

“It ain’t (just) what you do, it’s (also) the way that you do it”: The role of Procedural Justice in the Implementation of Anti-social Behaviour Interventions with Young People

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Introduction

Concerns about youth behaviour are by no means new (Pearson 1983). Over recent decades, however, they have prompted intense political debate and policy reform, heralding the introduction of an array of measures to tackle low-level behavioural problems and prevent their escalation. Whilst analogous developments have found expression in various European and Western societies (Beckett and Herbert 2010; and this special issue), nowhere has this been more evident than in the UK—England in particular. For many the symbol of conservative and stable legal institutions, England over the past two decades has been at the forefront of regulatory innovations of a kind almost unique in its legal and constitutional history (Moran 2003). Novel regulatory tools have been fashioned that include, *inter alia*, anti-social behaviour orders (ASBOs), housing injunctions, acceptable behaviour contracts (ABCs), parenting orders, parenting contracts, tenancy demotion orders, family intervention programmes, and so forth.¹ These coalesce around the term anti-social behaviour (ASB) conceived as a precursor to more serious crime—a type of pre-crime (Zedner 2007)—and an indicator of future criminality. As an umbrella concept, ASB has come to demarcate a distinct policy field that blurs

¹Many of the specific powers and developments referred to in this article are different in their legal status and implementation in Scotland and to a lesser extent Northern Ireland, as compared with England and Wales. Nevertheless, the broader trends and developments that they express have parallels across the UK (for example, Crawford 2008; Burney 2009).

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traditional distinctions between crime and disorder (Crawford 2009a: 814). In many ways, the new hybrid tools represent a direct challenge to, and in some cases an assault upon, traditional conceptions of criminal justice. They frequently undermine established legal principles of due process, proportionality and special protections afforded to young people. Above all else, the panoply of new laws, powers and technologies that have been spawned are targeted at, and concerned with, the question of governing troublesome youth (Crawford 2009a).

From the outset, the new powers raised questions about their legitimacy and effectiveness. Legitimacy, as Weber (1978) noted, constitutes important moral glue that informs people's motivational systems and guides their behaviour. Legitimacy speaks to, and derives from, intrinsic motivations that foster self-regulation and encourage the internalisation of social norms and values. Following Beetham (1991: 16), legitimacy may be understood as the extent to which powers conform to established rules; the rules can be justified by reference to beliefs shared by both dominant and subordinate groups; and there is evidence of consent by the subordinate to the particular power relations. In relation to the first, there have been significant debates about the extent to which specific new powers may contravene established legal rules, most notably human rights protections via the European Convention on Human Rights (Bakalis 2007; Cosgrove and Cosgrove 2011). This paper, by contrast, explores the legitimacy of the hybrid powers from the perspective of those subordinate groups who are subject to them. It provides an overview and analysis of the introduction and implementation of various regulatory tools to regulate ASB, drawing on an empirical study conducted between 2008 and 2012, in England. Whilst there have been recent changes to the armoury of powers introduced during this period, via the Anti-Social Behaviour, Crime and Policing Act 2014, much of this has been superficial rather than a wholesale change. Moreover, as we shall see, many of the most important innovations occurred without any legislative footing and have remained unaffected by recent modifications. What follows explores the role of procedural justice and legitimacy in the use of interventions with young people. To situate the research findings in a broader context, we begin with an overview and analysis of the politics that informed the regulatory innovations and their implementation.

Regulatory Hyperactivity

Whilst the term anti-social behaviour first appeared in housing legislation, in 1996, before the election of the first Blair government (a year later), the ASB agenda became a key cornerstone of the Labour government's approach to public policy (Crawford 2008). At the symbolic heart of this regulatory revolution was the ASBO. The Crime and Disorder Act 1998 (s. 1) gave police and local authorities powers to apply to the Magistrates' Court for an ASBO on the grounds that the person acted in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the accused and that such an order is necessary to protect relevant persons from further anti-social acts. The penalty for breach of an ASBO enabled imposition of a custodial sentence of imprisonment for up to 5 years. Subsequently, the Police Reform Act 2002 (s. 64) introduced a post-conviction version of the ASBO—colloquially known as the Criminal Anti-Social Behaviour Order, or CRASBO—that could be imposed in addition to a criminal sentence if there was evidence of past ASB. Within 2 years there were nearly double the number of CRASBOs by application as there were ASBOs. This little remarked transformation in the use of ASBOs (Burney 2009) was one of the most significant developments, reinforcing the argument that as a technology of

control, ASBOs herald novel ways of regulating behaviour for which criminal responses were already available but deemed ineffective in themselves.

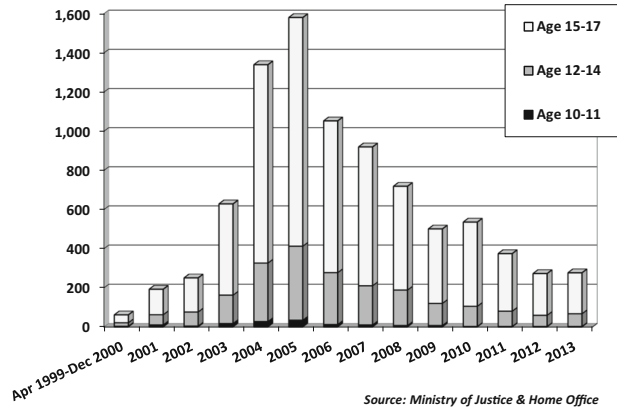
Since its introduction in 1999, the ASBO came to dominate public debate about interventions with young people to address behavioural problems. Up to the end of 2013, some 24,427 ASBOs were issued, of which 8710 (or 36 %) were issued against young people aged between 10 and 18 years (Ministry of Justice 2014). Of these, <2 % (153) were granted against 10 and 11-year-olds, a further 23 % (2026) against 12 to 14-year-olds and the remaining 75 % (6531) against those ≥ 15 and <18 (see Fig. 1). Most ASBOs were issued on conviction (CRASBO) for a criminal offence (60 %; 14,776) rather than as preventative stand-alone civil orders. In 2013, 65 % of ASBOs were issued following conviction for a criminal offence. Slightly more than two thirds of juveniles had breached their ASBOs at least once by the end of 2013, compared with slightly more than half of adults.

