

A guide to anti-social behaviour orders

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Ministerial foreword

It is now seven years since anti-social behaviour orders (ASBOs) were introduced following the Crime and Disorder Act 1998. Since then over 7,300 ASBOs have been issued. We often hear from residents up and down the country about how useful they are in bringing respite to communities suffering anti-social behaviour. The drive to tackle anti-social behaviour has been pioneered by anti-social behaviour practitioners and other interested parties all over England and Wales.

During this time much has happened:

- For our part we have adjusted policy and response to changing demands prompted by practitioners to ensure that the tool continues to be effective.
- The Together ActionLine, website and Academy events have provided an excellent source of advice and ensured spread of good practice.
- Practitioners have developed protocols and helpful leaflets to improve communication between themselves.
- A number of organisations have also organised seminars and conferences to bring practitioners together, debate problem areas and resolve issues between them.
- The courts have responded and played their part and we particularly welcome Lord Justice Thomas's guidance, which has been referred to substantially for the revision of this guidance, and which provides the latest case law for practitioners in a very clear and methodical manner.

The fundamental ethos of ASBOs remains that they combine the twin-track approach of enforcement and support.

However, there have also been some developments and policy adjustments as the courts have interpreted ASBO legislation as more and more cases come before them.

After ASBOs were first introduced, orders on conviction were introduced to improve access and timing; and interim orders for extreme cases where communities needed protecting urgently. Since May 2004 courts have been able to issue individual support orders to juveniles issued with ASBOs on application. This is a positive measure, attaching positive conditions to ensure that young people get all the support they need to change their behaviour. I urge agencies to make the greatest possible use of them.

We are also extending the power to apply for orders to the Environment Agency and Transport for London.

We continue to listen to the views of practitioners and stakeholders and to adjust policy and legislation accordingly. One illustration of this has been the development of the one-year review of ASBOs issued to young people, which is explained in this guidance. Although it is not yet enshrined in legislation, we feel that this formalises existing good practice to ensure that young people are provided with the right support throughout the duration of their ASBO. We also hope to introduce later this year measures to empower the courts to apply rigorous case management in ASBO proceedings.

This guidance is also issued in the context of the Respect programme which builds on the Government's anti-social behaviour strategy. Under the Respect drive, we will maintain and build on the strong enforcement action that has helped us make so much progress, but extend this further through a comprehensive strategy to deliver:

- a new approach to tackling problem families;
- a wide-ranging programme to address poor parenting;
- measures to improve behaviour and attendance in schools;

- initiatives to provide constructive activities for young people; and
- a drive to strengthen communities through more responsive public services.

I am delighted to introduce this new guidance which I am sure everyone working in the field of anti-social behaviour will find to be a source of reference that is both useful and informative.

TONY McNULTY
August 2006

Introduction

This guidance on ASBOs draws on the experience of the police service, local authorities, youth offending teams, the courts and other organisations. It is intended for use by practitioners – people with a professional responsibility for tackling anti-social behaviour, whether they represent local authorities, the police, youth offending teams, registered social landlords, prosecutors, the courts, or any other agency which seeks to tackle the problem of anti-social behaviour.

The crime and disorder reduction partnership lies at the heart of the Government's approach to the reduction of both crime and anti-social behaviour (much of which is of course criminal in nature). All crime and disorder reduction partnerships have an anti-social behaviour co-ordinator and access to them is published on the Together website (www.together.gov.uk). All partnerships, too, are required to draw up strategies for the reduction of anti-social behaviour in their areas, and the anti-social behaviour co-ordinators are in the best position to ensure that those strategies genuinely reflect the needs of the community served by the partnerships.

Anti-social behaviour is given a wide meaning by the legislation – to paraphrase the Crime and Disorder Act 1998, it is behaviour that causes or is likely to cause harassment, alarm or distress to one or more people who are not in the same household as the perpetrator. Among the forms it can take are:

- graffiti – which can on its own make even the tidiest urban spaces look squalid, and can act as a magnet for further anti-social behaviour and crime;
- abusive and intimidating language, too often directed at minority groups;
- excessive noise, particularly late at night;
- fouling the street with litter;
- drunken behaviour in the streets, and the mess it can result in; and

- dealing drugs, with all the problems to which it gives rise.

There has been considerable criticism of the current wording being too wide. However, the House of Commons Select Committee looked at this in its report on anti-social behaviour and concluded¹ that it would be a mistake to make it more specific because:

- the definitions work well from an enforcement point of view and no significant practical problems appear to have been encountered;
- exhaustive lists of the kind of behaviour considered anti-social by central government would be unworkable and anomalous; and
- anti-social behaviour is inherently a local problem and may be of a different nature in different localities.

This flexibility is therefore a major strength of the current statutory description of anti-social behaviour.

Anti-social behaviour is an issue that concerns everyone in the community. Incidents that cause harassment, alarm and distress cannot be written off as generational issues – they impact on the quality of life of young and old alike. And they require a response that puts partnership into action.

Just as the problems of anti-social behaviour are wide-ranging, the solutions too must operate equally effectively on many levels. While an energetic and constructive police response is essential, it must be supplemented by engagement from a wide variety of partners. To take only the most obvious, schools need to have effective policies in place against truancy and bullying, and the police need to work closely with licensing authorities in order to tackle alcohol-related problems. Local authorities and registered social landlords need to take responsibility for acting against anti-social behaviour by their

¹ House of Commons Select Committee, *Anti-Social Behaviour: 5th Report of Session 2004–05*, recommendation 7.

tenants and against their tenants. Social services need to ensure that they are taking the welfare of the whole community fully into account when making decisions, as well as taking care of the perpetrators. And, just as important, all of these bodies need to be sharing information with each other to the fullest possible extent in order to act fairly and decisively against the problems of anti-social behaviour.

1. Anti-social behaviour orders: the basics

What are anti-social behaviour orders?

Anti-social behaviour orders (ASBOs) were introduced by section 1 of the Crime and Disorder Act 1998 in England and Wales and have been available since April 1999. The powers to deal with anti-social behaviour were strengthened and extended by the Police Reform Act 2002, which introduced the power to make similar orders on conviction in criminal proceedings, and in county court proceedings, and the power to make interim orders. Orders can now also extend across any defined part of England and Wales. The provisions relating to orders on conviction under section 1C and interim orders under section 1D in the magistrates' courts were inserted in the 1998 Act by the Police Reform Act 2002 and came into force on 2 December 2002.

The provisions relating to orders in county court proceedings (section 1B) were also inserted in the 1998 Act by the Police Reform Act 2002 and came into force on 1 April 2003.

ASBOs are civil orders to protect the public from behaviour that causes or is likely to cause harassment, alarm or distress. An order contains conditions prohibiting the offender from carrying out specific anti-social acts or from entering defined areas and is effective for a minimum of two years. The orders are not criminal sanctions and are not intended to punish the offender.

Applications for ASBOs are made to the magistrates' court by 'relevant authorities' which include local authorities, chief officers of police, registered social landlords, housing action trusts or any other person or body specified by the order of the Secretary of State (as previously mentioned, it is intended that the Environment Agency and Transport for London be specified for this purpose). A similar order can be applied for during

related proceedings in the county court, and can be requested on conviction of certain offences in the criminal courts. It remains a civil order irrespective of the issuing court.

ASBOs are community-based orders that involve local people not only in the collection of evidence to support an application but also for the purpose of helping to enforce breaches. By their nature they encourage local communities to become actively involved in reporting crime and disorder and to contribute actively to building and protecting the community. The civil status of ASBOs has implications for the nature of the proceedings at which applications are heard. For example, hearsay and professional witness evidence can be heard. This is an extremely important feature of ASBOs that can help protect victims and witnesses of anti-social behaviour.

What sort of behaviour can be tackled by ASBOs?

Anti-social behaviour that can be tackled by ASBOs includes:

- harassment of residents or passers-by;
- verbal abuse;
- criminal damage;
- vandalism;
- noise nuisance;
- writing graffiti;
- engaging in threatening behaviour in large groups;
- racial abuse;
- smoking or drinking alcohol while under age;
- substance misuse;
- joyriding;
- begging;
- prostitution;
- kerb-crawling;
- throwing missiles;
- assault; and
- vehicle vandalism.

The terms of each order should be tailored to the circumstances of the individual case.

Tackling prostitution and drug-related anti-social behaviour at Kings Cross

Issue

Kings Cross was one of the most infamous drug and vice hotspots in the country. For years the authorities had struggled to improve the area.

Approach

The anti-social behaviour partners meet to discuss individual cases and offer appropriate help, including housing and rehabilitation services. If the perpetrators of the anti-social behaviour fail either to engage or to change their behaviour, acceptable behaviour agreements (ABAs) are often used to bring to the offenders' attention the impact of their behaviour on the community.

Outcomes

This worked very well with only 4 out of 32 ABAs progressing to ASBO applications. But where the ASBO was deemed necessary by the partners, Camden police officers put together bundles of evidence, with Camden Council's legal team making the ASBO application. Impact statements were taken from local community activists and councillors to prove the need for the orders. Since then, having issued 45 ASBOs with prohibitions within the area, Kings Cross is completely unrecognisable from its previous image. The partners have also been successful in working with perpetrators to facilitate a significant sustainable change in behaviour. One crack cocaine addict recently wrote to the local paper apologising to the people of Kings Cross for his behaviour. Another went on to be a drugs worker in Brixton while a third is now working in the Home Counties and has had her ASBO discharged with the consent of the authorities.

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Legal definition of anti-social behaviour for the purpose of obtaining an order

Under section 1 of the Crime and Disorder Act 1998, the agency applying for an ASBO must show that:

- the defendant behaved in an anti-social manner; and
- an order is necessary for the protection of people from further anti-social behaviour by the defendant.

This is sometimes referred to as the 'two-stage test'.

Section 1(1) of the Act describes acting in an 'anti-social manner' as acting 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 the perpetrator. The wording is intentionally wide-ranging to allow for the orders to be used in a variety of circumstances.

The expression 'likely to cause' has the effect that someone other than a victim of the anti-social behaviour can give evidence of the likelihood of its occurring. This is intended specifically to enable the use of professionals as witnesses where those targeted by the behaviour feel unable to come forward, for example for fear of reprisals or intimidation.

Standard of proof

In the case of *McCann (R v Crown Court at Manchester ex parte McCann (FC) and Others (FC))*, the House of Lords, while confirming that ASBOs were civil orders, set out the law on the standard of proof as follows:

'they [magistrates] must in all cases under section 1 apply the criminal standard... it will be sufficient for the magistrates, when applying section 1(1)(a) to be sure that the defendant has acted in an anti-social manner, that is to say in a manner which caused or was likely to cause harassment, alarm, or distress to one or more persons not of the same household as himself' (Lord Steyn, paragraph 37)

This means that the criminal standard of proof applies to acts of anti-social behaviour alleged against the defendant.

However, Lord Steyn went on to explain:

‘The inquiry under section 1(1)(b), namely that such an order is necessary to protect persons from further anti-social acts by him, does not involve a standard of proof: it is an exercise of judgement or evaluation.’

It should be noted that it is the effect or likely effect of the behaviour on other people that determines whether the behaviour is anti-social. The agency applying for the order does not have to prove an intention on the part of the defendant to cause harassment, alarm or distress. Under section 1(5) of the 1998 Act, the Court will, however, disregard any behaviour shown to be reasonable in the circumstances.

The most common behaviour tackled by ASBOs is general loutish and unruly conduct such as verbal abuse, harassment, assault, graffiti and excessive noise. ASBOs have also been used to combat racial harassment, drunk and disorderly behaviour, throwing fireworks, vehicle vandalism and prostitution. Many other problems, for instance the misuse of air guns, could also lend themselves to this approach.

The wide range of anti-social behaviour that can be tackled by ASBOs and the ability to tailor the terms of the order to each specific case illustrates their flexibility. There have been cases where the chief executive of a company has been issued with an ASBO for anti-social behaviour committed by the company. This is because ASBOs must be issued against individuals and not against organisations. ASBOs may also be used, for example in the misuse of mini motos, where warnings and other measures have failed.

Against whom can an order be made?

An order can be made against anyone aged 10 years or over who has acted in an anti-social manner, or is likely so to act, and where an order is needed to protect people and the wider community from further anti-social acts. A list of interventions available for children under 10 is at Appendix A.

The orders are tenure-neutral and can be used against perpetrators living in any type of housing (not just social housing). Because the order is specific to the person, if someone moves house, it still remains in force. ASBOs can be used to combat anti-social behaviour in a wide range of situations and settings. They are highly relevant to misconduct in public spaces such as parks, shopping centres and transport hubs, but they are by no means confined to such areas.

Where groups of people are engaged in anti-social behaviour, a case needs to be made against each individual against whom an order is sought. However, the cases can be heard together by the court. Agencies have found that targeting ringleaders with orders is an effective deterrent to other members of the group.

When investigating complaints about anti-social behaviour, it is vital that agencies satisfy themselves that complaints are well founded. In particular, they should consider the possibility that complaints may have been motivated by discrimination, perhaps on racist grounds, or to further a pre-existing grudge. However, failing to act against instances of anti-social behaviour can lead to an escalation of the problem by increasing fear of crime or leading those subjected to the anti-social behaviour to retaliate. Nipping unacceptable behaviour in the bud is therefore the best option.

Who can apply for an order?

Agencies able to apply for orders are referred to as ‘relevant authorities’ in the legislation (section 1(1A) of the Crime and Disorder Act 1998). These are:

- local authorities – by virtue of sections 1(A) and 1(12) of the 1998 Act, a local authority is, in England, the council of a county, district or London Borough, the Isle of Wight or the Isles of Scilly, or, in Wales, the council of a county or county borough;
- police forces, including the British Transport Police (BTP);
- registered social landlords (RSLs), that is a body registered as a social landlord under section 1 of the Housing Act 1996; and
- Housing Action Trusts (HATs).

The Environment Agency and Transport for London are to be designated as relevant authorities in due course.

Local authorities and the police may apply for an order where they consider it necessary to protect persons in their area ('relevant persons') from further anti-social behaviour irrespective of where the original anti-social behaviour took place. An order can be sought which provides protection not just to the relevant persons but also, where necessary, to any persons in England and Wales.

The BTP, RSLs and HATs are empowered to apply for orders by virtue of changes introduced under the Police Reform Act 2002, which enable these agencies to deal with their particular problems of anti-social behaviour in a more effective and timely manner. RSLs and HATs may apply for orders against non-residents as well as residents and should consider doing so where the anti-social behaviour of non-residents is affecting the quality of life for residents.

Applications from the BTP, RSLs or HATs must concern anti-social behaviour related to the premises for which they are responsible by persons who are on or in the vicinity of such premises or likely to be either on or in the vicinity of such premises.

The BTP, RSLs and HATs are required to consult both the local authority and local police force when applying for an order. The agencies are not compelled to use the power. The police or local authority may still apply for ASBOs on their behalf.

Under section 17 of the 1998 Act, the police and local authorities have a joint responsibility to develop and implement strategies for tackling anti-social behaviour and disorder in the local area. This responsibility is not changed in any way by allowing the BTP, RSLs and HATs to apply for orders.

Which courts can make ASBOs?

ASBOs can be made by:

- magistrates' courts (acting in their civil capacity);
- county courts (where the relevant authority or the person against whom the

order is sought is a party to the proceedings and the non-party is joined to these proceedings);

- magistrates' courts (on conviction in criminal proceedings);
- the Crown Court (on conviction in criminal proceedings);
- youth courts (on conviction in criminal proceedings); and
- at the time this guidance was being revised, 11 county courts, which were trialling hearings for ASBO cases for children and young people. These are as follows:

Bristol
Central London
Clerkenwell
Dewsbury
Huddersfield
Leicester
Manchester
Oxford
Tameside
Wigan
Wrexham

The pilot will be evaluated in autumn 2006.

The table overleaf sets out what each type of court can do.

Length of orders

Orders are issued for a minimum of two years and can be issued for an indefinite period pending a further order. They can also be varied or discharged on application by either party, although they cannot be discharged in the first two years without the consent of both parties. In the case of young people, ASBOs should be reviewed each year as explained on page 45.

Anti-social behaviour response courts

Within Her Majesty's Courts Service there is now a network of specialist anti-social behaviour response courts across the country – existing courts that are better able to respond to the issue of anti-social behaviour. They ensure that magistrates and court staff are specially trained and follow a framework – including specialist sessions, witness care, local community engagement and appropriate media strategies. This ensures courts are able to respond properly to anti-social behaviour cases in a visible and consistent way.

	Magistrates' court – acting in their...			
	...Civil capacity	...Criminal capacity	County court	Youth court
Which ASBO?	No restrictions	Only on conviction in criminal proceedings	Pilots taking place for children and young people until September 2006	Only on conviction in criminal proceedings as it has no civil jurisdiction
Disposals available if ASBO breached – under-18s	n/a	n/a	n/a	Sections 90 and 91 cases – Powers of Criminal Courts (Sentencing) Act 2000, detention and training order, action plan order, referral order, attendance centre order, supervision order, reparation order, parenting order, fine, community punishment and rehabilitation order (16–17 year olds), absolute discharge All sentences to the community are open to the following orders: curfew order, parenting order, drug testing and treatment order
Disposals available if ASBO breached – adult	Maximum five years' imprisonment; community order, absolute discharge, fine, compensation order, deferred sentence	Maximum five years' imprisonment; community order, absolute discharge, fine, compensation order, deferred sentence	Maximum five years' imprisonment; community order, absolute discharge, fine, compensation order, deferred sentence	n/a

Untouchable gang's reign of terror on a Merseyside street ends in the anti-social behaviour response courts

Issue

A gang of 10 youths who believed they were beyond the reach of the law were regularly terrorising vulnerable residents on a street in Thornton, Merseyside. The youths had been smashing windows, breaking into and throwing missiles at vehicles, and verbally abusing people. Victims included the young, elderly and vulnerable and the gang's behaviour created such fear locally that residents would not go out after dark or leave their properties unattended. Many of them installed CCTV. Only the most serious incidents were reported at the time they occurred but victims would not press charges for fear of being singled out and targeted by the gang.

