



Children and young people in 'breach'

A scoping report on policy and practice in
the enforcement of criminal justice and
anti-social behaviour orders

Di Hart

NCB's vision is a society in which all children and young people are valued
and their rights are respected.

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Introduction

This report summarises the findings of the first phase of a project concerning young people who are in 'breach' of their bail requirements, or anti-social behaviour or criminal justice order. The project is being undertaken by NCB and aims to increase our understanding of policy and practice in different aspects of breach proceedings. A particular focus is the population of children and young people who are in custody as a result of breach, particularly where this is the main reason for their incarceration.

The report is based on an analysis of:

- the legal and policy framework
- research literature
- available statistical data
- the views of stakeholders working within youth justice and anti-social behaviour services.

The work has raised a number of questions about the stories that lie behind the statistics and will be followed by a second qualitative phase of the project examining day to day practice. The Prison Reform Trust has agreed to fund this work and it will be the subject of a separate report. It will:

- work in partnership with eight localities to seek the perceptions of those responsible for enforcement on the current approach to enforcement and their local operational systems
- undertake a more detailed examination of practice in a sub-set of the localities
- undertake a small number of case studies to identify the key factors that have contributed to each young person's pathway/outcome, including interviews with the young people and their networks.

Why is 'breach' an issue?

Children and young people in breach of bail, anti-social behaviour or criminal justice orders are taking up a growing proportion of custodial places. This increases their risk of poor outcomes and is a drain on resources. The total population includes younger children (Glover and Hibbert 2008) and those who were not originally convicted of a criminal offence (Brogan 2005). Possible reasons for a decision to bring breach proceedings are that the young person has failed to keep appointments or observe a curfew, or to comply with other conditions of their order. Even where appointments are kept, bad behaviour can be taken as a failure to comply. The young person may or may not have committed further offences or anti-social acts.

The decision to breach could therefore be seen as a failure on the part of the young people, but could equally be interpreted as an indictment of the terms of the order: are young people being set up to fail? This possibility

has been raised within the *Youth Crime Action Plan* (Home Office 2008a). Even where the terms of the order are achievable, there may be a question about the level of support needed by some young people in order to comply, especially those with complex needs.

There are five main pathways for young people subject to bail requirements, an anti-social behaviour or criminal justice order. They may:

1. comply with the conditions and remain on bail or complete the order
2. fail to comply but not be formally breached
3. fail to comply, be formally breached but allowed by the court to continue with the current requirements/order
4. fail to comply, be formally breached and the court rescinds bail or revokes the order and imposes a new disposal
5. fail to comply, be formally breached and the court sentences them for the breach offence (may be in addition to 3 or 4).

Young people may be committed to custody as a result of formal breach proceedings. All pathways are of interest if the key issues are to be identified.

Whilst the problem has been acknowledged, no systematic work has been done to identify the factors that determine these different career pathways and the second phase of the project will attempt to explore these in more detail. It can be anticipated that these factors will include:

- young people's characteristics and behaviour
- expectations set out in national policy and guidance
- local guidelines and culture
- practitioners' attitudes, including youth offending teams, police, prosecutors and courts
- quality of support services
- nature of enforcement arrangements.

What is the legal and policy context?

The current approach to youth offending, as with adults, is based on a belief that crime and anti-social behaviour require a 'tough' response, as epitomised in the title of the White Paper that set out the New Labour government's intentions in 1997: *No More Excuses*. There is also a concern about public confidence, so that justice must not only be done but be seen to be done. For example, the Government's *Strategic Plan for Criminal Justice 2004–2008* gave the enforcement of community penalties greater priority than ever before:

To re-balance the criminal justice system in favour of the law-abiding majority and improve public confidence, it was thought essential to ensure that the conditions of community penalties were fully adhered to and that (where necessary) enforcement action swiftly followed non-compliance (Home Office 2007a, p.7).

The law relating to specific aspects of the system for breaching young people is complex, with different systems and processes applicable to different orders. A range of agencies and individuals are responsible for deciding whether to bring breach proceedings; some breaches are technically a criminal offence whilst others are not and it may be difficult to disentangle the response to the breach from the response to other aspects of offending. Further offending does not constitute a breach in itself and should be prosecuted separately but the boundaries can become blurred. This is particularly the case when the conditions that the young person must comply with include a prohibition against committing further crimes, which can potentially lead to double penalties for a single offence. A summary of youth justice and anti-social behaviour disposals and the breach arrangements for each can be found in Appendix 1.

The role of policy and guidance

The system for bringing breach proceedings is determined by law but actual decisions about whether to return a young person to court and any resulting penalty will depend on how this legal framework is operated. This is determined in part by the raft of guidance issued to the agencies involved in such decisions, including the local authority, police, Crown Prosecution Service, electronic monitoring contractors, community panels, Youth Offending Teams (YOTs) and the courts. It is also determined by individual judgements and the use of discretion. A subsequent section of this report offering an analysis of statistical data suggests that there may be inconsistencies in the response to breaches across the country and towards different groups of young people.

There are separate guidance documents in relation to children within the youth justice and anti-social behaviour systems, reflecting the different agencies that are responsible for enforcement.

Youth justice guidance

Decisions about breach within the youth justice system rest largely with the YOT and they are given very clear messages about the importance of compliance by the *National Standards for Youth Justice Services* (YJB), updated in 2004 and 2009. The general principles, regardless of the type of order that the young person is subject to, are that the YOT must explain the order to the young person (and parents/carers) and the consequences of failing to comply, including acceptable behaviour, time-keeping and absence criteria. The latest version of the *Standards* appears to adopt a slightly more flexible approach than the 2004 version, including discretion both to breach even where the usual warnings haven't been served and not to breach when they have. They also appear to introduce more explicit expectations of the practitioner, not just the young person. For example, the latest version says that the YOT worker must not only set out in writing what is required of the young person but ensure that the young person *understands*. Also new is the expectation that the YOT worker should make 'every effort to support the child and young person in successfully completing an order' (p.39).

Compliance and enforcement must generally be managed by the YOT in the following way:

- record any contacts where the child or young person fails to attend as either acceptable or unacceptable in line with the locally agreed definition¹
- follow up all failures to attend within one working day by telephone, home visit or letter to determine whether the reason is acceptable or unacceptable
- where a child or young person fails to attend and the explanation given is unacceptable (or no explanation is given within 24 hours), issue a formal written warning within 24 hours
- where two formal warnings are given (for YROs² within the 12-month warned period) and a further unacceptable failure to attend takes place, then breach action must be initiated within five working days unless, in exceptional circumstances, breach action is stayed with the authorisation of the YOT manager
- where there is a single serious unacceptable failure to comply, breach action can be initiated immediately. However this should only be considered in exceptional circumstances (p.39).

Case Management Guidance (YJB 2009b) expands on these questions. In considering the question of 'acceptable' non-attendance:

... the responsible officer should take into account a young person's welfare and the provision of support to meet their welfare needs, their circumstances, overall compliance and whether they seem committed to completing the order (p.152).

¹ It is the responsibility of the YOT manager to establish this.

² Youth Rehabilitation Orders.

These considerations are also of relevance to the YOT manager when deciding whether to exercise their discretion to stay breach proceedings; they should not only consider the young person's welfare but:

... whether staying breach would be in the interests of the objectives of their order. Even where breach action is initiated, the child or young person should be given the opportunity to continue with the order (p.153).

It is not only non-attendance that can be considered as a failure to comply: there is some mention of 'unacceptable behaviour' such as attending appointments under the influence of drugs or alcohol although it is unclear as to when and how this will trigger breach proceedings.

Case Management Guidance also proposes that breach proceedings may be instigated outside of the normal warning period:

... if the young person's failure to comply is of the nature that requires such action [for example, significant concerns raised by the child or young person's risk of serious harm to others] (p.153).

Perhaps in recognition of the fact that the number of requirements attached to the new YRO means there is more scope for failure, the revised *National Standards* and *Casework Guidance* describe in some detail the stages that the YOT must go through before deciding to bring breach proceedings, including the content of the two written warnings that will normally be given before action is taken. Even then, there is some scope for discretion:

... before the matter is referred back to court, the responsible officer/ YOT manager should consider whether there are any exceptional circumstances leading to the young person's failure to comply with the YRO and assess whether breach action is necessary at this stage (YJB 2009b, p.60).

Anecdotally, it is said that some YOTs initiate breach proceeding as a 'message' to the young person but then withdraw them before the hearing if this seems to have had the desired effect. This appears to be unofficial but the concept of 'therapeutic breach' is mentioned in some guidance:

Breach can be a positive tool to make clear to young people that the programme will be robustly enforced. If a scheme is using 'therapeutic breach' in this way, they should make clear to the court that they want to see the young person returned to the programme and make the case for why this should be done [citing other attendance, behaviour and engagement wherever possible](YJB 2009c, p.23).