ASBOs, like a number of other hybrid orders used to regulate behaviour and low-level incivilities, present acute legitimacy challenges and embody mixed assumptions about behavioural motivation and agency, with significant implications for compliance, especially for young people (Crawford 2009b). They do so not only because they straddle and blur distinctions between criminal and civil legal processes and fuse informal and formal interventions, but also because they constitute a cluster of civil preventative orders, prohibitions and conditional support interventions whereby noncompliance (breach) is rendered an offence and thus punishable. Failure to fulfil the terms of an initial order, contract or agreement provides the grounds for subsequent criminalisation. Hence, they constitute civil orders backed up by criminal penalties, whereby it is future conduct that becomes the focus of prospective regulation. The criminal act arises as a result of failure to abide by the conditions set in the order rather than the initial conduct itself. Significantly, the behaviour that breaches the conditions or agreed terms may under all other circumstances constitute permissible legal activities.² These hybrid orders introduce a distinct dimension of conditionality into the legality of future conduct for those subject to them. In the process, principles of proportionality no longer determine the relationship between past acts and future constraints. Hence, through hybridisation notions of intention and motivation become confused, and new variations of liability are formed (Ashworth 2004: 265). At the same time, hybridisation facilitates evasion of erstwhile safeguards and established due process, both of which are deemed to get in the way of effective regulation.

The early years, 1997–2003, constituted a period in which new legal powers and practices were initiated through legislative reforms and policy hyperinnovation. In addition to the introduction of the ASBO and CRASBO, this included an array of nonstatutory innovations, such as the use of formal warnings and ABCs. The latter—also known in some parts of the country as acceptable behaviour agreements (or ABAs)—are a written agreement between an individual and local authority and/or police consisting of a list of anti-social acts from which the person agrees to desist. They may also include positive conditions by way of support services to be accessed by the individual. The use of ABCs largely emerged through local initiative in the late 1990s, rather than being centrally driven. They subsequently received formal government recognition and promotion (Home Office 2003) and were the subject of an early Home Office evaluation (Bullock and

² Although their basic legal structure is similar both to the longstanding application that a person be bound over to keep the peace, and to applications under various provisions relating to health and safety at work that originated in the nineteenth century, the immediate roots of the new civil preventive orders lie in legislative developments in the 1990s. The most closely related legal instrument in form is the Statutory Nuisance Abatement Notice, s.79 of the Environmental Protection Act 1990 (see Jenkins 2015).

Fig. 1 Number of anti-social behaviour orders (ASBOs) issued to juveniles in England and Wales 1999–2013



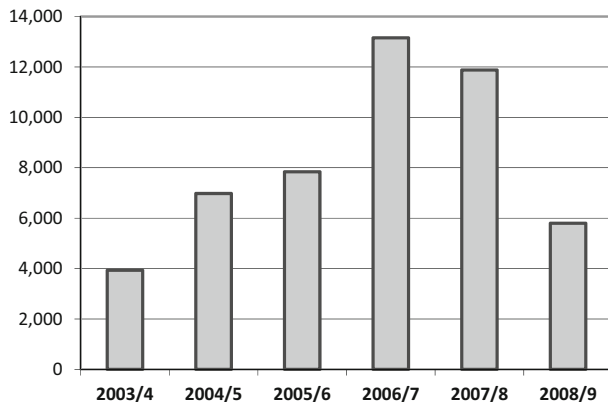
Jones 2004). Importantly, whilst ABCs are not legally binding, they can be used in court as evidence in an ASBO application or in eviction proceedings (Crawford 2003).

From 2004 to 2006 the focus shifted significantly to the challenges of policy delivery whereby the goal of irreversible change that citizens might notice and appreciate became a major policy driver. The Prime Minister's Delivery Unit (first established in 2001) set the template for the relentless pursuit of policy implementation; what the head of the unit, Sir Michael Barber (2007: 79), described as “deliverology—the science (or pseudoscience) of marshalling prime ministerial power to deliver significant measurable improvements in the public services”. This found keen expression in the establishment of the Anti-Social Behaviour Unit and then the Respect Taskforce. This zenith of the ASB agenda is reflected in the numbers of ASBOs for both adults and juveniles that were granted by the courts in England and Wales (see Fig. 1). Whilst few had been issued before 2003, >42 % of all ASBOs issued (up to the end of 2013) were issued from 2004 to 2006. Of those ASBOs issued against juveniles, nearly 46 % came in the same 3-year period. Since the high-water mark of 2005, the use of ASBOs has declined steadily. Even at their peak (4122 in 2005), the numbers never reached the levels initially envisaged by policymakers of 5000 per year. The national decline in the use of ASBOs, however, hides the fact that a large volume of work with young people aimed at tackling ASB has been taking place below and before recourse to such acute, legal responses.

