

THE CRASBO – A NEW TOOL FOR ENVIRONMENTAL NOISE CONTROL

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1 INTRODUCTION

The Crime and Disorder Act, 1998 was a step-change in local authorities' involvement in tackling anti-social behaviour (ASB). Since then, there has been an explosion of legislation on ASB and "envirocrime" with new offences and much tougher enforcement mechanisms being brought in. This has given practitioners Anti-social Behaviour Orders (ASBOs) and, more recently, ASBOs on Conviction (CRASBOs). Seizure of vehicles used in envirocrime (fly-tipping) is now on the agenda, as are powers of arrest. At the same time, there has been much emphasis on speeding up enforcement, notably by means of Fixed Penalty Notices (FPNs). The importance of the ASB issue, and the speed of change, is illustrated by the major government ASB web sites^{1,2}, an essential information source for anyone working in this field. There is massive political will behind these changes, reflecting obvious public concern. Indeed, early September 2005 saw the Prime Minister personally re-launch the Government's "respect" agenda. This demonstrates how the entire landscape of ASB, Public Realm and Cleaner Neighbourhood enforcement has changed – indeed, these phrases simply didn't exist (say) 8 years ago!

Those practitioners involved in environmental (or neighbourhood) noise control will appreciate that noise nuisance sits firmly at the junction of ASB and envirocrime. Indeed, Home Office data¹³ shows noise nuisance to be amongst the most common types of ASB, with 5374 reports in a single day, costing an estimated £249million per year. In an effort to tackle this, these new enforcement "tools" – especially the CRASBO – can very usefully be added to the traditional statutory nuisance enforcement regime. How they are used will depend on local needs, service structures and enforcement styles. However it is done, it is clear that central government expects local authorities to tackle ASB, and Environmental Health staff are at the 'sharp end' of that effort. To help practitioners, mid-September 2005 saw the Chartered Institute of Environmental Health launch an ASB toolkit⁸, endorsed by the Home Office and dealing with environmental crime such as noise, abandoned cars, fly-tipping, graffiti and fly-posting.

This paper therefore outlines something of the author's experience of using CRASBOs and tries to pass on what has been gained from a very steep learning curve. The main issues centre around the drafting of effective and enforceable conditions, including the application of the Human Rights Act. Not only do practitioners need to convince the Court of the necessity for granting a CRASBO, but we have to understand that the Court effectively "owns" the CRASBO. The need for multi-agency working is highlighted, and the challenges of enforcement are also considered.

2 ANTI-SOCIAL BEHAVIOUR ORDERS (THE ASBO)

An ASBO is a very powerful Civil Court Order. Breach of an ASBO brings in power of arrest, fines and imprisonment. ASBOs are obtained to curb behaviour which has caused or is likely to cause harassment, alarm or distress to one or more persons not in the same household as the offender. They are obtained in County Court, on the balance of probabilities, using hearsay evidence. The conditions imposed by an ASBO can be very wide – they can prohibit any form of ASB and can prohibit a person from entering a defined area. Note that they can only prohibit specified anti-social behaviour, not force persons to undertake actions or to

behave in a particular (nice?) manner. Of particular interest to noise practitioners are options such as:-

- Prohibiting causing noise nuisance, or prohibiting audible noise during certain hours.
- Prohibiting use of certain equipment (say, no television after 11pm or before 8am).
- Can prohibit activities such as begging, drinking, being drunk in certain areas.
- Can prohibit meeting with certain people or going to specific addresses, or entering certain areas (even entire cities).
- Have been used to prohibit spitting, exposing oneself, wearing hooded clothing (so they cannot easily be identified), swearing, aggressive behaviour and violence towards persons (including Council staff).

For the noise practitioner, getting an ASBO is not particularly simple. First, proceedings are usually in the County Court (a Civil Court), whereas most of our expertise is in the Magistrates' (Criminal) Court. Second, this means they are relatively expensive. Third, there is a statutory need to consult other agencies (Police, Social Services, Education) as necessary. Now, multi-agency working is obviously essential if you are trying to solve difficult problems, but this can be an obstacle to speedy action. Fourth, ASBOs are generally still seen as being a very serious step, and would not be appropriate for a simple noise nuisance case.

Having said this, their use is accelerating, mainly driven by Housing management, but they are still little (if ever) used by Environmental Health, although we give evidence in support of Housing.