Where a young person is returned to court as a result of breach proceedings, the YOT is responsible for 'prosecuting' the breach i.e. providing a report for the court that should outline:

- the details of the failures to comply, including how any issues affecting compliance were initially communicated (in view of

- maturity, parental support, mental health, learning disability, speech, language and communication issues)
- progress and achievements in relation to the requirements of the order
- details of the original offence
- a proposal for the most appropriate course of action (YJB 2009b, p.153).

The young person is entitled to contest the breach and to have legal representation.

The Courts have a range of options open to them when considering their response, depending on the specific order. The Sentencing Guidelines Council offer guidelines that every court must have regard to when reaching decisions. They have recently issued specific guidance on the principles underpinning the sentencing of young people under the age of 18 (Sentencing Guidelines Council 2009) stressing the importance of avoiding the 'criminalisation' of young people and making decisions that will promote reintegration rather than to 'impose retribution' (p.3). Young people are acknowledged to require a different approach from adults, based on an understanding of their individual circumstances. This is partly because:

... young people are unlikely to have the same experience and capacity as an adult to realise the effect of their actions on other people or to appreciate the pain and distress caused and because the young person is likely to be less able to resist temptation, especially where pressure is exerted (s3.1).

Decisions must be based on the primary aim of the youth justice system, that is to prevent offending, and the young person's welfare. In the section specifically related to breach of a YRO, sentencers are advised that they are not obliged to make any order even if the breach is proved: unlike adult offenders, there is no obligation to make the penalty more onerous and they can simply allow the order to continue. As with the new *National Standards*, there is implicit recognition that responsibility for compliance does not rest solely with the young person. For example, when imposing Intensive Supervision and Surveillance:

... a court must ensure that the requirements are not so onerous as to make the likelihood of breach almost inevitable (s10.27).

The use of custody for breach is also considered to be a serious step and:

... a court should be satisfied that the YOT and other local authority services have taken all steps necessary to ensure that the young person has been given appropriate opportunity and support necessary for compliance (s10.39).

In general, breaches should not result in custody if the original offence was not imprisonable. However, specific penalties may be available where the young person has 'wilfully and persistently' breached the terms of the order. This would usually mean where there had been three previous court

appearances for breach. Even where the young person has 'wilfully and persistently' failed to comply, custody is not inevitable: the court should first consider the suitability of imposing a fostering or ISS requirement to allow the young person to remain on a YRO. Further persistent breaches may then result in a Detention and Training Order (DTO) of up to four months, even if the original offence did not warrant it.

This would suggest a higher threshold than was previously the case with some community orders that have been replaced by the YRO. Certain sentences used for 16 and 17 year olds, such as community punishment orders, were administered by the Probation service and adult standards of enforcement were applied. These provided a lower threshold for initiating breach proceedings.

The guidance for supervising young people serving the community part of a DTO is generally the same as for those on community sentences. However, there is a difference in the threshold for considering breach proceedings, with the addition of 'risk to self':

If any failure to comply suggests, in the light of the risk assessment, an enhanced risk of harm to self or the community, the supervising officer must review the case with the YOT manager or their nominee as soon as possible and within one working day to decide what action should be taken. This may include breach action (YJB 2009a, p.59, para 8.192).

Interestingly, this is not reflected in the case of young people released from s90/91 or s226/228 sentences, where risk of harm to others is the significant factor in prompting a recall to custody.

Guidance on breaches of anti-social behaviour order (ASBO)

Decisions to breach a young person on an ASBO are taken by the anti-social behaviour unit, although the YOT may have an opportunity to contribute their opinion. The YOT will also be involved where the young person is failing to comply with their Individual support Order (ISO), which is also a criminal offence, but again do not have the final say. Policy on breaches of anti-social behaviour legislation differs somewhat in tone from that of youth justice policy, perhaps reflecting the fact that it refers to both adults and young people. The recent announcement of a 'crackdown' on breaches³ emphasised the importance of enforcement rather than the support to comply that is becoming more evident amongst recent guidance on youth justice orders. It was stated that **every** breach of an ASBO must be prosecuted. The Home Office are currently in the process of producing additional guidance to be issued in Spring 2010 to support local authorities in tackling non-compliance amongst across both adults and young people.

This is perhaps surprising in that it follows a number of other, very recent, initiatives in respect of the enforcement of anti-social behaviour legislation. Specifically in relation to young people, 52 areas have been running 'Challenge and Support' pilots funded by the Youth Taskforce. The aim is to

³ Home secretary Alan Johnson's speech to the Labour Party Conference 2009

ensure that young people who have received formal warning letters, Acceptable Behaviour Contracts (ABCs) or ASBOs, get support to address the causes of their behaviour. This includes a push to increase the number of ASBOs that are accompanied by an ISO. Each area is operating differently but all are expected to provide tailored and coordinated support to the young people. For example, some areas have established a multi-agency panel to design individual packages of support; others have set up systems to identify young people at an early stage and to issue red or yellow warnings whilst signposting them to services and another has provided a mediator to help resolve conflicts between young people.

There have also been recent specific sentencing guidelines issued on ASBO breaches (Sentencing Guidelines Council 2008). Sentencers are reminded that ASBOs are preventative not punitive orders and that the prohibitions they contain should reflect this, rather than being a '*standard list*'. The terms should be precise and '*capable of being understood by the subject*'. The main aim of sentencing for breach is to achieve the purpose of the order and it should primarily reflect the '*harassment, alarm or distress involved*' rather than the fact of breach in itself. The relevant factors in deciding on the seriousness of the offence include:

- whether the offender intended to breach the order and to cause harm
- aggravating and mitigating factors
- personal mitigation, such as a lower level of understanding of the order or compliance with an ISO.

In a specific section on young offenders, the same general principles are said to apply but the penalty should reflect the fact that they are generally less culpable than adult offenders and that punishment will have a more onerous effect on them. The appropriate disposal will therefore usually be a community sentence, and sentencers should ensure that any requirements are compatible with those of the ASBO and that the combination of both are not so onerous as to make further breaches likely (p.10). Custody should normally only be considered if the breach involved:

... serious harassment, alarm or distress through either the use of violence, threats or intimidation or the targeting of individuals/ groups in a manner that led to a fear of violence (p.11).

Alternatively, custody is also a possibility where there has been more than one breach but, again, only when there has also been a substantial degree of harassment, alarm or distress. Even where the custody threshold has been reached, it is clearly stated that a custodial sentence is a last resort and that the court should normally impose a community sentence.

There is still a fundamental difference, however, in the sentencing principles for criminal justice and ASBO breaches. In general, custody should only be used for breach of a criminal order when the original offence also reached the custody threshold. This is not the case with ASBOs, where the original behaviour was not a crime at all, let alone one that warranted custody. It is also the case that, whilst the youth justice system allows for both a number

of warnings and the option to use discretion, ASBO policy expects the first and every breach to be prosecuted.

Monitoring and inspection

Given how rigorously the young people are held to account, is this reflected in the way that practice is scrutinised? There are important differences in the way practice is monitored across the range of agencies dealing with young people in trouble. YOTs are required to submit performance data to the YJB and this is published in an annual report. It has included data on their compliance with the three 'enforcement' performance standards since 2004. These standards focus exclusively on the timeliness of the response to non-compliance rather than the quality of the decision-making. YOTs are inspected by HMI Probation and they have previously also focused on the issue of timeliness. The Core Case Inspection Criteria in use from 2009 (HMI Probation 2009), however, are broader in scope: consideration of young people's compliance is looked at within the context of outcomes.

There has been compliance with requirements, a reduction in needs relating to factors linked to offending and reduced re-offending (3.1a).

The YOT are asked to provide information about the young person's needs, including disability, care status and other welfare needs, and offences in order to enable the inspection team to arrive at a judgement about this. HMI Probation are also undertaking an inspection of courts' decision making in respect of young people which may cast more light on the quality of the information they receive from YOTs when deciding the appropriate disposal for breach cases.

The work of YOTs is also considered within the wider inspection of children's services and they feed into Comprehensive Area Assessments, although the issue of breach is unlikely to receive specific attention. They are, however, bound by the principles of Every Child Matters and should be working towards improving the outcomes for children and young people alongside partner agencies.

The monitoring and inspection arrangements for other relevant agencies are less clear, and less focused on children. This is particularly the case for anti-social behaviour units within local authorities. They are not within the governance of children's services and are not subject to inspection in the way that would be expected of an agency making important decisions about young people's lives. Although there is an expectation that a child who perpetrates anti-social behaviour will receive an assessment of their circumstances and needs (Home Office 2008b, p.63), there is a potential for confusion about who is expected to undertake this, and using which assessment framework. The YOT is expected to assess for the suitability of an ISO or parenting order using Onset/Asset but it is also suggested that the children's services department may need to undertake a specialist assessment using the *Framework for the Assessment for Children in Need and their Families* if the child is thought to be in need and that every child where an ASBO is sought should be assessed using the *Common Assessment Framework* (YJB 2008 p.6). Given this lack of clarity, a child

could receive multiple assessments and the processes for coordinating and quality-assuring such assessments may not be in place. There is also scope for confusion in who is ultimately accountable for managing the case.

