



ANTI-SOCIAL BEHAVIOUR ORDERS

- a Staffordshire protocol

This Protocol represents the commitment of Staffordshire Police Force, the Crown Prosecution Service, the Courts, and the relevant Local Authorities within Staffordshire to a multi-agency approach to Anti-Social Behaviour Orders.

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INTRODUCTION

- 1 The Crime and Disorder Act 1998 introduced the concept of an Anti-Social Behaviour Order that is a civil remedy open to application on behalf of the Chief Constable of a Police Force or the Local Authority.
- 2 The Police Reform Act 2002 allows an Anti-Social Behaviour Order to be made on conviction of a defendant for a criminal offence.
- 3 The Anti-Social Behaviour Act 2003 allowed the Crown Prosecution Service to apply for, and conduct proceedings in respect of, applications for Anti-Social Behaviour Orders on conviction.
- 4 Anti-Social Behaviour has a wide definition, but includes:-
 - Graffiti.
 - Abusive and intimidating language.
 - Excessive noise.
 - Fouling the street with litter.
 - Drunken behaviour in the streets.
 - Drug activity.
- 5 Each of these issues have a direct impact on the quality of life of young and old people in a community. The public expect an appropriate response from all of the criminal justice agencies.

AIM

- 6 To ensure that applications for Anti-Social Behaviour Orders are made and enforced in appropriate cases by the Police, Crown Prosecution Service, Local Authorities and all other relevant agencies combining their skills and resources to best effect. By doing so they will
 - reduce the level of anti-social behaviour, the public's fear of anti-social behaviour and increase public confidence in the Criminal Justice System and
 - improve the experience of victims and witnesses within the Criminal Justice System.

CONDITIONS

- 7 An Anti-Social Behaviour Order may be made if it appears that the following conditions are fulfilled with respect to any person aged 10 or over, namely:-
 - that the person has acted since 1 December 2002 in an anti-social manner, that is to say in a manner that has caused or is likely to cause harassment, alarm or distress to one or more persons not of the same household as himself, and
 - that such an Order is necessary to protect relevant person from further anti-social acts by him.

NATURE AND TYPE OF ORDER

- 8 The nature of the proceedings is civil so the rules of the Civil Evidence Act will apply. The “burden of proof” is to the criminal standard. See *R v Manchester Crown Court ex parte McCann 2002 3 WLR 1313*.

DEFINITIONS

- 9 In this Protocol the following definitions are used:-

- **CRASBO** is a Criminal Anti-Social Behaviour Order made available under the Police Reform Act, 2002 and made upon conviction for a relevant criminal offence, under Section 1C of the Crime and Disorder Act, 1998.
- **ASBO** means an order made under any sections 1, 1B or 1D of the Crime and Disorder Act, 1998.
- **ECHR**: European Court of Human Rights
- **PNC**: Police National Computer.
- **CPS**: Crown Prosecution Service.
- **MG13**: a standard form produced by the Home Office for use in the CRSBO application
- **Interested Agency**: an organisation other than the CPS, Police and Local Authority with an involvement with either offenders or the process of applying for anti-social behaviour orders, and which may possess information relevant to an application for an order upon conviction or a prosecution for breach of an ASBO or order upon conviction.
- **Relevant Person** is someone in England and Wales who is in need of protection under the legislation from Anti-Social acts
- **OIC**: Officer in the Case
- **YOTs**: Youth Offending Teams
- **RIPA**: Regulation of Investigatory Powers Act 2000.
- **PPO**: Prolific and Priority Offender (*as defined*)
- **Consultation**: a forum where the Local Authority, Police and interested agencies exchange information and discuss either strategies for tackling anti-social behaviour in general or individual cases. As a result of differing regional priorities and agencies, and the make up and purpose of consultation meetings may vary between Areas.
- **Local authority**: the council for a local government area.

EQUALITY AND DISCRIMINATION

- 10 Under this Protocol an ASBO application will be considered where it is necessary to protect individuals or families who are the targets of anti-social behaviour or whose lives or communities are being blighted by such behaviour.

- 11 An application will not be made against people simply because they are different from their neighbours or engage in activities which are different, for example, because they belong to another race or religion.
- 12 When investigating complaints about anti-social behaviour, the partner agencies must satisfy themselves that they have been motivated by discrimination/victimisation on the grounds of, for example, race, disability, sex, sexual orientation, age, religion or creed.