The well-documented limitations of ASBOs encouraged practitioners to experiment with and develop a host of informal approaches that seek to engage young people and their parents through a complex array of sticks, carrots and persuasion designed to induce behavioural change. As such, ASBOs represent only the very tip of a much larger structure of proactive ASB interventions. Given the attention accorded to the ASBO (Squires 2008), other powers have largely evaded public scrutiny, such as the much more widely used warning notices and ABCs (Cosgrove and Cosgrove 2011). As Fig. 2 shows, the recorded use of ABCs—during the years in which national data were collected—far exceeded that for ASBOs. According to Home Office surveys of local community safety partnerships during the 6 years 2003–2009, nearly 50,000 ABCs were formally issued (the real figure is likely to be higher due to underrecording), the vast majority being to young people. This compares with 6242 ASBOs issued to juveniles across approximately the same period.

The piecemeal introduction of powers left little room to consider the manner in which various orders interact, conflict or connect with the wider existing system of youth justice. Yet in practice a complex series of tiered hierarchies of powers emerged—often depending upon

Fig. 2 Number of acceptable behaviour contracts (ABCs) issued in England and Wales (2003/4–2008/9)



housing tenure—in which certain powers became complementary, such that, generally, a recognised tiered approach existed (Home Office 2003):

1. ASBO or CRASBO
2. ABC or ABA
3. Warning notice or letter

In some parts of the country, these tiers were themselves extended to a more finely grained hierarchy—or ladder of intervention—in which different levels of warning (with or without referral to youth inclusion or prevention services) subsequently escalated to an ABC. In some places a second, higher-level ABC was also used, whereas in others, pre-ASBO warnings were used. At the apex of this ASB regulatory pyramid stood the ASBO.

From 2006 onwards there was a steady waning of the central government zeal with the arrival of Gordon Brown as prime minister and the subsequent closure of the Respect Taskforce in late 2007. In the light of criticisms of ASBOs from the European Commissioner on Human Rights (Gil-Robles 2005), difficulties exposed about their ineffectiveness—often labelled a badge of honour in the media—and high breach rates (Solanki et al. 2006; National Audit Office 2006; Matthews et al. 2007), there ensued a period of ambivalence and policy inertia. The Coalition Government elected in 2010 was committed to reversing much of the Labour project. It set about reviewing and reforming the legislative framework (Home Office 2011, 2012) with the introduction of the *Anti-social Behaviour, Crime and Policing Act 2014*. At its heart was a commitment to abolish the ASBO and streamline the plethora of existing ASB powers. In place of the ASBO and CRASBO, the legislation created two new powers: the criminal behaviour order (s. 22), available on conviction for any criminal offence and including both prohibitions and support designed to stop future ASB; and the injunction to prevent harassment, alarm and distress (s. 1), a civil order with a civil burden of proof.³ In essence, what transpired largely constituted a rebranding

³ Injunctions may be ordered where the court is satisfied that, on the balance of probabilities, the respondent has engaged or threatened to engage in ASB, and it considers it “just and convenient” to grant the injunction to prevent the person engaging in ASB. The definition of ASB remains unchanged; however, both injunctions and CBOs can now include positive requirements on the individual as well as negative restrictions. As with the CRASBO, the CBO will be a civil preventative order that can be attached to conviction, breach of which continues to attract a criminal penalty with a maximum sentence of 5 years.

exercise, with some elements of consolidation, rather than genuine reform. It also included various, rather inconsistent, attempts to put victims at the heart of ASB policies (Heap 2016). But for the name changes, however, the regulatory powers mostly remained intact. Furthermore, the commitment to informal and out-of-court disposals for low-level incivilities, and the use of ABCs, warnings and early intervention programmes (Allen 2011) continued unabated.

Nuffield Study

It was against this background and given the absence of detailed research into the impact of diverse ASB interventions on young people and the interactions between them that the Nuffield Foundation funded a large-scale research study over a 4-year period between 2008 and 2012. This paper draws on the findings of the Nuffield research (see also Crawford et al. 2012). It focused on the use of formal ASB warning letters, ABCs and ASBOs and the interrelations between these tools and the wider preventive and support services allied to them. The research gathered data from, and interviewed a range of participants in, four Community Safety Partnerships across England. These study sites comprised two large northern cities and two London boroughs. As agreed at the outset, the sites are not named. They were selected on the basis that they represented large Community Safety Partnerships in relatively high-crime areas with diverse minority ethnic populations, indicators of social deprivation and significant social housing stock. At the time the study commenced, they were also acknowledged to have developed significant expertise in tackling ASB and in delivering coherent packages of youth interventions. In many senses, they were seen as leaders in the field of ASB practice and recognised as examples of good practice.

The research collected data on the use of ASB interventions with all young people given a formal warning, ABC or ASBO between 1 April 2008 and 31 March 2010 in the four study areas. The study sought to track their pathways back over time, and forward to the end of the data collection period. More than 120 interviews were conducted across the fieldwork sites. This includes interviews with 36 young people subject to an ABC and 18 parents. In addition, interviews were held with more than 70 local ASB professionals from housing, police, the local authority and youth offending services. This paper focuses on the qualitative findings drawing primarily from the interviews with young people and their parents. It does so to illustrate key conceptual themes regarding the manner in which interventions are implemented and to explore the core characteristics of procedural justice. The quantitative analysis of outcomes and youth pathways through ASB interventions and criminal justice sanctions are explored elsewhere (Lewis et al. 2016, under review).