3 ANTI-SOCIAL BEHAVIOUR ORDERS ON CONVICTION (THE CRASBO)

- 1) The CRASBO has virtually identical powers to an ASBO – there is the same power to set conditions, with the same enforcement powers. This relatively new legislation has been fully explained by Pema and Heels⁴ and by Carr et al⁵. Most importantly for the noise practitioner, the CRASBO is much easier to obtain than the ASBO. You don't need the extensive consultation of an ASBO (but don't forget to consult the Police, if you want them to enforce your conditions). More importantly, you don't need an expensive County Court case; "piggy-backing" on a successful criminal conviction, the CRASBO is effectively free!

To gain a CRASBO, you have to show behaviour which has caused or is likely to cause harassment, alarm or distress to one or more persons not in the same household as the offender. And that without the CRASBO, this will continue. So, practically, you need to demonstrate a pattern of behaviour, possibly of a more serious nature (than "normal" noise case), possibly over a long period and possibly with previous seizures or convictions which failed to stop the problem.

The CRASBO is obtained in the Magistrates' Court, following any criminal conviction. This is very useful because you have already done the hard work - you have just obtained a conviction on the basis of "beyond reasonable doubt". As soon as you get the "guilty" verdict you ask for a CRASBO. The Court sentences the guilty party and the hearing should then move seamlessly from a criminal trial to a civil hearing. The Justices' Clerks' Society Good Practice Guide³ is an authoritative reference for Court procedures at this stage and Strevens⁶ gives more practical advice on presentation of evidence.

The Court can base their decision on the evidence that has just been heard, but you can also introduce new evidence. Take care here – as anything other than previous convictions can be challenged, taking up what limited Court time you have and possibly de-railing what should be a very quick process. At Greenwich, our strategy has been to produce a single side of A4 paper summarising previous convictions, witnessed events, number of complainants, number of calls to out of hours service, etc.

If granted, the CRASBO can address any ASB – obviously, the matters on which offender has just been found guilty, but also wider issues of ASB. So, if found guilty of noise nuisance, you can also add in alcohol or substance-related issues, or other behavioural issues.

The CRASBO appears to be the perfect “add-on” to statutory nuisance prosecutions. They allow the enforcement action to be escalated past a simple prosecution and they give the victim much better protection than simple fines.

4 GREENWICH EXPERIENCE WITH CRASBOS

Greenwich Council’s Noise Team applied for their first CRASBO in August 2004. The story of how we were unsuccessful has already been told (Strevens⁶) but, even so, it was considered useful to have tried. That case concerned loud amplified music affecting up to 10 complainants over a 5-year period, as well as unreasonable impact noise (footfalls) additionally affecting the neighbour immediately below the defendant’s flat. In that time, there had been over 60 calls to the Council’s Noise Line and 20 witnessed nuisances (of varying degrees of seriousness). However, due to the length of the investigation, at any one time staff never considered there was enough to prosecute – until the decision was taken in August 2003. Nuisance continued even after summonses were issued, and defence delays meant the case did not get to Court until July 2004. The District Judge eventually gave a three year conditional discharge (the maximum length permissible) along with pretty substantial costs (£750) – the Judge suggested that the defendant should have pleaded guilty, and commented on the waste of Council resources caused by the “hopeless” defence case.

In March 2005, the Greenwich Noise Team successfully obtained their first-ever CRASBO, on a similarly serious case. The defendant had previously had their stereo seized and had been prosecuted for 7 breaches of an Abatement Notice. They went quiet for a time, but then anti-social noise started up again, leading to a second seizure of a stereo system and a prosecution for a further 11 breaches of the Abatement Notice. After discussions with our legal team, the defendant pleaded guilty to 6 counts and a CRASBO was granted. Lunney⁷ gives more information on how this case progressed.

July 2005 saw the Greenwich Noise Team gain their second CRASBO. Again, it was a fairly serious case, with the defendant being previously prosecuted for 6 breaches of the Abatement Notice. Almost a year of peace and quiet followed, but ended with 8 more breaches of the notice being witnessed by Council officers and seizure of his stereo system. The CRASBO was granted.

Given the above, Greenwich has taken a policy decision that CRASBOs will be considered in every noise prosecution. Unless there are contra-indications (vulnerable person, not in public interest, etc) we basically have a presumption that application for a CRASBO is warranted where a noise abatement notice has been repeatedly ignored.

5 OTHER RECENT CRASBOS

EHOs at the London Borough of Hammersmith & Fulham got their first ASBO on Conviction in April 2004. This case concerned a defendant where they had already seized stereos four times in the past year! In total, they had some 50 complaints from 9 different complainants and 10 witnessed breaches of the abatement notice. The noise-maker was prosecuted on four breaches of the notice, pleaded guilty but tried to argue that he was a “music producer and DJ” and he only played loud music on the odd occasion. This was contrary to the evidence, and he was fined, and the ASBO on Conviction granted.

