



NORTHERN  
IRELAND  
HUMAN  
RIGHTS  
COMMISSION

## **“Measures to Tackle Anti-Social Behaviour in Northern Ireland”**

### **The Response of the Northern Ireland Human Rights Commission**

1. The Northern Ireland Human Rights Commission (the Commission) is a statutory body created by the Northern Ireland Act 1998. It has a range of functions including reviewing the adequacy and effectiveness in Northern Ireland of law and practice relating to the protection of human rights,<sup>1</sup> advising on legislative and other measures which ought to be taken to protect human rights,<sup>2</sup> advising on whether a Bill is compatible with human rights<sup>3</sup> and promoting understanding and awareness of the importance of human rights in Northern Ireland.<sup>4</sup> In all of that work the Commission bases its positions on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), other treaty obligations in the Council of Europe and United Nations systems, and the non-binding or “soft law” standards developed by the human rights bodies.
2. The Commission welcomes the opportunity to comment on the proposals to implement anti-social behaviour orders (ASBOs) in Northern Ireland. It would welcome feedback from the Northern Ireland Office on this response. Where it is decided not to take account of some of the comments made, the Commission would be grateful for an indication of the reasons for not doing so.

#### **A meaningful consultation?**

3. It is regrettable that the Commission was not made aware of these proposals in advance of the public consultation exercise. Such early consultation with the Commission would facilitate it in discharging its statutory duty under section 69(2) of the 1998 Act to advise on legislative and other measures which ought

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<sup>1</sup> Northern Ireland Act 1998, s.69 (1).

<sup>2</sup> *Ibid.*, s.69(3).

<sup>3</sup> *Ibid.*, s.69(4).

<sup>4</sup> *Ibid.*, s.69(6).

to be taken to protect human rights. The Commission was created as an independent, expert resource to Government in its consideration of such significant proposals and their particular human rights impact in the Northern Ireland context. Failure to consult the Commission at an early stage loses much of the value of that role.

4. The absence of such pre-consultation reinforces the Commission's perception that this public consultation process is, as far as the Northern Ireland Office is concerned, a mere box-ticking exercise, in that the Government has prejudged the outcome. On 10 March 2004, in the House of Commons, the Minister of State Mr John Spellar said the following in response to a question from a Northern Ireland Member regarding the current consultation on the introduction of anti-social behaviour orders in Northern Ireland:

*The Hon. Gentleman knows that communities across Northern Ireland have resoundingly said yes, and we have put detailed provisions out for consultation. Furthermore I have shortened the consultation period precisely so that we can implement the measures as soon as possible. There is a crying need for them, and we know from our experience in England that they work. We want to introduce them as soon as possible.*

5. That hardly manifests a willingness to reflect on any contrary views that may emerge from a consultation still under way. The Commission is particularly concerned that the Government appears to have prejudged the outcome of the consultation given the clear human rights implications associated with the introduction of ASBOs. Issues regarding the presumption of innocence, the right to a fair trial and the rights of freedom of association and of peaceful assembly, freedom of expression, privacy and freedom to choose one's residence are all engaged.<sup>5</sup> The Commission is particularly concerned about the impact of the proposals on the rights of the child guaranteed by international human rights treaties to which the United Kingdom is a signatory. These concerns are set out in more detail below.

### **The Commission's approach**

6. The Commission takes a keen interest in the social problems that the current consultation ostensibly seeks to address. Through its work with victims and with members of vulnerable groups in Northern Ireland, the Commission is well aware of people's fears for their safety and the safety of their families. One of the issues that the Commission has been considering in its work on a Bill of Rights for Northern Ireland has been the possibility of including a right to personal and/or physical integrity in such a Bill.<sup>6</sup> It has also taken a keen interest in the experience of children and young people who have come into

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<sup>5</sup> See the relevant international human rights standards set out in Appendix 1.

<sup>6</sup> See *Making a Bill of Rights for Northern Ireland*, NIHRC, September 2001. The Commission plans to publish shortly a Progress Report reflecting the Commission's latest thinking regarding the proposed Bill of Rights.

contact with the law.<sup>7</sup> It is keen that such young people be facilitated and supported in taking responsibility for their actions but that the means by which society seeks to make them accountable does not result in an increased tendency towards criminality.