Approach

The neighbourhood police officer carried out a detailed investigation of the problem to bring a case for arresting the perpetrators and bringing them before the courts. Previous police logs and reports were scrutinised and impact statements taken from the majority of witnesses in anonymity to use as hearsay evidence. One family, which had been singled out by the perpetrators, was given support by the police with daily contact and visits. The victims installed CCTV and kept a diary of all the incidents which was exhibited as evidence.

The police and Crown Prosecution Service (CPS) worked closely together to prepare the case and the police gathered strong evidence. Interviews with perpetrators were carefully planned so that when faced with

the evidence against them all 10 perpetrators admitted their responsibility.

In advance of the case, the CPS specialist prosecutor for the area worked to set up a special anti-social behaviour response court. Advance disclosure of evidence to the judge and other parties prior to the court hearing meant that the case was dealt with quickly once in court.

At the hearing, nine perpetrators were charged on criminal offences ranging from disorderly behaviour to attempted arson. Three of the gang were given ASBOs and six of the gang signed acceptable behaviour agreements.

Conditions attached to the ASBOs were designed to protect the community from any recurrence of the behaviour. The perpetrators were restricted to sleeping at their nominated address and were not allowed out between 6.00pm and 6.00am unless accompanied by a parent or appropriate adult. They were clearly instructed not to approach or interfere with any prosecution witnesses. They were also prohibited from being verbally abusive and from throwing missiles at any residential property or from

carrying anything which they could use to launch a missile.

The CPS advised the local media of the anti-social behaviour response court and the press reported this operation on the front pages of the local papers. This is part of a strategy to publicise successful action of the police, CPS and judiciary working in partnership to tackle anti-social behaviour. Its aim is to encourage the community to report anti-social behaviour, knowing that it will be dealt with effectively.

Outcome

The operation provided much needed relief for the residents in the area. A parent of one of the gang members has since become proactive in a local community action group which is working to increase diversionary activities for young people in the area.

For the professionals involved in the case, the operation has underlined the importance of taking impact statements as a matter of course when victims fail to press charges due to fear of reprisals. The multi-agency partnership approach works best if one officer who is aware of all the facts of the case co-ordinates the case.

Orders made in county court proceedings (section 1B of the Crime and Disorder Act 1998)

For an application to be made in the county court, both the applicant and the person against whom the application is made must be parties to the 'principal proceedings' (such as an eviction). Where the relevant authority is not a party to the principal proceedings, an application to be made a party and the application for an order should be made as soon as possible after the authority becomes aware of the principal proceedings. Where the person alleged to have committed the anti-social behaviour is not a party but the relevant authority thinks that his anti-social acts are material to the principal proceedings, the authority can apply to have him joined in the proceedings and apply for an order. The county court will be able to grant orders where the principal proceedings involve evidence of anti-social behaviour.

Enabling the county courts to make orders may remove the need for a separate legal process in the magistrates' court and make it possible for the public to be protected from anti-social behaviour more quickly and more efficiently.

An order made in county court proceedings might, for example, be useful to prevent an individual, evicted from his accommodation for harassing his neighbours and/or others in the area, from returning to the same area to continue the abusive behaviour.

2. Taking a strategic approach

Orders can only work properly when they are based on partnership in action. They are powerful instruments, and they will be at their most effective when all the agencies confronted by an individual's anti-social behaviour collaborate to make the best possible use of them.

Orders made on conviction in criminal proceedings

Criminal courts – the magistrates' court, the Crown Court and the youth court – can make orders against an individual who has been convicted of a criminal offence, and this is known as an 'order on conviction' (sometimes also called a 'CRASBO'). Some county courts are currently trialling stand-alone ASBO cases for children and young people until the end of September 2006. These are not proceedings on conviction.

The order on conviction is considered at a civil hearing after the verdict. It is not part of the sentence the offender receives for the criminal offence.

The order will be granted on the basis of the evidence presented to the court during the criminal proceedings and any additional evidence provided to the court after the verdict, although it is possible for the order to be granted on the basis of the criminal proceedings alone. There is a statutory requirement for a conviction to be for an offence committed after the date on which the insertion of the relevant provisions by the Police Reform Act took effect.

The court may make an order on conviction either on its own initiative or following an application by the prosecutor (see section 1C(3) of the Crime and Disorder Act 1998). Alternatively, the order can be requested by the police or local authority, who may make representations to the court in support of the request. Orders on

conviction cannot be made if there is a deferred sentence for the relevant offence.

The court may adjourn the proceedings following conviction to allow an application for an order on conviction to be made. By virtue of section 1D(1)(b) of the 1998 Act (inserted by the Serious Organised Crime and Police Act 2005), the court may also make an interim order.

The order on conviction is a civil order and has the same effect as an ASBO made on application – it contains prohibitions rather than penalties and is made in civil proceedings. It is similar to the football banning order on conviction in that it is a civil order made following a criminal procedure.²

If the offender is detained in custody, the court may make provision for requirements of the order on conviction to become effective on their release. For this period the order takes effect immediately but its terms are suspended until release.

Where is an ASBO valid?

Before the changes introduced by the Police Reform Act 2002, the conditions an order could impose extended only to the applicant's area and adjoining areas. An order can now extend across any defined area within England and Wales.³

The power to make an order over a wide area is for use where there is reason to believe that the person concerned may move or has already moved. It goes some way to addressing the problem of offenders moving to other areas and continuing the behaviour.

An order covering a wider area could address problems such as ticket touting at different train stations or anti-social behaviour on trains, and could help deal with the minority

² Section 1C(2) of the Crime and Disorder Act 1998 states that the court may make an order which prohibits the offender from doing anything described in the order. Section 14A of the Football Spectators Act 1989 places a duty on the court to impose a football banning order if a person is convicted of a relevant offence or to state in open court why such an order has not been made.

³ The geographical area which an order may cover is indicated by section 1(6) for ASBOs and orders made in county court proceedings; and by section 1C(2)(b) for orders made on conviction in criminal proceedings.

of the travelling community who persistently engage in anti-social behaviour around the country. Careful thought needs to be given to the consequences of extending the exclusion area so that it does not simply result in displacing the behaviour into a neighbouring area.

Any evidence of the itinerant nature of the defendant's lifestyle, of the likelihood of the individual moving to another area, or of wide geographical spread of offending behaviour should be submitted with the application file. The applicant does not have to prove that anti-social behaviour will occur elsewhere, just show that it is likely to.

The more serious the behaviour, the greater the likelihood that the court will grant a geographically wide order. Orders that seek to operate in the whole of England and Wales will not be granted without evidence that that is the actual or potential geographical extent of the problem. Further detail about effective prohibitions is given in Chapter 7.

Can interim orders be made?

Interim orders are available under section 1D of the Crime and Disorder Act 1998 (as amended by section 65 of the Police Reform Act 2002 and the Serious Organised Crime and Police Act (SOCPA) 2005) in both the magistrates' court and the county court. This is an order made at an initial court hearing held in advance of the full hearing. This temporary order can impose the same prohibitions and has the same penalties for breach as a full order.

The interim order can, with leave of the justices' clerk, be made without notice of proceedings being given to the defendant. A without notice interim order has no effect until it has been served on the defendant. If it is not served within seven days, it will cease and will not have effect. The benefit of the interim order is that it enables the courts to order an immediate stop to anti-social behaviour and thereby to protect the public more quickly. It reduces the scope for witness intimidation by making it unlawful for the offender to continue the behaviour while the ASBO application is being processed. It also removes any delay in the proceedings.

Section 139 of SOCPA 2005 gives the court the power to grant an interim order pending an adjourned hearing for an order on conviction.

The interim order will send a clear message to the community that swift action against anti-social behaviour is possible.

The order can be made at the outset of proceedings for an ASBO application if the court considers that it is just to make such an order. The applicant authority should, if possible, request an interim order at the same time as submitting an application for a full order.

When considering whether to make an interim order, the court will be aware that it may not be possible at the time of the interim order application to compile all the evidence which would prove that a full ASBO is necessary. Rather the court will determine the application for the interim order on the question of whether the application for the full order has been properly made and where there is sufficient evidence of an urgent need to protect the community.

Applications for interim orders will be appropriate, for example, in cases where the applicant feels that persons need to be protected from the threat of further anti-social acts which might occur before the main application can be determined. Where an interim order is granted without notice of proceedings to the defendant, it is expected that the court will usually arrange an early return date.

An individual who is subject to an interim order will have the opportunity to respond to the case at the hearing for the full order. The defendant is also able to apply to the court for the interim order to be varied or discharged. In this instance the matter will be dealt with at a hearing dealing specifically with the interim order.

The interim order:

- will be for a fixed period;
- can be varied or discharged on application by the defendant;
- will cease to have effect if the application for the ASBO or county court order is withdrawn or refused;

- may extend over any defined area of England and Wales; and
- has the same breach penalties as for a full order.

The court procedures and forms to be used when applying for or making an interim order are set out in the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002 (available at www.opsi.gov.uk/si/si2002/20022784.htm).

Interim orders made in the county courts

A relevant authority may apply for an interim order in the county court once it is party to the 'principal proceedings'. The application for an interim order should be made early in the proceedings.

The procedure for making applications for orders in the county court is set out in the Practice Direction of the updated Civil Procedure Rules 65. 24 to 26 (Appendix B).

Orders against children and young people

Under the Crime and Disorder Act 1998, applications for ASBOs against young people aged 10 to 17, and in certain circumstances 18-year-olds, can be heard in the magistrates' court. As a result of the recent practice direction (the Magistrates' Courts (Anti-Social Behaviour Orders) Composition of Benches practice direction, February 2006), the justices constituting the court should normally be qualified to sit in the youth court unless to do so would result in a delayed hearing. Applications for orders are not heard in the youth court as a matter of course because of the civil status of the orders, although youth courts may make orders where appropriate on conviction.

Practitioners familiar with dealing with young people's cases will be aware of the restrictions on reporting that apply under the Children and Young Persons Act 1933. However, automatic reporting restrictions do not apply to stand-alone ASBOs as they are civil orders. In orders on conviction cases, the court does have discretion under section 39 of the Children and Young Persons Act 1933 to impose reporting restrictions. Reporting

restrictions will always apply to the criminal proceedings on which the order on conviction is based but in all other cases, the presumption is that publicity will be allowed. See page 52 for detailed guidance on promoting awareness of orders.

A court making an ASBO does have the power to impose restrictions to protect the identity of a person under 18. But the imposition of reporting restrictions may restrict the effectiveness of the order if the effectiveness of the ASBO will largely depend on the wider community knowing the details. Please see the separate sections on publicity and on children and young people.

Breach of an order

Breach of an order is a criminal offence; criminal procedures and penalties apply. The standard of proof required is the criminal standard. Guilt must be established beyond reasonable doubt. Breach proceedings are heard in the magistrates' court and may be committed to the Crown Court. Such proceedings are the same irrespective of whether the order is a full or interim order made on application to the magistrates' court or the county court, or an order on conviction in criminal proceedings.

Expert prosecutors

A team of 14 anti-social behaviour expert prosecutors has been set up with funding from the Together campaign to support all Crown Prosecution Service (CPS) prosecutors dealing with anti-social behaviour-related cases. The team drives improvements in performance across the country.

The team:

- promotes better partnership working between local prosecutors, the police, local authorities, registered social landlords and others involved in taking action against anti-social behaviour;
- delivers training to prosecutors on the new powers to obtain orders on conviction;
- provides advice to prosecutors on the full range of enforcement measures and key issues such as prosecution of ASBO breach; and

- works with court clerks and magistrates in improving their response to anti-social behaviour.

In addition to the 14 specialist prosecutors, anti-social behaviour co-ordinators have now been appointed CPS-wide to ensure that there is a focus on anti-social behaviour issues in every CPS area. Their role is to drive this work forward. Further information can be obtained from Sarah Johnston at sarah.johnston@cps.gsi.gov.uk.

Standard ASBO form

A copy of the order form used by the magistrates' courts can be found at Appendix C.

Disposals

The maximum penalty for breach of an order is five years' imprisonment for an adult offender. A conditional discharge is not available for breach of an ASBO.

The full range of disposals of the youth court is available, and custody should only be considered as a last resort in cases of serious and persistent breach (if appropriate, breach may be dealt with by way of a final warning). Where custody is deemed by the court to be necessary, the maximum sentence for breach by children and young people is a detention and training order (DTO), which has a maximum term of 24 months - 12 months of which is custodial and 12 months is in the community. The DTO is available for 12 to 17-year-olds (although 12 to 14-year-olds must be persistent (criminal) offenders to be given a DTO). A 10 to 11-year-old can be given a community order for breach of an ASBO. The sentence given should be proportionate and reflect the impact of the anti-social behaviour. It must relate to all the relevant circumstances, such as the number of breaches and how the breach relates to the finding of anti-social behaviour. Proceedings should be swift and not fractured by unnecessary adjournments either during the proceedings or before sentencing. Information on how to handle breaches of ASBOs by young people is contained in page 26 of the anti-social behaviour guidance issued by the Youth Justice Board, Home

Office and Association of Chief Police Officers.⁴

The leading precedent for the approach on sentencing on this point is *R v Lamb* [2005] EWCA Crim 2487. In this judgment the court drew the distinction between a breach that represents further anti-social behaviour and those that are merely breaches of the terms of an order, for instance, as in that case, not to enter a particular metro system. Differing from earlier decisions - in particular from the case of *R v Morrison* [2005] EWCA Crim 2237 - the court held that the orders are properly designed to protect the public from frequent and distressing repeated misbehaviour.

In the case of *Morrison*, it was determined that if the breach amounted to a specific criminal offence that carried a particular penalty, the sentence for breach of the ASBO could not be greater than that.

As the court in *Lamb* pointed out, this would merely encourage people to commit criminal offences rather than breach their ASBOs in other ways. The court has therefore laid down a series of steps for consideration prior to the imposition of a sentence.

Where a breach does not involve harassment, alarm or distress, a community order may be considered to assist the defendant to learn to live with the terms of the ASBO. This is entirely consistent with the guideline on breach proceedings issued by the Sentencing Guidelines Council, where it is pointed out that custody should be used as a last resort, and the primary purpose of breach proceedings should be to ensure that the order itself is observed.

However, *Lamb* confirmed that where there is a persistent breach without harassment, alarm or distress, it may become necessary to impose custody to preserve the authority of the court. In those circumstances, the sentence should be as short as possible, and in *Lamb* the individual sentences were reduced to two months in custody. However, where the new breach amounts to further harassment, alarm or distress, then the court thought orders of eight months, on a guilty plea, were appropriate, applying *R v Braxton* [2005] 1 CR APP R (S) 36, *R v Tripp* [2005]

⁴ Youth Justice Board, Home Office and Association of Chief Police Officers (2006) *Anti-social Behaviour: A guide to the role of Youth Offending Teams in dealing with anti-social behaviour*. This can be downloaded at www.youth-justice-board.gov.uk/Publications/Scripts/prodView.asp?idproduct=212&ep=

EWCA Crim 2253 and *R v Dickinson* [2005]
2 CR APP R (S) 488.

When the offender has been found guilty of breaching an order, and before sentencing, the court may take reports from the local authority or police and any applicant agency. The court should also consider the original reasons for the making of the order.

A copy of the court order (ASBO) as granted (including any maps and details of any prohibitions) can be put before the court during breach proceedings as evidence that an order has been made without the need for a statement formally proving that an order was made. This provision was introduced by SOCPA 2005 on 1 July 2005.

3. Managing the application process

This section focuses on the main issues involved in applying for an order. For an ASBO to be effective, the process of evidence gathering and applying to the courts should be as swift as possible.

Groups of organisations and partnerships such as crime and disorder reduction partnerships (CDRPs) may wish to consider buying specialist legal advice in blocks or pooling expertise and experience. This is likely to be more cost effective than buying in legal advice on a case-by-case basis.

Partnership working

A fully co-ordinated approach is essential if anti-social behaviour is to be tackled. Effective defence of communities depends on all agencies - including housing organisations, social services, education authorities and youth services - accepting that the promotion of safe and orderly neighbourhoods is a priority, and working together to agree a response to unacceptable behaviour. The consultation arrangements are important but should be organised so that they do not cause delays in dealing with cases.

Agencies and communities join to tackle anti-social behaviour in Slade Green

Issue

Slade Green in Bexley was once described as 'a cluster of low-rise estates centred on a precinct of shops and Slade Green railway station, where vandalism, burglary and drugs blight the lives of residents'. Slade Green has experienced high levels of crime and social deprivation and features among the top 16% of the most deprived wards in England. Bexley Police identified Slade Green as a hot spot for residential and non-residential burglary, auto crime, disorder, domestic violence and race crime. Residents, local housing providers and the leader of the Slade Green Community Safety Forum were alarmed at the escalation of anti-social behaviour in the area. Residents regularly experienced threats and actual violence, making them afraid of giving evidence to the police.

Approach

A meeting between residents and the local partnership team produced an outline action plan. Community meetings, local press coverage and 'Have A Say' days led to key witnesses being willing to give evidence.

The partnership team applied for ASBOs against the six men identified as the most prolific perpetrators. In total, 30 witnesses gave evidence, most in the form of hearsay, with nine giving evidence in person at the court hearing. The policing team involved in the case supported witnesses by being at court to provide additional reassurance. Victim Support's witness support service also helped. Strong witness evidence and a compelling case prepared by the police and the council legal department convinced the court to agree to all six applications.

Outcome

The impact of these ASBOs on crime and fear of crime in the area was significant. For the period 2003/04, robbery incidents fell by 53%, burglary by 21% and auto crime by 40%. Of the original six to receive an ASBO, one person has been prosecuted for breach of the ASBO condition relating to criminal damage to a car, for which he received a custodial sentence.

A community safety action zone (CSAZ) was established in Slade Green with the aim of reducing crime and disorder in the area. A multi-agency operations group was formed

to find the grass roots issues leading to these problems. The addition of environmental and security improvements have enhanced the appearance of the area and have made it a safer and more secure place to live. These improvements have included improved street lighting, removal of graffiti, removal of fly-tipping, removal of abandoned and unlicensed cars and improvements to play areas.

A survey was carried out before the start of the CSAZ which found that 22% of residents in Slade Green who responded felt safe at night in their area. After the CSAZ had been set up, 93% of residents surveyed in Slade Green felt safe at night in their area.

Contact

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Taking ownership

It is vital that a specified individual within the lead agency takes on a lead role with responsibility for the ownership, direction and management of the case. This will help ensure that there is no confusion about who is expected to make sure that the necessary actions are taken on the right timescale.