HUMAN RIGHTS AND ECHR CONSIDERATIONS

- 13 From October 2002, the Human Rights Act made it unlawful for a public authority to act or fail to act in a way which is incompatible with the ECHR. All partner agencies will comply with the ECHR at all stages of the process, taking into account the need to protect the rights and freedoms of members of the community at large as well as those of the defendant.
- 14 Those in charge of a case at any given stage will, in consultation with legal advisers, therefore need to be satisfied that:-
 - All procedural and substantive rights under the ECHR are complied with.
 - Any interference with the defendant's rights which is sought in the ASBO is necessary and in accordance with the provisions of the ECHR.
 - The proposed terms of the ASBO are reasonable and proportionate to the anti-social behaviour in question; and
 - The ASBO being applied for is not in such terms that the defendant is bound to breach it.
 - In assessing what is reasonable and proportionate those in charge of a case will bear in mind the need to uphold people's rights not to be disturbed by anti-social behaviour.
 - Compliance with the Articles of the ECHR incorporated into the UK law by the Human Rights Act.

THE EXCHANGE OF PERSONAL INFORMATION

- 15 Where information is to be exchanged or shared between the parties to this Protocol pursuant to the power contained in section 115 of the Act, this must be strictly in accordance with the principles set out in the legislation.
- 16 Where multi-agency consultation forums exist, they will ensure that all possible actions to resolve anti-social behaviour problems are considered and that where the decision is taken to pursue an ASBO, regular reviews will be undertaken to ensure that the process remains proportionate throughout. Multi-agency meetings will be held in confidence and all parties present will be required to sign a confidentiality agreement.
- 17 In cases where information is to be disclosed pursuant to other statutory provisions, such as section 29 of the Data Protection Act, 1998, that permits the processing of personal data for the prevention or detection of crime, or the apprehension or prosecution of offenders, the Parties will comply with provisions of the Protocol to the extent that it is practicable to so comply.

ASBO UNDER SECTION 1 CRIME AND DISORDER ACT, 1998 (FREE STANDING)

APPLICATION

- 18 Only a 'relevant authority', defined as follows, can apply for an Order under Section 1 (1A).
- 19 'Relevant authority' includes:-
- The Council for a local government area (defined by Section 1 (12) as the area of a District Council.
 - The Chief Officer of Police of any Police Force maintained for a Police area.
 - The Chief Constable of the British Transport Police.
 - Any person registered under Section 1 of the Housing Act, 1996 as a social landlord who provides or manages any houses or hostel in a local government area.
 - Housing Action Trusts.
 - County Councils.

CONSULTATION REQUIREMENTS

- 20 If a Council intends to apply, it must first consult the Chief Officer of Police for the area.
- 21 If the Chief Officer of Police intends to apply, he must first consult the Council for the area in which the proposed defendant resides or appears to reside.
- 22 Any other 'relevant authority' that intends to apply must first consult both the Council for the area in which the proposed defendant resides, or appears to reside, and the Chief Officer of Police for the area.
- 23 County Councils must consult the local District Council where one exists.
- 24 Agreement between agencies is not required.

COURT (SECTION 1 (3))

- 25 The application must be made by complaint to the Court whose commission area includes the local government area or Police area concerned.
- 26 The application will be heard in the adult Court even if the order is sought against a youth and the proceedings are classed as civil proceedings.

CRITERIA FOR MAKING AN ASBO (SECTION 1 (1))

- 27 The person against whom the Order is sought must have acted in an anti-social manner, that is to say, 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 himself and,
- 28 That such an Order is necessary to protect 'relevant persons', (defined above at paragraph 10) from further anti-social acts by that person.

EVIDENTIAL REQUIREMENTS

- 29 A standard of proof is required to satisfy the equivalent of a criminal standard of beyond reasonable doubt, even though the proceedings are civil (so the Justices have to be sure that the defendant has acted in an anti-social manner).
- 30 "The enquiry under Section 1(1) (b), namely that such an Order is necessary to protect persons from further anti-social acts by that person, does not involve a standard of proof. It is an exercise of judgement or evaluation". (*per Lord Steyn in R v Manchester Crown Court ex parte McCann*).
- 31 Hearsay evidence is admissible in accordance with the Civil Evidence Act, 1995. The Court must carefully decide what weight to attach to it, as it cannot be tested by cross examination.
- 32 The Court will disregard any act of the defendant which he shows, on the balance of probabilities was reasonable in the circumstances.
- 33 If both conditions are fulfilled, the Court may make an ASBO which prohibits the defendant from doing anything described in the Order.