7. On 16 March 2004 the Commission organised a seminar to facilitate discussion of the current proposals. Some 30 people attended<sup>8</sup> and heard Professor Phil Scraton<sup>9</sup> present his views on the operation to date of ASBOs in England and Wales. A lively discussion ensued during which some very strong criticisms were made of the Government's failure to specifically examine the suitability of ASBOs in the Northern Ireland context. The Commission is most concerned that, with the exception of an acknowledgement of the different local government structures in Northern Ireland and the existence of youth conferencing, the consultation document gives no consideration to the potential impact of ASBOs in Northern Ireland. These concerns are set out in more detail below.
8. A key concern in the Northern Ireland context is the outcome of the NIO's initial screening of these proposals for adverse impact on section 75 groupings. The Commission cannot accept the outcome of the NIO's initial screening which, according to paragraph 41 of the consultation document, found that the proposals are not likely to have an adverse differential impact on any of the groups. The Commission's concerns in this regard are set out below and have been communicated to the Equality Commission for Northern Ireland.
9. The Commission is concerned about the assumption in the consultation document that ASBOs are a "good thing" and that they help to divert children and young people at risk of offending. There is a risk that a high proportion of those made subject to ASBOs will shortly thereafter, given the most restrictive nature of the conditions imposed on them, acquire a criminal conviction and a custodial sentence for breaching the order. Past experience has shown that incarceration in a youth justice facility is often only the first step on the ladder of criminality and should be avoided except in the most extreme circumstances.
10. The Commission is also concerned at the huge discretion which exists for those seeking the orders and at the very subjective nature of the definition of anti-social behaviour. The potential for misuse is huge given the wide number of "partners" who can now seek orders<sup>10</sup> and the perception which has developed that such orders are a panacea for all ills. A recent example of the inappropriate use of an ASBO arose in Teesside in November 2003, when an interim order was made at the request of the local health authority against a woman who had been making a large number of telephone calls to her local

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<sup>7</sup> See the NIHRRC's investigation report, *In our care: Promoting the rights of children held in custody*, March 2002.

<sup>8</sup> See the attendance list attached at Appendix 2.

<sup>9</sup> Professor of Criminology at the Queen's University of Belfast.

<sup>10</sup> The number of "partners" who can seek an order in England and Wales was recently extended under the Police Reform Act 2002.

health centre and had been pestering health service staff.<sup>11</sup> Fortunately, the interim order was revoked by the Crown Court on appeal two months later, when the judge said it was inconceivable that such an order should be made at a time when no medical evidence was available in respect of the woman's state of mind. He stated that the health authority was seeking to use the ASBO for a purpose for which it had not been designed.<sup>12</sup>

11. Given the serious infringement of rights associated with the operation of ASBOs there is a heavy onus on the Government to not only make out a strong case for the introduction of ASBOs in Northern Ireland but to include as part of that case a rationale for the proposed departure from long-standing safeguards of due process and indeed from their own obligations under international human rights law. The Commission considers that the Government has failed in the current consultation document to make out an adequate case for the introduction of ASBOs in Northern Ireland.
12. In addition, the introduction of ASBOs in Northern Ireland does not sit well with existing Government policy and would seriously undermine other Government initiatives designed to reduce social exclusion. This issue is examined in more detail in the section below dealing with the Northern Ireland context. What could be more conducive to social exclusion for a child than to be the subject, as early as 10 years of age, to a minimum of two years of an ASBO which may exclude him or her from vast geographical areas, disrupt friendships and social networks, forbid certain types of non-criminal behaviour or lead to an eviction from home, a change of school and relocation far from family and friends? The breadth and duration of many ASBOs in England and Wales appear not to be a proportionate response to the need to "prevent and punish" the behaviour in question. The extent to which a child may have already been set apart from society is highlighted even more starkly by the making of an ASBO and its subsequent publication.