The lead individual should manage and co-ordinate the involvement of other agencies so that they add value by contributing their own specialist knowledge and expertise.

A multi-agency approach should be adopted so that all agencies that could hold information on the individual in question are involved in the process at an early stage.

Such agencies include the Probation Service, social services, health services, the youth offending team (YOT) and voluntary organisations, all of which may have come into contact with the individual or members of their family.

CDRPs should consider adopting the anti-social behaviour action group (ASBAG) approach developed by Watford Borough Council.

Watford's partnership approach involves all relevant statutory and voluntary agencies and engages the local community in taking a stand against the perpetrators of anti-social behaviour.

They have developed a problem-solving approach to issues and apply the SARA model:

- Scan for all available intelligence in relation to the anti-social behaviour issue.
- Analyse the intelligence, looking for the root cause of the problem.
- Respond with a clear action plan designed to address the behaviour.
- Assess the progress/success of the action plan on a monthly basis.

Delivery is through the monthly multi-agency ASBAG, which includes cross-boundary working as required.

Watford's anti-social behaviour strategy allows for a range of diversionary activities and intervention as alternatives to enforcement, if the ASBAG agrees they are appropriate to effectively tackle an individual and their anti-social behaviour, such as:

- verbal warnings;
- written warnings;
- acceptable behaviour contracts (ABCs);
- mentoring programmes;
- intervention programmes;
- educational programmes;
- supporting youths and their parents; and
- restorative justice (when and where appropriate for victims and localities).

Information is exchanged between stakeholders and members of the CDRP at each monthly ASBAG meeting.

This strategy works in parallel with the prolific and priority offender strategy and a representative from the prolific offender unit is represented on the ASBAG to avoid duplication of work.

If the level of anti-social behaviour is such that the risk of further behaviour or escalation of behaviour is imminent, the Watford anti-social behaviour co-ordinator may convene an immediate action plan meeting with the police anti-social behaviour officer and a legal representative from Watford Borough Council acting on the ASBAG's

behalf in the interests of managing the risk to public safety without delay.

Watford CDRP works to the principles of the National Intelligence Model for tasking and co-ordination.

Each action plan is performance-managed by the ASBAG and is subject to monitoring and scrutiny by quarterly feedback to the Watford responsible authority group by the Watford Borough Council anti-social behaviour co-ordinator. The ASBAG performs a full self-evaluation and review every 12 months.

Contact

Matt Leng
Anti-social Behaviour Coordinator
Watford Borough Council
Matt.Leng@watford.gov.uk

Other considerations

Local authorities have a duty under the NHS and Community Care Act 1990 to assess any person who may be in need of community care services. If there is any evidence to suggest that the person against whom the order is being sought may be suffering from drug, alcohol or mental health problems or an autistic spectrum disorder, the necessary support should be provided by social services or other support agencies. Such support should run parallel with the collection of evidence and application for an order, where an application for an order is deemed necessary. This ensures that the court can balance the needs of the community with the needs of any alleged perpetrator.

From December 2006, provisions in the Disability Discrimination Act 2005 will come into force which make unlawful discrimination by a public authority in the exercise of public functions. There are some exemptions for listed persons and certain acts including (in broad terms) legislation, prosecution and judicial acts. However, the new prohibition of discrimination covers functions carried out, for example, by local authorities and the police. The definition of discrimination includes, in some circumstances, not making a reasonable adjustment to the way a function is carried out. Chapter 11 of the guidance, which the Disability Rights Commission will issue shortly (entitled *Code of Practice - Rights of*

Access: services to the public, public authority functions, private clubs and premises) includes advice on how the Act now impacts on those carrying out public authority functions. It will be available on the Commission's website (www.drc.org.uk).

Statutory consultation requirements

Section 1E of the Crime and Disorder Act 1998 (as amended by section 66 of the Police Reform Act 2002) sets out the consultation requirements for agencies applying for orders. These are that:

- the police and local authorities must consult each other; and
- the British Transport Police (BTP), registered social landlords, housing action trusts and any other person or body designated by the Secretary of State as a relevant authority must consult both the local authority and the police force for the area.

Consultation takes place with the authority or force whose area includes the address where the subject of the order resides or appears to reside. Each district or borough council and police division/basic command unit should have a nominated contact. Care should be taken (where the local authority is the applicant) that if the subject is under local authority care there is no conflict of interest. They must ensure that the social worker involved in the case is consulted. Where a young person is the alleged perpetrator, the YOT should be consulted.

Consultation is required to inform the appropriate agency or agencies of the intended application for the order and to check whether they have any relevant information. The agencies must take into consideration at the earliest possible opportunity the relevant information necessary to apply for an individual support order or a parenting order. Information on these is contained in a separate section on children and young people.

Where the partnership working arrangements recommended in earlier paragraphs are in force, they will normally satisfy (and exceed) the statutory requirement for consultation.

The statutory requirement for consultation does not mean that the agencies must agree

to an application being made but rather that they should be told of the intended application and given the opportunity to comment. This should ensure at the very minimum that actions taken by each agency regarding the same individual do not conflict.

While no agency has a veto over another agency's application for an order, the expectation is that any reservations or alternative proposals should be discussed carefully against the background of the overriding need to bring the anti-social behaviour to a speedy end. Again, the case conference procedure is designed to ensure that this happens.

A signed document of consultation is all that is required by the court. This should not indicate whether the party consulted was or was not in agreement. This is not required by the legislation. Supporting statements or reports from partner agencies should be provided separately.

The changes introduced by the Police Reform Act 2002 reduce bureaucracy by removing the need for applying agencies to consult with every local authority and police service whose areas are included in the order.

In addition to the consultation requirements set out above, it may be helpful for police forces to contact the BTP, which may hold information on the anti-social behaviour of the subject. The availability of this information may assist the evidence-gathering process for an order. The BTP holds a national database of offenders committing summary offences (these include railway-specific summary offences as well as those included in Home Office counting rules).

Police forces can request a search on a particular offender, in writing, from the Force Crime Registrar, British Transport Police, Force Headquarters, 15 Tavistock Place, London WC1H 9SJ.

Collection of evidence

When applying for an order, the lead agency will be required to gather evidence to prove its case beyond reasonable doubt. This evidence can include hearsay evidence. Further advice on hearsay evidence is provided later in the guidance.

The evidence in support of an application for an order should prove:

- that the defendant acted in a specific way on specific dates and at specific places; and
- that these acts caused or were likely to cause harassment, alarm or distress to one or more persons not in the same household as the defendant.

The court then needs to evaluate whether an order is necessary to protect persons from further anti-social acts by the defendant. This is not a test to which a standard of proof will be applied. Instead, it is an assessment of future risk. The applicant can present evidence or argument to assist the court in making this evaluation. Witness evidence need not prove that they were alarmed or distressed themselves, but only that the behaviour they witnessed was likely to produce such an effect on others. As hearsay evidence is allowed, it may be given by 'professional witnesses' – officers of public agencies whose job it is to prevent anti-social behaviour. Since civil rules apply to these orders, it is unnecessary to disclose the names of the witnesses.

Experience has shown that elaborate court files are not normally required or advantageous. Where the anti-social behaviour has been persistent, agencies should focus on a few well-documented cases. A large volume of evidence and/or a large number of witnesses creates its own problems. There is more material for the defence to contest and timetabling issues may increase delays in the process.

Agencies applying for orders should strike a balance and focus on what is most relevant and necessary to provide sufficient evidence for the court to arrive at a clear understanding of the matter.

Evidence may include:

- breach of an ABC;
- witness statements of officers who attended incidents;
- witness statements of people affected by the behaviour;
- evidence of complaints recorded by the police, housing providers or other agencies;

- statements from professional witnesses, for example council officials, health visitors or truancy officers;
- video or CCTV evidence (effective where resolution is high and high-quality still images can be used);
- supporting statements or reports from other agencies, for example probation reports;
- previous successful civil proceedings that are relevant, such as an eviction order for similar behaviour;
- previous relevant convictions;
- copies of custody records of previous arrests relevant to the application; and
- information from witness diaries.

Together campaign fact sheet

The Together campaign has produced a fact sheet giving step-by-step guidance on evidence collection which is available on the website www.together.gov.uk

Southampton shopping area blighted by anti-social behaviour

Issue

Lordshill centre was suffering from a large amount of anti-social behaviour, especially around the local supermarket. There was a substantial amount of shoplifting, criminal damage and harassment of visitors and shoppers. At the other end of the centre was a large bingo hall frequented by older patrons who were becoming increasingly afraid to go after 6pm. The supermarket was also shutting earlier in response to these incidents.

Approach

The local anti-social behaviour team's senior investigator met with the manager of the supermarket, together with the local police, and discussed possible ways of working more closely to deal with the issues. They were provided with a log book to record all incidents and this was checked weekly by the anti-social behaviour investigator and the police. This information was then put into a schedule to identify times and dates of the issues and also the perpetrators. Log books were provided to the local library and the bingo hall, as well as the supermarket, in an attempt to collate a large amount of evidence. 'It's Your Call' posters were put up in all shops in the area and premises were visited regularly by a member of the multi-agency team.

Outcome

Because of the joint working and shared support, the stores felt able to tackle those causing the problem. As a result of information provided by the shops, an ASBO was obtained against the main perpetrator, with an exclusion from the whole shopping area.

There was also a Crime Reduction and Environment Week in the area, and a youth project has been funded by the supermarket, which has also provided paint to repaint the subway. This has prevented graffiti reappearing. There is also a dispersal order in place now to complement the ASBO and the perpetrator has not returned to the area. Residents and visitors can now shop in peace and the supermarket is looking to invest more money in the area.

Contact

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Anti-social Behaviour Manager
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4. Time limits

Magistrates' courts (acting in their civil capacity)

Under section 127 of the Magistrates' Court Act 1980, a complaint must be made within six months of the time when the matter of the complaint (the behaviour) arose. One incidence of serious anti-social behaviour may be sufficient for an order to be made. Earlier incidents may be used as background information to support a case and show a pattern of behaviour. As long as the complaint is made within the six-month timeframe, a summons may be served outside this time period, although delay is not encouraged.

5. Use of hearsay and professional witness evidence

Hearsay and professional witness evidence allow for the identities of those too fearful to give evidence to be protected. This is especially vital as cases often involve anti-social behaviour in residential areas by local people and those targeted by the behaviour feel unable to come forward for fear of reprisals. Hearsay evidence cannot be excluded (at the request of defence lawyers) simply on the grounds that it is hearsay.

Hearsay evidence

Evidence of anti-social behaviour which occurs at any time after the commencement of section 1⁵ may be taken into account when the court considers whether or not to grant an order on conviction under section 1C.

The House of Lords judgment in the McCann case confirmed that hearsay evidence is admissible. Lord Steyn stated that:⁶

‘Having concluded that the proceedings in question are civil under domestic law and article 6, it follows that the machinery of the Civil Evidence Act 1995 and the Magistrates’ Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 allow the introduction of such evidence under the first part of section 1.

‘... use of the Civil Evidence Act 1995 and the Rules in cases under the first part of section 1 are not in any way incompatible with the Human Rights Act 1998.

‘... hearsay evidence will often be of crucial importance. For my part, hearsay evidence depending on its logical probativeness is quite capable of satisfying the requirements of section 1(1).’

It is a matter for the judge or magistrate to decide what weight they attach to hearsay evidence.

Hearsay allows a police officer to provide a statement on behalf of a witness or witnesses who remain anonymous. Hearsay evidence must be relevant to the matters to be proved. It could include details such as dates, places, times, specific descriptions of actions, who was present and who said what.

Hearsay can include evidence from the person taking the statement. The person giving the hearsay evidence may attest to the observable conditions of the witness, for example that the witness appeared upset, and may give evidence based on their own judgement of the situation.

Where an applicant intends to rely on hearsay evidence in the county court, they must act in accordance with part 33 of the Civil Procedure Rules. Written notice must be given at least 21 days before the hearing to the other party and to the court.

Professional witnesses

Professional witnesses can be called to give their opinions as to matters within their expertise and can give evidence about their assessments of the respondent or his/her behaviour. Examples of witnesses who may be called as professional witnesses include council officials, health visitors, railway staff, teachers, doctors and police officers.

Care should be taken to ensure that a professional witness does not inadvertently enable vulnerable or intimidated witnesses to be identified, for example from their home address.

Vulnerable and intimidated witnesses

Witnesses who are willing to testify in court provide the best form of evidence and, where possible, should be encouraged to come forward. The new provisions introduced in

⁵ Section 1 of the Crime and Disorder Act 1998 came into force on 1 April 1999.

⁶ Taken from paragraphs 35, 36 and 37 of *Clingham (formerly C (a minor)) v Royal Borough of Kensington and Chelsea (on Appeal from a Divisional Court of the Queen’s Bench Division); R v Crown Court at Manchester ex parte McCann (FC) and Others (FC)*.

the Serious Organised Crime and Police Act 2005 make it easier for victims of anti-social behaviour to attend court and give evidence in person. The Act permits the 'special measures' that were formerly reserved for criminal hearings to be used in anti-social behaviour cases. This will enable witnesses who wish to give direct evidence to do so in private, from behind a screen or by video link.

Vulnerable witnesses are all witnesses aged under 17 years or whose quality of evidence is likely to be diminished because they have a mental disorder or learning disability or have a physical disability or physical disorder.

Intimidated witnesses are witnesses whose quality of evidence is likely to be diminished because they are in fear or distress about testifying. It is for the court to decide whether the quality of a witness's evidence is likely to be diminished.

Witness development and support

The principal purpose of an order is to protect those who directly experience anti-social behaviour. The protection provided should include, where necessary, those who are personally targeted by perpetrators, other witnesses who see this happen and the wider local community. It follows that engaging, developing and supporting these individuals and groups of people must be a primary concern for any agency managing a case and seeking to use these orders. Without the initial complaint of the witness, the agency will have no detailed knowledge of the problem. Without their continuing engagement, there will be no evidence on which to build a case.

Local strategies to promote the use of orders should have the interests of the witnesses and the community at their centre. The welfare and safety of residents whose complaints form the basis of any action must at every stage of the process be the first consideration. The use of hearsay evidence and professional witnesses is one way of achieving this (see section on hearsay evidence above).

While professional witnesses may have a duty to engage, lay witnesses can only be expected to do so if they can see a point in doing it; if the agency is credible and authoritative;

if the case work is visibly focused on the interests of the witnesses; if the order protects them and stops the anti-social behaviour quickly and effectively; and if the case manager offers them well-informed, practical personal support throughout the period of evidence collection, court proceedings and afterwards, as necessary.

The experience of witnesses must be given value and significance by case managers. The status and importance of witnesses in case development must be made clear. They should be provided, as appropriate, with:

- a simple method of capturing information – diaries, video/audio recording facilities and translation services;
- information on services and procedures – about the way witness support services work, service access points, telephone numbers and the name of the case manager working on the case;
- an active and respected role in developing the case – the case strategy should reflect their needs, particularly for reassurance about their safety, and they should have control over any information they provide, including agreeing the form in which it will be provided to the defence;
- protection for themselves and their family – security for door and window access, emergency contact equipment, panic alarms and mobile phones may all be appropriate in particularly serious cases;
- regular contact from the case manager, including telephone contact as agreed with the witness (daily, weekly, etc);
- support for any court appearance – a briefing on court procedures and what they should expect, the presence with them in court of the case manager, transport to and from court (if necessary) and a secure space separate from perpetrators in which they can wait to be called; and
- support after a court appearance – speedy delivery of information, copies of any orders which have been made and an explanation of the implications of the court decision.

Each key witness should also be engaged in a face-to-face meeting with the agencies, including those who do not wish to give a statement or attend court.

Agencies should publicise positive results – one way this can be done is through leaflet drops (these can be cost effective when targeted appropriately).

Witness support is an area where the benefits of partnership working can be clearly seen: local authorities and the police have different skills and resources and can combine them to give well-rounded support.

Methods of supporting witnesses currently being used by agencies also include:

- enclosing a letter with the summons advising the respondent to stay away from witnesses;
- a higher police presence in the vicinity;
- giving witnesses the personal mobile telephone number of a named police officer who can be called if they are threatened;
- visits from neighbourhood wardens at pre-arranged times (sometimes daily); and
- phone calls from the local authority at pre-arranged times.

The interim order enables witnesses to be protected from the outset of the court process. Sections 48 and 49 of the Criminal Justice and Police Act 2001 make it an offence to intimidate witnesses in civil proceedings such as those for ASBOs.

Improving protection of witnesses in court

Manchester City Council protects witnesses

Issue

Witnesses felt anxious about giving evidence. Their concerns included the prospect of appearing in court, coming face to face with defendants and being threatened by defendants at the court building, as well as uncertainties about waiting room and refreshment facilities.

Approach

Manchester City Council negotiated the following arrangements with local courts for anti-social behaviour cases:

- access to a quiet room for witnesses;
- a video link for perpetrators in prison where it would be expensive to bring them back for an ASBO or injunction hearing (this also has the benefit of being less stressful for the witnesses);
- a video link for children and young people; and
- police presence, where appropriate.

In addition, the council provides practical information and support to witnesses. They are made aware of what to expect, including the court layout, where they and the defendant(s) will be sitting and how people will be dressed. Practical support also includes transport to and from the court, being met by a council officer on arrival and information about refreshment and bathroom facilities.

Outcome

The result has been reassurance and physical security for witnesses. This has led to a reduction in the anxiety about the prospect of appearing in court or accidentally meeting a defendant. Witnesses are better able to focus on the case. The case manager is also able to keep witnesses informed of progress and to manage the case more effectively.

Contact

Nuisance Strategy Group
Telephone: 0161 234 4611

6. Information sharing

Section 115 of the Crime and Disorder Act 1998 empowers any person to disclose information, where necessary or expedient for the purposes of the Act, to a 'relevant authority', namely a chief officer of police, police force, local authority, probation service or health authority, or to a person acting on their behalf. Where the agency requesting the information clearly needs it for the purposes of reducing anti-social behaviour, the presumption should normally be that it will be supplied.

As a result of the findings of the Crime and Disorder Act review, the Police and Justice Bill before Parliament seeks to strengthen section 115 of the Crime and Disorder Act further. For example, the power to disclose personal information has not changed but it places a duty on relevant authorities to share depersonalised data which is relevant for community safety purposes and already held in a depersonalised format.