The Metropolitan Borough of Rochdale got their first in June 2004. This was against a noise-maker prosecuted for four breaches of a Noise Abatement Notice. This was his third prosecution for noise, and stereo equipment has previously been seized. In this case, evidence was gathered for the prosecution using Digital Audio Tape and these recordings allowed the court to appreciate accurately the disturbance caused to neighbours. Once they

had obtained the guilty verdict, the EPA Solicitor sat down and the specialist ASB Solicitor jumped up! The noise-maker was then made subject to a three-year anti social behaviour order which prohibits him from:

- 1 acting in an anti-social manner in the Metropolitan Borough of Rochdale, that is to say in a manner which causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household as himself.
- 2 using, demonstrating or threatening violence against any such person.
- 1 playing amplified entertainment at an excessive volume so as to cause nuisance to neighbouring properties
- 2 playing amplified entertainment between the hours of 11.00pm and 7.00am on Sunday night to Thursday night inclusive and 12 midnight to 8.00am on Friday night to Saturday night inclusive.
- 3 consuming alcohol in any public street or open place.
- 4 using abusive, insulting, offensive, threatening or intimidating language or behaviour in a public place or any place to which the public have access.

August 2005 saw Caradon District Council get a particularly interesting CRASBO against the operator of a quad bike safari business^{9, 10}. The operator ignored repeated planning and nuisance orders, but continued operate in a quiet village and cause serious nuisance. Quad bikes (9 in total) were eventually seized and a 10 year CRASBO granted following a successful noise prosecution. The Council commented that "The length of the CRASBO reflects the seriousness of this case, which involved intimidation on top of some 15 months of severe noise nuisance for residents of the area". The CRASBO prohibits the quad bike operator from:-

- 1 Assaulting, threatening harassing, using threatening behaviour, intimidating and/or otherwise abusing any person residing or visiting a designated area within the village of Morval, and Council staff;
- 2 Causing or allowing to be caused any noise nuisance as a result of any unauthorised recreational or commercial activity;
- 3 Any unauthorised advertising of any unauthorised activity.

Interestingly, in 2004, the Environment Agency¹² obtained an ASBO (not a CRASBO) on the owner of a skip hire and plant business. This prohibited him from repeatedly burning skips of rubbish, rather than disposing of it legally. A similarly interesting example of an 'envirocrime' ASBO comes from Thanet District Council¹¹, who in September 2005, obtained an ASBO against a persistent fly-tipper. Other local authorities have threatened companies involved in fly posting with CRASBOs. These cases demonstrate the width of the ASB/envirocrime agenda and just how it is complementing (perhaps taking over from) our more traditional enforcement options. It is interesting to note that these cases involved businesses, albeit sole traders.

6 HUMAN RIGHTS ISSUES

Human Rights concerns with ASBOs continue to "fester", but practitioners and (more importantly) the wider public appear to have accepted this form of enforcement. There are possibly fewer issues with CRASBOs, as you have already achieved a "guilty" verdict beyond reasonable doubt. The fact that the noise abatement notice has already been breached (perhaps repeatedly) makes it more reasonable to seek a more "serious" enforcement option. In all of this, we must not lose sight of the rights of victims – Environmental Health are often the only agency sticking up for the victim, especially in private sector housing.

My colleague Heather Lunney has outlined⁷ the practicalities of literally debating Human Rights in Court. To obtain Greenwich's first-ever CRASBO, she had to argue a sequence of options with the Court, before settling on a wording which (with hindsight) we found to be less than perfect. That experience made us realise that you must be fully prepared to justify and debate your preferred draft wording. You must also make sure your draft conditions are:-

- 1 Necessary. Your defendant has been convicted of playing loud amplified music – do

- you really need to prohibit him from making DIY noise?
- 2 Proportionate. Do you ask for silence from the defendant's home 24 hours a day? Probably not, but after victims have suffered months of serious nuisance, it is arguably reasonable to insist that they now get silence during the night.
 - 3 Realistically practical. Can the defendant know whether they are complying? Can the conditions be enforced?
 - 4 Clear, concise and accurate. What type of noise, caused by what? Can the defendant understand what is expected of them?
 - 5 Specific about matters of time and place. Addresses? Be careful about days of the week and 24 hour clocks.
 - 6 Not mandatory. Must not be worded to compel the defendant to do specific acts (the CRASBO can only prohibit behaviour).
 - 7 Possible to be complied with. Must not be worded so the defendant is bound to breach it.