Who is being breached and for what?

Sources of data

There are a number of sources of statistical data on aspects of breach. Since 2002/03 the YJB has published *Youth Justice Annual Workload Data* which includes the following data relevant to this project:

- the types of offence that have been committed by young people
- sentence outcomes, including custody
- YOT performance.

Information is provided on three types of breach offence that have resulted in a disposal of some sort: breach of conditional discharge⁴, bail or statutory order. This does not fully represent the extent of non-compliance because it does not include breaches that have not resulted in an additional substantive outcome. There are also doubts about the accuracy of the information received from the courts⁵. The data is broken down into age, gender and ethnicity. It allows an examination of trends over time and this analysis has been explicitly included in the last three reports from 2005/06.

An additional YJB data source is the *Secure Accommodation Clearing House System* (SACHS) which collects data on the reasons for young people entering custody, including breach, although the YJB acknowledge that there are some problems with the accuracy of the statistical returns on which this is based. The YJB provided additional data from this database for the project on the numbers of young people in custody for breach of a statutory order for both 'primary' and 'non primary'⁶ offences for each month between June 2008 and June 2009 broken down by gender, age, ethnicity and legal basis for detention. Unfortunately, it is not possible to determine how many young people are first time entrants into custody as a result of breach although future data collection may allow this level of analysis.

Data on ASBOs is available from an annual report published by the Home Office⁷ using information supplied by the Courts. This will be considered after consideration of the data supplied by the YJB.

⁴ The question of conditional discharges is not considered in depth within this report: such young people are not required to remain involved with the youth justice system following their conviction and will only be returned to court if they have committed a further offence. The decision to breach them is related to their offending behaviour rather than non-compliance, and is therefore qualitatively different.

⁵ The YOT is responsible for submitting data on outcomes in the Youth Court. Some disposals may be recorded as a breach disposal when this is not technically the case, for example, breach of bail may actually be a remand to custody, although the hearing has been prompted by a breach of bail conditions.

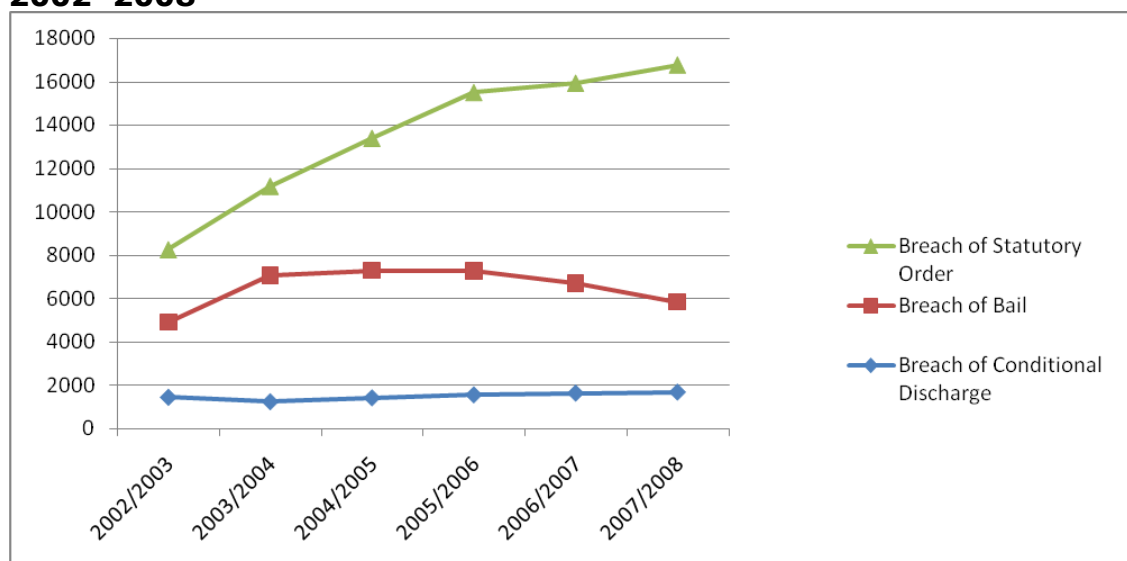
⁶ That is, whether the breach of statutory order was the most serious offence or not

⁷ <http://www.crimereduction.homeoffice.gov.uk/asbos/asbos2.htm>

Overall incidence of breach offences

Breach of statutory order⁸ is the only offence type that has increased every year. The latest published data shows that it constituted 6 per cent of all offences by young people resulting in a disposal in 2007/08 – almost double the proportion in 2002/03 – whilst overall offending had only risen by 3.5 per cent in that period. The report for 2006/07⁹ suggests that the dramatic increase was due to the inclusion of the 'enforcement' National Standard in the YOT performance Framework since 2004/05, with enforcement levels improving from a low base. This increase has not been matched by increases in the breach of bail or conditional discharges.

Trends in young people receiving a disposal for breach proceedings 2002–2008



It is not possible from the published data to determine *which* statutory order has been breached. Neither is it possible to determine the proportion of orders that are breached except for the Intensive Supervision and Surveillance Programme (ISSP) where separate data is now provided. The breach rates for ISSP are high, reflecting perhaps the complex needs of these young people. The proportion of ISSPs that have resulted in breach proceedings increased from 27 per cent in 2004/05 to 49 per cent in 2005/06 before stabilising at around 31 per cent but the proportion of breaches that resulted in custody rose from 28 per cent to 52 per cent.

From the additional data provided by the YJB, however, it appears that breach rates for other types of community disposal are also high, with over half of community punishment and curfew orders being breached in 2007/08. Interestingly, both of these orders were supervised by Probation or other adult based services. Low level disposals were least likely to be breached, with referral orders being breached in only 11 per cent of cases.

⁸ This category of offence includes breach of ASBO, community sentences and licence conditions following custodial sentences.

⁹ Youth Justice Annual Workload Data 2006/7 (p.14).

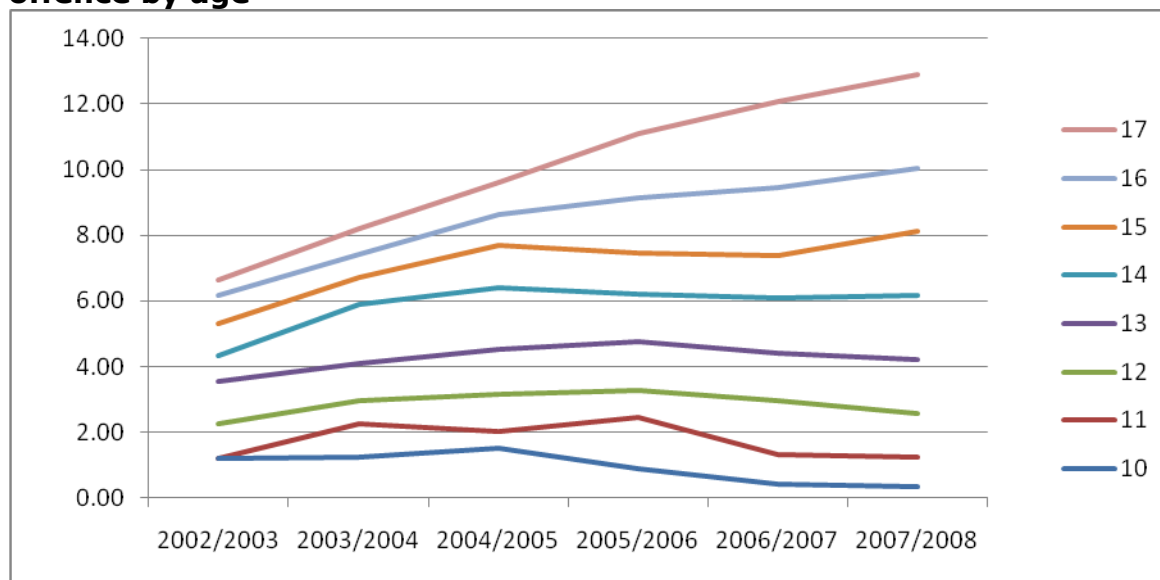
Age, gender and ethnicity

Young males are proportionally slightly more likely to receive a disposal for a breach offence than young females, except in London. For example, in 2007/08, 9 per cent of offences committed by boys nationally were breach offences as against 7 per cent of girls' offences, whereas in London this was 10 per cent of girls' versus 9.5 per cent of boys'. If the current trajectory continues, however, girls will also overtake boys in the national data.