### **Section 75 equality duties**

13. The Commission has considered the result of the initial screening of the proposals under section 75 of the Northern Ireland Act which is set out at paragraph 41 of the consultation document. The document states that the outcome of this initial screening has been that the proposals "are not likely to have an adverse differential impact on any of the groups".
14. However, the consultation document clearly states at an earlier point that the proposals it contains are in the main targeted at young people. In addition, the experience in England and Wales appears to indicate that young men are most likely to be targeted for ASBOs. Assuming that ASBOs in Northern Ireland will follow general trends in relation to youth justice, one would expect young men to be most at risk of being subjected to them. Boys are significantly

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<sup>11</sup> *Teesside Evening Gazette*, 12 November 2003, [icteesside.icnetwork.co.uk](http://icteesside.icnetwork.co.uk), follow links to "campaign archives" and thereafter to "anti-social behaviour."

<sup>12</sup> *Teesside Evening Gazette*, 16 January 2004, [icteesside.icnetwork.co.uk](http://icteesside.icnetwork.co.uk), follow links to "campaign archives" and thereafter to "anti-social behaviour."

overrepresented in youth custody in Northern Ireland. A recent study of young people and the police in Northern Ireland found that more males in the research sample (56%) than females (28%) reported contact with the police in the past 12 months.<sup>13</sup> While it is likely that young males will be most likely to be the target of ASBOs, there is also a possibility that girls will also find themselves increasingly pulled into the criminal justice system through the adoption of ASBOs. There is a clear need to assess the possibility of a differential impact in relation to gender. Additionally ASBOs tend to be used more in areas of public sector housing – the NIO should therefore be thinking about their potential impact in terms of the religious/political divide here. The Commission has raised its concerns in this regard with the Equality Commission for Northern Ireland, which has oversight of compliance with section 75.

15. The Commission is also unaware of any efforts made by the NIO to consult with children or any of the other groups which may be adversely affected by the proposals. Such consultation is required for compliance with the section 75 equality duty and with Article 12 of the United Nations Convention on the Rights of the Child (UNCRC) in respect of children and young people. The Commission would welcome details as to the outcome of any consultation which has been carried out with the affected groups.

### **The Northern Ireland context**

16. The NIO's failure to consider the context in Northern Ireland within which ASBOs might operate is a matter of key concern for the Commission. This concern appeared to be shared by a large number of those who attended the Commission's seminar on the consultation document on 16 March 2004.
17. An undertaking was given in the NIO Community Safety Strategy of 2003 to "examine the legislation that has been introduced in England and Wales to deal with antisocial behaviour *to see if it is appropriate for Northern Ireland*" (emphasis added). The Commission can find no evidence of that examination having been conducted either in the community safety consultation document of 2003<sup>14</sup> or in the current consultation document. Neither document discusses in any detail the particular circumstances of Northern Ireland.
18. The NIO's consultation documents of 2003 and 2004 on this subject demonstrate an alarming absence of any detailed consideration of the specific Northern Ireland context. This is in spite of the NIO's own statement in its consultation document of 2003 that an essential part of the Community Safety Unit's remit would be to ensure that Ministers would have advice as to the Northern Ireland perspective when considering UK legislation (para.4.40).
19. It is clear to the Commission that the introduction of such orders would conflict significantly with the recommendations of the Criminal Justice

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<sup>13</sup> Jennifer Hamilton, Katy Radford, Neil Jarman, 2003, *Policing, Accountability and Young People*, Institute for Conflict Research.

<sup>14</sup> *Creating a Safer Northern Ireland Through Partnership. A Strategy Document*, Community Safety Unit, NIO, March 2003.

Review regarding juvenile justice. The introduction of ASBOs in Northern Ireland would directly counter the range of restorative and rehabilitative measures proposed by that Review. There are, it seems, some initial indicators of the success of such an inclusion-based approach in the reduction in numbers of children being held in custody in Northern Ireland. ASBOs threaten to reverse this very positive advance.

