

## **Warwickshire Anti Social Behaviour Protocol:**

### **1 Purpose of Protocol**

- 1.1 This protocol sets out the procedures for considering and making application for an ASBO and applying for the variation and discharge of an ASBO.
- 1.2 The purpose of this protocol is to ensure that the lead agencies for obtaining ASBOs, and other interested agencies have clear guidance on:
  - The type of behaviour that may warrant an application
  - The agencies that should be consulted before making an application
  - The procedure to be followed in making an application
  - The extent to which information can legally be shared between agencies
  - To record understandings regarding ASBOs in criminal proceedings ("CRASBOs")

### **2 Partner Agencies**

Warwickshire Police  
British Transport Police  
Warwickshire County Council (including the Education Department, Social Services Department, Fire and Rescue Service)  
Youth Offending Team  
North Warwickshire Borough Council  
Nuneaton and Bedworth Borough Council  
Rugby Borough Council  
Warwick District Council  
Stratford District Council  
Warwickshire Probation Service  
Warwickshire Ambulance Service  
North Warwickshire PCT  
Rugby PCT  
South Warwickshire PCT  
George Eliot Hospital NHS Trust  
South Warwickshire General Hospitals NHS Trust  
University Hospitals Coventry and Warwickshire NHS Trust  
Warwickshire Registered Social Landlords (See appendix 8)  
National Probation Service Warwickshire Area

- 2.1 The following are not partner agencies but specific arrangements have been made with them for consultation and information sharing as necessary: -

Crown Prosecution Service  
Warwickshire Magistrates' Courts Service  
Coventry County Court  
Stratford County Court  
Warwick Combined Crown and County Court

- 2.2 The agency with delegated authority for co-ordinating activity in relation to anti-social behaviour orders (ASBOs) is the Co-ordinating Agency seeking the order. This agency will be responsible for providing legal advice and services as required in the process. It may be agreed at this stage another agency will become the Lead Agency in regard to the pursuit of Court Proceedings.
- 2.3 The officers responsible for formal consultation as required by the Crime and Disorder Act 1998 are the ASB Officer on behalf of the local authority, the Community Safety Inspector for the BCU in which the anti-social behaviour is occurring, the designated officers of the British Transport Police and of the Registered Social Landlords. (See appendix 3)

### **3 Equality and Discrimination:**

- 3.1 Under this protocol an ASBO will be considered where it is necessary to protect individuals who are targets of anti social behaviour or whose lives are or communities are blighted by such behaviour.
- 3.2 An application for an ASBO 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 ethnic group or religion from the complainant.
- 3.3 When investigating complaints about anti social behaviour the partner agencies will satisfy themselves that complaints have not been motivated by discrimination/victimization on the grounds of, for example, race, disability, gender, sexual orientation, creed, religion or age.

### **4 Human Rights**

- 4.1 The Human Rights Act makes it unlawful for a public authority to act or fail to act in a way that is incompatible with the European Convention on Human Rights (ECHR).
- 4.2 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 the community at large as well as those of the potential defendant.
- 4.3 Those in charge of a case at any given stage will, in consultation with legal advisors, therefore need to be satisfied that:-

- All procedural and substantive rights under the ECHR are complied with;
- Any interference with the defendant's rights are reasonable and proportionate to the anti social behaviour in question,
- The ASBO being applied for is in such terms that the defendant has a reasonable ability to comply with it.

## **5 Information Sharing**

5.1 All disclosures of personal and sensitive information by agencies for the purpose of seeking an ASBO will be made in accordance with the Warwickshire Sharing of Information Protocol (Crime and Disorder Partnership Protocol):

- Requests for information and disclosures will be made through the nominated Designated Officers within each agency.
- Audit trails will be maintained of the exchange
- The information retained from the meeting will be held separately within the agency in a project file, and destroyed when there is no longer a need to hold the information.

5.2 Care must be taken to ensure that “spent” convictions, within the meaning of the Rehabilitation of Offenders Act are not disclosed. Legal advice should be sought as to which convictions are “spent” under the Act.

5.3 Registered Social Landlords have the same status as other signatory agencies for the specific purpose of disclosure to obtain an anti social behaviour order. (I.e. signatory agencies can disclose information with a RSL under section 115 of the Crime and Disorder Act 1998, when seeking an ASBO). Registered Social Landlords must appoint a Designated Officer for the exchange of information.