Information sharing and registered social landlords

A 'relevant authority' (as defined by section 115 of the Crime and Disorder Act 1998) may disclose information to a registered social landlord where the landlord is acting on behalf of the relevant authority for the purposes of the provisions of the Act.

In order to be 'acting on behalf of' the relevant authority, the person or body so acting must have authority and must have consented to do so. Such authority may be given in writing or orally. Authority may also be implied from the conduct of the parties or from the nature of employment. Authority may be confined to a particular act or be general in its character. If authority is general, then it will that be confined to acts that the relevant authority itself has power to do.

Information sharing protocols

It may be useful for partners to negotiate information sharing protocols, examples of which can be obtained from the Home Office Information Sharing Team at informationsharing@homeoffice.gsi.gov.uk www.crimereduction.gov.uk/informationsharing

If possible, the protocol should be published, so that the public can see that information is being shared in an appropriate way.

The model protocol can be accessed at www.crimereduction.gov.uk/infosharing21.htm

Information sharing issues can also be discussed with the Information Commissioner's Office, whose website (www.ico.gov.uk) gives further details.

7. The terms of the order (the prohibitions)

The role of the agencies

Although it is for the court to decide what prohibitions are to be imposed by the order, the applicant agency should propose conditions (including duration) to the court. A full order should be drawn up using the form in the court rules. The courts find it helpful if applicants can ensure that they are equipped to amend and print off the final version of the order at the end of the hearing. This improves efficiency and helps ensure that the defendant leaves the court with a clear understanding of the prohibitions.

In the county court, the proposed order should accompany the application. The process for the county court is set out in the Practice Direction at Appendix B.

Where the order is made on conviction in criminal proceedings, an agency concerned in the case, such as the police, may propose prohibitions or the court may draw them up of its own volition. It should be noted that the order may not impose positive requirements, only prohibitions.

Careful thought needs to be given to the formulation of the conditions so they cannot be easily circumvented, and can be easily understood by the perpetrator.

The prohibitions

The prohibitions:

- should cover the range of anti-social acts committed by the defendant;
- should be necessary for protecting person(s) within a defined area from the anti-social acts of the defendant (but, as a result of the recent changes, that defined area may be as wide as necessary and could in appropriate cases include the whole of England and Wales);
- should be reasonable and proportionate;
- should be realistic and practical;

- should be clear, concise and easy to understand;
- should be specific when referring to matters of time if, for example, prohibiting the offender from being outside or in particular areas at certain times;
- should be specific when referring to exclusion from an area, including street names and clear boundaries such as the side of the street included in the order (a map with identifiable street names should also be provided);
- should be in terms that make it easy to determine and prosecute a breach;
- should contain a prohibition against inciting/encouraging others to engage in anti-social behaviour;
- should protect all people who are in the area covered by the order from the behaviour (as well as protecting specific individuals);
- may cover acts that are anti-social in themselves and those that are precursors to a criminal act, for example a prohibition on entering a shopping centre rather than on shoplifting;
- may include a general condition prohibiting behaviour which is likely to cause harassment, alarm and distress, but where this is done there must be further clarification of what type of behaviour is prohibited; and
- may include a prohibition from approaching or harassing any witnesses named in the court proceedings.

Examples of ASBO prohibitions can be found on the Crime Reduction website at www.crimereduction.gov.uk

The courts

The absence of a precise definition of anti-social behaviour within the legislation means that orders can be used to tackle a wide range of behaviour. In recent years, courts have imposed orders to prevent behaviour such as joyriding, verbal abuse, vandalism, begging,

drinking under age and assault. While the proceedings and the making of the order itself can curb behaviour, the extent to which the order succeeds also depends on the prohibitions imposed, which in turn require effective wording.

It is good practice for the applicant to provide a draft of the prohibitions sought, but the final wording of the order will be a matter for the court. Problems have arisen when prohibitions have been drafted too widely or in such ways that enforcement is made difficult, if not impossible. Guidance and general principles on drafting prohibitions have come from legislation, case law and shared best practice. The following section draws together these principles and provides suggestions and comments for consideration.

There is now a requirement for the court to set out its findings of fact in relation to anti-social behaviour on the face of the order, following the cases of *Wadmore* and *Foreman*.

Effective prohibitions

If the conditions for making an order are met, the court may make an order which prohibits the defendant from doing anything described in the order (section 1(4) Crime and Disorder Act 1998 (CDA)). The facts leading to the order should be recorded and the court should provide its reasons for making the order (*C v Sunderland Youth Court* [2003] EWHC 2385).

The effect of the order should be explained to the defendant and the exact terms pronounced in open court. Most courts now have a practice of serving the defendant with a copy of the court order before he or she leaves court and may also require his or her acknowledgement. The order should set out in full the anti-social behaviour in relation to which the order was made (*R v Shane Tony P* [2004] EWCA Crim 287).

Once the court has decided that the order is necessary to protect persons from further anti-social acts by the defendant, the court must then consider what prohibitions are appropriate to include. Each order and therefore prohibition will need to be targeted to the individual and the type of anti-social behaviour it is to prevent.

The prohibitions that may be imposed are those necessary to protect persons from further anti-social behaviour by the defendant (section 1(6) CDA) and must not impose positive obligations. Therefore each prohibition must be:

- negative in nature;
- precise and target the specific behaviour that has been committed by the defendant;
- proportionate to the legitimate aim pursued and commensurate with the risk to be guarded against, which is particularly important where an order may interfere with an ECHR right (*R v Boness* [2005] EWCA 2395); and
- expressed in simple terms and easily understood.

Identification of some of the best practice used within the courts suggests that the following issues should be borne in mind when formulating prohibitions:

- A court should ask itself before making an order: 'Are the terms of this order clear so that the offender will know precisely what it is he or she is prohibited from doing?' (*R v Boness* [2005] EWCA 2395).
- Less common phrases such as 'curtilage', 'paraphernalia' or 'environs' should be avoided as they may cause confusion.
- Can it be enforced? Those who will enforce the order must be able to identify and prove a breach.
- Are any excluded areas clearly delineated? Most courts require a map to be included and it may be necessary to delineate which side of the road forms the boundary. If a line is drawn down the middle of a road, there may be arguments as to which side of the road the defendant was standing.
- Does the prohibition clearly identify those whom the defendant must not contact or associate with?
- Where the defendant is a foreign national, some courts consider it good practice for the order to be translated into the native tongue.
- Testing the prohibition by considering ways in which it could be breached may highlight its limitations (*R v McGrath* [2005] EWCA Crim 353).
- There is no requirement that the acts prohibited by an order should by themselves give rise to harassment, alarm or distress (*R v McGrath* [2005] EWCA Crim 353).

- Curfews are substantially prohibitive and, while also a sentence of the court, there is nothing legally objectionable to a curfew as a prohibition if the necessary protection of the public justifies its inclusion (*R (Lonerghan) v Lewes Crown Court* [2005] EWHC 457 (Admin)).

A prohibition can prohibit behaviour that is in any event unlawful, although previously the courts have encouraged inclusion of comparatively minor offences only (*R v Shane Tony P* [2004] EWCA Crim 287). However, recently the Court of Appeal has indicated that prohibiting behaviour that is in any event a crime does not necessarily address the aim of an order, which is to prevent anti-social behaviour. Prohibitions should enable agencies to take action before the anti-social behaviour takes place rather than waiting for a crime to be committed (*R v Boness* [2005] EWCA 2395). Therefore, bail conditions provide a useful analogy when considering what prohibitions to impose.

The Court of Appeal provided some hypothetical examples by way of guidance. If faced with a defendant who causes criminal damage by spraying graffiti, then the order should be aimed at facilitating action to be taken to prevent graffiti spraying by him before it takes place. For example, the prohibition could prevent the offender from being in possession of a can of spray paint in a public place, giving an opportunity to take action in advance of the actual spraying. This makes it clear to the defendant that he has lost the right to carry such a can for the duration of the order.

If a court wished to make an order prohibiting a group of youngsters from racing cars or motor bikes on an estate or driving at excessive speed (anti-social behaviour for those living on the estate), then the order should not (normally) prohibit driving while disqualified. It should prohibit, for example, the offender while on the estate from taking part in, or encouraging, racing or driving at excessive speed. It might also prevent the group from congregating with named others in a particular area of the estate. Such an order gives those responsible for enforcing the order on the estate the opportunity to take action to prevent the anti-social conduct before it takes place. Neighbours can alert the police, who will not have to wait for the commission of a particular criminal offence.

The order will be breached not just by the offender driving but by his giving encouragement by being a passenger or a spectator.

The court also seemed to leave open the door for the continued use of a prohibition to prevent conduct that also amounts to an existing offence which carries only a monetary penalty, for example loitering for the purpose of prostitution. The court should not impose such a prohibition merely to increase the sentence for the offence, but must go through all the steps to make sure that an order is necessary.

Further details can be found on the Together website at www.together.gov.uk

Length of prohibitions

In *R (Lonerghan) v Lewes Crown Court* [2005] EWHC 457 (Admin), Maurice Kay LJ referred to the duration of prohibitions, saying:

‘A curfew for two years in the life of a teenager is a very considerable restriction of freedom. It may be necessary, but in many cases I consider it likely that either the period of curfew could properly be set at less than the full life of the order or that, in the light of behavioural progress, an application to vary the curfew under section 1(8) might well succeed.’

Consequently, just because an order must run for a minimum of two years, it does not follow that each and every prohibition within the order must endure for the life of the order. This approach was endorsed by the Court of Appeal in *R v Boness* [2005] EWCA 2395 which considered that it might be necessary to amend or remove a prohibition after a period of time, for example if the defendant started work.

ASBOs on juveniles should be reviewed yearly, and further details are given on page 45.

Targeting specific behaviour

As noted above, prohibitions must target the defendant’s specific anti-social behaviour. But assuming the prohibitions are negative, specific and enforceable, the appropriateness of

the prohibitions imposed can be judged only on the facts of each case. Therefore, a number of common scenarios are included below for consideration. These are based on orders made by the courts, although facts and prohibitions have been altered to highlight specific issues. While these types of behaviour have been made the subject of orders, this should not imply that such behaviour will automatically be held to be subject to orders in the future.

Further examples of prohibitions can be found on the Crime Reduction website at www.crimereduction.gov.uk

The following are examples of prohibitions that were drawn up but were found to be too wide or poorly drafted:

- Not to be a passenger in or on any vehicle, while any other person is [sic] committing a criminal offence in England or Wales. (A breach could be occasioned by travelling in a bus, the driver of which, unknown to the subject of the order, was driving without a licence (*R (W) v Acton Magistrates' Court* [2005] EWHC 954 (Admin)).)
- Not to associate with any person or persons while such a person or persons is engaged in attempting or conspiring to commit any criminal offence in England or Wales. (A similar result to the above, in that he could be associating with someone who, unknown to him, was conspiring to commit an offence.)
- Entering any other car park, whether on payment or otherwise, within the counties of [...]. (This was considered to be too draconian as it would prevent the defendant from entering, even as a passenger, any car park in a supermarket (*R v McGrath* [2005] EWCA Crim 353).)
- Trespassing on any land belonging to any person, whether legal or natural, within those counties. (As above, in that any wrong turn onto someone else's property would risk custody.)
- Having in his possession in any public place any window hammer, screwdriver, torch or any tool or implement that could be used for the purpose of breaking into motor vehicles. (Unacceptably wide, as the meaning of 'any tool or implement' is impossible to ascertain.)
- Entering any land or building on the land that forms a part of educational premises, except as an enrolled pupil with the agreement of the head of the establishment or in the course of lawful employment. (It was held that the term 'educational premises' lacked clarity, for example it could have included teaching hospitals or premises where night classes were held. Also, there was a danger that the defendant might unwittingly breach the order if he played on playing fields associated with educational premises (*R v Boness* [2005] EWCA 2395).)
- In any public place, wearing, or having with you, anything that covers, or could be used to cover, the face or part of the face. This will include hooded clothing, balaclavas, masks or anything else that could be used to hide identity. (This was found to be too wide and a breach could occur by wearing a scarf or carrying a newspaper.)
- Doing anything that may cause damage. (Far too wide, as it may include the defendant scuffing his shoes.)
- Committing any criminal offence. (Taken with other prohibitions, the divisional court commented that this was very plainly too wide (*R (on application of W) v DPP* [2005] EWHC 1333 (Admin)).)

Further examples and consideration of prohibitions made for football-related violence may be found in the case of (*R v Boness* [2005] EWCA 2395).

Duration of an order

The minimum duration of an order is two years, which was set in order to give respite to communities from anti-social behaviour. There is no maximum period and an order may be made for an indefinite period. It is for the court to decide the duration of an order, but the applicant agency should propose a time period as part of its application.

The duration applied for should take into account the age of the recipient, any special conditions that might affect their behaviour, the severity of his or her anti-social behaviour, the length of time it has gone on for and the recipient's response to any previous measures to deal with the behaviour. A longer order will generally be appropriate in the case of more serious or persistent anti-social behaviour. Orders issued to children and young people should be reviewed annually and careful consideration must be given to the case for applying for such orders to last beyond two years.

8. Applying to the courts

Summons procedure

Magistrates' court (acting in its civil capacity)

The lead individual in charge of the case should arrange for an application form and three copies of the summons form to be completed and served upon the court. Once these proceedings have been issued, the applicant should serve the defendant with the following:

- the summons;
- a copy of the completed application form;
- documentary evidence of statutory consultation;
- guidance on how the defendant can obtain legal advice and representation;
- notice of any hearsay evidence;
- details of evidence in support of the application as agreed with the applicant agency's solicitor; and
- a warning to the defendant that it is an offence to pervert the course of justice, and that witness intimidation is liable to lead to prosecution.

Wherever possible, the lead officer in charge will ensure that service of the summons is made on the defendant in person. If personal service is not possible, the summons should be served by post as soon as possible to the last known address.

Where a child or a young person is concerned, a person with parental responsibility must also receive a copy of the summons. This could be a local authority social worker in the case of a looked-after child as well as, or instead of, the parent. ('Parent' has the same meaning as under section 1 of the Family Law Reform Act 1987, and 'guardian' is defined in section 107 of the Children and Young Persons Act 1933.)

The summons forms are set out within the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002. See Appendix D.

County court

The process for the county court is set out in the Practice Direction of the updated Civil Procedure Rules at 65.21–65.26.

Disclosure

Before evidence is disclosed, the applicant should consult the police and other agencies to ensure that all reasonable steps have been taken to support witnesses and minimise any potential for witness intimidation. Evidence should not be disclosed without the express permission of the witness. However, evidence that is not disclosed cannot be relied on.

The applicant should seek to maintain witness anonymity and ensure that it does not identify them by default (for example through details of location, race, personal characteristics or age).

Court procedures

It is important that those hearing the case are fully briefed on the purpose of an order. There should be no confusion as to the purpose of the order, which is to protect the community. Where the case concerns a child, the welfare of the child is, of course, to be considered, and indeed the making of the order should contribute to this by setting standards of expected behaviour. But the welfare of the child is not the principal purpose of the order hearing.

Whether or not the subject of the application is present, the court should be asked to make the order. Adjournments should be avoided unless absolutely necessary.

Magistrates' court (acting in its civil capacity)

An application for an order in the magistrates' court is made by complaint. This means that the court will act in its civil capacity. The provisions governing civil applications for

orders in magistrates' courts are set out in the Magistrates' Courts Act 1980.

The application, under section 1(3) of the Crime and Disorder Act 1998, should be made to the magistrates' court whose area includes the local government area or police area where people need to be protected from the anti-social behaviour.

The lead officer in charge of the case should ensure that all the evidence and witnesses are available at the hearing, including evidence in support of any need for the court to make an immediate order.

Under section 98 of the Magistrates' Courts Act 1980, evidence will be given on oath. Any magistrate or judge may hear the case.

Where a defendant fails to attend a hearing, the applicant may, after substantiating the complaint on oath, apply to the court to issue a warrant for the defendant's arrest. Various provisions for adjournment, non-attendance at court and the issue of a warrant for arrest are contained in sections 54 to 57 of the Magistrates' Courts Act 1980.

County court

An application for an order in the county court must be made in accordance with the procedure set out in the Practice Direction at Appendix B.

Where the applicant is the claimant in the principal proceedings, the application for the order should be included in the claim form. Where the applicant is the defendant in the principal proceedings, the application should be made by way of an application notice,

How to prepare a court file for an application

A file to support the application for an order should be prepared by the lead agency or the solicitor acting on their behalf.

A minimum of eight identical court bundles will be required as follows:

- three for the magistrates;
- one for the legal adviser;
- one for the applicant's solicitor;
- one for the defence solicitor;
- one for the defendant; and
- one for the witness box.

The files are in loose-leaf format (in an A4 ring binder) and should be indexed and paginated.

The index and contents should include, as appropriate:

- the summons for the order, together with proof of service;
- the application for the order (in the format provided by the Magistrates' Court (Anti-Social Behaviour Orders) Rules 2002);
- the defendant's details;
- the defendant's previous convictions;
- the defendant's acceptable behaviour contract (ABC) agreements;
- a summary of the incidents being relied upon by the applicant;

- a map and description of the exclusion area;
- an association chart (showing relationships and connections where the alleged anti-social behaviour is by a group of people);
- documentation of statutory consultations;
- supporting statements from any multi-agency consultation;
- a statement from the officer in the case;
- any other statements obtained;
- hearsay notices;
- a draft order for approval by the court; and
- a home circumstances report where the subject of the order is a child or young person (if necessary and completed).

The bundle should be prepared and served on the solicitor for the defendant as soon as the summons is served. The applicant's solicitor should attempt to have the contents of the bundle agreed prior to any pre-trial review. Disclosure should be transparent and complete.

Contact

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which should accompany the defence. If the applicant is not a party to the principal proceedings, an application to be made a party and for the order must be made to the court in the same application notice.

Orders made on conviction in criminal proceedings

After a defendant has been convicted of an offence, the prosecutor may make an application for an order. Alternatively, the court may make an order of its own volition.

Orders on conviction can be made by the magistrates' court, the youth court or the Crown court. The form of these orders is set out in the Magistrates' Court Rules and the Crown Court Rules. An order may be made only if the court sentences or conditionally discharges the offender for a relevant offence.

