

ASB injunctions and vulnerable defendants

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Anti-Social Behaviour Crime and Policing Act 2014, s.1 created an injunction power for anti-social behaviour (an ASBI). In this briefing, we analyse 242 committals of adults for contempt of court case of breach of an ASBI from 1 January 2020 to July 2024 where the recorded outcome of the committal was a sentence of imprisonment, whether immediate or suspended. The decisions were taken from the Ministry of Justice [Judicial Website of judgments](#) or other media sources. All the cases were heard in the county court.

1. The law

The Anti-social Behaviour, Crime and Policing Act 2014, section 1 allows a range of public organisations (primarily local authorities, the police and ‘housing providers’ - in England and Wales essentially non-profit registered providers of social housing – generally known as ‘housing associations’) to apply for an injunction in the High Court or the county court in cases of anti-social behaviour. The ASBI can be made if the court finds, on the balance of probabilities, a) the defendant has been anti-social and b) if it is just and convenient to grant the injunction to prevent the defendant from engaging in further ASB.

Anti-social behaviour is defined in section 2 as:

- (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
- (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- (c) conduct capable of causing housing-related nuisance or annoyance to any person (this is only available to local authorities and housing associations).

The injunction could include not only prohibitions but also positive action, with a supervisor of the requirement identified in the injunction.

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If a defendant breaches the injunction to the criminal standard of proof, the principal sanctions for a civil contempt are imprisonment, fine and seizure of goods. If the court decides on imprisonment, the Contempt of Court Act 1981, section 14(1) provides a fixed maximum sentence of 2 years. The court may suspend the sentence. As the committal takes place in the county court there are not Sentencing Guidelines from the Sentencing Council as there was for ASBOs under the Crime and Disorder Act 1998.

2. The type of anti-social behaviour and the sentence

There has been an on-going criticism of measures (particularly the ASBO that the ASBI replaced) that the definition of anti-social behaviour is 'elastic', with the capacity to be 'stretched' to encompass a wide variety of situations and behaviours which provides an ill-defined and unrestricted power to state institutions. Although the term broadly encapsulates actions that cause distress, alarm, or harm to individuals or society, the popular perception regarding such powers is that 'you'll know it when you see it' which means that the actual nature of the problem has been left ill-defined and obscure. In fact, the 2014 definition by including 'conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises' went further than the ASBO. When the 2014 Act was first proposed one commentator on this expansion wrote: 'to expand the legal definition is to increase the risk of court-sanctioned ostracisation of individuals within...vulnerable groups.'

Our data does not always record the terms of the injunction being breached. However, where it is available we have recorded the type of term. The most common terms that were breached are (some cases had breach of a number of different terms):

- The defendant is not allowed in a defined area: 73 cases
- General nuisance (ie the wording of the Act): 72 cases
- Abusive language: 61 cases
- Noise: 51 cases.

This leaves us still concerned that people are being sent to prison for behaviours that are not generally criminal.

There are lower counts of other behaviour that is clearly criminal its own right that are being dealt with under an injunction committal:

- Violence: 11 cases
- Damage to property: 13 cases.

These raise the question why such cases are not dealt in the criminal courts.