## **6 The Anti Social Behaviour Group**

6.1 For each administrative area of the 5 district councils in Warwickshire there will be established an Anti-Social Behaviour Group (ASBG). The Group will be composed of the district council for the area, the police, the county council and any other appropriate partner agencies. The partner agencies will each provide a delegate as a member of the ASBG. The ASBG will meet quarterly as a general rule but may meet more or less often if required.

6.2 The purpose of the Group will be to:

- (a) Ensure a complaint has not been made as a result of malice or discrimination.

- (b) Decide which agency is in the lead, where the ASB co-ordinator has not already done so.
  - (c) Agree an action plan aimed at:
    - Supporting the victims and witnesses of anti-social behaviour
    - Preventing further anti-social behaviour
  - (d) Monitor the process of applications and results.
- 6.3 The co-ordinating agency will normally chair the case management meeting and arrange for notes to be taken and a note of the action plan agreed.
- 6.4 The co-ordinating agency will decide on the urgency of the case. Where a case is designated as urgent the Co-ordinating Agency will (subject to there being a strategic-level agreement on this) appoint the police or local authority as the lead agency and ask agencies for urgent comments. If necessary he or she will convene a special meeting of the group.
- 6.5 In non-urgent cases, the co-ordinating agency will arrange for the case to be considered at the next scheduled meeting of the ASBG.
- 6.6 If there is a possibility that the anti-social behaviour is also affecting people in an adjoining local authority area, the co-ordinating agency will consult their counterparts in that area at the same time as taking the action set out in the paragraph above, in case there is a need for an ASBO applying to more than one local government area.
- 6.7 There is no absolute requirement to interview or write to a person about the fact that an ASBO application is to be considered in his or her case and to offer that person a chance to comment on the matter. It is recommended, however, that, unless there are exceptional circumstances, the subject of a potential ASBO should be informed that such action is being considered.
- 6.8 However, in cases where it is necessary to seek the consent of an individual or to inform them that information will be shared in order to comply with the fair processing principle (of the Data Protection Act 1998), the co-ordinating agency will take the necessary steps to obtain consent or inform the individual.
- 6.9 At the meeting of the ASBG, each partner agency will be invited (subject to each agency being satisfied that it has the legal power to do so) to exchange any relevant information and comments about the case.
- 6.10 In agreeing an action plan to prevent further anti social behaviour the case management meeting will take the following considerations into account:
- Is there evidence that an identified individual has acted in a manner that caused harassment, alarm or distress to another person not of

the same household in circumstances where there is no reasonable excuse for the conduct, and which constitutes a pattern of behaviour over the relevant period of time?

- Is there evidence that the actions of the individual have had a serious negative impact (including racially motivated behaviour) on others?
- What action (if any) has been taken to restrain the type of conduct or to divert the individual to more positive ends?
- What different courses of action are available and (at this stage) more appropriate e.g. mediation, Acceptable Behaviour Contracts, warnings, challenges, injunctions, criminal prosecution (with or without CRASBO but with a possible subsequent civil ASBO application to deal with any matters not covered by any CRASBO), eviction?
- Whether there are ongoing County Court proceedings (for example, where a Local Authority or Registered Social Landlord is seeking possession of their property on the grounds of anti social behaviour) where the ASBO could be applied for within those proceedings (where the Lead Agency is a party to those proceedings or is prepared to apply to become a party to those proceedings) rather than a “free standing” application being made to the Magistrates Court.
- Does the case management meeting agree that it is appropriate and necessary in those circumstances to apply for an ASBO?
- Are there circumstances involved in the case to indicate that an immediate application for an ASBO is appropriate coupled with a view to making an application for an Interim Order? (Where an ex parte application is anticipated, immediate contact with the Court should be made by the lead agency)
- If the case management meeting decides to apply for an ASBO what other actions (if any) are being taken or should be taken in parallel? In particular, the case management meeting will establish if there are any civil or criminal proceedings proposed or impending with which an application should be integrated (e.g. relevant principal proceedings in the County Court and/or prosecution in the criminal courts).
- If the case management meeting decides NOT to apply for an ASBO, what alternative action is agreed and why?
- Whether publicity should be sought once a Court Order has been made? If the action is to be publicised then the impact of that decision should be explored with partner agencies.