Do not be mistaken, as an enforcing officer you can interfere with the defendant's Human Rights – but any interference must be necessary and proportionate, and balanced with the victim's rights.

7 DRAFTING CONDITIONS

The importance of careful drafting cannot be over-stressed. It has already been mentioned how “debate” in the Magistrates’ Court led in Greenwich’s case to conditions which were less than perfect. Actually, our first CRASBO was almost unenforceable – and all because of two missing words! The wording given by the Court was:-

“The defendant is prohibited from using any electrical equipment to generate noise which can be heard outside his front door between 8pm and 6am daily.”

On first examination, this appears marvellous. If noise is not audible outside the defendant's front door, then it is unlikely to be causing a nuisance to neighbours (subsequent experience in this case showed this was correct). Better still, anybody (Noise Officer, Police, neighbours) can witness noise from “electrical equipment” outside the defendant's front door and if it's outside of the permitted hours, it is a breach of the CRASBO. The defendant can then be arrested.

Unfortunately, it was not that simple. Leaving aside judgements about “electrical equipment”, this condition had one major flaw: we have to prove that it was the defendant personally who was making this noise. Not only do we have to hear the noise outside his front door, but we then have to knock and ask him if it is him making the noise! Put simply, our experience shows that (generally) an enforceable condition must be one that includes the words “or permits”. This relatively small change makes all the difference:-

“The defendant is prohibited from using, or permitting to be used, any electrical equipment to generate noise which can be heard outside his front door between 8pm and 6am daily.”

The above formula does away with the need to prove the defendant was personally making the noise. It makes it relatively easy for anybody to witness a breach. It also allows the defendant to check their own compliance (a useful Human Rights “check”). Whilst we might think it better if it prohibited noise being audible anywhere outside the defendant's property, you would then lose the ability of the defendant to check – the Court thought that much less reasonable. Finally, it provides a high level of protection to the victims.

8 PROVING HARASSMENT, ALARM OR DISTRESS

Being able to prove that the defendant has behaved in a manner causing or likely to cause harassment, alarm or distress is fundamental to obtaining a CRASBO. Now, a statutory noise nuisance will almost always cause (or be likely to cause) distress, sometimes it will

alarm and on occasion it can amount to harassment. Having proved statutory nuisance “beyond reasonable doubt”, we should therefore be able to rely on the test of “likely to cause” harassment alarm or distress to obtain our CRASBO.

Interestingly, in one of our two CRASBOs, the District Judge seemed to want more than this. The Judge knew we would ask for a CRASBO if the defendant was found guilty and so, during the statutory nuisance case (before we had got to the CRASBO hearing), he asked every Noise Officer giving evidence of nuisance “what was the state of mind of your complainants?” Luckily, several of our witnesses had notes of the effects of the noise on our complainants, and so could answer. But, this is not normal practice for statutory nuisance cases, where we rely on the effect on the notional “average person”, not any effects on our specific complainant.

The lesson here is – be prepared to give evidence about the effects of the noise on your complainants. The Greenwich Noise Team are considering adding this question to our noise call-out proforma. We will perhaps require officers to check the effects of the noise on our complainants; but only in a box marked “For ASB use only – NOT for nuisance decisions”.

9 OWNERSHIP OF THE CRASBO

Those involved in noise enforcement are probably used to drafting, and hence “owning” noise abatement notices under the Environmental Protection Act, 1990. However, with CRASBOs, you are completely in the hands of the Court; it is a Court Order, drafted by the Judge or Magistrate and issued and enforced by them. The local authority will suggest a wording, but the decision is the Court’s. So, the officer attending Court has to be ready to debate wordings and justify any draft that is offered. I would suggest that they also need to be assertive, and honest, in order to explain (if needed) why a particular wording offered by the Court will not work. See Lunney⁷ for an example of how suggestions were rejected because they didn’t work acoustically, or in terms of enforcement.

Enforcement is also in the hands of the Court, and this leaves the noise enforcement officer in something of a quandary. Do we make decisions about enforcement, or do we leave these to the Court? To some extent, this depends on what route you take to enforcement (see below), but it is suggested that if you have any reasonable evidence of breaches, you should err on the side of caution and let the Court decide. If I had evidence of several breaches of the Court’s CRASBO, the last thing I would want is a Judge asking me why I had not been quicker in bringing this before the Court? Why did I presume to make judgements the Court should be making?