PROHIBITIONS THAT MAY BE IMPOSED

- 34 Those necessary for the purpose of protecting persons (whether relevant persons or persons elsewhere in England and Wales) from further anti-social acts by the defendant.
- 35 The Court will need to be satisfied that an ASBO is necessary to protect relevant persons, the prohibitions imposed need not be limited to those necessary for their protection but can include those necessary for the protection of persons elsewhere in England and Wales.

DURATION OF ASBO

- 36 The Order can be fixed for a period (but not less than 2 years) or until further order.

VARIATION OR DISCHARGE OF ASBO

- 37 Either the applicant or the defendant may apply by complaint to the Court that made the Order for its variation or discharge but it cannot be discharged within 2 years of its service on a defendant unless both parties consent.

INTERIM ASBO APPLICATIONS

- 38 Will be listed for hearing within 7 days of the making of an ex parte interim order.
- 39 List for hearing within 7 days of the issue of the summons.

ANTI-SOCIAL BEHAVIOUR ORDERS ON CONVICTION (SECTION 1C CRIME AND DISORDER ACT 1988 AS AMENDED BY THE ANTI-SOCIAL BEHAVIOUR ACT, 2004)

The following deal with the obligations of the Police, the Crown Prosecution Service, and the Courts Service in respect of such Orders.

THE POLICE

- 40 The Police will adhere to the guidance outlined in the Manual of Guidance in respect of orders on conviction.
- 41 The Police will use an agreed and standardised application process for ASBOs.
- 42 The Police will provide an “all encompassing witness statement” - sometimes referred to as a Community Impact Statement - where necessary, formulated from the officer in the case outlining the acts of alleged Anti-Social Behaviour committed by the defendant, and the impact upon persons within the community of that behaviour whether it is subject to a conviction or not. This statement could provide the applicant with the opportunity to broaden the scale and type of prohibition sought.
- 43 The Police will discuss all aspects of the ‘Order upon Conviction’ often referred to as a CRASBO application with the relevant Anti-Social Behaviour co-ordinator where available and the file will be prepared by the officer responsible for doing so, as designated by the Divisional Commander. (This will be either the Anti-Social Behaviour Co-ordinator, or general patrol officer).
- 44 The Police will identify within the file that there is a potential Anti-Social Behaviour Order on conviction application.
- 45 PPOs - a Prolific and Priority Offender is a person who has been identified locally to be significantly adversely affecting a community through nuisance and criminal behaviour. PPO status is highlighted on PNC. The OIC will decide if the offence for which the defendant is due to appear in court is of such a nature that is caused harassment, alarm or distress and that the Order is necessary to protect persons from further anti-social behaviour by the defendant. Strong consideration must be given to the application of an ASBO.

DEFENDANTS FOR WHOM AN ASBO APPLICATION IS PENDING

- 46 Where civil proceedings for an ASBO are pending, and where due to subsequent offending the OIC feels it appropriate, an application for a CRASBO may be made in the agreed manner. The OIC, as a matter of urgency, will inform the relevant ASB officers or equivalent and any other party leading the civil application so that the supporting paperwork can be included. If the CRASBO is made, the civil action will be made redundant.
- 47 The Police will provide to the Defence, by means of service in the Advanced Information, a copy of the “all encompassing community impact witness statement”, a copy of the Draft Order and a copy of the MG 13. This will then be the written information that the Defence will have to take their client’s instructions on the ASBO application.

48 In respect of breaches, the breach file will need to show:-

- That the Order was lawfully made.
- Details of the Order.
- What the offender did in breach of the Order.
- That the defendant was the person subject to the Order.

THE CROWN PROSECUTION SERVICE

49 In all applications for Anti-Social Behaviour Orders on conviction the Crown Prosecution Service will comply with its statutory obligations laid down under the Prosecution of Offences Act 1985.

50 The Crown Prosecution Service are responsible for the conduct of applications in these cases. The power to do this lies in Section 1C of the Crime and Disorder Act, 1998 as amended by the Anti-Social Behaviour Act, 2004 and the Prosecution of Offences Act, 1985.

51 The Crown Prosecution Service acknowledges that the source of applications will be three fold, firstly by way of Police request, secondly at the instigation of the Crown Prosecutor after review of the file, and thirdly at the volition of the sentencing court in any event.