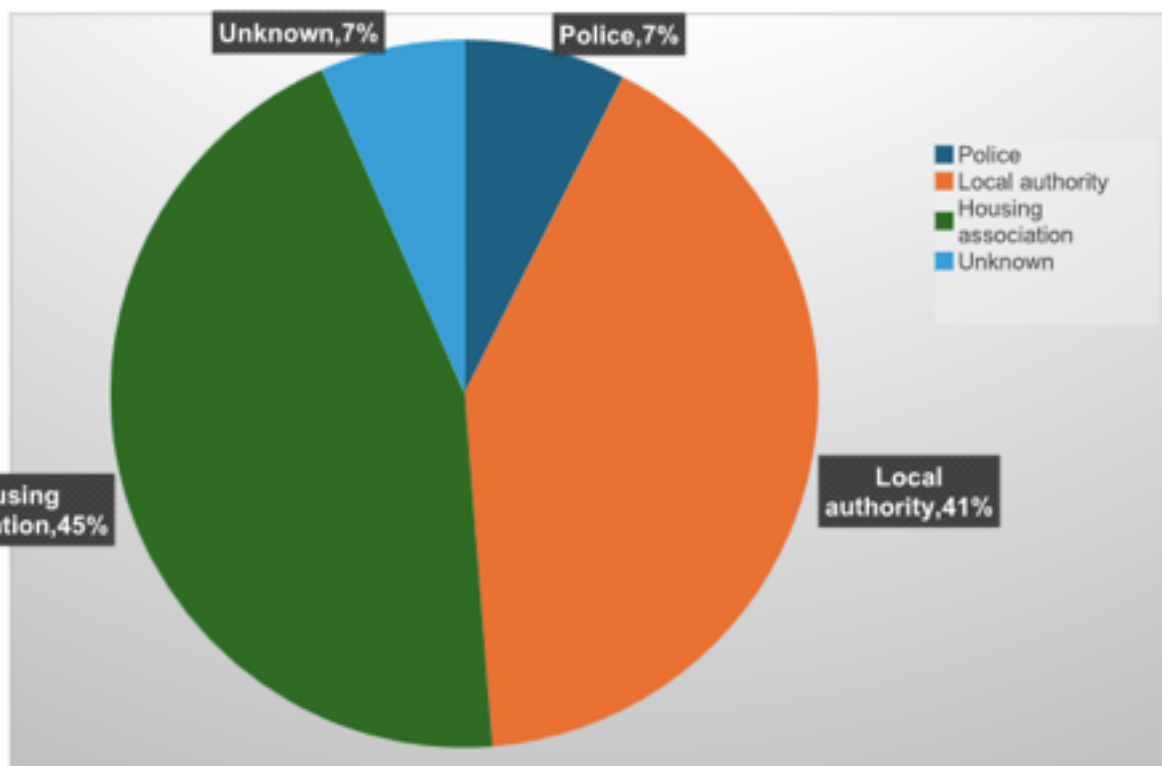
Across the whole data set the average length of imprisonment was 2.8 months. This is less than the average for ASBOs which was 4.7 months for adults, although in the final year of ASBOs (2013) this had fallen to 3.9 months. More than half (125) of the terms were for immediate imprisonment while 113 terms were suspended. There is also some evidence that the decision in *Lovett v Wigan B.C* (2022), in which Court of Appeal gave guidance on sentencing for ASBIs, has had some effect in lowering sentences. The decision was made in December 2022. Pre-*Lovett* the average was 3.0

months, since then the average sentence has been 1.8 months.

3. Who is taking committal cases?

As noted, the police, local authorities and housing associations have power to apply for ASBIs. In terms of committal proceedings, it is housing associations who have the most cases.

At first, we were slightly surprised that housing associations had the most activity. But on reflection perhaps this is not so surprising. Housing associations are now the major providers of social housing rather than local authorities. They can use s.2(1)(b): 'conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises' and (c) housing-related nuisance or annoyance. We know they house some of the most vulnerable persons and as we show below it is these people who largely targeted for ASBIs.



4. Vulnerable defendants

The corollary to such ambiguity of the definition, is a concern reflected in many commentaries that ASB powers have disproportionately targeted certain vulnerable groups due to a perception that these groups are deviating from normative standards of behaviour. General research of ASB interventions in social housing highlights the vulnerable nature of perpetrators of ASB and the evidence from studies of ASBOs demonstrates the range of vulnerability of defendants.

In those cases in our data where the court had mentioned any form of vulnerability we noted this. We created 6 codes to record any evidence of:

- Homelessness
- Threatened homelessness
- Use of drugs
- Use of alcohol
- Mental health issues
- Physical health issues

Again, in most cases there was no evidence present from the court records. Where there was such evidence defendants often had a range of vulnerabilities. We recorded the following vulnerabilities (some cases had a number of vulnerabilities, so this does represent individual cases):

- Homelessness: 4
- Threatened homelessness: 2
- Use of drugs: 27
- Use of alcohol: 19
- Mental health issues: 19
- Physical health issues: 6

We have tracked some cases in more depth and a couple demonstrate why we should be concerned with the decisions that are being made in the courts.

[Vale of Aylesbury Housing Trust v Nudd](#)

In the first case, an ASBI was made against Ms Nudd in December 2020. The defendant was subject to a range of terms, including positive requirement to engage with adult mental health services. Other terms covered access and repair to the property which was let to Ms Nudd by the applicant and a general term not to cause harassment, distress, nuisance and annoyance to neighbours. The injunction included a power of arrest. In March 2021 the landlord applied to the court of committal for breach of injunction. The breaches included 'being discharged from the community health team... due... to non-engagement' and failing to respond to an opt-in letter for the 'complex needs service' as well as a number other breaches of other terms.

The application was followed by a number of hearings to ensure that Ms Nudd attended. At a hearing in August 2021, Ms Nudd's behaviour in shouting and interrupting the proceedings was such that the court had reason to think that a Mental Health Assessment

was required, and a report would be needed before the hearing could continue. She was remanded into custody at HMP Bronzefield to enable a medical examination to take place and a report to be made. Ms Nudd's mental health continued to deteriorate, and she was moved to a hospital under sections 48 and 49 of the Mental Health Act 1983. The committal hearing finally took place 19 October 2021 through a video link from the hospital.