In terms of ethnic differences, young people of black and mixed origin were more likely to receive a disposal for breach than other ethnic groups and this pattern has been consistent across all regions of England and Wales and over time. For example, out of the total number of young people who received a disposal for a breach offence in 2007/08, 11.5 per cent were of mixed ethnic origin, 9.7 per cent of black origin, 8.8 per cent white, 7 per cent Chinese and 5.7 per cent of Asian origin. This appears to be an increasing trend: there were almost 80 per cent more breaches of statutory order by young people of mixed ethnic origin in 2007/08 than 2004/05 whereas the increase amongst Asian young people was less than 10 per cent.

The greatest increase in young people receiving a disposal for a breach offence has taken place primarily amongst those aged 15 and above. This upward trend is continuing for this age group whilst it has begun to decline for those aged 13 and under.

Percentage of young people who received a disposal for breach offence by age



Regional variations

At a national level, around 8 per cent of offences committed by young people have consistently involved one of the three types of breach, that is conditional discharge, bail or statutory order. However, there are some regional variations with slightly higher proportions evident in the North West and Yorkshire (around 11 per cent) and London (around 10 per cent) and lower in the South West (around 6 per cent).

There were also regional variations in the ethnicity of breach offenders. Although young people of black and mixed ethnic origin were more likely to receive a disposal for breach than those of white origin, in some regions (for example, East Midlands, North West and Southwest) the discrepancies were greater than in others (for example, London). This data can only be fully understood within the context of the ethnicity of the overall population of 10–17 year olds in each region: areas with a smaller ethnic minority population could be expected to have lower rates of breach amongst those groups. This is not reflected in the findings, however. Wales and the South West have much smaller ethnic minority populations than London, which indicates that the disproportional breach rates are even greater than is immediately apparent.

Percentage of those who breached out of the total number of offenders by ethnicity (2007/08)

	White	Mixed	Asian or Asian British	Black or Black British	Chinese or Other Ethnic Group	Not Known
National	8.8	11.5	5.8	9.7	7.1	2.7
East Midlands	7.3	14.4	6.9	9.8	5.4	1.6
Eastern	6.6	10.4	6.3	10.5	0.0	1.7
London	10.0	11.9	7.0	9.7	10.4	3.2
North West	11.7	14.7	5.4	13.1	12.8	4.1
North East	9.9	9.9	5.5	6.4	4.2	2.9
South East	7.5	7.5	4.2	10.4	0.0	2.9
South West	5.9	11.2	6.9	9.8	0.0	0.4
West Midlands	7.9	10.0	4.1	7.0	3.1	2.2
Yorkshire	11.2	13.3	5.5	11.4	4.4	2.2
Wales	8.1	13.1	10.1	7.0	0.0	1.2

Use of custody for breach

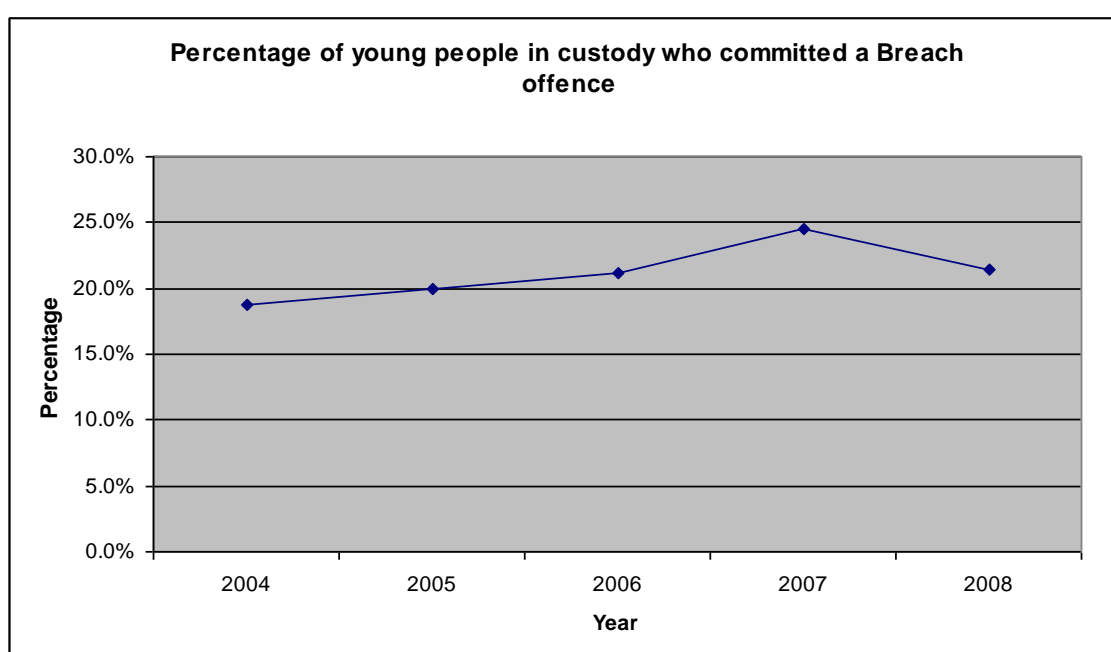
The published data allows only a limited analysis of which disposal, including custody, has resulted from breach offences. Sentence outcomes for each type of offence have only been reported in full since 2006/07. The most common disposals for breach are community-based penalties (60 per cent), particularly a supervision, curfew or Attendance Centre Order. For breach of conditional discharge and breach of bail the most common disposals were first-tier, particularly a fine or referral order.

However, in the year 2007/08, 16 per cent of young people in breach of a statutory order were given a custodial sentence. This accounted for more DTOs in the year than any other offence (n=2085) and 26 per cent of the total¹⁰. This was considerably higher than the second most common reason: 'violence against the person' (n=1453). Breach of bail resulted in a custodial

¹⁰ Some DTOs will have been issued for more than one offence so this does not constitute 26% of the custodial population.

sentence in 5 per cent of cases and breach of conditional discharge in 10 per cent.

In terms of the total custodial population over recent years, an increasing proportion are there because of a breach offence. The SACHs database identifies whether young people were committed to custody for breach of a statutory order as a primary or secondary offence. It is not uncommon for young people to be returned to court for breaching their order **and** for new offences, or the court may decide to rescind their order and re-sentence them for the original offence. The use of custody may therefore be for reasons other than the breach alone. Where they are committed to custody for breach of a statutory order as a primary offence, however, it may be that the reason for their incarceration is purely because of non-compliance rather than their offending behaviour.



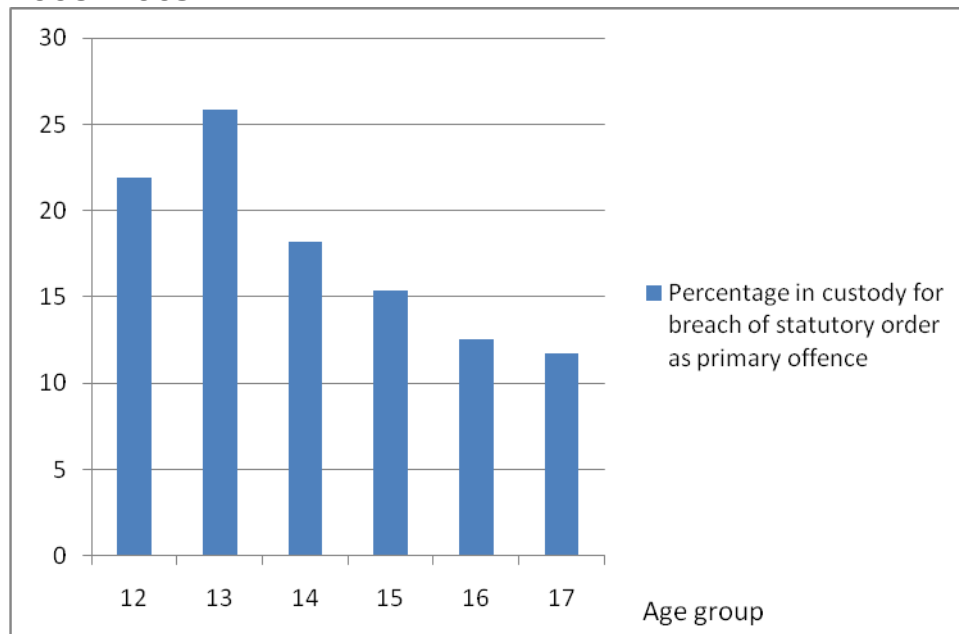
From the additional data provided by the YJB for the year June 2008–2009, it appears that the above downward trend may be continuing. An average 16 per cent of the custodial population were there because of breach of statutory order and a further 2 per cent for breach of bail. However, in most cases the breach was the primary offence and in 12 per cent of cases it is the *only* recorded offence.

In terms of *which* statutory order had been breached by those sentenced to custody, it appears that a significant proportion (31 per cent) had been recalled for non-compliance with the conditions of their licence following release from a DTO or other custodial sentence and about 12 per cent were in for breach of an ASBO. The others appear to have been in breach of a community penalty.