6.11 The case management meeting will agree to apply for an ASBO only where it concludes that it is **necessary** to protect others and is a **proportionate** step to take to achieve that objective.

6.12 There is no requirement for the lead agency to demonstrate that it has exhausted every other remedy before applying for an ASBO.

6.13 Having exchanged information, the ASBG will agree an action plan to prevent further anti-social behaviour. In particular the ASBG will consider;

- If an ASBO is warranted what action is to be taken, by whom and within what timescale, to proceed to an application
- Whether there are any courses of action other than an ASBO which are, at this stage more appropriate?
- If an ASBO is not considered appropriate, what other action, if any is agreed?

## **7 Guidance relating to Interim Anti Social Behaviour Orders:**

7.1 In seeking an Interim ASBO the following considerations will apply:

- They are available in civil proceedings but not in criminal proceedings (consider in such cases conditional bail if and as appropriate)
- There has to be a substantive civil ASBO application already in place but the application for that and the Interim ASBO can be lodged simultaneously.
- The Act does not give any indication as to whether or not evidence has to be heard (even in part) or whether or not the interim matter can be based on representations only.
- The court has to be satisfied that an Interim Order is “just”.
- The Justices’ Clerk (or any member of his staff to whom the power has been further delegated) can grant leave (based on the test of “necessary”) for such an application to be made ex parte<sup>1</sup>.

7.2 It is suggested that ex parte leave will be appropriate only where both of the following factors apply: -

- There is an immediate and significant need to provide relief from the effects of the suggested anti-social behaviour above and beyond the usual basic imperative behind an ASBO application AND/OR there might be issues of witness intimidation if there is not any immediate safeguard in place
- The interim relief sought is proportional to the fact that it is to be ordered ex parte (i.e. the Interim Order may just relate to a prohibition on matters which, in themselves, are criminal or quasi-criminal rather than say being a prohibition on entering certain areas/premises – thus it may well relate to only part of the full order sought).

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<sup>1</sup> Ex parte – where the defendant has not been given notice of proceedings

- 7.3 The fixed period required for any form of Interim ASBO will usually be until the first substantive hearing unless there are good reasons to the contrary.

## **8 Civil ASBOs and their relationship with criminal proceedings**

- 8.1 In certain cases where there has been no conviction as yet, the case management meeting may decide to proceed with an ASBO application instead of criminal proceedings if it is agreed in consultation with the CPS that:
- An ASBO is likely to be more effective in tackling the anti social behaviour, and the CPS agrees that any criminal evidence can be used in connection with the application; or
  - An ASBO would be equally effective as the criminal proceedings in tackling the anti social behaviour and there would be advantage (e.g. preventing criminal labelling) in opting for the ASBO; or
  - Where several perpetrators are involved and a mix of criminal proceedings and ASBOs is appropriate.
- 8.2 Where the individual is the subject of an active criminal prosecution the case management meeting will consider whether it is appropriate to seek an ASBO alongside those proceedings.
- 8.3 Where criminal prosecution fails the case management meeting will take due account of the legal, procedural and ECHR implications of mounting an ASBO application.

## **9 Recording and Implementing the ASBG's Decision**

- 9.1 Where there has been a meeting of the ASBG, the minutes and the note of the action plan will be circulated within 5 working days unless the Group requests greater urgency. The action plan will commence from the date of the Group and will be reviewed after 30 days.
- 9.2 The action plan should not be varied without reference back to the agencies involved in the case management meeting.
- 9.3 If a decision is taken to apply for an ASBO, the delegated officer for the lead partner agency will, in addition to the minutes and action plan, obtain a completed certificate of consultation from the police or local authority (and from YOT where the defendant is under eighteen) as soon as possible. (An example of a certificate is attached at appendix 3)
- 9.4 If the Group is unable to agree on a course of action, the lead agency will need to review whether there are reasons for applying for an ASBO despite the absence of a consensus.

9.5 If it is decided to apply for an ASBO the co-ordinating agency will also:

- Ensure that complainants are kept informed of the progress of the case and take responsibility for handling the media, given that there may or may not be reporting restrictions in court;
- Monitor progress against the action plan to assess the needs of victims and witnesses and to discuss future handling of the case;
- Appoint an officer in overall charge of the case.
- Keep the partner agencies in touch with the progress of the action plan.