20. A central plank of the Criminal Justice Review's recommendations in this regard was the introduction of youth conferencing schemes with a considerable element of restorative justice. The Review recommended that a Youth Conferencing Plan might include an apology to the victim, financial compensation to the victim, practical activity to benefit the victim, service to the community, programmes to deal with offending behaviour and the normal probation, community service and custody orders.<sup>15</sup>
21. Such an approach is indeed a far cry from the conditions which habitually now attach to an anti-social behaviour order. As the Home Office Guide makes clear: "It should be noted that an order may not impose positive requirements, only prohibitions."<sup>16</sup> One such order recently granted in respect of a 19-year-old in Manchester<sup>17</sup> contained a ban on the young person from using abusive, insulting or threatening language or behaviour in public for five years. The order specified that the young person should not misbehave *in his own garden* (emphasis added), play loud music at home or in a car or meet any of ten named people outdoors or in their gardens. Any breach of these conditions will result in the young person in question returning to prison for up to five years, as the ASBO is to be served on him upon his release from custody for criminal offences.
22. Other recent cases include ASBOs imposed in March 2004 on two brothers in Manchester, prohibiting them, *inter alia*, from uttering the word "grass" or being in a group of more than three people in a public place. An earlier case (in January), also in Manchester, resulted in a 14-year-old boy also being prohibited from using the word "grass", in his case until the year 2010. The Commission is not aware of any evidence that the magistracy in Manchester is particularly imaginative, or as it might appear irrational, in the conditions it attaches to ASBOs, but evidence from that city at least suggests that the powers are drawn so broadly that they are capable of being applied in ways that could not possibly have been envisaged by legislators.
23. Unreasonable or oppressive conditions applied to ASBOs can easily bring the law, and those administering it, into ridicule and disrepute, and are very likely to increase the alienation and disaffection of young people and families who suffer the consequences. Such an approach can appear to be posited on stereotyping, retribution and deterrence, running counter to the more modern, humane and effective approaches based on rehabilitation, reintegration and restorative justice. That makes it particularly unfortunate that ASBOs are

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<sup>15</sup> *Review of the Criminal Justice System in Northern Ireland: A Guide*, March 2000, para.64.

<sup>16</sup> *A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts*, Home Office, 2002, p35.

<sup>17</sup> *Irish News*, 26 March 2004.

being contemplated at the very time when other parts of the statutory and voluntary criminal justice agencies in Northern Ireland are trying hard to develop innovative restorative schemes. It is regrettable that while the constructive, positive conditions which may result from a youth conferencing scheme apply after the admission of guilt in relation to the commission of a criminal offence, the negative, totally unconstructive conditions which can attach to an ASBO may arise where no criminal offence has been committed.

24. As mentioned above, the Commission has considered the NIO's 2003 consultation on a community safety strategy for Northern Ireland. It finds clear conflicts between the proposed approach as regards youth offending and what is now proposed in the current consultation paper regarding anti-social behaviour. Unlike the community safety strategy, the ASBO approach has no element of supported intervention. The Commission is therefore concerned that recourse to ASBOs in Northern Ireland would seriously undermine the now accepted practice regarding supported, positive interventions. It suggests that the cost of obtaining an ASBO<sup>18</sup> could be more constructively applied to a supportive, positive intervention which would be likely to have a higher degree of success.
25. The adoption of ASBOs will run contrary to the OFMDFM Children's Strategy: an overarching strategy which "encompasses the rights and needs of young people."
26. Furthermore, the Children's Services Planning process identifies young people in conflict with the law as being children in need. The adoption of ASBOs fails to treat children in trouble as being in need of support and services but rather uses a punishment-based approach.
27. The consultation document also fails to address the impact of child poverty in Northern Ireland both on the incidence of so-called anti-social behaviour and on the potential consequences of the making of an order. Research has demonstrated appalling levels of child poverty in this region. Professor Paddy Hillyard's recent work found that 148,900 children in Northern Ireland are living in poor families.<sup>19</sup> His report stated that "the impact on the development and opportunities of these 150,000 children and young people should not be under-estimated. The wider consequences and costs for society as a whole must also be of concern. These children and young people occupy ... 'spaces of dispossession', growing up as excluded people in excluded families increasingly characterised by anti-social behaviour, insecurity and threat."<sup>20</sup>
28. If the impact of ASBOs will be felt most strongly in poorer areas, it will impact disproportionately on areas with high levels of public housing. The

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<sup>18</sup> Estimated at approximately £5,350 per order in the summary of the findings of the Home Office review: *Implementing Anti-Social Behaviour Orders: Messages for Practitioners*, Dr Siobhan Campbell, January 2002, p.4.