Interestingly, although there were no differences according to age or gender amongst the young people in custody for breach of bail for the year June 2008–2009, there were amongst those in custody for breach of a statutory order. Girls were more likely to be in custody for breach as a primary

offence than boys (21 per cent versus 15 per cent). In terms of age differences, although the overall trend data shows that younger teenagers are less likely to commit breach offences than older teenagers, they appear to be proportionally more likely to be in custody:

Proportion of each age group who are in custody for breach: June 2008–2009



Unfortunately, there was no data available that would allow an analysis of the proportion of young people from different ethnicities in custody for breach offences.

YOT performance

YOTs have been audited on their adherence to the *National Standards for Youth Justice Services* since 2004 and the results published within the annual Workload Data reports. Three of the Standards relate to enforcement:

- Unacceptable failures to attend followed up within one working day
- Unacceptable failures to comply with order followed up with formal written warning
- Young people with three unacceptable failures where breach action initiated within 5 days or stayed by YOT manager.

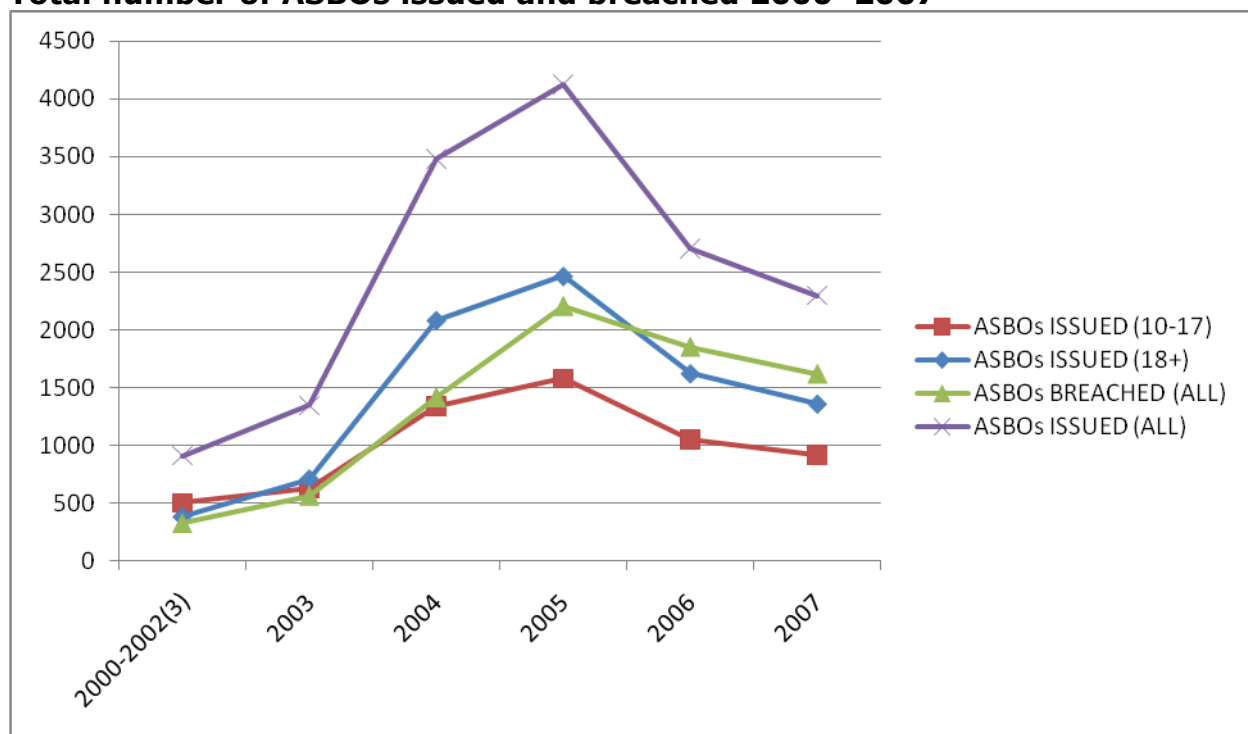
There has been a steady increase in YOT compliance with these Standards since 2004 with the average rate of compliance across the three standards being 77 per cent in 2007/08 compared to 60 per cent in 2004/05. Interestingly, however, the lowest levels of YOT performance are those relating to contact with young people on Supervision/Action Plan orders, particularly at the beginning of their orders when contact levels are expected to be once or twice a week. Although there is improvement, compliance has never achieved the 'acceptable' rating of 70 per cent.

Breach of ASBOs

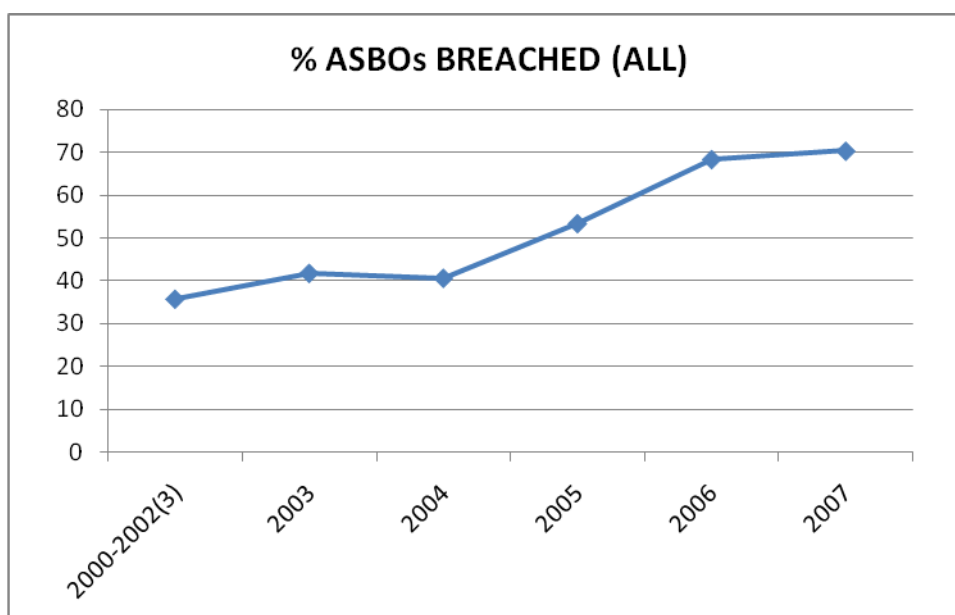
The Home Office produce annual statistics on the numbers of ASBOs issued and breached, although concern about the accuracy of the data has resulted in this being fairly limited in scope (Home Office 2007b). It also includes sentences imposed for proven breaches. This includes some analysis by age, gender and criminal justice area but not ethnicity. The data is difficult to interpret because some information does not fully differentiate between young people and adults. For example, data on the sentences imposed on adults for breaching an ASBO includes those that were issued when the person was below the age of 18.

It is also difficult to establish trends because only some data is provided for each separate year whilst other data is aggregated from the point data collection started. For example, there is data presented on the numbers of ASBOs issued to young people each year but not how many were breached: these figures combine breaches by adults and young people.

Total number of ASBOs issued and breached 2000–2007



The proportion of ASBOs that are breached has increased over time, but there is no data that would allow an analysis of comparative trends between young people and adults across the years. However, the **total** percentage of ASBOs breached for England and Wales from 2000 to the end of 2007 is 64 per cent for young people and 48 per cent for adults.



There are local variations in the overall rate of breaches, with the highest proportion in Lincolnshire (85 per cent), Dorset (81.5 per cent) and Durham (80 per cent). The lowest rates of ASBO breaches are in Suffolk (42 per cent) and North Yorkshire (51 per cent). There are also local differences in the pattern of breaches between adults and young people: in some criminal justice areas more adults breached an ASBO than young people (for example, North Yorkshire and Dyfed Powys); in some areas breach rates were the same (for example, Wiltshire, Sussex, and Suffolk); in others the breach rates for young people were more than double those of adults (for example, Lincolnshire). In interpreting this data, however, the total number of ASBOs issued must be borne in mind. Some areas appear to have a higher threshold for issuing an ASBO to a young person than others, reserving them for the most troubling situations. In these areas, higher breach rates could be expected and are not an indication of poor practice.

In terms of type of sentence received for breaching an ASBO, the available data indicates that adults were more likely to receive a custodial sentence than young people (59 per cent as opposed to 41 per cent) but that the average sentence length was longer for young people (6.5 as opposed to 4.9 months). Males who breached ASBOs were more likely to receive custody than females and this was the case for both young people and adults. Interestingly, this is in contrast to other types of breach of statutory order, as described within the analysis of the YJB data.

There has been a drive to ensure that young people subject to an ASBO receive support and, since 2004, the Home Office has collected data on the numbers of ASBOs with an ISO. The overall percentage has increased from 2 per cent in 2004 to 11 per cent in 2007 but the greatest increase has been for the younger age group (10–14 years) where 19 per cent were recorded as having an ISO. Unfortunately, there is no available data on whether young people with an ISO were more or less likely to breach their ASBO.