The Crown Prosecution Service usually requests the court to make an order on conviction, as there is no formal application process for this order. The court has to consider that:

- the offender has acted in an anti-social manner, that is in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender; and
- an order is necessary to protect any persons in any place in England and Wales from further anti-social acts by him.

Evidence

Evidence should explain to the court the context of the anti-social behaviour and its effect on other people. It can include:

- direct witness statements;

The head of a noisy household gets an ASBO for ignoring repeated official warnings and threatening complaining neighbours and council officers

Issue

In March 2004, neighbours of a house in Lowestoft were subjected to frequent and persistent loud music, resulting in 17 complaints over the course of a month. The perpetrator, who was a housing association tenant, had intimidated, threatened and verbally abused her neighbours, council officers and visitors.

Approach

A noise abatement notice was served on the perpetrator by environmental health officers under section 80 of the Environmental Protection Act 1990. Audio equipment was confiscated following breach of the noise abatement notice. During the confiscation, the perpetrator verbally abused the council officers.

After seven warning letters, two abatement notices and the confiscation of more than £1,000 of musical equipment, the council was still receiving complaints.

Failure to comply with an abatement notice without reasonable excuse is an offence, and the noisy neighbour was taken to court. The council consulted Suffolk Police and the

housing association and proposed terms for an order on conviction that achieved much more than the original abatement notice was capable of.

The magistrates granted the council's application for an order on conviction with the following prohibitions:

- not to play loud music that could be heard outside her dwelling; and
- not to verbally (or otherwise) abuse: employees or agents of the council; neighbours; or visitors to the neighbourhood.

Outcome

The order on conviction had several advantages over the noise abatement notice as an enforcement tool. It was easier to enforce as the evidence of experts such as environmental health officers to prove statutory noise nuisance would not be required. The order on conviction reduced the test of compliance to a simple (non-expert) factual observation of 'audibility' beyond the confines of the defendant's dwelling - a simple matter of observable fact that, say, a police officer could witness.

The second prohibition to deal with the tenant's threatening and abusive behaviour was beyond the scope of the original abatement notice. It was granted as the council was able to produce evidence of the tenant's behaviour to justify the restriction gained from early consultations with Suffolk Police and the housing association, which proved it was a reasonable restriction to impose on the defendant.

The resulting order on conviction did not cost any more than the noise prosecution would have cost on its own. Obtaining these restrictions in this way avoided the need for a stand-alone ASBO application in respect of the other aspects of the defendant's behaviour, saving money, avoiding several weeks' delay, and achieving faster and more readily enforceable relief for the wider community.

Valuable lessons were learnt by environmental health and other enforcement authorities in this action. In particular, early consultation with relevant agencies in the process of investigation and enforcement are important to an ASBO's success. And if the applicant for an order offers the other relevant agencies the opportunity to assist in drafting appropriate prohibitions, a successful outcome, which offers relief for the community 'on all fronts', is more likely.

Contact

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- professional witness statements;
- hearsay evidence;
- CCTV footage;
- letters of complaint (including anonymous complaints) to the police, the council or a landlord;
- articles in the local press;
- the number and nature of the charges against the defendant;
- the defendant's character and conduct as revealed by the evidence;
- the content of the victim's personal statement;
- other offences that have been taken into consideration (TICs);
- details of final warnings or previous convictions;
- the risk assessment in any pre-sentence report;
- records of any non-compliance with other interventions, eg ABCs or warnings; and
- the community impact statement (CIS).

A CIS can be written by a caseworker (such as a housing officer or community safety officer) and/or by the local police. The purpose of a CIS is to outline the effect the anti-social behaviour is having on the wider community in a way that is clear and concise for the judge's consideration. In certain circumstances, some elements of evidence, such as hearsay, CCTV footage and letters of complaint, can be put in a CIS.

Adjournments

Section 10(3) of the Magistrates' Courts Act 1980 permits adjournments to be made after conviction and before sentence to enable enquiries to be made or, in this context, to determine the most suitable way of dealing with an application for an order under section 1C of the Crime and Disorder Act 1998. Where the court adjourns and delays sentencing to consider the order, it can impose bail conditions in the normal manner.

Section 139 of the Serious Organised Crime and Police Act 2005 has amended section 1C of the Crime and Disorder Act 1998 to allow for adjournments after sentencing the offender for the purpose of considering an order. Powers are also available to compel a defendant to return to court after sentencing to attend the adjourned hearing.

Interim orders on conviction

An interim order on conviction can be sought to protect vulnerable witnesses and communities from threats of violence, intimidation and further anti-social behaviour by the defendant pending the hearing of an application for a full order. This change to the Crime and Disorder Act 1998 was also introduced by section 139 of the Serious Organised Crime and Police Act 2005. For more information on interim orders, see the

article ‘What are interim anti-social behaviour orders?’ on the Together website at www.together.gov.uk

Step-by-step guide

A step-by-step guide to the process can be found at Appendix E.

Public funding for defendants

A guide to public funding for defendants can be found at Appendix F.

9. Children and young people

The Home Office, Youth Justice Board and Association of Chief Police Officers have issued separate guidance on the role of the youth offending team (YOT) in dealing with anti-social behaviour.⁷ There is also separate guidance on the interventions available for children under 10 at Appendix B.

This section sets out the procedures for applying for ASBOs and similar orders in respect of children and young people, and the procedures for managing the case afterwards.

Who can apply for an order?

Agencies able to apply for orders are the same as those for adults, and the consultation requirements are the same.

The role of the YOT needs to be clearly set out in terms of what it can offer in the prevention of anti-social behaviour, and in the ASBO process. All other agencies should involve the YOT in any consideration of an order at an early stage as it is likely to have much information to share about that young person. The YOT has a responsibility to prevent crime and anti-social behaviour by young people, and should help partners to obtain an order to stop the behaviour continuing where it is deemed appropriate. If there are any doubts about the option of obtaining an order, these should be explored at an early stage with the YOT and other partners, rather than in court. The YOT can also have a role in explaining the conditions of an order to the young person and their parents, explaining the impact of that person's behaviour on the community and making it clear that the order is the consequence of that behaviour. In addition, the YOT and other partners should offer support in order to aid compliance.

In cases of a breach of an order, the pre-sentence report (PSR) provided to the court by the YOT should outline the impact the behaviour has had on the community.

The YOT can also use the PSR in criminal proceedings to recommend an order on conviction where that course of action has been agreed and deemed appropriate.

The PSR should also address the issue of parenting and further support to the young person. Courts can make a parenting order with an ASBO or similar order, if a voluntary approach has failed and it will help improve behaviour, together with an individual support order (ISO). The YOT has a key role in both of these interventions. Details on these are set out below.

Applications to the magistrates' court acting in its civil capacity

Since the youth court has no civil jurisdiction, applications for orders against under-18s will be heard by the magistrates' court (except where the youth court is asked to impose an order on conviction). A pilot to allow children and young people to be joined to proceedings in the county court, for the purpose of obtaining an ASBO where the anti-social behaviour is material to the principal proceedings, is currently under way in 11 county courts and is due to run until September 2006.

The officer in charge of the application should contact the justices' clerk in advance of the hearing to ensure that it will be conducted in a way that is suitable for the child or young person.

- Where there is an application to a magistrates' court for an ASBO under section 1 of the Crime and Disorder Act 1998, or an application to a magistrates' court for an ASBO to be varied or discharged under section 1(8) of the Act, and the person against whom the order is sought is under 18, the justices constituting the court should normally be qualified to sit in the youth court.
- Unlike a youth court, which is closed to the general public, the magistrates' court is

⁷ Youth Justice Board, Home Office and Association of Chief Police Officers (2006). *Anti-social Behaviour: A guide to the role of Youth Offending Teams in dealing with anti-social behaviour*. This can be downloaded at www.youth-justice-board.gov.uk/Publications/Scripts/prodView.asp?idproduct=212&ep=

Dealing effectively with persistent young perpetrators in Norfolk

Issue

Improved partnership working between the police and the YOT was key to effectively tackling anti-social behaviour by young people.

Approach

Regular liaison meetings of YOT and youth inclusion and support panel (YISP) staff were held at the Safer Communities Unit. Community reparation projects were planned which impacted on sensitive communities or resonated with vulnerable members of the community. Police officers forged contact with youth groups and educational centres. Part of the action plan required YISP workers to attend a police tasking and co-ordination meeting.

Outcomes

The YOT discussed, and was helpful to and supportive of, community reparation

projects that added to increased public reassurance. Work commissioned included graffiti clearance in priority areas, and the cleaning of 'Home Watch' street signs that were covered in algae, and where householders were elderly and not able to carry out that work. Two respected local officers maintained their links with a local community youth project through a weekly radio broadcast, 'On the Beat', on the first community radio station in Norfolk. The Safer Communities inspector became a member of the steering group of that project. Community team officers enjoyed good relations with the Excellence Centre, a unit for excluded or disengaged children of school age, as evidenced by the support of the centre manager for the Constabulary's recent 'Chartermark' award.

Contact

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open to the general public and has no automatic restrictions to prevent public and press access or to prevent reporting of the proceedings or to protect the identity of a child or young person (or adult) who is the subject of an application.

- The court should have a good reason, aside from age alone, to impose a discretionary order under section 39 of the Children and Young Persons Act 1933 to prevent the identification of a child or young person concerned in the proceedings.
- The applicant may resist a call from the defendant's representatives for such restrictions if the effectiveness of the ASBO will largely depend on the wider community knowing the details.

The applicant should note the following.

- Under section 98 of the Magistrates' Courts Act 1980, evidence will be given on oath, except the evidence of a child under 14 years of age, which is given unsworn.
- Section 34A of the Children and Young Persons Act 1933 requires the attendance of a parent or legal guardian at court for any person under 16 years of age. Every effort should be made before a hearing to

ensure that this takes place to avoid unnecessary adjournments.

- The court will require information about the child's or young person's background, home surroundings and family circumstances. Such information should be available to avoid the need for an adjournment.

Assessment of needs

When applying for an order against a young person aged between 10 and 17, the YOT should make an assessment of their circumstances and needs. This will enable the local authority to ensure that the appropriate services are provided for the young person concerned and for the court to have the necessary information about them.

It is vital that any assessment does not delay the application for an order. The lead agency should therefore liaise closely with the local social services department or YOT from the start of the process so that, where a new assessment is required, it can be begun quickly. In some cases an up-to-date assessment may already be available.

Councils with social services responsibilities have a duty, arising from section 17 of the Children Act 1989, to safeguard and promote the welfare of children within their areas who may be in need. The assessment of the needs of such children is expected to be carried out in accordance with the *Framework for the assessment of children in need and their families*.⁸ The guidance sets out the content and timescales of the initial assessment (seven working days) and the core assessment (35 working days). A core assessment is required when an initial assessment has determined that the child is in need. The assessment will cover the child's needs, the capacities of their parents and wider family, and environmental factors. This enables councils to determine whether the child is a 'child in need' and what services may be necessary in order to address the assessed needs.

The assessment of the child's needs should run in parallel with evidence gathering and the application process. Statutory agencies, such as social services, the local education authority or the health authority, have a statutory obligation to provide services to under-18s. They should do so irrespective of whether an ASBO application is to be made and the timing of that application. The ASBO application does not prevent such support and can proceed in parallel, or indeed prior to, that support.

Parenting orders

This section should be read in conjunction with Government guidance on parenting contracts and parenting orders.⁹ There is also information on the Together website (www.together.gov.uk). The applicant for parenting orders is the YOT. (Provisions in the Police and Justice Bill currently before Parliament aim to extend to registered social landlords and local authorities the power to apply for parenting orders.)

Parenting orders are available alongside other court action where:

- an ASBO or a sex offender order has been made in respect of a child or young person; or
- a child or young person has been convicted of a criminal offence.

Parenting orders can be made for children aged between 10 and 17 provided that the conditions in section 8 of the Crime and Disorder Act 1998 are met. This section stipulates that a parenting order is desirable only if it is made 'in the interest of preventing repetition of the behaviour which led to the order being made.'

The court can decide to make the order; it is not necessary to obtain the consent of the parent or guardian.

It is essential that parents and guardians take responsibility for the behaviour of their children. If an ASBO or an order on conviction is made against a child or young person, the court must also consider making a parenting order in respect of the parents or guardians of the child or young person.¹⁰ Where the parent or child has a disability, a practitioner with specialist knowledge should be involved in the assessment process to help establish whether the behaviour is a result of disability and whether it could or should be addressed.

Parenting orders are civil orders that help to engage parents¹¹ to address their child's offending or anti-social behaviour, and to establish discipline and build a relationship with their child. This may help the conditions of the ASBO to be met and thereby reduce the chances of the young person breaching the order.

The parenting order requires the parent or guardian to comply, for a period of not more than 12 months, with such requirements as are specified in the order, being those which the court considers desirable in the interests of preventing any repetition of the anti-social behaviour (for example ensuring that the

8 Department of Health (2000) *Framework for the assessment of children in need and their families*.

9 Home Office, Youth Justice Board, Department for Constitutional Affairs. *Parenting Contracts and Orders Guidance*, February 2004.

10 Provision for parenting orders is set out in sections 8, 9 and 10 of the Crime and Disorder Act 1998. The orders can be made in proceedings where a child safety order, an ASBO or sex offender order has been made; a child or young person is convicted of an offence; or a person is convicted of an offence under sections 443 or 444 of the Education Act 1996.

11 For the purposes of the 1998 Act, the term 'parent' has the same meaning as that contained within section 1 of the Family Law Reform Act 1987, that is either of the child's or young person's natural parents whether or not married to each other at the time of their birth. 'Guardian' is defined in section 117 of the 1998 Act with reference to section 107 of the Children and Young Persons Act 1933, and includes any person who, in the opinion of the court, has for the time being the care of the child or young person. This may include people who may not have parental responsibility for the child or young person as defined in the Children Act 1989, such as step parents.

child attends school regularly, avoids certain places, or is home by a certain time at night).

The parent or guardian is required to attend a counselling or guidance programme for up to three months. This element is compulsory and must be imposed in all cases when an order is made (except where the parent or guardian has previously received a parenting order – section 8(5)). Programmes can cover setting and enforcing consistent standards of behaviour and responding more effectively to unreasonable adolescent demands.

The court needs to consider an oral or written report before making a parenting order, unless the child or young person has reached the age of 16. To avoid unnecessary adjournments, such a report should be available early in the court process.

A ‘responsible officer’, who will generally be from the local YOT, social services, probation service or local education authority, supervises delivery of the parenting order. The officer will have responsibility for, among other things, arranging the provision of counselling or guidance sessions and ensuring that the parent complies with any other requirements which the court may impose.

If the parent does not comply with the order, the responsible officer can refer the matter to the police for investigation. Such action is generally expected only where non-compliance is sufficiently serious to warrant possible prosecution – the responsible officer is expected to work with the parent to improve compliance. But if prosecuted and convicted for non-compliance, the parent can be fined up to £1,000 (level 3 on the standard scale).

Individual support orders

Section 1AA of the Crime and Disorder Act 1998, which was inserted by section 322 of the Criminal Justice Act 2003, provides for the making of ISOs, which have been available since May 2004. They are civil orders and can be attached to ASBOs made against young people aged between 10 and 17 years old. They impose positive requirements on the young person and are designed to tackle the underlying causes of their anti-social behaviour.

ISOs are available for stand-alone ASBOs made in the magistrates’ courts only. Where a magistrates’ court makes an ASBO against a young person, it must also make an ISO if it considers that an ISO would help to prevent further anti-social behaviour. ISOs are not available for orders on conviction, where it is expected that sentencing will address the underlying causes of the offence.

ISOs can last up to six months and require a young person to comply with such requirements as may be specified in the order and any directions given by the responsible officer to that end. Such requirements must be those which the court considers desirable in the interests of preventing repetition of the anti-social behaviour and may include requirements to participate in certain activities, to report to a specified person at specified times or to comply with educational arrangements, but in no case should they require attendance on more than two days a week. An example would be support sessions tailored to the individual’s needs and designed to address the causes of the behaviour that led to the ASBO being made, such as counselling for substance misuse or an anger management programme. The ISO may name specific activities the individual must participate in and can also specify dates and places where attendance is required.

ISO application process

There is no need for a specific application for an ISO, although it might be helpful to raise the issue with the court. Where a magistrates’ court is making an ASBO (stand-alone only) against a person under 18 years old, it is obliged to make an ISO at the same time if the following conditions are met:

- the ISO would be desirable in the interests of preventing any repetition of the anti-social behaviour which led to the ASBO being made;
- the young person is not already subject to an ISO; and
- the Secretary of State has notified the court that arrangements for implementing the ISO are available (this was done in April 2004 in Home Office Circular 025/2004).

The court should ensure the requirements of the ISO and the consequences of breach are explained to the defendant. If an ISO is not made, then the court must state why it

considers that the conditions for making the order are not met. ISOs are not available for orders on conviction.

Role of the youth offending team

The YOT advises the magistrates' court on whether an ISO is necessary and the conditions an ISO should contain. This information is based on a needs assessment of the young person.

The YOT is responsible for co-ordinating delivery of the ISO and also has a role in ensuring that the terms and conditions of both the ASBO and ISO are understood by the defendant. The conditions within the ISO are overseen by a responsible officer who is usually a member of the YOT, social services or local education authority.

Variation and discharge

An application to vary or discharge the ISO may be made by either the young person subject to the ISO or the responsible officer. The need to vary an ISO may arise where support proves to be inappropriate or the individual moves out of the area. Equally, if the ASBO linked to the ISO is varied by a court, the court may also vary or discharge the ISO at the same time.

If the ASBO comes to an end or is discharged, the ISO also ceases to have effect.

Breach

Breach of an ISO is an offence and criminal penalties apply. For ISOs to be credible, breaches must be dealt with.

The responsible officer is responsible for ensuring compliance with an ISO. It will usually be appropriate for the responsible officer to encourage compliance using warning letters before instigating proceedings for a criminal prosecution.

The breach is taken forward by the Crown Prosecution Service and breach proceedings are heard in the youth court. If a court finds that the subject of the order has failed to comply with any requirement of the order, they are guilty of an offence. Breach is a summary offence and the court can impose a fine of up to:

- £1,000, if defendant aged 14 or over; or
- £250, if defendant aged under 14.