<sup>19</sup> Hillyard, P. *et al.*, *Bare Necessities: Poverty and Social Exclusion in Northern Ireland - Key Findings*, Democratic Dialogue Report 16, 2003, p.29.

<sup>20</sup> *Ibid.*, pp.64-65.

Housing Executive will be a “partner” in relation to ASBOs and will therefore be empowered to seek orders in respect of tenants who will run a high risk of losing their home if the order is granted. Those owning their own houses will not be so vulnerable in this regard. These important issues are given no consideration in this consultation document.

29. Of greatest concern, however, is the omission of any consideration of the impact of two very significant factors particular to Northern Ireland, namely the high degree of segregation in society here and the presence of paramilitaries. The segregated nature of society here could have serious consequences for a person who is banned from a particular area of Northern Ireland. In many cases individuals and their families would feel uncomfortable and at risk were they to relocate to an area principally inhabited by persons of another religious belief or political opinion. In the consultation document there is no mention of this dynamic and what it might mean for the right to shelter and indeed the right to life.
30. One of the issues which most exercised participants at the Commission’s seminar on 16 March was the possible involvement of paramilitaries in the punishment of those who had been made subject to an ASBO. There was widespread concern that people would be “punished twice”, first by the making of the order and thereafter by the paramilitaries. Information regarding the identity, residence and activities of those subject to an order would be in the public domain and could potentially lead to a breach of the right to life were paramilitaries to act upon that information. The Commission cannot understand why this very real risk is not discussed in the consultation document. The Commission considers that widespread publication of the identity of a child together with the conditions of their ASBO, as has been the practice in England and Wales to date, could in the Northern Ireland context lead to a serious breach of the child’s Article 19 right to protection and indeed more fundamentally to their right to life under Article 6(1) of the UNCRC and Article 2 of the ECHR (see Appendix 1).

### **The rights of the child**

31. According to the Home Office:

*There should be no confusion as to the purpose of the order, which is to protect the community. The welfare of the child is of course to be considered and indeed the making of the order should contribute to this by setting standards of accountable behaviour. But the welfare of the child is not the principal purpose of the order hearing.<sup>21</sup>*

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<sup>21</sup> A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts, Home Office, 2002, p38.

This explanation of the weight to be given to the welfare of the child during court hearings for ASBOs is contained in the Home Office Guide to ASBOs and acceptable behaviour contracts (ABCs). It conflicts with the commitment the UK has accepted under the UN Convention on the Rights of the Child which requires at Article 3(1):

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies or legislative bodies the best interests of the child shall be a primary consideration.*

32. The Commission is dismayed that the consultation document includes no discussion of the impact of ASBOs on children nor on the protection of their rights. Such an omission is especially surprising given the way in which the use of ASBOs has evolved in Britain, where children and young people are now the main subjects of the orders. The Commission will be bringing its concerns about the impact of such orders on the rights of the child to the attention of the UN Committee on the Rights of the Child before that Committee considers the UK's Third Periodic Report which is due to be submitted in September 2004. In the interim the Commission would be keen to hear from the Government the outcome of its own proofing of this proposal for compliance with the United Kingdom's obligations under international human rights standards.
33. Below are set out the issues of principal concern to the Commission regarding children and ASBOs. Many of these apply equally as regards the impact of such orders on adults. Where appropriate some of the relevant international standards are cited, although the list is not exhaustive:
- The degree of discretion for the "partners" seeking an ASBO in defining anti-social behaviour and deciding when to seek such an order.
  - The fact that the orders are sought in the ordinary courts and not in a youth court and that consequently there are no automatic reporting restrictions (UNCRC Arts. 6(1), 16, 19, 40(1), 40(2)(vii), 40(3), ECHR Arts. 2, 6(1) and 8 and Beijing Rules 8.1 and 8.2).
  - The fact that the standard of proof applied is the balance of probabilities and not beyond a reasonable doubt (UNCRC Art. 40(2)(b)(i) and (ii), ECHR Art. 6(1)).
  - The fact that hearsay evidence is admissible (UNCRC Art. 40(2)(b)(i) and (ii), ECHR Art. 6(1)).
  - The fact that children as young as 10 years of age can be made the subject of one of these orders (UNCRC Art. 40(1) and Beijing Rules 4.1).
  - The fact that the minimum duration of the ASBO is two years and that its maximum duration is indefinite (Beijing Rules 5.1).
  - The fact that recent changes have meant that orders covering areas as large as England and Wales can now be made (Beijing Rules 5.1).
  - The fact that the rights to education and home life can be affected by an exclusion from a particular area (UNCRC Arts. 16(1) and 28, ECHR Art. 8 and Art. 2 of Protocol 1).