Is there a need for change?

This question can be considered at different levels: firstly, whether the current system for responding to breaches is the most effective way of preventing repeated incidents of anti-social or criminal behaviour and secondly, whether the system is being operated in a fair and effective manner in practice.

System issues

Enforcement v. support

Stakeholders who contributed their views to the project were in agreement that it is in the interests both of the community and those subject to orders that they be implemented. If the public have no confidence in the way that anti-social and offending behaviour are being tackled, there may be calls for a more punitive response. At the same time, most (but not all) participants feel that young people cannot be helped to achieve change if they do not engage in the interventions on offer¹¹, and they should also take court orders seriously. There must therefore be consequences if they do not.

The pressure to take a risk-averse approach to public safety also affects policy-makers and practitioners at all levels of the system: if it is known that an order is being breached and no action is taken, they will be held to account if the young person goes on to commit a serious offence. There was, however a consensus that the best way to achieve compliance is not through enforcement alone: it must be accompanied by support, and that the current approach has not necessarily achieved the right balance between these elements. This was particularly the case in relation to anti-social behaviour.

A supportive approach was thought to be important, not because it is less harsh, but because it is likely to be more effective. This is endorsed by a Home Office study comparing reconviction rates across probation areas. It found that:

When areas were grouped between 'high' and 'low' rates of breach at court, there was very little difference in their overall reconviction rates. 'Strictness' of an area appears to have very little impact on rates of reconviction ... Whatever the explanation, probation areas and policy-makers should be realistic about what reductions in offending can be achieved in the short term through toughening up enforcement practice (Hearnden and Millie 2003, p.10).

¹¹ Although it could be argued that this is not necessarily supported by research evidence: the reasons for desistance from offending may be due to a range of factors, and there is some evidence that youth justice intervention may even exacerbate offending behaviour – see McAra and McVie (2007).

It is clear, however, that enforcement has become a political issue:

The credibility of the government's flagship policy to deal with anti-social behaviour is severely undermined by the failure to enforce orders (Hansard 18th Jan 2007, Column 956).

Whilst it is the task of agencies to implement government policy, it is also important to retain a sense of what the anti-social behaviour and youth justice systems are trying to achieve, that is the prevention of the problematic behaviour.

The 'best' response to non-compliance

What are the best approaches if a young person does fail to comply? Squires and Stephen (2005) suggest that:

Project managers need to be free to exercise some discretion in managing their offenders and should not be confined by over-stringent breach conditions which produce high failure rates and render such projects little more than stepping stones to custody (p.109).

Whilst there is some scope for discretion within guidance, there is also a clear expectation that this should be exercised only in 'exceptional circumstances' and little to suggest what these might be. In the light of this, there will inevitably be different interpretations in decisions about when to bring formal breach proceedings. Some doubts were expressed by contributors as to whether there should be more room for discretion, or more detailed guidance about the factors to be taken into account. As one interviewee put it regarding the expectations about the number of breaches that should trigger proceedings: *'Who says three is the magic number?'* One possible alternative raised was allowing a young person the opportunity to 'pay back' for non-compliance, through measures such as extra activities, before deciding to breach. Other 'tiered' approaches could include an informal warning stage but it is unclear how this would fit with guidance.

Even where it has been decided to bring formal proceedings, there is no requirement in the case of young people to impose a 'vertical' tariff, where each failure to comply automatically triggers a more punitive response (see recommendation of Audit Commission 2004). This is welcomed, but does depend on sound alternatives being available. It requires good quality reports being provided to sentencers, setting out the reasons for the breach and offering realistic proposals for how best to enable the young person to comply in future. It also requires a range of suitable local resources and there are widespread concerns that, whilst the range of conditions (such as intensive fostering) that can be attached to an YRO are excellent in theory, they will not be available in practice. In addition, courts cannot issue more than one YRO to a young person at the same time. Although the order can be amended, the Youth Court is unable to amend an order made in Crown Court, which could be a complicating factor in arriving at a suitable disposal for some young people in breach proceedings.

'Therapeutic' breach

Breach proceedings may be initiated in order to send a message to a young person that their non-compliance is taken seriously but without the intention to impose any additional sanction. The YOT may withdraw the application at the last minute, request that the order continue unchanged or be amended to make it more achievable. It is not clear how common this practice is, although it appears to be sanctioned in the guidance on breaches of ISS (YJB 2009c), or how effective. It also used to be the case that courts could adjourn a hearing to test the young person's compliance, effectively giving them a chance to avoid an additional disposal, but now that targets have been set for the timescales within which a case should be heard, this potentially useful device has been discontinued.

Is there a place for rewards?

As part of the discussions on rebalancing, the possibility of rewarding compliance was raised. This is a difficult issue politically, because it could be interpreted as indirectly rewarding bad behaviour, and it is not an approach spelt out within current guidance. It is recognised, however, that young people could benefit from positive reasons to comply as well as the negative reason of avoiding being breached. Such rewards could include being returned to court to have the order varied or discharged as a result of good progress but even measures such as praising young people's efforts were thought to be important motivators.

Structures and processes

There appear to be a number of structural barriers inherent within the system that may be increasing the incidence of breach. As described earlier, many agencies are responsible for working with young people in trouble and the arrangements for decision making are complex. Unless local services have made an effort to establish effective ways of working together, the response to young people may be fragmented.

Working across agencies

Interviewees described a particular unease between agencies responsible for anti-social behaviour, with a more adult focused and punitive approach, and those responsible for youth justice, who were thought to be more aware of young people's needs. Although YOTs are meant to be consulted over decisions to apply for, or breach, ASBOs, this does not always work well and they may be unaware of court hearings until the last minute. The increasing expectation that ASBOs will be accompanied by an ISO also received a mixed response. It might not add anything to interventions already in place and, at worst, provide yet another order for the young person to breach.

There are also ongoing problems with information sharing between agencies. The fact that there are different assessment models, IT systems and lines of accountability can mean that agencies are not aware of important information about young people at risk until they are in serious difficulty. Although the importance of early intervention and a multi-agency approach are acknowledged, the way agencies are configured does not

facilitate this. Local attempts have been made to get round these difficulties, through multi-agency panels or joint protocols, but the national picture remains patchy.

Scrutiny of decisions

This potential fragmentation is reflected in the arrangements for the scrutiny of decisions. Anti-social behaviour units sit outside the normal monitoring and inspection arrangements for other children's services and it is unclear if they see themselves as working towards the Every Child Matters outcome framework. This does not mean that all is well within youth justice services: the performance framework has been largely focused on the timeliness of enforcement rather than the quality of decision-making and there is a need to ensure that there are arrangements for better scrutiny.

Due process

Ultimately, the courts are in a position to ensure the quality of practice in relation to breach and to ensure that young people are fairly treated. They are faced with two decisions when breach proceedings are taken: did the young person fail to comply with the order and, if so, what is the most suitable disposal. There may, however, be barriers that impede their ability to fulfil this role effectively. A number of participants were critical of the quality of legal representation provided for young people in breach proceedings. They are entitled to contest the breach but do not always receive the support needed to do so. An added complication is that breaches of criminal justice orders are normally prosecuted by the YOT, who can cross-examine the young person, with the potential damage this may cause to their relationship. There is no standard format for the report that is presented to the court and it may contain both evidence of the breach and a recommendation about disposal, blurring the two separate decisions that are to be taken. These issues could all interfere with the principles of due process and it is important to consider whether the system is fair.

Gaps in the data

Although some statistical data is available to identify patterns in the use of breach proceedings, it leaves many questions unanswered. The new YJB counting rules may allow for a more sophisticated analysis in future but at present we do not know:

- which 'statutory orders' are being breached
- the profile of young people breaching each type of order, including looked after children, disabled children or those with other special needs
- the disposals for breaching each type of order
- the proportion of breach proceedings that do not result in a significant disposal
- the ethnicity of those in custody for breach
- the numbers/proportion of young people being breached more than once and their sentencing patterns

- the numbers of first time entrants to custody who are there solely for breach
- index offences of those being breached.

We know even less about young people who have breached an ASBO, including their ethnicity. Although the current policy advocates accompanying ASBOs with an ISO or parenting order, there is no data that would enable an examination of whether these measures support compliance. With all data sources, there are also an acknowledged doubt about accuracy. In the absence of better data, it is difficult to understand trends, including the apparent increase in breaches, and it cannot therefore contribute to improvements in practice.

Practice issues

The second set of questions relates, not to the system itself, but the way it is being operated. Stakeholders had a number of observations about how well the system is working and changes they would like to see.

Are young people being set up to fail?