52 The Crown Prosecution Service should, at review stage, decide if the case is appropriate for the making of an order on conviction and if so, ensure that the necessary supporting evidence is contained on the file in order that it can be presented to the court. The file will be reviewed by the CPS in accordance with the Code for Crown Prosecutors. The review should cover whether or not an application is made pursuant to Section 1C, the evidential and public interest tests will be applied, and an assessment will be made as to whether the suggested prohibitions are proportionate. Consideration regarding the duration of the Order will be given in the light of representation provided by the Police for the Order to exceed 2 years.

53 The application will be subject to continual review throughout the Court proceedings in consultation with the OIC. The CPS retains the right to amend the Order through consultation with the relevant officer in the case.

54 In the Crown Court, the Crown Prosecution Service will undertake, at the point of service of committal papers, or if appropriate, at the service of Section 51 of the Crime and Disorder Act, 1998 papers, to serve a letter to the Crown Court, the Probation Service, and the Defence indicating that in the event of any sentence in respect of this matter, there will be an application for an Anti-Social Behaviour Order on conviction. Included with that Notice to both the Defence and the Court will also be served:

- A copy of the Draft Order,
- A copy of the “all encompassing community impact witness statement” which should contain relevant information from other agencies in support of the application.,
- Form MG 13,
- Form ASB 1.
- Maps where appropriate.

- Any other information in the hands of the prosecution that supports the application.
- 55 The CPS will prosecute contested applications.
- 56 In the Magistrates' Court the Crown Prosecution Service will rely on, either,
- Notification to the defendant, at the point of charge that an application will be made, or
 - An indication from the prosecutor at initial stage of the proceedings that an application will be made on sentence, or
 - An indication from the Magistrates at point of sentence that they consider the case may warrant the imposition of an Anti-Social Behaviour Order, at the court's own volition.
- 57 In cases of multi-handed defendants, each defendant is to be treated entirely separately.

YOUTHS

- 58 Offenders between the ages of 10 to 17 years inclusive will be dealt with in line with normal procedures for youth prosecutions both in respect of applications for Section 1C ASBOs and breaches thereof. A CPS youth offender specialist will review any proceedings.

DISPUTE RESOLUTION

- 59 Disputes in respect of issues surrounding applications should be referred to the next line management of the agency concerned in seeking resolution. Any issues not resolved through the line management process or inter-agency consultation, should be referred to the designated CPS area anti-social behaviour lead who will determine the outcome.
- 60 The CPS will make the final decision as to whether a case will proceed once they have possession of it, and will act in accordance with the Code for Prosecutors but will consult and advise if discontinuation is contemplated.

THE MAGISTRATES' COURT

- 61 On an indication by a defendant that he does not take issue with any aspect of the application for an Anti-Social Behaviour Order on conviction, the Court will seek to move to sentence as soon as is practicable.
- 62 If the defendant indicates that he takes issue, in all or part with the making of an Anti-Social Behaviour Order on conviction, the Magistrates' Court at that point will enquire as to the extent of the evidence required as to whether an adjournment is required for evidence to be heard.
- 63 Where, having heard the evidence presented, the Magistrates amend the draft Order, the Court will implement a process whereby those changes are presented in typed format upon the final document.
- 64 On the passing of an Order on conviction, the Magistrates' Court will undertake to give to the defendant, prior to his leaving Court a copy of the Order, and will also supply a copy of the same Order to the Prosecutor at Court, and the Probation Service or the YOTs.

- 65 The Crown Prosecution Service will then undertake to endorse its file that the defendant has been duly served with the appropriate Order a copy of which is on the file.
- 66 The convicting Court will send to the local designated police contact point a copy of the Order by 5.00 p.m. on the day that the Order is made, or in any event within 24 hours.

THE CROWN COURT

- 67 For applications in the Crown Court
- Prosecution to give early notice to the Defence and to the Court of an intention to apply for an Order
 - Notice to be given preferably on Committal or service of Section 51 Committal.
 - In any event notice to be given at least 14 days before sentence.
 - If the decision to apply is made as a result of evidence given during a trial or by the Court of its own volition then application should be made after the verdict is given and unless otherwise agreed sentence will be adjourned.
- 68 At least 14 days before the sentence, the prosecution to serve on the defence and the Court a Draft Order and associated plans and further evidence on which prosecution intend to rely.
- 69 The extent of any Order should only be what is “necessary” and Orders, which are too widely drawn, are likely to be amended.
- 70 At least 14 days before the hearing of the application, prosecution to give a time estimate assuming that the application is contested. At least 7 days before the hearing the Defence to notify the Court whether the application will be contested and if so, whether the time estimate is agreed.
- 71 If the Court decides that it is an appropriate case to consider the making of a CRASBO it will invite the prosecution to draw up the appropriate Order.
- 72 It is unlikely to be appropriate for a Court to make a CRASBO where it imposes a substantial sentence of imprisonment (*see R v P 2004 ECWA Crim 287*). Prosecution is invited to bear this in mind when deciding whether to apply for orders.
- 73 If there is an indication by the Defence, that they accept the Crown’s application in respect of an Anti-Social Behaviour Order on conviction, the Crown Court will move to sentence as soon as is practicable.
- 74 In the event of an indication by a defendant that the Order is contested, in whole or in part, the Crown Court will adjourn the sentence hearing for evidence to be called in respect of the Crown’s application.
- 75 On the making of an Order, the Court Office will supply to the defendant and the Crown Prosecution Service a copy of the order.
- 76 The convicting Court will send to the local designated police station contact point a copy of the Order by 5.00 p.m. on the day that the Order is made, or in any event, within 24 hours.