In line with earlier studies (Burney 2009; Crawford and Lister 2007; Cooper et al. 2009; Clarke et al. 2011), the Nuffield research identified widespread and considerable variations in ASB policies and the use of interventions and tools. Such variations in practice and process were not linked directly to the distribution of risks of victimisation, to levels of socioeconomic deprivation or to disparities in the nature or type of local ASB problems. Rather, they were influenced more often by local preferences for particular approaches to ASB interventions; policy selections about the favoured balance between enforcement, prevention and (welfare-based) support; the nature of interorganisational partnership relations; the willingness of key individuals to experiment with new tools; and the availability of local support services. For example, the number of juveniles who received an ASB intervention in relation to population

size (i.e. per 10,000 population) was more than six times greater in the site with the second-largest juvenile population than in the site with the most 10- to 17-year-olds. Moreover, there was no straightforward relationship between levels of deprivation and the number of young people in receipt of ASB interventions. Rather, resultant policies and practices reflected local interinstitutional cultures of tolerance, authority and behavioural regulation, informed by political and organisational choices.

Again, in line with other studies, the research identified a significant gap between formal statements of local policies and the realities of what local frontline professionals did in practice (Burney 2009). More generally, the reality of governing ASB in different parts of the country often significantly belies the rhetorical pronouncements of central government. The research adds to the abundant evidence that national policies are often resisted and refashioned through implementation (Solanki et al. 2006; Crawford 2008), as a result of which the expectations of policymakers are modified, adapted and given distinct concrete form. The research found evidence of individuals’ and teams’ operating procedures that differed markedly from, and sometimes were at considerable odds with, those set down in formal policy documents or articulated by senior managers. Hence, to some considerable degree, policy formation and implementation become confounded and (con)fused in a more iterative and dynamic process of delivery than often assumed. As a result, outcomes are less easily predictable.

Most work to tackle ASB occurred before recourse to the use of legal tools like the ASBO, but this was frequently hampered by a lack of joined-up approaches within and between partners. Given the nature of ASB and the novelty of many of the regulatory tools, policy implementation presented significant challenges for local practitioners. Foremost was the demand for interorganisational partnerships, given the ways in which ASB cuts across the domains and concerns of divergent organisations. By necessity, these partnerships challenge organisational assumptions and require that professionals work in different, sometimes innovative, ways (Crawford and Cunningham 2015). They also enable the deployment of diverse supplementary levers of behavioural control. This is especially evident in the context of social housing, where civil levers of control associated with tenancy demotion and eviction are often accompanied by criminal sanctions through the police and courts. The former are often perceived as more dramatic in their impact by those on the receiving end than the threat of criminal punishment (Crawford 2013). This highlights the capacity to combine control systems in a form of “regulatory pluralism”, whereby complementary instrument mixes are preferred over single instrument approaches (Gunningham and Grabosky 1998). However, the combination of regulatory approaches, sanctions and levers of control raises important ethical, legal and social questions about the interactional effects of different regulatory regimes and the complementary or ambiguous relations between them. It also prompts concerns about the implications of regulatory overload, net widening and MESH thinning (Cohen 1985; Brown 2004). There are evident dangers of professionals assuming that multiple instruments—or as many as possible—should be deployed rather than the minimum necessary to achieve the desired result.

There were also significant variations in the types and seriousness of behaviours and activities deemed worthy of intervention. As such, the general thresholds for intervention were inconsistent, and the types of activities that were typically the focus of attention varied. In some sites, responses to ASB could be triggered by nuisance behaviour (examples include kicking footballs at properties, use of abusive language at a street party, throwing snowballs at members of the public, shouting, swearing, throwing stones, climbing on walls, etc.). In sites where the thresholds were higher, many behaviours being dealt with through ASB channels

were criminal in nature (examples include arrested for violent disorder, shoplifting, assaulting another youth, criminal activities, possession of an offensive weapon—knife—and so forth). Reflecting these discrepancies, young people's pathways into, through and away from ASB interventions differed significantly across the various sites. Some areas drew young people who already had significant experiences of criminal sanctions and contact with youth justice into ASB interventions. In one site, many recipients of ASB interventions were already known to youth justice services. In other areas, by contrast, ASB interventions tended to be more exclusively used at an early intervention stage to nip in the bud problematic behaviour before it expressed itself as criminal and prior to the individual experienced significant contact with the youth justice system. In sum, the findings unsettle prevailing beliefs concerning the targeted use of ASB interventions to nip crime in the bud by tackling low-level incivilities. Rather, they evidence the use of ASB interventions with clearly defined criminal behaviour. Furthermore, they also “contest the logical sequencing of behaviour regulation strategies by demonstrating the haphazard deployment of ASB sanctions within complex webs of prevention, ASB and youth justice interventions” (Lewis et al. 2016, under review).

Procedural Matters

There is growing awareness that the impact of criminal justice policies and modes of regulation are in large part determined by the manner in which they are implemented. Good intentions are seldom enough and often produce unintended consequences, especially in the field of youth justice (McCord 2003). Outcomes are shaped by reflexivity, reactance, resistance and feedback on the part of practitioners charged with implementing interventions, as well as recipients of regulatory strategies (Pawson and Tilley 1997). The procedural manner in which interventions are delivered may be as, if not more, important than the mechanisms themselves. Delivery styles are particularly important in shaping motivations to cooperate and intentions to comply on behalf of those at the receiving end of interventions. Given the abundant tensions and blurred lines relating to interventions in response to youth ASB—between civil and criminal approaches; formal and informal tools; preventive support services and punitive sanctions; ideals of responsive self-regulation and realities of imposed order—the importance of procedural justice emerged from the research as a pivotal issue.