10 ENFORCING THE CRASBO

As yet, the Greenwich Noise Team have no experience of enforcing a CRASBO, nor have we any information on whether others have done this yet. However, we have got close in at least one case, and that has made us consult other practitioners and to think about our next step. There are several options, not at all clear-cut:-

- Leave it to the Police. This is a seductive option. After all, the CRASBO is a serious Court Order, with powers of arrest and penalties for a breach including up to 5 years in prison. Surely the Police should be enforcing it? They can witness a breach, arrest the defendant, interview them at the Police Station and then give the case to the Crown Prosecution Service (CPS) to deal with. However, despite the order being serious, our experience is that the Police simply cannot react to witness noise; it’s not that they don’t want to (they clearly appreciate the effects on our victims), but they have far higher priority work, especially in inner cities. The reality is that most local authorities will have a much better response to noise than the Police. The local authority is almost certainly the agency best placed to get evidence of breaches on a noise CRASBO. Perhaps more importantly, the local authority will have dealt with the victims and witnesses through a pretty tortuous process, and handing the case over to the CPS at this stage might not be very effective.

- Partnership, with local authority prosecuting. Given the above, some sort of partnership approach will probably be most effective. How this will work depends largely on local circumstances, multi-agency structures and working relationships. For example, noise enforcement staff could witness a breach and then make statements of witness (Section 9 statements) for the Police, who are requested to arrest the defendant. With effective liaison, the local authority Solicitor could be in Court when the defendant is brought in by the Police (this process is already used in child protection and fraud cases). The local authority Solicitor then takes the case.
- Partnership, with CPS prosecuting. As above, but the CPS uses local authority evidence to take the case.

Of course, none of the above rules out using evidence from victims, neighbours, Housing staff, Police and any other decent witness. Perhaps the most important issue will be to make sure you have effective liaison between the various agencies.

11 THE FUTURE

It really is early days for noise CRASBOs. They are increasingly being used, but practitioners face a pretty daunting learning curve and are, understandably, being cautious. However, several issues are already possibilities for the future.

First, local authorities should consider the practicality of getting noise conditions added to Police CRASBOs. The Police are increasingly using CRASBOs for drunk and disorderly cases, drugs, violence, etc; the defendants involved in these forms of ASB are very likely the same people involved in anti-social noise. Can we identify them and set up systems to deal with the noise aspects of their ASB at the same time as the Police bring the other issues before the Court?

Second, local authorities should add CRASBOs to their Enforcement Policies, along with seizure of stereos and multi-agency working for those involved in other forms of ASB (as above). Your Policy should state very clearly that you will consider a CRASBO on every prosecution – not just for serious cases, but for every case where an abatement notice has been repeatedly breached. The possibility of imprisonment and unlimited fines should be clearly noted. The publicity aspects of CRASBOs should also be flagged up.

Finally, consider using CRASBOs for more than just domestic noise. There are examples where ASBOs have been used on businesses, or at least sole traders. If you can apportion responsibility, there is no reason why they could not be used for partnerships – and perhaps for named directors or even managers of limited companies.

12 REFERENCES

- 1) 1. www.together.gov.uk
- 2) 2. www.crimereduction.gov.uk
- 3) 3. Justices' Clerks' Society. Good Practice Guide - Anti-Social Behaviour Orders: A Guide to Law and Procedure in the Magistrates' Court. (April 2004)
- 4) 4. Anesh Pema and Sharon Heels. Anti Social Behaviour Orders: Special Bulletin (Second Edition). Jordan Publishing (August 2004) ISBN 0853089345.
- 5) 5. Helen Carr, Mathew Waddington, et al. Anti-Social Behaviour Act 2003: Special Bulletin. Jordan Publishing (March 2004) ISBN 0853089175
- 6) 6. D Strevens. The new order. Environmental Health Journal (December 2004) p386-388.
7. H Lunney. Environmental Health Journal (June 2005) p27.
8. Chartered Institute of Environmental Health. Taking Action: tackling antisocial behaviour. (September 2005).
9. Quadder gets Crasbo. Noise Management. (August/September 2005). p1.
10. Quad bikes impounded after conviction. Environmental Health News. (29 July 2005). p7.
11. Lengthy jail stretch for Kent's persistent fly-tipper. Environmental Health News. (9

- September 2005). P4.
12. ASBOs call for environmental criminals. Environmental Health News. (5 August 2005). P3.
 13. The one day count of anti-social behaviour (September 10th 2003). www.together.gov.uk

Note that the views expressed in this paper are those of the author and do not necessarily reflect those of his employing authority.