Where the defendant is under 16, the parent will usually be responsible for payment of the fine. The court also has the discretion to order the parent to pay if the defendant is aged between 16 and 18 (as set out in section 137 of the Powers of Criminal Court (Sentencing) Act 2000).

A referral order is not available for breach of an ISO.

Balcony games for the boys creates corridor of hell for neighbours: ASBOs, ISOs and a house move bring relief for all

Issue

Sons of two neighbouring families were responsible for persistent noise nuisance which caused neighbours great distress for over a year. The children of families X and Y, aged between 10 and 15, lived in first-floor council flats where they played rowdy games outside their flats. Family X had a secure tenancy while family Y had a short-term tenancy. Residents frequently complained to the housing office or to the local police community support officers (PCSOs).

Approach

Police and the housing office worked closely together on the case and discovered a pattern of nuisance. PCSOs and the estate manager mediated between families X and Y and their neighbours. When mediation failed, joint visits were made to warn the families of the consequences of their continued anti-social behaviour. Formal warnings followed, outlining the consequences of the boys' actions in terms of potential ASBOs and possible loss of their parents' tenancy. When all warnings had failed, a multi-agency team obtained an interim ASBO on the five boys to put an immediate stop to the nuisance.

Evidence provided by PCSOs and the estate manager was used at the hearing, and interim orders were granted.

Minor breaches over the Christmas period were reported to the police by witnesses between the interim and full hearing, and

these strengthened the case for the ASBOs at the full hearing.

Witnesses who were previously fearful of giving evidence were willing to do so at the full hearing where the ASBOs were granted, and an ISO was attached to each ASBO to tackle some of the underlying causes of the behaviour.

The conditions of the ASBOs on the five boys ordered them:

- not to cause nuisance within the vicinity of their dwellings;
- to stop knocking on doors and windows; and
- not to play games on the balcony.

Outcome

The main benefit of the ASBOs was the relief that they brought to the neighbours, who felt they had been supported through the process by police and the housing office.

The ISO, devised and facilitated by Norfolk Youth Offending Team, consisted of four hour-long sessions aimed at helping the boys develop an understanding of how their anti-social behaviour, their constant shouting and banging, impacted on themselves as a group, on their immediate family, and on their neighbours.

The first session defined the ground rules for the group, including showing respect, listening with only one person talking at a time, no shouting, and with each member

being allowed to voice an opinion. The second session got the boys listening to what people were saying around them. The third session introduced elements from a social skills game that focused on the boys' finding different ways of asking each other something without resorting to shouting. In the fourth session, a worker from Positive Futures helped the boys think about what leisure activities were available as alternatives to playing on the balcony. The youth worker kept the boys' parents up to date on what was happening in the sessions.

Family X, who were relocated away from family Y, kept their tenancy and no further problems were reported. Similarly, family Y succeeded in stopping their anti-social behaviour.

The ISO gave the boys an opportunity to understand the effect of their rowdy behaviour on themselves and others. As a result of the order and the interventions of the youth worker, the boys took up recreational activities and found constructive ways of spending their time.

Overall, the intervention package was a great success for the community, and for the families themselves.

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In a debate in the House of Commons on 28 June, Vernon Coaker MP, a Home Office Minister, said:

“ISOs are playing their part in the wider battle to combat anti-social behaviour and promote positive behaviour. They have proven potential to help young people to turn around their lives and move away from anti-social behaviour and offending. I share the enthusiasm for ISOs of my hon. Friend the Member for Stockport, and I hope that she and the other hon. Members will encourage local agencies to make more use of such a highly effective intervention tool.”

10. Immediate post-order procedure (adults and young people)

Where an ASBO or similar order is granted, it is preferable for a copy of the order to be served on the defendant in person prior to his or her departure from court. It is essential to ascertain that the defendant understands the nature of the prohibitions and the order.

Good practice – managing procedures and timescales

Practitioners handling such orders have taken a range of measures to minimise paperwork and delays, including:¹²

- breaking down the process into clear, manageable stages that are easy to follow for those unfamiliar with the process;
- setting timeframes for each stage of the application to keep the process focused, including a commitment to arrange problem-solving meetings at short notice;
- releasing key staff so that they can concentrate on the application process – this should result in evidence gathering being conducted quickly and efficiently;
- using other agencies, such as neighbourhood wardens and station staff, to collect additional evidence where required (evidence gathering and attending incidents are tasks that local authorities, registered social landlords (RSLs) and the police are already involved in and therefore involve no additional cost);
- adopting strategies to overcome challenges to witness evidence such as ensuring that witness statements corroborate;
- minimising court delays by forewarning the courts of application and using pre-trial reviews;
- sharing costs between partner agencies and utilising the expertise from each agency; and
- not engaging in non-essential problem-solving meetings in more serious cases in order to get to court more quickly.

Where an individual has not been personally served with the order at the court, the court should be asked to arrange for personal service as soon as possible thereafter.

In without notice proceedings, proof of service of an ASBO is important, since any criminal proceedings for breach may fail if service is challenged by the defence and cannot be proved by the prosecution. While all other orders do not need proof of service in order to prove breach of an order, lack of knowledge of existence of an order will contribute to a reasonable excuse for the defence. In the case of a child or young person, the order should also be served on the parent, guardian or an appropriate adult, and such service should be recorded.

An order comes into effect on the day it is made. But the two-year period during which no order shall be discharged except with the consent of both parties starts from the date of service.¹³

The lead agency, if not the police, should ensure that a copy of the order is forwarded immediately to the police. The agency should also give copies of the order to the anti-social behaviour co-ordinator of the local crime and disorder reduction partnership, the other partner agencies and the main targets and witnesses of the anti-social behaviour, so that breaches can be reported and acted upon. The Justices' Clerks' Society guidance states that it is the responsibility of the court to inform the police of the making of an order.¹⁴

The police should notify the appropriate police area command on the same working day so that details of the defendant and the conditions of the order can be recorded.

A copy of the order should be provided to the lead agency's legal representative on the same day as the court hearing, and in the case of a child or young person, the court will provide a further copy for the youth

¹² Campbell, S. (2002) *Implementing Anti-social Behaviour Orders: messages for practitioners*. Home Office Findings 160.

¹³ Sections 1(9), 1B(6) and 1C of the Crime and Disorder Act 1998, as amended.

¹⁴ Justices' Clerks' Society. *Good practice guide – Anti-Social Behaviour Orders. A Guide to Law and Procedure in the Magistrates' Court*, 4.5(V).

offending team (YOT). The YOT should arrange for action to be taken by an appropriate agency (for example social services) to ensure that the young person understands the seriousness of the order. It should also consider the provision of appropriate support programmes to help avoid a breach of the order by diverting the offender from the behaviour that led to it, although such programmes cannot, as the law currently stands, be a condition of the order.

Enforcing the order

The obtaining of the order is not the end of the process. The order must be monitored and enforced properly.

Partnership working after the order is made should include information exchange to ensure early warning of problems and clarification of who should do what to safeguard witnesses, as well as what other action should be taken to challenge the perpetrator in such cases.

It is essential that breaches of an order, appeals against the sentence and any other actions relating to the management of the case are reported to the agency responsible for the management of the case.

One year review of juveniles' ASBOs

Orders issued to young people should be reviewed each year, given young people's continually changing circumstances, to help ensure that they are receiving the support they need in order to prevent breach. The review should be administrative rather than judicial, and should be undertaken by the team that decided upon the initial application. Where practicable, the YOT should provide the group with an assessment of the young person. Depending upon progress towards improved behaviour, possible outcomes will include an application to discharge the order or a strengthening of the prohibitions. Applications to vary or discharge the order will have to be made to the court in the usual way. The overriding considerations remain the safety and needs of the community, and the review would have to incorporate the community's views on the order's effectiveness.

Agencies need to be alert to the prospect that this should become a statutory requirement in the near future. Adopting this as best practice now will enable them to achieve compliance more readily.

Police National Computer (PNC)

Recording of orders on the PNC will enable police forces to enforce breaches effectively. Local arrangements should be made for orders to be placed on the PNC so that police officers are in a position to access usable data to identify those who are subject to an order. Conditions of the order should be appended clearly along with the identity of the case officer so that the necessary action can be taken in case of a breach (which is an arrestable offence).

11. Appeals

Magistrates' court (acting in its civil capacity) and orders on conviction in criminal proceedings

Section 4 of the Crime and Disorder Act 1998 provides the offender with the right of appeal against the making of a stand-alone ASBO.

Section 108 of the Magistrates' Courts Act 1980 provides a right of appeal against an on-conviction order. An appeal in both cases is to the Crown Court. Rules 74 and 75 of the Magistrates' Courts Rules 1981 and 6 to 11 of the Crown Court Rules 1982 apply to appeals against orders. Both parties may provide additional evidence. By virtue of section 79(3) of the Supreme Court Act 1981, an appeal is by way of a re-hearing of the case. In determining an appeal, the Crown Court should have before it a copy of the original application for an order (if applicable), the full order and the notice of appeal. The lead agency should ensure that copies are sent to the court.

Notice of appeal must be given in writing to the designated officer of the court and the applicant body within 21 days of the order (Crown Court Rules 1982, rule 7). But the Crown Court has the discretion to give leave to appeal out of time (rule 7(5)). The agency that brought the initial application should take charge of defending any appeal against the order. It should also lead in action to guard against witness intimidation.

The Crown Court may vary the order or make a new order. Any order made by the Crown Court on appeal shall be treated for the purpose of any later application for variation or discharge as if it were the original magistrates' court order, unless it is an order directing that the application be re-heard by the magistrates' court.

Although on hearing an appeal it is open to the Crown Court to make any incidental

order, for example to suspend the operation of a prohibition pending the outcome of the appeal where this appears to the Crown Court to be just, there is no provision for automatic stay of an order pending appeal. The order remains in force pending the outcome of the appeal, and breach is a criminal offence even if the appeal subsequently succeeds.

An appeal against the ruling of the Crown Court is to the High Court by way of case stated under section 28 of the Supreme Court Act 1981, or by application for judicial review by virtue of section 29(3) of that Act. It is also open to the applying authority to seek to challenge a magistrates' decision to refuse to grant an order by way of case stated (judicial review of the decision to the divisional court) by virtue of section 111 of the Magistrates' Courts Act 1980.

County court

Any appeal against an order made in the county court must be made in accordance with part 52 of the Civil Procedure Rules. Appeals against orders made by district judges will be to a circuit judge and against orders made by circuit judges to the High Court.

Appeals to the High Court by case stated

Any person who was party to any proceedings or is aggrieved by the conviction, order, determination or other proceedings of the court may question the proceedings on the grounds that it is wrong in law or in excess of jurisdiction.

The court can then be asked to state a case for the opinion of the High Court.

The case stated is heard by at least two High Court judges, and more often three judges sit, including the Lord Chief Justice. No evidence

is considered, so the hearing consists entirely of legal argument by counsel.

Having heard and determined the question(s) of law, the High Court may reverse, affirm or amend the original determination in respect of which the case has been stated, or remit the matter to the justices with the opinion of the court, or make such an order in relation to the matter as the court may see fit.

Appeals before the Crown Court

The hearing at the Crown Court is an entirely fresh one and, by virtue of section 79(3) of the Supreme Court Act 1981, is a full re-hearing of the case. The judgment in the case of *R v Lamb* [2005] EWCA Crim 2487 recommended that circuit judges and above should be dealing with these cases.

Rectification of mistakes

Section 142 of the Magistrates' Courts Act 1980 gives the court power to vary or rescind a sentence or other order imposed or made by it when dealing with an offender, if it appears to the court to be in the interests of justice to do so. However, this section is intended to rectify mistakes and applies only to orders made when dealing with an offender in criminal proceedings. Therefore, this power would only be applicable to orders made on conviction, rather than on a stand-alone application.

Application for judicial review

Judicial review looks at the lawfulness of actions and decisions. An application can be made for the High Court to consider whether the magistrates' court has failed to exercise its jurisdiction properly or whether it has made an error of law, which appears on the face of the record.

The High Court has the power to quash the order or make a mandatory prohibiting order.

An application must be made promptly, and in any event within three months of the date on which the grounds for the application arose.

12. Breaches

Breaches by adults

Breach of an order is a criminal offence, which is arrestable and recordable. Prosecutions for breaches of orders can be brought by the Crown Prosecution Service (CPS), although a local authority may also do so by virtue of section 1(10A) of the Crime and Disorder Act 1998 (as inserted by section 85(4) of the Anti-social Behaviour Act 2003), which states that prosecutions can also be brought by:

- (a) a council which is a relevant authority;
- (b) the council for the local government area in which a person in respect of whom an order has been made resides or appears to reside.

The lead officer managing the case should keep the other partner agencies informed of the progress and outcome of any breach investigation. A particular consideration will be the need to protect witnesses. The standard of proof for prosecution of a breach of an order is the criminal standard - 'beyond reasonable doubt'. Provision is made in section 1(10) of the Crime and Disorder Act 1998 for a defence of reasonable excuse.

The maximum penalty on conviction in the magistrates' court is six months in prison or a fine not exceeding £5,000 or both; at the Crown Court the maximum penalty is five years in prison or a fine or both. Community penalties are available but a conditional discharge is not.

Agencies and courts should not treat the breach of an order as just another minor offence. (It should be remembered that the order itself would normally have been the culmination of a course of persistent anti-social behaviour.) An order will only be seen to be effective if breaches are taken seriously.

Information on breaches can be received from any source, including the local authority

housing department and other local authority officers, neighbours and other members of the public. Any information received by a partner agency should be passed immediately to the police and lead officer, who should inform the other agencies involved. Breach penalties are the same for all orders, including the interim order. Court proceedings should be swift and not fractured by unnecessary adjournments either during the proceedings or before sentencing.

Where the offender is found guilty of the breach, the court may take reports from the local authority or police and any applicant agency before sentencing. The court should also consider the original reasons for making the order. A copy of the original order as granted (including any maps and details of any prohibitions) can be put before the court as evidence that an order has been made without the need for a statement formally proving that an order was made (section 139 of the Serious Organised Crime and Police Act 2005).

The sentence given should be proportionate and reflect the impact of the behaviour complained of.

Breaches by children and young people

Breach proceedings for children and young people will be dealt with in the youth court. Breach proceedings in the youth court are not subject to automatic reporting restrictions. The Serious Organised Crime and Police Act 2005 removed automatic reporting restrictions for children and young people convicted of a breach of an ASBO (section 141), and thus details about the perpetrator can be made public. The court may still impose reporting restrictions, particularly if they were put in place when the order was initially imposed in a civil court.

Under section 98 of the Magistrates' Courts Act 1980, evidence will be given on oath, except the evidence of a child under 14, which is given unsworn. Section 34 of the Children and Young Persons Act 1933 requires the attendance of a parent or legal guardian at court for any person under 16 years of age. The court will require information about the young person's background, home surroundings and family circumstances prior to sentence. This should be provided by the youth offending team or social services.

As with adults, community penalties are available but a conditional discharge is not. In addition, the youth court should consider whether to make a parenting order, or whether the individual support order should be amended.

13. Variation and discharge of an order

Variation or discharge of an order, including an interim order, may be made on application to the court that originally made it. An application to vary or discharge an order made on conviction in criminal proceedings may be made to any magistrates' court within the same petty sessions areas as the court that made the order. The application can be made either by the original applicant in the case or the defendant. An order cannot be discharged within two years of its service without the consent of both parties. An order made on conviction cannot be discharged before the end of two years. Prohibitions, however, can be varied, removed or added within that initial two year period.

The procedure for variation or discharge is set out in the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002, the Crown Court (Amendment) Rules 2002 and the Civil Procedure Rules. These are published separately from this guidance and are available on the crime reduction website at www.crimereduction.gov.uk

If the individual who is subject to the order asks for its variation or discharge, the agency that obtained the order needs to ensure that a considered response is given to the court. If it is decided that the lead agency should contest the application for variation or discharge, it should give the court its reasons, supported as appropriate by evidence gathered in the course of monitoring the effectiveness of the order. The magistrates' legal adviser will send details of the variation or discharge of any order to the local police force and local authority. The police should record any discharge or variation of the order on their computer system and arrange for any changes to be reflected in the Police National Computer record.

14. Monitoring and recording

Local agencies should agree common procedures for recording and monitoring both their successful and unsuccessful applications. Details of orders granted should be sent to the local crime and disorder reduction partnership (CDRP) anti-social behaviour co-ordinator and the local authority or police as appropriate, as well as to other agencies involved with the offender (including the local youth offending team if the offender is under 18 years old).

As a minimum there should be a record of:

- the original application (or details of the prosecution and hearing of any request for the order in the case of an order on conviction), including the name, address, date of birth, gender and ethnicity of the defendant;
- the order itself, including, where applicable, the map showing any exclusion area;
- the date and details of any variation or discharge of the order; and
- the action taken for any breach.

The following information could also be recorded:

- name, address, age, gender and ethnicity of any victim – or a statement that the case involved no identified victim;
- details of any person or persons who complained of the behaviour;
- details of any contributory issues, for example drugs, alcohol and substance misuse and/or mental health problems;
- details of any aggravating factors, for example racial motivation; and
- assessment of outcome in terms of whether or not the anti-social behaviour ceased.

Consistency of information will help to assess the effectiveness of orders and inform future local audits and crime reduction strategies.

Local authorities and other agencies, including the police, have a duty under the Race Relations (Amendment) Act 2000 to

satisfy themselves and the public that their anti-social behaviour policies do not discriminate. The Act also imposes a duty to promote race equality. As part of this duty, local authorities and the police should therefore ensure that they monitor the impact of their anti-social behaviour policy on the promotion of race equality. Systems to monitor the ethnicity of both defendants and victims will therefore need to be in place. This information should, where possible, be collected on the basis of self-definition by the defendant.

From December 2006, the new general duty under the Disability Discrimination Act requires a public authority to pay due regard when carrying out its functions to: the need to eliminate unlawful discrimination against disabled people; the need to eliminate disability-related harassment of disabled people; the need to promote equality of opportunity for disabled people; and the need to take account of disabled persons' disabilities even where that involves more favourable treatment. Advice on the general duty can also be obtained from the leaflet issued by the Office for Disability Issues (ODI) entitled *Disability equality: a priority for all*. The Disability Rights Commission website at www.drc.org.uk contains information under the section on publications entitled 'Do the Duty'.