## 10 Lead agency

10.1 In determining which should be the lead agency in a particular case the following considerations will apply:

- **Registered Social Landlord(s)}** Where the incidents take place
- **British Transport Police}** primarily on, or affect premises, for which they are responsible.
- **The Police}** A matter for negotiation between
- **The Local Authority}** the police and local authority

10.2 The lead agency will appoint a lead officer to be responsible for progressing the case in accordance with the decision of the case management meeting and the action plan.

10.3 The Lead Agency will normally be expected to bear the costs of any application. The Lead Agency may reach agreement with that other agency as to reimbursement of costs.

## 11 Evidence in support of an ASBO

11.1 When applying for an ABSO the lead agency will be required to prove its cases under civil rules of evidence but according to criminal standards of proof. The following points will be borne in mind;

- (a) Ensuring the safety of witnesses from harassment and intimidation is a central concern. To help facilitate this, preference will be given to using professional witnesses, making use of the extended hearsay provisions.
- (b) The court will need to be satisfied that
  - a. The defendant has acted as stated;
  - b. Harassment, alarm or distress was caused or was likely to be caused;
  - c. An order is necessary
- (c) Although the statutory time limits which apply to criminal cases are not relevant, an application for an ABSO must be made within 6 months of the last behaviour complained of;



- (d) Thereafter, earlier evidence may be used to support the case that there is a pattern of behaviour;
- (e) The Police and Criminal Evidence Act does not apply to civil proceedings but as a matter of good practice any formal interviews for use in proceedings should be undertaken using PACE principles.
- (f) The lead officer will take charge of gathering and presenting the evidence, but in consultation with partner agencies as necessary. Any covert evidence gathered will comply with the requirements of the Regulation of Investigatory Powers Act

11.2 The use of evidence by professionals will be maximised. Where direct evidence is provided by members of the public, the lead officer will notify the relevant partner agencies of the support needs of those witnesses. The Witness Support Service can offer support and advice to members of the public giving evidence in Court.

## **12. APPLYING FOR AN ORDER**

12.1 As soon as there is a real likelihood that an ASBO will be made the Court should be consulted with a view to making Court listings.

12.2 The officer in charge of the case will be responsible for preparing the ASBO application. A list of the key documents which should be on the application file are set out in Appendix 6, together with a checklist for completing the file.

12.3 The officer in charge of the case will ensure that the file of evidence is prepared with related documents grouped together and in chronological order. [For instance all documents relating to a failed Council attempt at eviction should be kept together]. He or she will also complete a case summary for briefing purposes. All the evidence must be referred to in the case summary.

12.4 Evidence from criminal proceedings which have failed may be used in support of an ASBO application following consultation with the police and the CPS.

12.5 If, after consultation with the CPS, it is decided to proceed with an ASBO application instead of a criminal prosecution, the lead agency may find it appropriate to consult the CPS, via the police, as to what criminal evidence, including witnesses, may be used.

12.6 It will be for the court to decide what prohibitions to apply, but the lead agency will help to inform that decision by including in its ASBO application;

- (a) The prohibitions being applied for which are necessary for and proportionate to the aim of protecting people from the anti-social acts of the defendant

(b) The requested duration of the ASBO.

12.7 The officer in charge of the case will obtain advice from the case solicitor on drawing up the proposed prohibitions. Guidance on prohibitions is also set out in Appendix 5.

### **13 Procedure on the Issue of Summons, the Hearing and Appeals against Orders**

13.1 The suggested procedures for service of the summons, the hearing of an application and any appeals are set out at Appendix 8.

### **14. Post Order Procedure**

14.1 An ASBO is effective on the date it is made but the period it lasts for commences from the date of service. Every effort must be made to ensure that the Order is served on the defendant at court, but if this is not possible, the court will be asked to arrange for the speedy provision of the order (and the relevant number of formal copies) for service (preferably personally) by the applicant as soon as possible thereafter. [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.] In all cases the applicant will provide the court with a draft Order.

14.2 Where an ex parte Interim Order has been made, it will be served personally and as immediately as possible on the subject by the lead agency together with the application for the full Order and a date for the subject to attend Court.