- The fact that other children of the family may also have to relocate home and school, and/or may be victimised because of their association with the affected child (UNCRC Arts. 2(2), 3 and 19).
  - The fact that an integral part of the order procedure involves the publication of its conditions and an invitation to those in the locality to inform the authorities of any breach thereof (UNCRC Arts. 6(1) and 19 and ECHR Art. 2).
  - The fact that where an ASBO is made alongside a custodial sentence for criminal conviction the effect is one of release on licence following the period in custody, with the risk of a return to custody for any breach of the conditions of the order, even when the behaviour would not normally attract a custodial sentence and may not even constitute a crime (ECHR Art. 7).
34. In the consultation document the inroads into fair trial rights, such as the admissibility of hearsay evidence and use of the civil standard of proof, are described “as having a number of advantages when compared to existing criminal sanctions.”<sup>22</sup> The Commission strongly rejects the view that the absence of basic safeguards designed to protect human rights can be regarded as “advantages”.
35. A number of the international human rights standards set out in Appendix 1 guarantee rights for children accused of infringing the criminal law. While the procedure for obtaining an ASBO is civil in nature, the implications of the making of such an order, let alone its breach, are extremely serious for a child, his or her parents and other siblings – in many respects more far-reaching than a criminal conviction, possibly requiring relocation of the whole family. The Commission considers that the proceedings should therefore attract significant safeguards for the rights of the child. The implications for the child subject to ASBO proceedings are often as serious as those for the child facing criminal prosecution. The potential gravity of the outcome, rather than the terminology used to describe the proceedings, ought to determine the degree of safeguards necessary to protect the rights of the child.
36. It is incongruous, for example, that the right to privacy of a child charged with or convicted of a criminal offence is protected as a matter of course while the right to privacy of the child subject to an ASBO, who may not have been charged with any criminal offence, is removed as an integral part of the process. The child made subject to an ASBO upon conviction of a criminal offence would therefore have his or her right to privacy respected in respect of the criminal matters but would enjoy no reporting restrictions as regards the remainder of the proceedings. The coverage of ASBOs to date in the British press gives rise to very significant worries. There, local newspapers have chosen to place on the front page the name and address of a child against whom an ASBO has been made together with the child’s photograph and details of the conditions of the ASBO. These children are “named and shamed” and are stigmatised as a result. In areas of Northern Ireland young

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<sup>22</sup> *Measures to tackle anti-social behaviour in Northern Ireland, A consultation document*, NIO, 2004, p4.

people's names are already painted on walls by what may be termed non-state actors, together with details of their alleged offences. There is a chilling parallel between the two approaches. The state ought to reject in the strongest terms any consideration of a system which stigmatises children and young people in this way.