If a strong line is to be taken on the enforcement of an order, it is important that the order has a clear purpose, with conditions that are relevant to this purpose and based on evidence of what is likely to be effective. Conditions should also be reasonable and achievable. Although there are some indications in recent guidance that this is being recognised, it is easy to find examples where this has not appeared to be the case. A clinical psychologist, called in to a YOI to assess a young man with special needs who had breached a curfew imposed for criminal damage recounted:

During this assessment he was asked if he was able to tell the time. He replied no, he could not. He had never had a watch and had never been able to tell the time, but no-one had asked when the curfew was set (Care Services Improvement Partnership 2007, p.6).

Young people may have particular difficulty in compliance because of chaotic lifestyles, learning difficulties or just the impulsivity and rebelliousness that are associated with normal adolescence. Even where adults think they have explained what is expected, and the consequences of non-compliance, as one interviewee commented:

The young person can say they understand when they haven't got a clue ... they are frightened and not listening.

Interviewees felt that, although there is some improvement, the imposition of unachievable expectations was particularly likely in respect of ASBOs. Possible reasons for this were the fact that it is a system designed for adults and administered by people with little understanding of young people or the politicisation of anti-social behaviour. This appears to be borne out by research: a study of the use and impact of ASBOs carried out for the YJB (2006) found that many young people did not have a clear understanding of the details of their orders. Moreover, although all the young people interviewed for the study were aware of the possibility of breach, most

either did not consider the threat of custody to be 'real' or did not consider it to be a deterrent.

In a study of ASBO breaches resulting in custody Brogan (2005) found that the main conditions breached had been those of non-association or geographic restrictions. He recommended that these be researched further *'to assess their applicability and reasonableness'*.

'Up-tariffing'

In spite of the fact that 'vertical' sentencing is not meant to be automatic with young people, it is an inherent risk in the breach process. It is still possible to be sent to custody even where the original offence was relatively minor, or in the case of ASBOs, where no offence had been committed. This is particularly likely if there have been repeated breaches:

Because I was looking after my niece I breached some of my meetings ... once you're on an order and you breach it you get put on something higher so it just keeps going from there. So they don't really help you, they just keep escalating it (girl 15 *in* Glover and Hibbert 2008, p.4).

Brogan questioned whether the ASBO and consequent breach were being used tactically as a way of reducing the level of evidence required in order to secure a custodial sentence. He cited a number of cases where breaches had been trivial and non-threatening and observed that:

It also appears that there may be some young people ending up in custody for breaching an ASBO who would not otherwise have been sentenced (Brogan 2005, p.33).

Although not referring specifically to young people, the Prison Governors' Association also cautioned in 2007 that breach procedures were becoming a contributory factor in prison overcrowding:

People are being whisked into custody because of a non-show or a couple of late appearances for appointments. It is not realistic and is making its own contribution to the prison population (Tidball quoted in Travis 2007).

Are particular groups of young people receiving a disproportionate response?

The statistical data suggests that young people of black or mixed ethnicity are more likely to be breached within the youth justice system, and that this is an increasing trend. The Commission for Racial Equality (2006) have expressed concern about the absence of ethnic monitoring in the use of ASBOs.

From the statistical data, girls and younger children appear to be over-represented amongst young people in custody for breach. This is supported by a recent report on 10–14 year olds in custody who often felt they had lacked the support needed to help them meet what they saw as the strict criteria of their orders (Glover and Hibbert 2008).

There are other groups where data is not available but who may also be disadvantaged, for example:

... a recent survey of 54 YOTs suggested that one in three children were unable to fully comprehend the conditions of their orders because of learning or communication difficulties (CRE 2006, p.8).

The Communication Trust has developed a youth justice programme, based on an assessment that at least 60 per cent of young offenders have communication needs and have developed a guide for practitioners (Communication Trust 2009).

The data also suggests geographical variations. Although there will sometimes be local reasons for this, such as gang issues or football related offending, it is important to ensure consistent standards across the country. Interviewees recognised the variation and suggested that it is often related to the commitment of local agencies, or even individuals: a committed YOT manager, an effective custody panel or good working relationships between children's services and the police can ensure that young people get the support they need to comply.

Is the balance between enforcement and support 'right'?

This issue emerged as a crucial factor of concern to the stakeholders who contributed their views. They described a number of methods for supporting compliance, such as texting young people, negotiating appointments at a time and place that suits them, arranging for them to be picked up and undertaking a mixture of home visits and office appointments. It is also important that the quality of interventions is good enough: young people are more likely to participate in activities that have some purpose for them and are enjoyable rather than 'reporting' to the office just for the sake of it. It is clear from research that young people value a supportive approach. For example, one young person said about her YOT worker:

She always reminds me of appointments I've got, rings me up and reminds me. Also sends me letters and also gives me a ring and tells me when my appointments have been made (National Audit Office 2004, p.38).

Some interviewees were concerned that not all services had this approach, particularly towards young people subject to an ASBO rather than a criminal justice order. This is linked to an earlier point about the need to have systems in place for scrutinising decisions, both through line management arrangements and externally. Practitioners should be able to provide evidence that:

- they have explained the order both verbally and in writing
- the young person has understood what was expected
- interventions are based on the young person's interests and needs
- they have made an effort to engage the young person and their family
- any obstacles to compliance have been tackled at an early stage

- the young person has been praised for any progress made
- reasons for non-compliance are genuinely unacceptable.

It is not only the young person who should be engaged in this way: there was a sense that parents, extended family and the wider network were often overlooked but were crucial in helping the young person to comply.

Staff skills and attitudes

One of the most important factors in determining whether a young person would complete their order was the relationship with practitioners. The ability to communicate with young people and to convey a sense that they cared about them were seen as essential skills for all people involved in working with a young person or making decisions. Several interviewees expressed concern that not all staff had these skills, particularly those who did not have a background in children's services. This was likely to be the case with anti-social behaviour services but, even within YOTs, there was a suggestion that those from a Probation or other adult services background had more of a focus on enforcement. Culturally, they tended to see compliance as solely the offender's responsibility. Criminal solicitors may have no particular knowledge or expertise in children's issues, unlike their colleagues in safeguarding cases who are required to be on a specialist panel.

It was considered essential by some that the young person's case should be supervised by someone with a social work or youth background, even if this was at management rather than practitioner level. This could be linked to a team approach where the young person had access to support on a 24 hour basis so that they could contact someone if they felt at risk of getting into trouble.

This approach would require an examination of the skills and training needed by all those working in anti-social behaviour or youth justice services, including the police, solicitors and court staff.

What would make a difference?

Participants were not necessarily calling for major changes to the system, or a return to a time when young people were perhaps allowed to drift rather than being held to account for their actions. The main suggestions related to a rebalancing, so that agencies were similarly held to account for the support that young people are offered. There are subtle indications that recent guidance to YOTs and sentencers is moving in that direction but a more confusing message is evident in anti-social behaviour policy.

The overall message, both from the literature and stakeholders, is that agencies must work to engage young people, and that effective communication is an essential and under-recognised component in this. There is also evidence that young people want to be engaged: they value workers who listen and seem to care what happens to them. This engagement may work best, however, where there is a voluntary element to it. The Resettlement and Aftercare Provision (RAP) programmes piloted

by the YJB, and the Rainer RESET project both appear to have been effective in helping young people to stay out of trouble following a custodial sentence but both were voluntary: the young person could not be 'breached' if they did not attend. This was thought to be a crucial element in motivating the young people to engage, although it may also be a feature of the attitudes of staff who chose to work within these programmes. A 'youth worker' style has been said to support engagement and there is an argument for providing a range of informal support to young people alongside, or instead of, more formal interventions. For example, one YOT who offered informal but intensive support to young people on bail found that they were more able to comply with the conditions, which had the added benefit of convincing sentencers that they would respond well to a community rather than a custodial sentence.

An additional consideration when operating a system that requires young people to do what they are told is the nature of adolescence: rebelliousness and impulsivity are 'normal' developmental stages, which is why policy and practice needs to be different from that with adults. The following are some ideas for change.

- **Getting the expectations right** – a more rigorous approach to ensuring that orders are accompanied only by conditions that are necessary to achieve their stated purpose and are achievable.
- **Better communication to explain the expectations** – an increased focus on ensuring that the requirements, and the consequences of non-compliance, have been communicated to the young person in a way that has been understood.
- **A better balance between enforcement and support to comply** – measures would include:
 - a review of staff skills and training to ensure that practitioners understand children's policy and are competent in working with children and young people
 - a recognition of the importance of having a supportive relationship and consistency of worker
 - interventions that are purposeful and targeted to meet individual needs so that the young person is motivated to participate
 - practitioners who can evidence the steps they have taken to engage and support young people, in the context of their family and network.
- **Increased focus on the motivators to compliance** – this would include consideration of appropriate rewards, ranging from praise to the early discharge of orders.
- **Quality assurance systems to scrutinise decisions** – these could include quality assurance clinics, multi-agency panels and independent inspection.
- **Improved data collection and analysis** – this would provide an evidence base that could be used to understand and improve policy and practice.
- **Provide additional guidance** – topics identified include:
 - the purpose of ISOs

- appropriate conditions for ASBOs
 - what constitutes a reasonable excuse for non-compliance
 - the purpose and scope of management discretion.
- **Develop better multi-agency working between children's services, YOTs and anti-social behaviour units** – at all stages, from prevention to young people in or leaving custody.