14.3 The period for which an ASBO lasts dates from the date of its service on the defendant.

14.4 The lead agency, if not the police, will ensure that a court copy (not a photocopy) of the ASBO is forwarded immediately to the police at Judicial Services, Warwickshire Police, and other police forces covered by the ASBO. The agency will also give details of the ASBO to the Co-ordinating Agency, the other partner agencies, and to the victims and witnesses, so that breaches can be reported and acted upon. The police will notify the appropriate police command area the same working day so that details of the defendant and the prohibitions of the ASBO are recorded on their local force database. The Police will enter the details on the PNC.

14.5 The ASBG will draw up a plan to ensure that the ASBO is effective and to provide any necessary support to the victims/witnesses.

- 14.6 In addition to monitoring the defendant's compliance with the prohibitions, by means of visits and other checks, the Group will consider whether any help can usefully be given to diverting him or her from further anti-social behaviour. This type of positive action at the operational level may need to be mirrored at the strategic level, where consideration should be given by the relevant crime and disorder partnerships to using ASBO's as catalysts for wider-ranging action with local communities in order to involve local people in crime reduction and self-help initiatives.
- 14.7 Where an ASBO is in respect of a juvenile the lead agency will immediately inform the relevant YOT. The YOT will arrange for action to be taken by an appropriate agency (e.g. Social Services) to ensure that;
- The young person understands the seriousness of the ASBO;
  - Appropriate support programmes are put in place to avoid a breach of the ASBO by diverting him or her from the behaviour that led to this. If no other agency agrees to take action the YOT will step in quickly to do so itself.

## **15. Breaches of an ASBO**

- 15.1 Breach of an Order is a criminal offence. Breach penalties are the same for all Orders, including Interim Orders and CRASBOs.
- 15.2 The lead agency for investigating and prosecuting breach of an ASBO will be the police. Monitoring of ASBO compliance must be undertaken on a lawful basis. All agencies should be aware that evidence in pursuit of a breach should be to a criminal standard of proof – "beyond all reasonable doubt."
- 15.3 Any information received by a partner agency from any source about a breach will be passed immediately to the police and the co-ordinating agency, who will advise members of the ASBG.
- 15.4 The nominated officer in charge of the investigation will keep the other relevant agencies informed of progress and of the outcome of the breach investigation.
- 15.5 Where the police consider there has been a breach they will consult the CPS' designated officer on whether to prosecute and will also consider at this stage any issues relating to arrest and bail.
- 15.6 Where the defendant is less than 18 years old the police will also consult the Youth Offending Team on whether to prosecute.
- 15.7 Agencies should not merely provide evidence of a technical breach, but should provide details of all relevant surrounding circumstances in order

to enable a sentencing court to respond appropriately to all the circumstances of the breach.

## **16. Variation and Discharge of an ASBO**

- 16.1 Variation or discharge of an Order, including an interim Order is by way of complaint to the Court that made it. An Order, other than an interim Order, cannot be discharged within 2 years of its service without the agreement of the original applicant.
- 16.2 If the lead agency, or other partner agency, considers that it is necessary to vary the conditions of an ASBO or that an ASBO should be discharged, it will consult the ASBG, including the CPS as necessary. The relevant application will be made to the Magistrates' Court by the lead agency.
- 16.3 If the individual asks for a variation or discharge of an ASBO, the lead agency that obtained the ASBO will ensure that a considered response is given to the court, after consulting the ASBG, including the CPS. If it is decided that the lead agency should contest the variation or discharge of the ASBO, it will give the court its reasons. These should be supported as appropriate by evidence gathered in the course of monitoring the effectiveness of the ASBO.
- 16.4 The Magistrates' Court Justice Chief Executive will send a formal record of the variation or discharge of any ASBO to the Judicial Services, Warwickshire Police within 24 hours. The lead agency will also give details of the ASBO variation or discharge to the co-ordinating agency, the other partner agencies (including other police forces where the ASBO applies) and to the victims and witnesses, so that breaches can be reported and acted upon. The police will notify the appropriate police command area the same working day so that details of the defendant and the prohibitions of the ASBO are recorded on their local force database. The Police will enter the details on the Police National Computer.

