conclusion

The focus of this paper has been on the way in which people with mental health disabilities are constructed as both victims and perpetrators of anti-social behaviour. The complex material reality of ASB is revealed in the evidence that suggests that these categories are not mutually exclusive with six out of ten families referred to Family Intervention Projects also being victims of ASB (Nixon *et al.*, 2006). People with learning impairments and/or mental health conditions may be particularly susceptible to this type of cross over where negotiating the investigation and complaints process usually requires a sophisticated level of social skills.

A number of studies have looked at levels of harassment and victimisation amongst disabled people. It is not always possible however, to be precise about the behaviour involved as a variety of terms such as harassment, and victimisation are used interchangeably. Such acts when conducted against disabled people are also often referred to as 'bullying' a term, which tends to be treated with a lesser degree of seriousness by criminal justice agencies. Despite these difficulties, scrutiny of the evidence reveals there to be very high rates of susceptibility to behaviour which falls within the definition of anti-social, and which is often targeted at people because of their mental health disabilities.

Turning to what is known about perpetrators of anti-social behaviour, while the overall range and type of anti-social behaviour control measures are constantly on the increase the evidence base on the impact of these tools on disabled people is incomplete. Within this paper, attention has been focussed on two ASB measures, Family Intervention Projects and ASBOs. In relation to both of these types of interventions the evidence suggests that disabled people, particularly those with learning difficulties or mental health problems, comprise a significant proportion of those subject to interventions (BIBIC, 2007; Dillane *et al.*, 2001; Jones *et al.*, 2005; Nixon *et al.*, 2006). ADHD in particular, is emerging as a central issue in debates about disability and anti-social behaviour (Thapar *et al.*, 2006). It is clear that a large percentage of children subject to anti-social behaviour measures might be given a diagnosis of ADHD. The behaviour of this group of children (often male and adolescent) may be disturbing and distressing but all too often despite parents attempts to access special educational support or other behavioural interventions the problem is framed in terms of 'poor' or 'inadequate' parenting.

These findings raise crucial questions about the extent to which the use of potentially punitive control mechanisms among vulnerable individuals, many of whom are young people and children, can be justified. ASBOs in particular can have drastic impacts on disabled people. Not only do they fail to address 'root causes' of disruptive behaviour, but also the employment of a regulatory mechanism that can have exclusionary effects, even resulting in a custodial sentence, may serve to exacerbate their problems. The review highlights an urgent need for not only proper monitoring at a national and local level but also qualitative research into the particular 'problems' that agencies seek to address through the use of anti-social behaviour control measures, together with a critical assessment of the effectiveness and impact of these (and alternative) tools in providing 'solutions' from the perspectives of those subject to them.

Notes

¹ This is the date when the Housing Act 1996 first introduced measures explicitly directed at tackling anti-social behaviour in social housing.

² In none of the studies reporting a link between disability and the use of control mechanisms is it clear how systematic the collection of data about disability has been and it may well be that reported levels are an underestimate.

³ These levels are two to three times higher than the national average, which predicts that ADHD could be expected to be found in between 3-8 per cent of school age children.

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