A final challenge

His disorder means whatever anyone in authority tells him, he does the opposite, so I have no doubt he will breach it like he did within two hours of getting it, which meant he was tagged. He needs medical intervention and I need help (A mother describing her reaction to her 12 year old son's ASBO¹²).

It is entirely possible to envisage a scenario where this 12 year old is repeatedly returned to court, without ever receiving the treatment he needs, and eventually receives a custodial sentence: not because the sentencers wish to punish him or even because they think it will help, but because they do not know what else to do with him.

The suggestions offered above are primarily modifications of the existing system but perhaps there are more fundamental questions to be asked first.

- 1. Given the high threshold for custody set out in the guidelines, why are so many young people in custody for breach?**
- 2. If the fundamental purpose of intervention is to prevent further offending or anti-social behaviour, where is the evidence that the current arrangements are the best way of achieving this?**
- 3. What more do we need to know to develop a system that is both effective and fair?**

¹² Daily Telegraph. 25 June 2009

Appendix 1: The law relating to breach

Youth Justice disposals

Pre-court disposals

Young people who have committed relatively minor offences may receive a Reprimand or Final Warning¹³ or, in pilot areas, a Youth Restorative Disposal. These do not require the young person to appear in court or result in a criminal conviction. Although the YOT will offer diversionary activities or other interventions, these are voluntary and the young person cannot be breached for non-compliance.

A recently introduced measure, currently only applicable to 16/17 year olds, is the Youth Conditional Caution¹⁴. This has the effect of suspending any criminal proceedings to give the young person an opportunity to comply with agreed conditions, such as compensation to the victim. If the young person does not comply with these, this is not an offence in itself but they can be prosecuted for the original crime. It is the responsibility of the YOT to monitor compliance and to report failures, but the decision about any necessary action rests with the prosecutor. If they feel the young person has a reasonable excuse or has been largely compliant, they have the discretion to take no action or allow the young person additional opportunities to fulfil the conditions.

Bail

There is a presumption that young people will be allowed to remain in the community on 'bail' whilst waiting for trial or sentence by the court, unless certain defined exceptions apply (such as the seriousness of offence or grounds for believing that they would abscond or commit further offences). Bail may be unconditional or accompanied by conditions such as place of residence, non-association with named individuals or curfew. The YOT can provide informal support but the young person may also be subject to Bail Supervision and Support or a Bail Intensive Supervision and Surveillance Programme (ISSP), requiring them to participate in a scheme operated by the YOT. The aim of these interventions is to supervise the young person, support them to comply with the conditions of bail and to prevent further offending. The minimum level of attendance is three times a week, increasing to 25 hours with an ISSP.

Where the YOT, or partner agency, has been involved in supervising the bail conditions, they would be expected to report breaches of bail conditions to the police. A failure to comply with bail conditions is not a criminal offence in itself, although the police are entitled to arrest the young person¹⁵ and return them to court to allow further consideration of whether bail can continue. The court may vary the conditions or decide to remand the young person into a secure setting. Failure to appear in court at the appointed

¹³ Crime and Disorder Act 1998.

¹⁴ S48. Criminal Justice and Immigration Act 2008.

¹⁵ S7. Bail Act 1976.

time following a period on bail *is*, however, a criminal offence¹⁶ and the young person may receive a penalty such as imprisonment or a fine, in addition to any penalty for the original offence.

Community disposals

Where young people have been convicted of an offence, there are a range of community options.

- Absolute Discharge: conviction is considered to be punishment enough and there are no further requirements.
- Conditional Discharge: requirement not to commit further offences within a set time. If the young person does, they will be re-sentenced for the original crime in addition to the new offences.
- Fine: up to a maximum of £1000.
- Referral Order: requirement that young person cooperate with an Action Plan determined by a community panel and supervised by the YOT.
- Reparation Order: requirement that young person make reparation to the victim, supervised by the YOT.
- Youth Rehabilitation Order¹⁷ (YRO): a generic community sentence that can be accompanied by a number of additional requirements, ranging from substance misuse treatment to intensive fostering or ISSP, and supervised by the YOT.

Apart from an absolute discharge, all the above orders require the cooperation of the young person but the expectations will vary considerably. A young person subject to a conditional discharge must not commit further crimes but is otherwise free of restrictions whereas a young person on a YRO with several requirements may be expected to live at a specified address, attend a wide range of appointments, undertake unpaid work and be subject to electronic monitoring. Clearly, the more requirements there are, the easier it is to fail to fulfil them.

Although the decision-making process varies¹⁸, a young person who does not comply with the expectations placed on them may be returned to court. The breach may be an offence in itself, and therefore lead to additional penalties. The court may also decide to revoke the penalty and resentence for the original crime.

Custodial sentences

There are a range of custodial sentences that a young person can receive. The most common is a Detention and Training Order (DTO) ranging from four months to two years. The young person will normally serve the second half of the sentence in the community under the supervision of the YOT and subject to certain conditions. These will always include a specified address

¹⁶ S6. Bail Act 1976

¹⁷ The YRO is a new order introduced by the *Criminal Justice and Immigration Act* (2008) and replacing a number of previous community sentences. It was implemented in November 2009.

¹⁸ For example, it is the Community Panel that will decide whether to 'breach' a young person on a referral order but the YOT will decide in the case of a YRO.

and regular reporting to the YOT but may also be accompanied by an ISSP or other expectations. Young people may leave custody on 'early release' before the mid-point of their sentence if they have made good progress and will then be subject to electronic monitoring. If a young person fails to comply with the terms of their Notice of Supervision, they can be returned to court and fined or recalled to custody for three months or the remaining period of the DTO, whichever is the shortest.

For young people who are considered to have committed more serious crimes, they may have served a longer sentence under Section 90/91¹⁹ or Sections 226/228²⁰. On release, they will also be subject to licence conditions and supervision. There is an important difference from DTOs, however, in that young people can be recalled to custody without a court hearing. The guidance states:

There are two sets of circumstances which can lead to the recall of young people on licence:

- breach of licence conditions (including reoffending)
- behaviour which poses an increased risk of harm to the public.

The decision to initiate recall proceedings is at the discretion of the supervising YOT caseworker. Not all breaches of licence conditions will result in such a recommendation (YJB 2007, p.20).

Decisions should be taken in consultation with other agencies and approved by the YOT manager. Once the young person is back in custody, the Parole Board will decide whether the decision was justified.

Anti-social behaviour disposals

Acceptable behaviour contracts

Agencies are expected to identify those who are engaging in low level anti-social behaviour in an attempt to 'nip it in the bud' (Home Office 2007a). Acceptable Behaviour Contracts (ABCs) are written, voluntary agreements between an adult or young person involved in anti-social behaviour and one or more local agencies whose role it is to prevent such behaviour. The contracts are meant to be flexible and they can be used incrementally and adapted to changing needs. They should set out the behaviours that the person agrees to discontinue, alongside any interventions that will be offered in support, and the consequences of breaking the contract. There is no formal 'breach' process: if the agreement is broke, consideration can be given to applying for an Anti-Social Behaviour Order (ASBO).

ASBOs

There are two main types of ASBO²¹:

¹⁹ *Powers of the Criminal Courts (Sentencing) Act 2000.*

²⁰ *Criminal Justice Act 2003.*

²¹ *Crime and Disorder Act 1998.*

- standalone orders resulting from an application by the local authority in civil proceedings
- Criminal ASBOs (known as CRASBOs) made on conviction in criminal proceedings in addition to the main disposal.

Orders can be made if it is shown that the person concerned has behaved in an anti-social manner and that the order is necessary for the protection of the community. They are designed to be a preventative measure rather than a punishment. The minimum term is two years, although there is now a requirement to conduct annual reviews of ASBOs imposed on young people under 18²². An ASBO will contain various prohibitions designed to prevent problematic behaviour, such as telling the young person where they cannot go (exclusion areas) or who they should not have contact with (non-association requirements). Courts issuing ASBOs on young people must also consider whether it would be appropriate to accompany it with a Parenting Order or Individual Support Order (ISO) to make sure that the underlying causes of the anti-social behaviour order are tackled.

Although ASBOs are civil orders, it is a criminal offence to breach them and a decision to return to court may be taken by the police or the local authority. The maximum sentence for a single breach is 12 months detention in custody but if there is more than one, involving serious harassment, alarm or distress, this can be exceeded. It is also a criminal offence to breach an ISO, punishable by a fine.

²² *Criminal Justice and Immigration Act 2008.*

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