Procedures matter from at least four different perspectives:

1. They promote better outcomes—a consequentialist view
2. They have inherent value in their own right—a proceduralist view
3. They promote factors other than consequences that individuals value—a nonconsequential, instrumental view
4. They foster and reinforce wider social norms and moral values—a normative view

There is now a burgeoning literature on the value and application of procedural justice in criminal matters (Tyler 1990, 2003; Sunshine and Tyler 2003; Jackson et al. 2013), notably with regard to the benefits for compliance and legitimacy (Tyler and Fagan 2008; Crawford and Hucklesby 2013; Murphy et al. 2015). This approach has been labelled a process-based model of regulation. Procedural justice entails both justice in the quality of decision making and in the quality of treatment that people receive. These combine to enhance the legitimacy of authority and (legal) actors and foster cooperation and compliance with rules. When people are

so treated, they view law and legal authorities as more legitimate and entitled to be obeyed. As a result, people become self-regulating, taking personal responsibility for following social rules. From this perspective it is assumed that legitimate social arrangements that involve fair procedures, treat people with respect and dignity and provide them with participation in informed decision-making processes will generate normative commitments to compliance.

In sum, this literature highlights a number of key relational aspects to just procedures:

First, where people have the opportunity to voice their concerns before an authority makes a decision

Second, where authorities treat people with dignity and respect

Third, where the motives of authorities are seen to be fair, including whether they act in the best interest of citizens and display concern for the citizen’s well-being (of particular relevance in the context of young people and their parents)

Fourth, where decisions made by authorities are based on facts, not biases or personal opinions (namely, they exhibit neutrality’ and a detached stance)

Adapting insight from the procedural justice literature to civil ASB interventions, we can identify seven normative characteristics of just procedures: voice; voluntariness; respectful treatment; parsimony; accuracy of evidence/information; fairness; and neutrality. Let us explore these themes drawing upon the interview data.

Voice

Voice here refers to the means by which those who are affected or potentially affected by a decision have the opportunity to contribute to the decision-making process; to articulate their interests, needs and rights. This presupposes that the individuals understand the processes they are engaged in as well as their implications. From our interviews, it is clear that not all young people had an accurate grasp of what they were caught up in, its legal standing or its implications. As one young person noted: “I remember signing something, but I didn’t know what it was!” (YP-C/16)⁴ In many instances, the claim that young people are given a voice and choice in informal proceedings and in determining outcomes is something of a sham due to evident power imbalances in a room full of adults (Wonnacott 1999). The level of participation or agency in such circumstances is severely restricted or minimal. The reality too frequently is that choices are presented as varieties of “take it or leave it” arrangements, in which young people are given limited information upon which to base their preferences. The following young person’s comments illustrates this experience: “the conditions were terrible because they were things like, you can’t be in any more than a group of two, no spitting. Just a load of ridiculous rules reading down it. There were things that didn’t occur to me whatsoever, I’d never done these sort of things.” (YP-B/05)

Even in more genuinely deliberative proceedings in which young people are explicitly given opportunities and feel free to express themselves unconstrained, there are clear and present dangers of inappropriately over-burdening young people through interventions that presuppose the capacity to formulate and articulate preferences, weigh risks, compare

⁴ All interview quotes are attributed to unique identifiers following the pattern of person type-site/number, where YP = young person; F = mother, father or carer; and P = professional.

opportunities and costs, choose from options presented and comply with decisions made. Exercising voice in deliberative negotiations demands certain attributes and levels of competency, notably in articulating preferences and communication, which are not available to all youths. Some young people are evidently better capable of exercising their voice than others. The use of ASB interventions with young people considerably below the age of criminal responsibility (which is 10 years in England), further underscores the problems associated with voice. From the research study, it was not unusual to find children as young as 8 years the subject of ASB interventions; in some instances the research encountered work, including the signing of acceptable behaviour contracts, with 7-year-olds. The fact that children this young are being presented with contracts to sign (when legally they are not entitled to enter formal contracts), which may have (threatened) implications for the possible eviction of their family from social housing, raises fundamental question about what is expected of children so young. For many young people, voice in ASB proceedings constitutes little more than an obstructed ideal.

Voluntariness

In many senses, the norm of voluntariness is alien to criminal proceedings in which commands, sanctions and punishments are the prevailing regulatory lexicon. Yet in civil, precriminal interventions (as well as principles of restorative justice, for instance), voluntariness holds a pivotal—some might say sacred—place. Notions of responsive regulation (Ayres and Braithwaite 1992) that are informed by procedural justice ideals highlight how self-regulation operates through voluntary cooperation, which entails that regulators recognise and respond to the conduct of those they seek to regulate in ways that are sensitive to the capacity of the regulated to regulate themselves and the conditions in which regulation occurs (Braithwaite 2002). Voluntariness therefore plays a crucial role in the legitimacy of interventions and hence in motivations and compliance. For some, the threats of possible sanctions—either through the criminal justice system or social housing—were the enduring central experience of the process. As one young person explained: “They came to my house and made me sign this thing and that was when I thought I need to start being good because they’re going to bring me to jail again. They said if I broke the ABC then I’d get an ASBO and get brought to court, maybe even get kicked out of my house and I didn’t want that.” (YP-C/08)

As one mother commented, reflecting the fears experienced by many parents: “I didn’t like it because they threatened me with my home... it was not very fair because I knew that he’s not naughty... And they threatened me with my house.” (F-B/04).