APPEALS

- 77 Section 4 of the Crime and Disorder Act provides that an appeal against the making of an ASBO on the civil procedure is to the Crown Court. The appeal will be in the form of a re-hearing of the case.
- 78 The agency that brought the initial application will consider and take charge of defending any appeal that may be lodged against an ASBO.
- 79 If the appeal is against the imposition of an ASBO made on conviction, then the appeal is to the Crown Court if made in the Youth or Magistrates' Court.
- 80 If the Crown Court has made the CRASBO, then the appeal is to be to the Court of Appeal.
- 81 In relation to Orders made on conviction in criminal proceedings, the CPS will take the lead on the appeal.
- 82 There is no right of appeal by any of the agencies against the refusal by the Court to make an Order.

BREACH OF ANTI-SOCIAL BEHAVIOUR ORDERS

- 83 In the event of the breach of either a (free-standing) Anti-Social Behaviour Order or an Anti-Social Behaviour Order on conviction if proceedings for the breach are commenced by Staffordshire Police, the Officer in the case to provide a file to the CPS, in accordance with Manual of Guidance guidelines.
- 84 In the event of Staffordshire Police prosecuting a defendant for a breach of either a (free-standing) Anti-Social Behaviour Order or an Anti-Social Behaviour Order on conviction, the Crown Prosecution Service, will in accordance with its statutory duty be responsible for the prosecution of that breach. Any breach will be reviewed in accordance with statutory duty. CPS will exercise caution in proceedings, particularly in respect of minor breaches, taking into account the representations by relevant agencies. If the behaviour that has led to the charge is a repetition of the behaviour that led to the making of the Order, this will be a factor towards prosecution for breach. If the behaviour is criminal, as well as being in breach of the Order, that too will be a factor pointing towards prosecution for both the breach and the criminal offence.
- 85 In the event of any other relevant authority, with express power, to prosecute a breach of either an Anti-Social Behaviour Order or an Anti-Social Behaviour Order following conviction, any proceedings instigated by that Authority for breach will be their sole responsibility, in line with normal processes.

VARIATION/REVOCATION OF ORDER

- 86 These shall be made on complaint to the Magistrates' Court. Where the Court considers that there are grounds upon which it may conclude that the Order should be varied or discharged, it shall issue a summons giving not less than 14 day's notice to all parties.
- 87 Any Order to vary or discharge will be served on the parties as previously set out in this Protocol.

INFORMATION SHARING

- 88 The Crown Prosecution Service will seek, on a monthly basis, to ascertain the number of applications and Orders granted throughout the Staffordshire area. It will undertake to provide that information to all relevant parties to this Protocol.
- 89 The CPS will appoint a Lawyer as the ASBO Lead to oversee all CRASBOs to ensure quality assurance, and monitor the effectiveness of applications.
- 90 Each Court Centre, both Crown Court and Magistrates' Court, will undertake to provide to the Crown Prosecution Service at its dedicated E mail box, by the fifth working day after the end of each calendar month a list of each defendants against whom an Anti-Social Behaviour Order on conviction was made.

MEDIA AND COMMUNITY ENGAGEMENT

- 91 The person applying for the ASBO must liaise with all parties concerned with the application regarding consideration of preparing a joint press statement. This process will promote consistency of messages.
- 92 The preparation of the press statement should be done in readiness for the conclusion of the case or at the earliest press briefing opportunity following it. Parties to the application should raise awareness within the specifically affected community and surrounding areas in respect of the substance of Anti-Social Behaviour Orders in order to manage public expectations, subject to any reporting restrictions imposed by the court.