37. The repeated publication which in Britain has followed the granting of an ASBO would, in Northern Ireland, put some of the most vulnerable children in our community at further risk from those who might wish to harm them and who would have a great deal of information about the child's identity. This could clearly constitute a breach of the Article 19 UNCRC right to protection, in addition to the obvious engagement of the Art. 3 'best interests' principle and ECHR Articles including 2, 3 and 8.
38. The child's right under Article 15 of the UN Convention on the Rights of the Child (and ECHR Art. 11, and other instruments) to freedom of association would be seriously threatened by the introduction of ASBOs. The consultation document notes that the NIO research on fear of crime in Northern Ireland identified "teenagers hanging around" as the biggest category of concern for respondents. The Commission is keen for some clarity as to the aim of the Government's proposals in this regard. There is a need to distinguish between young people doing actual harm or threatening people and young people simply hanging around – the latter may appear threatening because of the fear of crime but the young people may not actually be a threat but simply exercising their right to freedom of assembly. After all, adults can freely associate in public houses, cafés, restaurants etc. in a way that is difficult for children with no independent income. Normal teenage behaviour, such as hanging around with friends, does not require a coercive response from the state merely because some people find it disquieting. Unwarranted anxieties can in some cases be addressed by the simplest of interventions such as creating opportunities to introduce the older and younger residents of a neighbourhood to one another. As is noted in the Riyadh Guidelines (United Nations Guidelines for the Prevention of Juvenile Delinquency), "youthful behaviour or conduct that does not conform to overall social norms and values is often part of the maturation and growth process and tends to disappear spontaneously in most individuals with the transition to adulthood."
39. It is the opinion of experts that labelling children and young people as 'deviant' or 'delinquent' often contributes to the development of patterns of undesirable or 'anti-social' behaviour.<sup>23</sup>
40. The introduction of ASBOs runs directly counter to the spirit of inclusion and rehabilitation as promoted in the Riyadh Guidelines. Among the fundamental principles of these Guidelines are:

*Principle 2: The successful prevention of juvenile delinquency requires efforts on the part of the entire society to ensure the harmonious*

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<sup>23</sup> Riyadh Guidelines 5(f).

*development of adolescents, with respect for and promotion of their personality from early childhood.*

*Principle 3: For the purposes of the interpretation of the present Guidelines, a child-centred orientation should be pursued. Young persons should have an active role and partnership within society and should not be considered as mere objects of socialization or control.*

The Guidelines place the onus on society and communities to provide support and services for children and young people, arguing that “formal agencies of social control should only be utilized as a means of last resort.”<sup>24</sup>

### **Acceptable Behaviour Contracts**

41. At first glance Acceptable Behaviour Contracts appear to give rise to a lot less concern than do ASBOs. However, these too are interventions which can have most serious repercussions and yet have no safeguards built in, such as independent legal advice for any child involved. Breach of an ABC can be used as evidence in the seeking of an ASBO and is therefore a matter of great significance.
42. At the Commission’s seminar on 16 March the view was expressed that ABCs without ASBOs could provide an acceptable compromise. The NIO consultation document refers to the practice in some areas of England and Wales whereby ABCs are used instead of ASBOs, together with other mechanisms. The Commission’s view, however, is that the case for ABCs in Northern Ireland has not yet been made out. At the very least it would want to see the results of research in England and Wales as to how well such contracts have operated there.

### **Conclusion**

43. For the reasons set out above, the Northern Ireland Human Rights Commission is totally opposed to the introduction of ASBOs in Northern Ireland. Its advice to the Government is not to proceed with these particular proposals.

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**1 April 2004**

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<sup>24</sup> Riyadh Guidelines 6 and 33.

# Appendix 1

## Some relevant international human rights standards

### *United Nations Convention on the Rights of the Child*

#### **Article 2(2)**

*States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.*

#### **Article 3(1)**

*In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative bodies or legislative bodies the best interests of the child shall be a primary consideration.*

#### **Article 6(1)**

*States Parties recognise that every child has the inherent right to life.*

#### **Article 12(1)**

*States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.*

#### **Article 13**

- (1) The child shall have the right to freedom of expression; this right shall include the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.*
- (2) The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
  - (a) for the respect of the rights or reputations of others; or*
  - (b) for the protection of national security or of public order or of public health or morals.**

#### **Article 15**

- (1) States Parties recognise the rights of the child to freedom of association and to freedom of peaceful assembly.*
- (2) No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a*

## **Article 16**

- (1) No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.*
- (2) The child has the right to the protection of the law against such interference or attacks.*

## **Article 19**

- (1) States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical and mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.*
- (2) Such protective measures should, as appropriate include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of the prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.*

## **Article 40(1)**

*States Parties recognise the right of every child alleged as, accused of or recognised as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.*