15. Promoting awareness of orders

The purpose of the orders is to protect local communities from the harassment, alarm or distress that can be caused by anti-social behaviour. An effective media strategy by the CDRP is therefore essential if local residents and businesses are to be aware of orders and their implications. Using the local press to ensure the community knows the subject and conditions of the order is often a cost-effective strategy. At the same time, the staff of the partner agencies need to understand how and when orders can be used, and how they relate to the other tools to combat anti-social behaviour available to the partnership.

Local agencies and CDRPs should, within the context of their overall strategies for combating anti-social behaviour, devise a strategy for promoting awareness of orders. A designated officer should have responsibility for its delivery. This might most naturally be the CDRP anti-social behaviour co-ordinator. Disclosure of information should be necessary and proportionate to the objective it seeks to achieve.

Suggested aims of the strategy

The aims of an effective local publicity strategy are to:

- increase community confidence in reporting anti-social behaviour and expectations that it can be reduced;
- deter potential offenders from anti-social behaviour;
- ensure that the local population is aware of orders; the powers of the local authority, registered social landlords, Housing Action Trusts, the Environment Agency and the police (including the British Transport Police) to apply for them; and whom to approach if they believe that an order may be appropriate;
- ensure that agency staff have confidence in using orders where they are deemed appropriate; and

- ensure that potential witnesses are aware of the support available to them.

Publicity

This part of the guidance reflects the judgment of Lord Justice Kennedy, presiding judge in the case of *R (on application of Stanley, Marshall and Kelly) v Commissioner of Police for the Metropolis and Chief Executive of London Borough of Brent* [2004] EWHC 2229 (Admin), commonly referred to as *Stanley v Brent*.

Principles

- There is no ‘naming and shaming’ – ASBOs are not intended to punish or embarrass individuals but to protect communities.
- Publicity is essential if local communities are to support agencies in tackling anti-social behaviour. There is an implied power in the Crime and Disorder Act 1998 and the Local Government Act 2000 to publicise an order so that it can be effectively enforced.
- Orders protect local communities.
- Obtaining the order is only part of the process; its effectiveness will normally depend on people knowing about the order.
- Information about orders obtained should be publicised to let the community know that action has been taken in their area.
- A case-by-case approach should be adopted, and each individual case should be judged on its merits as to whether or not to publicise the details of an individual who is subject to an order. Publicity should be expected in most cases.
- It is necessary to balance the human rights of individuals who are subject to orders against those of the community as a whole when considering publicising orders.
- Publicity should be the norm, not the exception. An individual who is subject to an order should understand that the community is likely to learn about it.

Benefits of publicity

The benefits of publicity include the following:

- *Enforcement* – Local people have the information they need to identify and report breaches.
- *Public reassurance about safety* – Victims and witnesses know that action has been taken to protect them and their human rights in relation to safety and/or quiet enjoyment of their property. Making local people aware of an order that is made for their own protection can make a real difference to the way in which they live their lives, especially when they have suffered from anti-social behaviour themselves or lived in fear of it.
- *Public confidence in local services* – Local people are reassured that if they report anti-social behaviour, action will be taken by local authorities, the police or other agencies.
- *Deterrent to the subject of the order* – The perpetrator is aware that breaches are more likely to be reported because details of the order are in the public domain.
- *Deterrent to other perpetrators* – Publicity spreads the message that orders are being used and is a warning to others who are causing a nuisance in the community.

The decision to publish

Each individual case should be judged on its merits as to whether or not to publicise the details of an individual who is subject to an order. There should be a correlation between the purpose of publicity and the necessity test: that is, what is the least possible interference with privacy in order to promote the purpose identified.

Decision-makers should ensure that the decisions to publicise orders are recorded. However, this should not be seen as an onerous, lengthy task, but merely a way of recording the process they go through to arrive at publication. To ensure it is achieved, it is good practice to identify an individual, such as the anti-social behaviour co-ordinator, to be in charge of the process.

The decision-making process should aim to consider and record several key factors:

- the need for publicity;

- a consideration of the human rights of the public;
- a consideration of the human rights of those against whom orders are made; and
- what the publicity should look like and whether it is proportionate to the aims of the publicity.

The decision-making process should be carried out early on so as to avoid any delay in publicity following the granting of the order.

The decision-making process

Publicity must be necessary to achieve an identified aim – this will involve a necessity test. The identified aim for publicising could be (1) to notify the public that an order has been obtained, to reassure the public that action has been taken; (2) to notify the public of a specific order so that they can help in its enforcement; or (3) to act as a deterrent to others involved in anti-social behaviour. In some cases two or even all three aims will be relevant.

Disclosure of information should always be necessary and proportionate to achieving the desired aim(s). When identifying the aim(s), decision-makers should acknowledge, in those cases where it is relevant, the ‘social pressing need’ for effective enforcement of an order that prohibits anti-social behaviour to protect the community. In effect, this is a consideration of the human rights of the wider community, including past and potential victims. The decision-maker should recognise and acknowledge that for publicity to achieve its aim, it might engage the human rights of the individual who is subject to the order and potentially those of his or her family. Publicity should be proportionate to ensure that any interference is kept to a minimum. For example, if the legitimate aim is enforcement of the order then personal information, such as the terms of the order, the identity of the individual (including a photograph) and how to report any breach of the terms should normally be included. Usually the consideration of the effect of publicity on family members should not deter decision-makers from the stated aim of publicising the order. However, consideration of the impact of publicity on vulnerable family members should be made and recorded. The defendant and his or her

family should be warned of the intention to publish details.

What publicity should look like: are the contents proportionate?

The contents of the publicity should also be considered and decisions about them recorded. Disclosure of information should always be proportionate to achieving the desired aim. The contents of publicity should include factual and accurate material.

The content and tone of the publicity should be considered carefully. Information must be based on facts, and appropriate language used: for example, the order itself does not mean that an individual has been found guilty of a criminal offence. Words such as 'criminal' and 'crime' to describe the individual and their behaviour must be used with care and only when appropriate. If the anti-social behaviour was, as a matter of fact, also criminal, then it is permissible to describe it as criminal. Breach of an order is an offence and should be described as such. Publicity should be consistent with the character of the order itself: that is, a civil prohibition (rather than a criminal order) restricting anti-social behaviour (which may be criminal, but need not be).

It would be prudent to rehearse the facts of the case and agree on appropriate language to use. Some consideration should be given to the personal circumstances of individuals named on the order when deciding whether to include them in any publicity leaflet, particularly if they are under 18. However, any arguments for not including their names must be balanced with the need to enable those who receive the leaflet to be able to identify a breach.

Details of conditions of non-association named on the order, particularly where those named are also subject to orders or have a recent history of anti-social behaviour, can be included in publicity. Even in cases where the named individuals with whom association is prohibited are not subject to an ASBO it will usually be appropriate to name them once some consideration has been given to their personal circumstances.

Type of information to include in publicity

The type of personal information that might be included in any publicity would be:

- the name of the individual; and/or
- a description; and/or
- the age; and/or
- a photograph; and/or
- his/her address;
- a summary of the individual's anti-social behaviour; and/or
- a summary of, or extracts from, the findings of the judge when making the ASBO; and/or
- a summary of, or extracts from, the terms of the ASBO;
- the identification of any relevant exclusion zone (as illustrated on a map);
- details of conditions of non-associations named on the order, particularly where those named are also subject to ASBOs or have a recent history of anti-social behaviour;
- the expiry date of the order;
- the manner in which the public can report breaches (for example names, telephone numbers, addresses, possibility of anonymous reporting, etc); and/or
- the names of local agencies responsible for obtaining the ASBO;
- local contact numbers, such as those for Victim Support, local police and housing services, with reassurance that reports will be treated in confidence;
- date of publication;
- the identity of the group to be targeted by the publicity (for example businesses or residents in the vicinity); and/or
- those who are suspected to have been subject to anti-social behaviour by the individual; and/or
- those individuals or businesses within and immediately adjacent to an area identified in the ASBO; and
- details of the publication area, for example within the area of any exclusion zone and the area immediately adjacent to the exclusion zone, within the borough.

Age consideration

The age of the person against whom the order was obtained should be a consideration when deciding whether or how to inform people about the order. Factual information should be obtained about whether an individual is particularly vulnerable. This should be done as early as possible, to avoid

delays in informing the public once an order has been obtained. The fact that someone is under the age of 18 does not mean that their anti-social behaviour is any less distressing or frightening than that of an adult.

An order made against a child or young person under 18 is usually made in open court and is not usually subject to reporting restrictions. The information is in the public domain and newspapers are entitled to publish details. But if reporting restrictions have been imposed, they must be scrupulously adhered to. In applications involving children and young people where evidence has consisted of details of their past convictions, and reporting restrictions were not lifted for the proceedings leading to those convictions, the publicity should not make reference to those convictions. Similarly, where an order on conviction has been imposed on a child or young person in the youth court, unless reporting restrictions are lifted, details of the offences or behaviour alluded to in that hearing cannot be reported. However, details of the behaviour outlined in the order on conviction hearing can be used, unless the court orders otherwise. Where the court making the order does impose reporting restrictions under section 39 of the Children and Young Persons Act 1933, the press must scrupulously observe these.

A court must have a good reason to make a section 39 order. Age alone is insufficient to justify reporting restrictions being imposed. Section 141 of the Serious Organised Crime and Police Act 2005 reverses the presumption in relation to reporting restrictions in the youth court in cases for breach of ASBOs. Automatic reporting restrictions will not apply but the court retains the discretion to impose them. The prosecutor can make an application to the court for this. While it is the case that from 1 July 2005 no automatic reporting restrictions have applied in cases for breach of ASBOs relating to children and young people, when dealing with the case the court will consider whether reporting restrictions were imposed when the original order was granted. As ASBOs are civil orders, reporting restrictions will not have applied (unless imposed by the court).

If reporting restrictions were imposed at the original ASBO hearing, then unless there has been a significant change in the intervening period, it is likely that the court will impose

reporting restrictions at the hearing for the breach. If no reporting restrictions were imposed at the original ASBO hearing, it is still open to the court to impose reporting restrictions at the hearing of the breach case. If reporting restrictions are not imposed, publicity can be considered, taking into account all the matters that are relevant when considering publicising the ASBO itself.

Photographs

A photograph of the subject of the ASBO will usually be required so that they can be identified. This is particularly necessary for older people or housebound witnesses who may not know the names of those causing a nuisance in the area. The photograph should be as recent as possible.

Distribution of publicity

This should be primarily within the area(s) that suffered from the anti-social behaviour and that are covered by the terms of the order, including exclusion zones. People who have suffered from anti-social behaviour, for example residents, local businesses, shop staff, staff of local public services, particular groups or households should be the intended audience.

All orders should be recorded on the Police National Computer to assist enforcement. This is particularly relevant where the order extends across England and Wales. It may be appropriate to extend publicity beyond the area where the anti-social behaviour was focused if there is a general term prohibiting harassment, alarm or distress in a wider area. It may also be appropriate if there is a danger of displacement of the anti-social behaviour to distribute it just beyond the area covered by the order.

The timescale over which publicity is anticipated to occur should also be given due consideration and decisions recorded. It is important that publicity does not become out of date or irrelevant. Special attention needs to be paid to posters that are distributed to other organisations, as posters should not be left up when the need for them has expired. It will usually be appropriate to issue publicity when a full order is made, rather than an interim order. However, exceptions can be made, for example where the anti-social behaviour is severe, where there has been extreme intimidation or where there is

a delay between the making of the interim order and the outcome of the final hearing. In the case of *Keating v Knowsley Metropolitan Borough Council* [2004] EWHC 1933 (Admin), the judge held that publicity could be used for interim orders. In these circumstances it should be stated in the publicity that the order is temporary and that a hearing for a 'full' order will follow, and distribution should be extremely localised.

Consideration of human rights

Consideration of the human rights of the individual who is subject to the order and of the human rights of the public, including the victim(s) and potential victims, should be carried out. Appropriate and proportionate publicity is compliant with the human rights of the individual who is subject to the order. The *Stanley v Brent* case accepted that publicity was needed for effective enforcement of the order. Individuals do not welcome publicity and may view the effect of publicity as a punishment. However, a subjective assessment by the individual of the effect of publicity is irrelevant in determining the purpose of the publicity. Consideration of the human rights implications of publicity should be recorded.

Consideration of data protection

Publicity is not contrary to the Data Protection Act 1998 as long as authorities are operating in accordance with the Act. There is an exemption in section 29 of the Act to the processing of personal data for the purposes of prevention or detection of crime. This means that personal data can be processed with a view to compliance with a statutory function, where the data has been obtained from a person who possessed it for the purposes of the prevention or detection of crime. This will be the case when considering publicising an ASBO.

Type of publicity

No one directly involved in the case (witnesses and victims) should wait unnecessarily for information about an order. They should be informed immediately when an order is made. This is in addition to keeping them informed of progress throughout the court process and can be done by visits, letters and community meetings or by phone. Victims and witnesses may also be given a copy of the order. It is

recommended that publicity be distributed to targeted households immediately after the order has been granted and by at least a week after the court date. Local people should be informed when variation or discharge of an order relevant to them is made.

The method of publicity can include the following:

- local print and television media;
- local leaflet drop; and
- local newsletter.

Practitioners need to apply the proportionality test when deciding which method is appropriate.

Leaflets and other printed materials, such as posters or residents' newsletters, allow local agencies to target particular neighbourhoods, streets or households with information.

The public can be informed about an ASBO at any time – publicity can be issued and re-issued according to the circumstances. However, publicity needs to be timely to ensure that people are able to enforce the order as soon as it has been granted and to reassure the public that something is being done.

Working with the media

It is usual for local statutory agencies to have working relationships with local and regional media, including press, television and radio. This is particularly relevant to issues such as anti-social behaviour and where the media are keen to report how local agencies are tackling these issues through the deployment of dispersal orders, ASBOs, 'crack house' closures, etc.

It is important to work with local media and to make them understand that it is not the purpose of any publicity to punish the individual. Media coverage has the potential to go to a wider audience than leaflets or posters. It is good practice to identify newspapers that report on city, borough and neighbourhood issues, free local press and local radio and television and to develop working relationships with them. This could include being aware of their publication deadlines, giving them exclusives and making sure that the complainant's (victim's) point of view is put across. However, it is important to

keep close control of the material. Witnesses should not be put at risk by disclosing dates of hearings, and your relationships with the courts should not be jeopardised. Those subject to an ASBO who are considered vulnerable should also not be put at risk.

Issuing a press release is a way of retaining control of the material. There should be an agreed process for authorisation of the press releases. The press release should contain information that meets the identified aim of the publicity. For example, if the aim is to help enforce the order, the information in the press release will be more detailed than the information needed for publicity whose aim is to reassure the community that something is being done. It is good practice to identify a spokesperson to liaise with the press.

Appendix A

Early intervention and tackling offending behaviour by under-10s

Interventions available

Acceptable behaviour contract (ABC)

An ABC (also known as an acceptable behaviour agreement) is an intervention designed to engage an individual in acknowledging his or her anti-social behaviour and its effect on others, with the aim of stopping that behaviour. An ABC is a written agreement made between a person who has been involved in anti-social behaviour and their local authority, youth inclusion support panel (YISP), landlord or the police. ABCs are not set out in law, which is why they are sometimes called agreements. Any agency is able to use and adapt the model. An ABC or acceptable behaviour agreement is completely flexible and can be adapted for the particular local need. It can include conditions that the parties agree to keep. It may also contain the agreed consequences of a breach of the agreement.

Parenting contracts (section 25 of the Anti-Social Behaviour Act 2003)

Parenting contracts are voluntary written agreements between youth offending teams (YOTs) and the parent/guardian of a child/young person involved, or likely to be involved, in anti-social behaviour or criminal conduct. They are a two-sided arrangement where both the parents and the agency will play a part in improving the young person's behaviour. The contract contains a statement by the parent(s) agreeing to comply with the requirements for the period specified and a statement by the YOT agreeing to provide support to the parent(s) for the purpose of complying with those requirements. It is important that there is a clear agreement about the consequences if the terms of the parenting contract are not adhered to. If the contract is broken, the YOT may apply to the court for a parenting order (see below), which would include compulsory requirements.

Child safety order (sections 11–13 of the Crime and Disorder Act 1998 as amended by section 60 of the Children Act 2004)

A child safety order (CSO) allows compulsory intervention with a child under 10 years of age who has committed an act which, had they been aged 10 or over, would have constituted an offence. It is designed to prevent anti-social behaviour when it is not possible to engage on a voluntary basis with a child under 10. A CSO is made in family proceedings in the magistrates' court on application by a local authority. The order places the child under the supervision of a responsible officer, who may be a local authority social worker or a member of a youth offending team and can include requirements designed to improve the child's behaviour and address underlying problems. If the order is not complied with, the parent can be made the subject of a parenting order if that would be in the interests of preventing repetition of the behaviour that led to the CSO being made.

Parenting order

A parenting order can be made in respect of a parent of a child under 10 years of age. It can require parents to attend a parenting programme (lasting up to three months) and specify requirements for the parent regarding supervision of the child (lasting up to 12 months). Failure to comply with a parenting order is a criminal offence punishable by a fine of up to £1,000 and/or a community sentence.

Under section 8 of the Crime and Disorder Act 1998 as amended by the Children Act 2004, a parenting order can be imposed on a parent of a child who is subject to a CSO or when a CSO has been breached.

Section 26 of the Anti-social Behaviour Act 2003 enables YOTs to apply to the magistrates' court for a 'free-standing' parenting order. The court must be satisfied that the child or young person has engaged

in anti-social behaviour or criminal conduct and that the order would be desirable in preventing further occurrences of such behaviour.

There is provision in the current Police and Justice Bill to extend the power to apply for parenting orders to local authorities and registered social landlords.

For further information on parenting orders, refer to the guidance on parenting contracts and orders at www.homeoffice.gov.uk/documents/parenting-orders-guidance

Local child curfew schemes (section 14 of the Crime and Disorder Act 1998 as amended by Criminal Justice and Police Act 2001)

These are designed for children and young people 15 years old and below, to help local authorities to deal with the problem of unsupervised children or young people involved in late-night, anti-social behaviour on the streets. Under a local child curfew scheme, a local authority or local police force can ban children under 16 from being in a public place during specified hours (between 9pm and 6am), unless they are under the control of a responsible adult. With children under 10, contravening a ban imposed by a curfew notice (for instance being found outside their homes after the curfew) is one of the conditions under which a family court could make the child subject to a CSO. A local child curfew can last for up to 90 days.