## **17. Monitoring and Evaluation**

- 17.1 The ASBG will regularly monitor compliance with and evaluate the success of any orders obtained in its area. In particular it will receive regular reports from partner agencies on the success or otherwise of orders.
- 17.2 As a minimum there should be a record of;
- Name, address, date of birth, gender and ethnicity of defendant;

- Name, address, age, gender and ethnicity of the victim-or a statement that the case involved no identified victim;
- Date and conditions of any order obtained;
- Date and details of any variation/discharge order;
- Details of any contributory issues e.g. drugs, alcohol and substance misuse and/or mental health problems
- Details of any aggravating factors e.g. racial motivation;
- Outcomes in terms of whether or not the anti-social behaviour ceased.

### **Glossary of Terms**

**Acceptable Behaviour Contract (ABC):** - Voluntary agreement between one or more agencies and the alleged offender.

**Action plan** - An agreed, times specific strategy with responsibility and accountability allocated to relevant officers for the purposes of supporting witnesses/victims, preventing further anti social behaviour and pursuing ASBO and/or other remedies as agreed.

**Anti Social Behaviour Group (ASB Group)** – formal group made up of partner agencies working to address anti social behaviour in each district or borough.

**Anti Social Behaviour Order (Civil ASBO)** - An Order made in civil proceedings which enable the Court to place specific restrictions on the individual to prevent anti social behaviour taking place, which then become a criminal matter if subsequently breached by the subject. (See Appendix 1)

**Certificate of Consultation** - A formal certification of consultation between the police and the relevant agencies in respect of each separate ASBO application.

**Coordinating agency** – Agency receiving information or becoming aware of behaviour which might require an ASBO and who holds responsibility for co-ordinating the ASB Group.

**Criminal Anti Social Behaviour Order (CRASBO)** – Anti Social Behaviour Orders, which are made by the court in addition to a criminal conviction and sentence.

**Designated Officer** - Officer nominated within each agency to authorise the sharing of information to other agencies to reduce crime and disorder and assist in seeking an ASBO.

**Ex Parte** – Proceedings where the defendant has not been given notice.

**Interim Anti Social Behaviour Order** – An Anti Social Behaviour Order that can be made by the Court with immediate effect to protect the public whilst a substantive ASBO application is being pursued. This can be made in some circumstances ex parte.

**Lead agency** - The agency identified by the case management meeting as responsible for pursuing court proceedings.

**Partner Agencies** – Agencies with a statutory duty to reduce crime and disorder and Signatories to the protocol.

**RSLs** - Registered Social Landlord as defined by Section 3 of the Housing Act 1996. A Housing Association.

## **APPENDIX 1**

### **Summary of Powers to Seek Orders**

1. The 1998 Crime and Disorder Act 1998 and Police Reform Act 2002 gives District and Borough Councils and the Police, RSLs and British Transport Police the power to apply to the Magistrates Court for an Anti Social Behaviour Order (ASBO). Orders may only be sought in respect of persons aged 10 or over where:

- The person has behaved in an anti social manner; and
- The order is necessary to protect others from further anti social acts.

Anti social behaviour is defined as behaviour that caused or is likely to cause harassment alarm or distress to one or more persons not of the same household as the persons carrying out the act.

2. No agency may apply for an Order unless it has consulted with other relevant authorities. Only acts committed after 1<sup>st</sup> April 1999 may form the basis of an application. Once granted, an ASBO lasts for a minimum of 2 years although the applicant or the defendant may apply to have the order varied or discharged. There is an appeal to the Crown Court against the making of an order.

3. In certain cases the Crown Prosecution Service can be asked to consider applying for a Criminal ASBO on conviction in criminal proceedings.

4. Where the subject of an ASBO breaches the terms of the order he is guilty of a criminal offence. The maximum penalty on conviction in the Magistrates' Court for an adult is 6 months imprisonment or a fine of £5,000, and on indictment, 5 years imprisonment or an unlimited fine. Where an application is made against someone under the age of eighteen, the maximum penalty is a two-year detention and training order.

