

# The Challenge of Antisocial Behaviour:

New relationships between the  
children, parents and the state

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Pam is 13. She lives with her father, who has HIV and her brother, Bob, who is 8. Her mother is subject to an interdict to keep her away from the family home.

Pam's grandparents live in a council flat. Pam frequently causes disturbances in the flats with a group of her friends. Residents are worried and ask the council to "do something about Pam", whom they say is the ringleader.

# The Kilbrandon Principle

Children's hearings, not courts, must have primacy in decisions about children

- emphasis on responsibility for crimes impedes preventive principle
- decision on guilt impedes assessment of needs

# Conceptual histories

## Psy-medical interests

- An interest in children - children's antisocial acts are “the single best predictor” of adult outcomes in relation to antisocial behaviour (Nuffield Council of Bioethics 2002)
- An interest in parents – “Antisocial parents tend to have antisocial children” (Farrington 2003)

## Housing

- Strong moral discourse
- Responsibilisation strategies (Flint 2000)

# Criticisms of both

- Overly broad and vague
  - “... it is quite meaningless to talk of, try to explain, or treat antisocial behaviour as if it were only one ‘type’. It is different in different people, in different situations, and at different times in the life history.” (Rutter 1998)
- Unclear on cause and effect
- Focus on the individual

Public provisions as children's services assume particular social constructions of the child. The child of children's services is incomplete and immature, a becoming adult ... The child of children's services is a 'poor' child: she is 'the child in need', 'the child at risk', the 'vulnerable child', 'the child needing to be readied to learn' ... The child of children's services is also a redemptive agent, who will grow up to rescue society – but first needs to be saved. (Moss 2002)

# Stage 1 Debate, Minister for Communities

Parenting orders will focus on the behaviour of parents. They will be targeted at parents who have persistently refused to engage with support to improve their parenting. It is the Government's role to ensure that we have the means to support parents. We must also recognize that a very small minority of parents fundamentally fail their children. We cannot ignore the plight of those children who have been failed. (10.03.04 Col. 6440)

# Alterations to legal system's response to children

- For some children, court, not children's hearing, becomes primary forum for decisions about children;
- Local authority is transformed from service provider of children's services to enforcer of responsible behaviour



# Provisions of the Act

- ASBO can be made where specified person is at least 12 years old;
- Criteria are that there has been antisocial behaviour and that an order is necessary to protect public;
- A local authority must consult with the Reporter before applying for ASBO against a child

# Provisions of the Act

- When deciding on an interim ASBO, the court must consider any views of the Reporter;
- When deciding on a full ASBO, the court must require the Reporter to arrange a children's hearing;
- Court making an interim or full ASBO may require the Reporter to refer the child's case to a hearing

# Role of the children's hearing

Section 4(4) of the Act:

“Where the specified person is a child, the sheriff shall, before determining the application, require the reporter to arrange a children's hearing for the purpose of obtaining their advice as to whether the condition in subsection (2)(c) is met;”

# Role of the children's hearing

Subsection (2)(c) of the Act:

**“that an antisocial behaviour order is necessary for the purpose of protecting relevant persons from further antisocial behaviour by the specified person”**

# Removal of Reporter's discretion

- The fact of making of antisocial behaviour order constitutes ground of referral and law states that reporter will be taken to be satisfied that compulsory measures of supervision are required

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