## **Article 40(2)(vii)**

*Every child alleged as or accused of having infringed the penal law has [the right]... To have his or her privacy fully respected at all stages of the proceedings.*

## **Article 40(3)**

*States parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognised as having infringed the penal law and, in particular:...(c) whenever appropriate and desirable, measures for dealing*

*with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected.*

***United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules)***

*1.2 Member states shall endeavour to develop conditions that will ensure for the juvenile a meaningful life in the community, which, during that period in life when she or he is most susceptible to deviant behaviour, will foster a process of personal development and education that is as free from crime and delinquency as possible.*

*4.1 In those legal systems recognising the concept of the age of criminal responsibility for juveniles, the beginning of that age shall not be fixed at too low an age level, bearing in mind the facts of emotional, mental and intellectual maturity.*

*5.1 The juvenile justice system shall emphasise the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence.*

*7.1 Basic procedural safeguards such as the presumption of innocence, the right to be notified of the charges, the right to remain silent, the right to counsel, the right to the presence of a parent or guardian, the right to confront and cross-examine witnesses and the right to appeal to a higher authority shall be guaranteed at all stages of proceedings*

*8.1 The juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling.*

*8.2 In principle, no information that may lead to the identification of a juvenile offender shall be published.*

***European Convention on Human Rights***

**Article 2(1)**

*Everyone's right to life shall be protected by law...*

**Article 3**

*No one shall be subjected to torture or to inhuman or degrading treatment or punishment.*

**Article 6(1)**

*In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a*

*reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require...*

#### **Article 8**

- (1) Everyone has the right to respect for his private and family life, his home and his correspondence.*
- (2) There shall be no interference by a public authority with the exercise of this right except such as in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well being of the country, for the prevention of disorder or crime, or the protection of the rights and freedoms of others.*

#### **Article 10**

- (1) Everyone has the right to freedom of expression. This right shall include the freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers...*
- (2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity, or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.*

#### **Article 11**

- (1) Everyone has the right to freedom of peaceful assembly and to freedom of association...*
- (2) No restrictions shall be placed on the exercise of these rights other than such as are prescribed by law and are necessary in a democratic society in the interests of national security or public safety, for prevention of disorder or crime, for the protection of health or morals or for the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces, of the police or of the administration of the state.*

#### **Article 14**

*The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.*

**Protocol 4, Article 2 (not yet ratified by the United Kingdom)**

- (1) Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.*
- (2) No restrictions shall be placed on the exercise of these rights other than such as are in accordance with law and are necessary in a democratic society in the interests of national security or public safety, for the maintenance of ordre public, for the prevention of crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

## Appendix 2

### Attendance list for the NIHRC Seminar on ASBOs, 16 March 2004

ID	TITLE	ORGANISATION
1	representative	NIO
2	Solicitor	Children's Law Centre
3	Acting Director	Community Services, Youth Justice Agency
4	Community Safety Officer	Ballymena Borough Council
5	representative	NIACRO
6	Director	Children's Law Centre
7	Co-ordinator	South East Belfast Children's Project
8	Community Safety Co-ordinator	Moyle District Council
9	representative	Newtownabbey Borough Council
10	Head of Legal and Complaints	Office of the Commissioner for Children & Young People
12	Project Manager	Towers Project
14	Manager	Northside, Youth Justice Agency
15	Policy Co-ordination Officer	Down District Council
16	representative	NSPCC
17	Community Safety Manager	NI Housing Executive
18	Community Safety Officer	Armagh City and District Council
19	Legal Officer	Office of the Police Ombudsman
21	Course Director	Criminology and Criminal Justice, University of Ulster
22	representative	CAJ
23	Assistant Chief Officer	Probation Board of Northern Ireland
24	Legislation & Policy Worker	NIHRC
25	Chief Commissioner	NIHRC
26	representative	Social Services Inspectorate
27	Principal Officer	Barnados
28	Assistant Director Policy	Barnados
29	Legislation & Policy Worker	NIHRC
30	Sgt, Community Safety Branch	PSNI
31	Project Manager	Youth Justice Agency
32	Development Worker	NIHRC
33	Councillor	Ards Borough Council
34	Councillor	Ards Borough Council