## Appendix 2

### SPECIFIC CONSULTATION CONSIDERATIONS FOR THE ASBG

	<i>CIRCUMSTANCE</i>	<i>CONSULTEES</i>
1.	The individual is under 18 years old	The Youth Offending Team, Social Services and Education Departments should be represented in the ASBG
2.	The individual is a child subject to a local authority care order or accommodated by the local authority	The Social Services Department should be represented in the ASBG
3.	The individual is considered to be vulnerable or to have significant social or health problems	The Social Services Department and Health Trust should be represented in the ASBG
4.	The harassment is of a racial nature	The ASBG should consult the Racial Equality Council and/or any relevant minority organisation for their view on the appropriateness of an ASBO and for any support they can give to victims



### APPENDIX 3

#### CERTIFICATE OF CONSULTATION Anti-Social Behaviour Order

appropriate) <sup>\*(delete where</sup>

(name)

I .....the Lead Officer  
of.....Police/Council

Certify that I have been consulted by.....Council/Police in  
connection with an application for an Anti-Social Behaviour Order, in respect  
of:-

Name.....Date of  
Birth.....

Address.....  
.....

And that I have/have no objections to the application.

Signed.....Date.....

## APPENDIX 4

### KEY DOCUMENTS FOR APPLICATION FILE TO BE PASSED TO LEGAL ADVISOR

- 1 Case summary - including
  - (i) Details of the individual or individual members of a group or family (for Police applications – form MG1)
  - (ii) Outline of the incidents involved (for Police applications – form MG5)
  - (iii) Welfare issues relating to the defendant, showing that there has been consultation between appropriate agencies
  - (iv) Adequate and appropriate information about the defendant and his or her family circumstances
  - (v) Evidence that consideration has been given to ensure that the defendant has not been victimised or discriminated against on the grounds of race, sex, disability, creed, religion, sexual orientation or other grounds.
- 2 Certificate(s) of consultation
- 3 Evidence in support of the application – to include, where applicable: -
  - (i) Witness statements
  - (ii) Letters of complaint about the individual
  - (iii) Warning letters sent by agencies to the Individual/parent or guardian
  - (iv) Acceptable Behaviour Contract – if offered to Individual
  - (v) A print-out of the individual's previous convictions (obtainable from the Police via the ASBG)
  - (vi) Custody records from previous arrests relating to the application
  - (vii) Copy of prosecution file for failed or concluded criminal proceedings, or for relevant civil proceedings.
  - (viii) Any known records of other proceedings brought by other agencies relevant to this application (eg. Eviction proceedings, Injunctions etc.)
- 4 List of proposed Prohibitions to be applied for.

### GUIDANCE ON PROPOSED PROHIBITIONS

Proposed prohibitions in an ASBO:

- Must relate to actions already committed by the defendant and which the applicant thinks will be committed again if no ASBO is granted
- Must be reasonable and proportionate
- Must be realistically practical
- Must be clear, concise and accurate

- Must be particularly clear about matters of time and place (Scale OS maps will be used to mark out roads and areas which are subject to any prohibitions)
- Must not be mandatory
- Need not be confined to acts which are already criminal, but may also prohibit actions which, although not criminal themselves, would be necessary precursors to a criminal act as a prohibition on entering a shop rather than shoplifting

## **APPENDIX 5**

### **SUMMONS PROCEDURE**

1. The officer in charge of the case will arrange for a Summons to be prepared, and issued by the Court (together with copies of the ASBO Application/complaint) with a copy retained on the application file, and for the defendant to be served with the following;

- the Summons
- a copy of the completed ASBO application
- a copy of the certificate of consultation
- Notice of any Hearsay evidence
- Evidence in support of the application (as agreed with the lead agencies solicitor)
- A formal warning in a covering letter to the defendant that it is a common law offence to pervert the course of justice, and that witness intimidation is liable to lead to prosecution

2. Wherever possible the 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 will be served by first class post to the last known address. The officer serving the summons will complete the certificate of service which will then be placed on the file.

3. Where a child or young person is concerned, a person with parental responsibility must also receive a copy of the summons.

4. The first hearing of the ASBO application will usually be a short hearing to establish whether or not a contested hearing will be required. If it is, then the Officer in charge of the case will be asked to advise the case solicitor of the availability of all witnesses required to give evidence at the contested hearing. The court legal advisor should be asked to set a date for the contested hearing as soon as possible.

### **PROCEDURE ON HEARING AN APPLICATION FOR AN ORDER**

1 Application for an ASBO is by complaint to the magistrates' court acting in its civil capacity, whether or not the defendant is 18 or over. Where the defendant is under 18, a Youth Court will not hear the case, since these are civil proceedings. . The officer in charge should therefore contact the justices' clerk in advance of the hearing to ensure that it will be conducted in a way which is suitable for the child or young person.