Junior youth inclusion projects

Junior youth inclusion projects are based on high-crime, high-deprivation neighbourhoods across England and Wales and work with the 8–13 age range. Projects aim to prevent youth crime in those neighbourhoods by targeting the 50 most at-risk children and young people in the area, assessing their needs and providing meaningful interventions aimed at addressing those risk factors. Young people typically are either on the cusp of offending or are already involved in low-level offending. In order to engage with the 50 most at-risk young people, projects work with around another 100 peers and siblings of core group members.

Youth inclusion support panels

Youth inclusion support panels (YISPs) are multi-agency planning groups that serve to identify those young people in the 8–13 age range who are most at risk of offending and engaging in anti-social behaviour. They offer an early intervention based on assessed risk and need. Parenting support in the form of contracts and programmes is offered as part of a range of tailored interventions.

The suggested criteria for a young person referred to the YISP is as follows:

- The child is aged between 8 and 13 years inclusive (up to 17 in some areas).
- The behaviour of the child is of concern to two or more of the partner agencies and/or their parents/carers, and they consider that it requires a multi-agency response.
- The parent/carer and child are willing to take part, give consent to the referral and the child is willing to co-operate with an integrated support plan.
- The child is exposed to four or more risk factors.
- There is known offending behaviour up to and including a police reprimand or ASBO, or there is concern over potential involvement in criminal or anti-social behaviour.

The panel is made up of representatives from a variety of agencies which can include YOTs; police; social services; housing, probation and education services; Connexions; voluntary sector organisations; anti-social behaviour units; and the fire service. (This list is not exhaustive and can be tailored to local circumstances.) The panel will meet on a regular basis and consider referrals made to it in order to devise an integrated support plan. The YISP must ensure that a mechanism is in place for the sharing of information. The method, criteria and considerations for this can be found by referring to the Association of Chief Police Officers/Youth Justice Board guidance.¹⁵

¹⁵ Association of Chief Police Officers/Youth Justice Board (2005) *Sharing Personal and Sensitive Information in Respect of Children and Young People at Risk of Offending*. London: Youth Justice Board, p.11.

Appendix B

County court Practice Direction according to the Civil Procedure Rules

IV. Anti-social behaviour orders under the Crime and Disorder Act 1998

Scope of this Section and interpretation	
65.21	(1) This Section applies to applications in proceedings in a county court under sub-sections (2), (3) or (3B) of section 1B of the Crime and Disorder Act 1998 by a relevant authority, and to applications for interim orders under section 1D of that Act.
	(2) In this Section –
	(a) ‘the 1998 Act’ means the Crime and Disorder Act 1998;
	(b) ‘relevant authority’ has the same meaning as in section 1(1A) of the 1998 Act; and
	(c) ‘the principal proceedings’ means any proceedings in a county court.

Application where the relevant authority is a party in principal proceedings	
65.22	(1) Subject to paragraph (2) –
	(a) where the relevant authority is the claimant in the principal proceedings, an application under section 1B(2) of the 1998 Act for an order under section 1B(4) of the 1998 Act must be made in the claim form; and
	(b) where the relevant authority is a defendant in the principal proceedings, an application for an order must be made by application notice which must be filed with the defence.
	(2) Where the relevant authority becomes aware of the circumstances that lead it to apply for an order after its claim is issued or its defence filed, the application must be made by application notice as soon as possible thereafter.
	(3) Where the application is made by application notice, it should normally be made on notice to the person against whom the order is sought.

Application by a relevant authority to join a person to the principal proceedings	
65.23	(1) An application under section 1B(3B) of the 1998 Act by a relevant authority which is a party to the principal proceedings to join a person to the principal proceedings must be made –
	(a) in accordance with Section I of Part 19;
	(b) in the same application notice as the application for an order under section 1B(4) of the 1998 Act against the person; and
	(c) as soon as possible after the relevant authority considers that the criteria in section 1B(3A) of the 1998 Act are met.
	(2) The application notice must contain –
	(a) the relevant authority’s reasons for claiming that the person’s anti-social acts are material in relation to the principal proceedings; and
	(b) details of the anti-social acts alleged.
	(3) The application should normally be made on notice to the person against whom the order is sought.

Application where the relevant authority is not party in principal proceedings	
65.24	(1) Where the relevant authority is not a party to the principal proceedings –
	(a) an application under section 1B(3) of the 1998 Act to be made a party must be made in accordance with Section I of Part 19; and
	(b) the application to be made a party and the application for an order under section 1B(4) of the 1998 Act must be made in the same application notice.
	(2) The applications –
	(a) must be made as soon as possible after the authority becomes aware of the principal proceedings; and
	(b) should normally be made on notice to the person against whom the order is sought.

Evidence	
65.25	An application for an order under section 1B(4) of the 1998 Act must be accompanied by written evidence, which must include evidence that section 1E of the 1998 Act has been complied with.

Application for an interim order	
65.26	(1) An application for an interim order under section 1D of the 1998 Act must be made in accordance with Part 25.
	(2) The application should normally be made –
	(a) in the claim form or application notice seeking the order; and
	(b) on notice to the person against whom the order is sought.

Appendix C

Order form

FORM

Anti-social behaviour order (Crime and Disorder Act 1998, s1)

Magistrates' Court
(Code)

Date:

Defendant:

Address:

On the complaint of
Complainant:

Applicant Authority:

Address of Applicant Authority:

The court found that:

- (i) the defendant acted in the following anti-social manner, which caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself:

And (ii) this order is necessary to protect persons

from further anti-social acts by him.

And it is ordered that the defendant

[NAME]

is prohibited from

Until []

[further order]

Justice of the Peace

[By order of the clerk of the court]

NOTE: If, without reasonable excuse, the defendant does anything which he is prohibited from doing by this order, he shall be liable on conviction to a term of imprisonment not exceeding five years or to a fine or to both.

Appendix D

Summons form

SCHEDULE 2

Rule 4(2)

FORM

Summons on application for anti-social behaviour order (Crime and Disorder Act 1998, s1)

Magistrates' Court
(Code)

Date:

To the defendant:

[name]

Address:

You are hereby summoned to appear on
[date] at

before the magistrates' court at

to answer an application for an anti-social behaviour order, which application is attached to this summons.

Justice of the Peace

[By order of the clerk of the court]

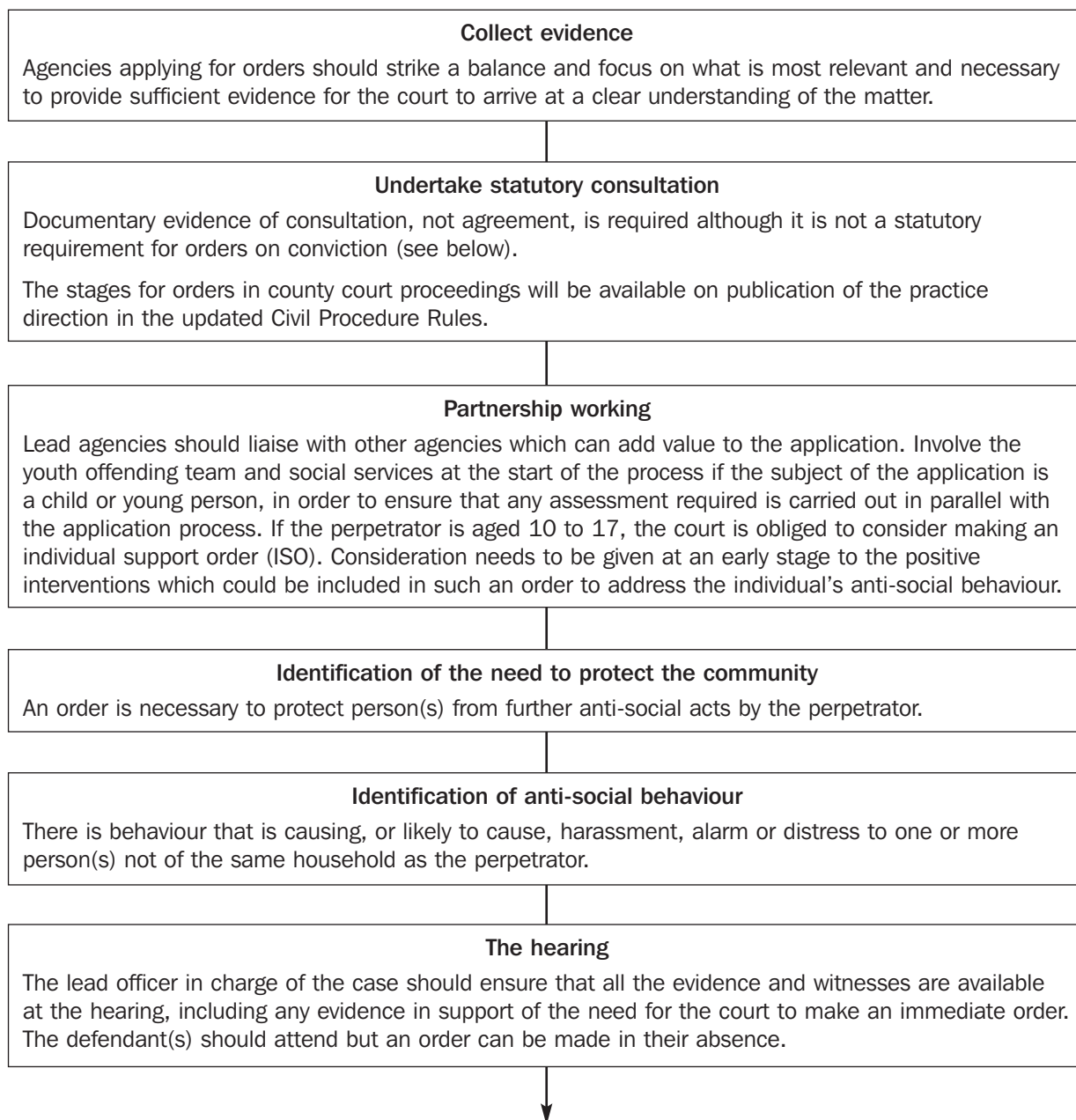
NOTE: Where the court is satisfied that this summons was served on you within what appears to the court to be a reasonable time before the hearing or adjourned hearing, it may issue a warrant for your arrest or proceed in your absence.

If an anti-social behaviour order is made against you and if, without reasonable excuse, you do anything you are prohibited from doing by such an order, you shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine, or to both.

Appendix E

Step-by-step process for anti-social behaviour orders and orders on conviction

Process for anti-social behaviour orders



Applying for an interim order

Where there is an urgent need to protect the community, an application for an interim order may be made with the application for the main order. The appropriate form in the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002 should be used. An application for an order without notice to the defendant may be made subject to agreement of the justices' clerk or other court clerk with delegated authority. The clerk shall grant leave for an application for an interim order to be made where they are satisfied that it is necessary.

The hearing for a without notice interim order will take place without the presence of the defendant. Where the hearing is made on notice, the defendant should be summoned to attend the hearing.

If an interim order is granted, the application for the main order (together with a summons giving a date for the defendant to attend court) should be served on the defendant in person as soon as practicable after the making of the interim order. The interim order will not take effect until it has been served on the defendant. If the interim order is not served on the defendant within seven days of being made, then it shall be set aside. The interim order shall cease to have effect if the application for an anti-social behaviour order is withdrawn or refused.

Make an application to the magistrates' court

An application for an ASBO is by complaint to the magistrates' court using the appropriate form in the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002. The complaint must be made within six months from the time when the matter of the complaint (the behaviour) arose. A complaint may be made on the basis of one incident if sufficiently serious. Earlier incidents may be used as background information to support the case and show a pattern of behaviour. The application may be made to any magistrates' court. A summons together with the application, as set out in the Rules, should be either given to the defendant in person or sent by post to the last known address.

Draw up prohibitions

The order should be drafted in full, including its duration, and a court file prepared.

Process for an order made on conviction in criminal proceedings (in the magistrates' court or the Crown Court)

Since the case of *R v Wadmore and Foreman* [2006] EWCA Crim 686 Court of Appeal Criminal Division, the court should record on the face of the order its findings of fact in relation to the alleged anti-social behaviour.

Verdict

If found guilty of breaching the order, the offender is convicted or given a conditional discharge.

Criminal hearing

This is to establish guilt of criminal charge only.

Signal intention to seek an order

Prior to, or at the start of, the criminal stage or hearing, the police, Crown Prosecution Service or local authority involved in the case may advise the subject and court that an order will be sought on conviction. This is not a requirement; the issue can be raised for the first time post-conviction.

Draw up prohibitions

The police or other agency involved in the case may draw up the prohibitions necessary to protect the community from the subject's anti-social behaviour for consideration by the court post-conviction. This is not a requirement.



Collect evidence

Evidence may be collected for presentation to the court post-conviction. This is not a requirement as the court may make an order on conviction on its own initiative.

Other matters

Application for variation or discharge by either the applicant or the defendant is to the same magistrates' court that made the order. Appeal is to the Crown Court. Breach of the order will go to the magistrates' court, which may refer it to the Crown Court in the more serious cases. Mode of trial decision determines whether breach of ASBO is dealt with in the magistrates' court or the Crown Court.

Immediate post-order procedure

Where an ASBO is granted, it is preferable for a copy of the order to be served on the defendant in person prior to their departure from court. If this is not possible, personal service should be arranged as soon as possible thereafter. In the case of a child or young person, the order should also be served on the parent, guardian or an appropriate adult. In all cases, service should be recorded.

The lead agency, if not the police, should ensure that a copy of the order is forwarded immediately to the police. Copies should also be given to the anti-social behaviour co-ordinator of the local crime and disorder reduction partnership, the other partner agencies, and to the main targets and witnesses of the anti-social behaviour.

An order comes into effect on the day it is made. But the two-year period during which no order shall be discharged starts from the date of service.

Other matters

Where the order is made on conviction in the magistrates' court, application for variation or discharge by either the applicant or the defendant may be made to any magistrates' court within the same local justice area as the court that made the order. Appeal is to the Crown Court. Breach of the order will go to the magistrates' court, which may refer it to the Crown Court in the more serious cases.

Where the order is made on conviction in the Crown Court, application for variation or discharge by either the applicant or the defendant is made to the same Crown Court which made the order. Appeal is to the Court of Appeal. Breach of the order will go to the magistrates' court, which may refer it to the Crown Court in the more serious cases.

Immediate post-order procedure

If the offender is given a custodial sentence, the court may make provision for the requirements of the order to come into effect when the offender is released from custody. See above for details for immediate post-order procedure for ASBOs.

Post verdict – hearing for order on conviction

The hearing for the order post-conviction is civil.

The issue of an order may be raised by the magistrates or judge without any request from the prosecution or the police or local authority; the Crown Prosecution Service may make an application for an order on conviction. Additional evidence relating to the request for the order and the need for the prohibitions may be produced.

Appendix F

Public funding for defendants

Criminal public funding is available for any proceedings under sections 1 and 4 of the Crime and Disorder Act (CDA) 1998 relating to ASBOs, including interim orders, where they are made in the magistrates' court or where an appeal is made in the Crown Court.

Advocacy assistance is available for an ASBO, an interim order under section 1D of the CDA, variation or discharge of an ASBO, or an appeal against the making of an ASBO under section 4 of the CDA, in accordance with the Criminal Defence Service General Criminal Contract. Solicitors can self-grant advocacy assistance for these matters. There are no financial criteria for the grant of advocacy assistance. Advocacy assistance may not be provided where it appears unreasonable that approval should be granted in the particular circumstances of the case, or where the interests of justice test, set out in Schedule 3 of the Access to Justice Act 1999, is not met. In applying this test, there is an additional factor of whether there is a real risk of imprisonment if an ASBO is made and subsequently breached.

A representation order may be sought on application to the Legal Services Commission in respect of these proceedings. Provision for representation is made under Regulation 3(2)(criminal proceedings for the purposes of section 12(2)(g) of the Access to Justice Act 1999) of the Criminal Defence Service (General)(No.2) Regulations 2001, and Regulation 6(3) of the same regulations.

An application to the Commission must be made on form CDS3. An application will be determined in accordance with the interests of justice criteria. The availability of advocacy assistance will be a relevant factor which the Legal Services Commission will take into account when considering the grant of representation.

Where an application for a representation order is refused, the Legal Services Commission shall provide written reasons for the refusal and details of the appeal process. The applicant may make a renewed application in writing to the Funding Review Committee, which may grant or refuse the application.

Advocacy assistance is available for proceedings in the Crown Court, where an appeal is made under section 4 of the CDA. The merits test is slightly different from that on application for an interim or a full ASBO. It is based only on the general reasonableness test. Advocacy assistance may not be granted if it appears unreasonable that approval should be granted in the particular circumstances of the case. The prospects and merits of an appeal should be taken into account as well as whether the individual has reasonable grounds for taking the proceedings. Representation is also available for an appeal against an order under section 4 of the CDA. An application should be made to the Legal Services Commission which will consider grant against the availability of advocacy assistance.

Any challenge against the ruling of the Crown Court to the High Court by way of case stated or by application for judicial review falls outside the scope of criminal funding. Legal representation would have to be applied for in accordance with the Funding Code procedures to the Legal Services Commission. This work is funded through the Community Legal Service although it falls within the scope of the General Criminal Contract.

Advocacy assistance is available for a breach of an interim order or full ASBO. Representation is also available for breach proceedings on application to the Commission as above.

Further reading

Anti-social Behaviour: A guide to the role of Youth Offending Teams in dealing with anti-social behaviour published by the Youth Justice Board, the Home Office and the Association of Chief Police Officers, which can be downloaded at www.youth-justice-board.gov.uk/Publications/Scripts/prodView.asp?idproduct=212&eP=

The Guidance for the Courts by Lord Justice Thomas can be found at:

www.youth-justice-board.gov.uk/NR/rdonlyres/398987C5-E79A-491E-B912-DF3D4D762293/0/ASBOGuidanceforjudiciaryHMCSjune05_2_.pdf

Websites

www.together.gov.uk

www.respect.gov.uk

www.crimereduction.gov.uk

www.youth-justice-board.gov.uk