Another mother explained: “When the police came round they explained what could happen if the kids continued [the ASB]. So they said if this happens again then there’s going to be a report to the council. And you’re going to bring problems on your parents, your parents will have problems... We were aware that if he carried on behaving badly, that there was a potential risk of losing the house and having to go and live somewhere else.” (F-D/05).

In this light, it is hard to identify to what extent voluntary cooperation is being enlisted in the service of self-regulation.

Respectful Treatment

Parents and young people spoke positively of the respectful treatments they received in ways that conferred legitimacy on the authorities, the process and the decisions arrived at: “When

they came to my house, I thought they were respectful, they knocked on the door and they spoke appropriately. And I got them to sit down and they explained why they had come to my house” (F-C/06).

The research suggested that experienced practitioners emphasised the importance of soft skills, interpersonal relations and respectful procedures in working with young people and their parents. Respectful treatment that engaged the young person and parents on a normative level was more likely to be well received with positive implications for compliance: [The police community support officer] was like the voice of reason, she was really nice and she spoke to [the daughter] on her level, she wasn’t rude to her... She explained to [the daughter] about how it felt like, say, for an old lady or an old man to come into the block and how intimidating it is to come across a gang of youngsters. And they’ve got to try and walk past the noise on the landing or on the stairwells” (F-B/01).

Parsimony

The idea of parsimony is central to notions of responsive regulation and a normative theory of justice, which seeks to maximise freedom as nondomination (Braithwaite and Pettit 1990); drawing on civic republicanism as a tradition of political thought that stresses the interconnection of individual freedom, citizen participation and a rich sense of civic virtue with promotion of the common good. This approach to ordering at the base of the regulatory pyramid is dependent upon the credible capacity of escalation—speaking softly and carrying sticks (Braithwaite 1997). There is a presumption to commence at, and that most regulatory action will occur near, the base of the pyramid with various attempts to coax compliance through persuasion (through warnings and informal agreements). From this perspective, only when dialogue and voluntary compliance fail ought there to be incremental escalation up the pyramid. In practice, this regulatory ladder was often pushed to one side in search of the right tool for the specific task. As the following police sergeant explained: “Because we’ve got this ladder that we have to follow, ASBOs are the last resort. Complete rubbish in my view. The term last resort causes so many problems if interpreted in a certain way... ASBOs, like any other form of intervention, should only ever be used if appropriate. That could be the first intervention, or it could be after a number of other interventions have been tried, but only when appropriate. So we never ever view it as a last resort, we never view it as a first resort, but when appropriate” (P-A/12).

The Braithwaitian model of regulation at the base of the regulatory pyramid uncontaminated by what occurs at the apex in the form of deterrent sanction presents a rather benevolent interaction between the sticks held as last resort (in the background) and the softly spoken negotiation in the foreground. Our research suggests that this assumption is misplaced in that, frequently, the sticks undermine and corrode the quality of the negotiation itself. The complex realities of treading this thin line between setting realistic parameters and threatening consequences is articulated by the following front-line ASB worker from the local authority: Whilst not wanting to frighten the young person, we’re also very realistic very early in our conversations with the parent... However, because you are a tenant, and you have certain tenancy conditions that you’ve agreed to abide by, this is how your child’s action could affect your tenancy. So we don’t want to spread doom and gloom right from the beginning, but we’re also very realistic” (P-D/05).

However, this was experienced, interpreted and felt very often by young people and their parents very differently to what may have been intended by the ASB practitioners. As Bottoms sagely notes: “Those who seek to induce compliance in others very often think they know what it will be like to be on the receiving end of the measures that they administer. But...

people in power frequently misjudge their audiences” (2001: 99). In the context of accusations about ASB, the presence of coercive sticks, however, even whether these are held in the background or as a last resort, frequently undermine any sense of voluntariness or unconstrained choice, as the following young person testified:

“She [police officer] took me into the office with my mum, asked me to sign it. I said: Oh I want to read it and everything! She let me read it but she says to me I didn’t have to sign it. But if I didn’t sign it, I could have got into more trouble for not signing it...so I signed it.” (YP-B/01)

This highlights limitations of the Braithwaitian view of the noncorrosive nature of punishment at the apex of regulatory regimes. The reality often is that the very presence of carrying sticks can undermine the normative values of the softly spoken words.

The principles of parsimony and proportionality demand a mature and robust understanding of the appropriateness of thresholds of intervention with young people. As one Youth Offending Service manager commented whilst reflecting on the reasons for a decline in the use of ASBOs and ABCs in the area: “That would indicate to us two things. One is that there were more young people being effectively diverted, secondly that maybe there’s more maturity about; where is the threshold? And there has to be a threshold about what is boisterous behaviour, what is kids being kids, what needs sanction and what doesn’t? I think there is probably a greater understanding of that” (P-C/09).

There is a central paradox in the context of shrinking welfare budgets and uneven availability of support services. For some families (mothers in particular), ASB interventions were welcomed precisely because of the possibility that they might open up access to local services that might not otherwise have been available, notably with regard to family support. For families in difficulty, some assistance was patently preferable to none, even if this came at expense of stigmatisation and possible criminalisation. Where access to support services is conditional upon behavioural change, parsimony takes on a different meaning and interpretation.