2 The officer will note that;

(a) unlike a Youth Court, which is closed to the general public, there will be no reporting restrictions unless the court decides to impose them under section 39 of the Children and Young Persons Act 1933 to protect the identity of a person under 18.

Although the question of reporting restrictions is for the court, the lead agency may need to resist a call from the defence for such restrictions if the effectiveness of the ASBO will largely depend on a wider community knowing the details. This will usually apply only as and when the ASBO is actually made, as the Court will usually make reporting restrictions while the proceedings are ongoing ;

(b) Under section 98 of the Magistrates' Court Act 1980 evidence will be given on oath. The evidence of a child (under 14 years) is given unsworn;

(c) Section 34 of the Children and Young Persons Act 1933 requires the Court to secure 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 this takes place to avoid unnecessary adjournments. It is therefore advisable for the Lead Agency to advise the parent/guardian of this when the Summons is served.

(d) In the case of a child or young person, the court will require information about his or her background, home surroundings and family circumstances where this is relevant to the application or prohibitions being applied for. Such information should be offered in support of an application or be available to avoid the need for an adjournment.

(e) The forms for use on ASBO applications are set out in schedules 4 and 5 to the Magistrates' Courts (Sex Offenders and Anti-Social Behaviour Orders) Rules 1998.

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

4 Where the court has decided to adjourn the hearing and the defendant fails to appear at the resumed hearing, the local agency's legal representative should ask the court for a decision in his or her absence.

5 Where an ASBO application is granted, the Court Legal Advisor will undertake to serve a copy of the ASBO on the defendant prior to his or her departure from Court. In the case of a child or vulnerable adult a copy will also be given to a parent or guardian. Where the defendant is under 18 the court may also consider making a parenting order. A copy of the ASBO will be provided to the lead agency's legal representative on the same day as the court hearing, and in the case of a juvenile the court will serve a further copy on the YOT.

## C. APPEAL AGAINST AN ORDER

1. Section 4 of the Crime and Disorder Act provides that an appeal against the making of an ASBO is to the Crown Court. The appeal will be in the form of a re-hearing of the case (this means that the evidence is heard again as if it was a new application, and the evidence will not necessarily be restricted to what was given at the original hearing). The agency which brought the initial application will consider and take charge of re-presenting the application at any appeal hearing. . It will also lead in action to guard against witness intimidation and to monitor possible breaches in case the ASBO is upheld on appeal.

## **APPENDIX 6**

### **Anti-Social Behaviour Orders Ancillary to Sentence ("CRASBOs")**

1. For offences committed after 2/12/02 criminal courts have been able, on sentencing an offender, to make an ASBO as an order in addition to the main sentence.
2. These have become known as criminal ASBOs or "CRASBOs".
3. All the following criteria apply: -
  - a) Main sentence to be determined first
  - b) Relates to those 10 years and above.
  - c) There need not be any application, although the prosecution may invite the court to exercise its discretion.
  - d) It is suggested that no one other than the Crown Prosecution Service and the Defence can make representations to the Court about the CRASBO.
  - e) The test to be satisfied for a CRASBO to be made is that -
    - (i) The offender must have acted in an anti-social manner (as specifically defined) since 1<sup>st</sup> April 1999.
    - (ii) A CRASBO must be necessary to protect others.
4. The Crown Prosecution Service will be asked to make an application for a CRASBO on behalf of the ASBG, if appropriate.
5. A CRASBO should usually be sought where there is some link between the offence for which the individual has been convicted and anti-social behaviour.
6. Once it is established that there has been anti-social behaviour since 2 December 2002, then previous convictions involving anti-social behaviour (for example, public order offences, threatening behaviour), which occurred before 2 December 2002 can also be used as evidence to support an application for a CRASBO.
7. Specific legal advice should always be sought as to whether a CRASBO may be appropriate in a particular case, usually from the CPS via the Police. However, the Lead Agency is still responsible for supplying all

necessary papers for the application to the CPS – for example, an application containing specific prohibitions being sought, supporting witness statements and so on, in good time prior to the hearing at which the CRASBO will be applied for.