In the sentencing remarks the judge recognised her longstanding mental health issues and the evidence that Ms Nudd had a history of overdosing and self-harming behaviours. The question of capacity was raised and the judge was satisfied that Ms Nudd had litigation capacity and understood the purpose of the injunction, had knowledge of it, understood its terms and fully appreciated the effect of a breach.

The judge decided that a fine was not appropriate and imposed an immediate custodial sentence of 6 months. In his penalty remarks the District Judge noted:

There are no specific sentencing guidelines in respect of contempt of court. I have determined that I should consider the parts of the Sentencing Council guidelines for breach of a criminal behaviour order, which also apply to breach of an anti-social behaviour order. I have found it useful to consider the guidance when considering culpability and harm.... The guidelines also provide for community orders, which cannot be made in these contempt proceedings. I note also that this court does not have the power to make the hospital order advocated by [your doctor].

This demonstrates some of the problems on committal. There are no sentencing guidelines. There are no community orders available. Further it seems the judge was not aware of the Contempt of Court 1981, s.14(4) that allows hospital orders, or for some reason it did not apply.

Midland Heart Ltd v Carruthers

The second case is tragic. We have been provided with the judgment and sentencing remarks from Mr Carruthers' solicitors with the consent of family. We have also used the ['Regulation 28 Report to Prevent Future Death'](#) report of the Coroner investigating Mr Carruthers' death.

Floyd Carruthers was diagnosed with schizophrenia in 2003. This was treated through medication, but he did at times stop taking it. His landlord successfully applied for an interim ASBI on 26 March, 2021 with a power of arrest attached. The terms of the injunction were typical of an ASBI:

1. Engaging or threatening to engage in conduct which is capable of causing a nuisance or annoyance to (a) any person with the right to occupy [a named property], visiting such accommodation; and (b) any person employed in connection with the applicant's housing management functions;
2. Using abusive, insulting or threatening behaviour towards any person specified ...

3. Using or threatening violence against such person...

On 7 April, 2021 he breached the ASBI by banging twice on his named neighbour's door, first at 17.30 and again at 19.30, shouting 'Are you coming down? Who is up there with you?' Admittedly the banging of the door was frightening to the neighbour as it created a hole in the door. The landlord applied to commit for the breach.

On 6 May the county court heard the committal application. In the sentencing remarks the Judge recognises that Mr Carruthers had a history of mental health issues but then continued:

... the evidence before me is to the effect that the psychiatrists who examined you... were satisfied that you had capacity and knew and were rational about matters that had occurred...

Without any sentencing guidance the Judge also looked at the guidance for ASBOs. On the basis that the Culpability was at the top of Culpability B (two deliberate breaches with a short time of each other) and a Category 1 harm (very serious harm or distress) the Judge sentenced Mr Carruthers to an immediate custodial term of 66 days. The Judge stated that: 'It also troubles me that there is a risk of harm to others'. In fact, the risk, as often the case in mental health cases, was to himself.

At the time of his arrest and subsequent transfer to prison Mr Carruthers was not taking his medication. When a mental health assessment was conducted on 7 May (at the request of his family) the assessment was completed from outside of his cell and lasted for about one minute. Mr Carruthers was polite but abrupt. On the prison wing he presented as reserved, shy and polite. However, in June 2021 Mr Carruthers stopped eating for four days. When a prison officer entered his cell after the four days they found he had collapsed and called an ambulance. He died in hospital of sepsis nine days after admission. Mr Carruthers had had an infected heart valve for weeks or potentially months before his collapse.

In our view, in considering the appropriate sentence, capacity cannot be the only issue in thinking about Mr Carruthers' mental health. Here was a person who according to the judge had never been involved with any criminal offending, who was known to have a serious mental health issue, who was sent to prison for relatively minor behaviour. Within 4 months of the injunction, he was dead and the death was, according to the jury in the Coroners court, contributed by neglect in prison.

5. Conclusions

The Law Commission is currently [examining the law on contempt](#). At the same time the Government has suggested a new '[Respect Order](#)' which will 'partially replace' the ASBI. Whatever changes those proposals lead to, in our view much is wrong in using the county court to commit people to prison for ASBIs. Whatever criticisms of the criminal courts' management of vulnerable defendants, the county courts are much less able respond appropriately to these cases. Neither the organisations bringing the cases, nor the judges

have the appropriate training and guidelines. There must be better ways to support vulnerable individuals in the community than sending them to prison.