Accuracy of Evidence and Information

Given the informality, lack of due process and pressures for early intervention and prompt responses to incidents of youth ASB, many cases involved a weak evidence base both in relation to: (i) understanding the details of an incident, which often relied upon hearsay and public perceptions; and (ii) understanding the young people and their families (notably with regard to other matters regarding the family and other interventions by differing services, which were poorly linked and for which data were frequently absent). With regard to the former, a local authority-employed ASB worker explained:

The weakness is that when we actually get to the signing of the document, this is the document, this is saying: “so and so will not involve themselves in these activities”. There’s always a lack of evidence. So the police are saying: “Well yeah, he’s up to no good, we know this one and he’s a bad egg!” Housing are saying: “Yeah, he’s a wrong one” and so on. But when you actually get the parent down there and say: “This is what your son’s been up to”, often we get this sort of thing: “Well prove it. I’m not signing anything until you can prove it” (P-A/03).

This weak evidence base resulted in parents and young people challenging the legitimacy and fairness of subsequent proceedings, as the following exchange testifies:

Father: Well he’s meant to have gone down one of the streets on the estate and thrown snowballs at a house.

Mother: That was supposed to have bricks in the snowballs weren’t they?

Father: Meant to be stones in the snowballs but which is ridiculous anyway because his sister was with him and she said there were no stones in snowballs. It was just kids playing, throwing snowballs. When I went to the housing, I actually said to them: “You’re telling me you’ve never thrown snowballs?” And he said: “I understand that, yes”.

Mother: He was supposed to have been videoed; well we asked to see this video.

Father: They didn’t have it, but [the son] put his hands up to throwing snowballs, he says: “but I haven’t thrown any bricks” (F-C/01).

The importance of accurate information about the youths and their families is also crucial for reasons of effectiveness in terms of their ability to use and draw upon their own resources for the purposes of compliance. Fostering the capacity for self-regulation and enlisting the capabilities and resources of family and community members can be vitally important but relies upon knowledgeable and informed practitioners. One mother explained the positive role that family, friends and neighbours can exert in fostering compliance:

It was a positive thing... And he did listen and he did understand it and I think if you’ve got a parent behind you that is saying: “No, these people are right you know!” All the people on my road, we were all in unison with it, we all supported each other. Because we’ve all grown up here together and we’ve all got children here now so we support each other and say: “No, it’s not fair on [a neighbour], don’t stand on her doorstep or outside her house”. So [the son]’s friends were getting it from their parents, too. So it did work out and we’re all [social housing] tenants so we were all concerned about our tenancies” (F-C/02).

By contrast, ASB interventions can also hinder (whether intentionally or not) the capacity and willingness of parents and significant others to foster desistance and promote prevention. Most specifically, where not complemented by access to supportive services, overly punitive approaches can foster disengagement and undermine the capacity of young people and families to nurture the conditions necessary to secure long-term compliance.

Fairness

Some young people and parents were concerned about the fairness of the procedures applied in their case. For example, one father was angered by the fact that he had not been present when his son had signed the ABC, albeit the mother was present: “Like with the ABC, I don’t think really they should have been there without me being there, and I could have signed the paperwork. It’s like I know a lot of the criminal side of it—I was a bad bugger when I was younger so...but to tell somebody they’ve got to sign a piece of paper and not read it, to me that’s wrong” (F-A/01).

As well as consistency of treatment and fairness of procedures, concerns about fairness also related to issues of proportionality and wider conceptions of the appropriateness of interventions. The mother of a girl who was involved in the same snowballing incident (discussed above) expressed similar concerns about the lack of proportionality in this case: “Well—I can understand people being evicted for bad anti-social behaviour... But for one snowball being

chucked! Fair enough, one snowball can lead to two snowballs and stones and everything else, but [the daughter]’s never been in trouble with the law before and there’s people on this estate that’s in trouble with the law but they’re still living in their [social] houses. So I thought that was a bit harsh; eviction for the next time” (F-C/03).

The father quoted earlier whose son was involved in the snowballing incident reinforced this perception of unfairness: “He was just knocking around with his mates having a laugh as far as he were concerned. Well as far as he was concerned, it was just snowballs, he says everybody’s done it, not as if I’m going round smashing windows or breaking into buildings... I thought it was stupid, it’s what every kid’s done, thrown a snowball, you even see grown-ups doing it. I thought it was actually stupid at the time. I thought it was actually the City Council going too far” (F-C/01).

Many young people, for instance, felt that the very definition of ASB—given its capacious, subjective and all-encompassing quality (dependent on the perceptions of others)—was itself unfair, as the following young person illustrates: “You could easily alarm someone couldn’t you? You could smoke or stand with a cigarette outside someone’s house and they might think it’s a spliff and that’s alarming isn’t it? I don’t find that fair to be honest!” (YP-C/10).

Neutrality

Neutrality speaks to the legitimacy of the decision makers and figures of authority; that they are nonpartisan and exhibit impartiality. This demands a detached stance as a central value. From the perspective of parents and young people, this translates into experiences that are not driven by the organisational priorities or ideologies of particular professions but rather treat them as people whose interests and well-being are of concern. It also expressed itself in terms of the transparency and reviewability of the decisions made and as such could be challenged or reviewed and was therefore justifiable, as the following local-authority worker explained: “They might think well let’s put all ten on an ABC because it’s an area that’s always got problems. They’re local kids that know better, let’s just go straight to an ABC. So sometimes we’ll bypass the powers but we have to justify it because obviously I don’t want complaints flying in say from parents to my complaints department asking why we’ve done it. So we’ve always got to justify it” (P-D/07).

Distributive Justice

The preceding discussions highlight the importance of the normative and affective dimensions of decision-making experiences in the exercise of authority. They also reinforce the current failings of practice in the delivery of ASB interventions that fail to live up to the regulatory ideals of procedural justice. For young people, ABCs and other ASB interventions were most effective when they were issued in a fair and proportionate way in which the young person and parents felt listened to and respected. This theme was evident across the four sites. Experiences of “respectful” and “appropriate” treatment shaped the willingness to cooperate, notably among parents. One parent summarised two different experiences of procedures and her responses to them:

The first time of going to the housing, we didn’t sign the ABC order because I just thought no it’s not fair because it was only sent to my son and not to the other children on the road...So we didn’t sign that one...But she came to visit us at home—it was a couple of police officers and somebody from our housing association—and they talked

me through it and I thought: “Do you know what, it’s best just to sign this one”. And to show that we are willing—because [her son] wasn’t really naughty. So we did, we signed that one... We just weren’t signing it [the first time] because we didn’t think it was fair... but the second time they were very nice to us when they came to the house, really, really nice (F-B/02).

Yet, this experience also raises implicit questions about the limitations of a purely process-based approach. It largely ignores the interaction between procedural and distributive justice. Legitimacy lies not just in procedure but also the fairness of social arrangements and authority more generally. Whilst procedural justice is necessary to foster compliance, it is not sufficient; social outcomes matter, not just (or simply) procedures.

Of most concern to questions of distributive justice is that the experience of justice and the powers of intervention are clearly different with regard to the housing tenure and status of the family concerned. Many ASB tools are either tenure specific or seen as more effective in relation to those in social housing, given the impact of the sanctions—notably eviction—that they enable. As a consequence, in England, those living in social housing are the subject of differential justice in ways that mere improvements in procedure will effect little change. The problems of “justice by tenure” and the questions of (il)legitimacy to which they give rise are not resolved simply by fair procedures. They are problems of distributive outcomes. Hence, to paraphrase the paper’s title: “It ain’t *just* the way that you do it! It’s also what you do” and the distributive consequences that arise!

Conclusions

The research presented here demonstrates that among practitioners there was an evident preference for working preventatively with young people and parents, providing support alongside clear boundaries that specify possible sanctions for breach. However, there were significant inconsistencies over the implementation of, and commitment to, a tiered approach to ASB tools or ladder of interventions. This can contribute to young people climbing, or being escalated, up the ladder at different speeds in different areas. In this regard, the importance of parsimony as a key normative principle guiding practice is underscored by two further central findings from the research: first, the inclination among risk-averse practitioners to deploy multiple levers of control; and second, concerns about differential experiences of “justice by tenure”. This suggests the need to emphasise parsimony over precaution: the least possible intervention necessary for the attainment of the preventative goals rather than a shotgun approach that overburdens young people with multiple strategies of regulation in the hope that some of it might bear fruit. More generally, research shows that the predictive capacity of practitioners to intervene with young people destined to proceed to more serious criminality remains highly circumspect. The available evidence suggests significant flows into, and away from, at-risk groups over the life course. In the context of early intervention, there is considerable scope for false positives and false negatives amongst cohorts of young people. Hence, there are genuine ethical concerns about labelling young people as future delinquents under the auspices of ASB intervention and the services that they access, given the conditionality that attends to them.

What is particularly worrying—given the findings reported here—is the fact that under the benevolent cloak of preventing future offending, young people are becoming the subject of earlier and more intensive interventions and closer scrutiny, which risks propelling them faster into possible criminalisation. Research reminds us that greater contact with legal authorities can often serve to undermine desistance, prolong persistence and draw young people deeper

into offending (McAra and McVie 2007). This implies that due concern should be given to the proportionality of the response in terms of the behaviour itself rather than an overriding concern for what *might* happen in the future. Otherwise, there are real dangers that overly punitive early interventions may serve to attribute and affix “troublemaker” identities and reputations on young people, which become difficult to shed in transitions to adulthood. Subjecting certain young people at an early age to more intense surveillance and monitoring on the part of formal authorities may set them up to fail by rendering minor infractions more likely to be noticed and by drawing them more precipitously and deeper into processes of criminalisation.

A key challenge, therefore, is to design, develop and promote constructive forms of early intervention and prevention that support and work with—rather than against—genuinely informal (familial and communal) process of regulation and social control that foster cooperation, compliance and desistance whilst avoiding stigmatisation, unnecessary coercion and criminalisation. Despite the changes to the legislative framework heralded by the 2014 Act, challenges in delivering ASB interventions with young people in ways that conform to ideals of “responsive regulation” persist and are as pressing as ever. Given that ASB interventions occupy simultaneously the gateway into and possible diversionary routes away from youth justice, as well as providing access to crucial support services for individuals and families in difficulty, it is vital that the use of those interventions is informed by clear normative principles of procedural and distributive justice. Compliance and cooperation demand processes that are perceived as legitimate and are experienced as procedurally just. For many young people ASB interventions are not an early intervention sitting below the criminal justice system but, rather, supplement or provide alternatives to youth justice. This research suggests that despite well-intentioned ambitions and aspirations held by many practitioners, the resultant practices frequently fail to conform to characteristics of procedural justice in ways that might enhance capacities and capabilities within communities, families and individuals for self-regulation. To do so, we need to know more about, and be sensitive to, the ways in which regulatory powers are experienced, interpreted and felt by those groups in the population on the receiving end of measures designed to regulate behaviour.

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