

DERBY CITY CRIME AND DISORDER STRATEGY.

ANTI-SOCIAL BEHAVIOUR ORDER PROTOCOL.

1.1 Anti-Social Behaviour Orders (ASBOs) were introduced in April 1999, as part of the Crime and Disorder Act (1998). It is only the Police and Local Authority who can apply for an order against an individual who acts in an anti-social manner. ASBOs are an important addition to the range of responses, which are available in tackling anti-social behaviour.

1.2 The purpose of ASBOs is to target behaviour and activities which disrupt the lives of individuals, families or communities. It is not required to demonstrate that every other intervention has been exhausted, but that an ASBO is the most appropriate remedy. For the ASBO to be considered as a credible part of the local strategy for reducing crime and disorder, effective liaison and working relationships need to be established with a number of different agencies.

1.3 This protocol sets out an agreement on the procedures to be followed in considering and making an application for an ASBO, and applying for the variation and discharge of the order.

- Anti-social behaviour under the Crime and Disorder Act (1998) is to be understood by reference to the term `anti-social manner` which is defined in section 1 (1) (a) as `a manner that caused or was likely to cause, alarm, harassment or distress to one or more persons not of the same household
- Section 1 (1)(b) ensures that it is necessary to show that an ASBO will protect persons in the local government area in which the behaviour takes place.
- Section 1(2) provides that only the Police or the Local Authority may apply for an ASBO after having consulted one another.

PARTNER AGENCIES.

2.1 The Crime and Disorder Act (1998) provides a statutory framework for establishing local partnerships and pursuing crime reduction strategies. The Derby Crime and Disorder Strategy has identified ASB as one of four key themes. Home Office guidance identifies the need for agencies to problem solve and work in partnership. There exists, as part of the Crime and Disorder Strategy structure, an ASB Steering Group which co-ordinates ASB work throughout the partnership. These agencies constitute the partnership in terms of the ASBO protocol:

Derbyshire Constabulary.
Derby City Council.
Derby Homes.
Registered Social Landlords.
Derby Youth Offending Service.
Derbyshire Fire and Rescue Service
Derbyshire P.C.T.
Connexions.
Derby DAT

2.2 Given the need for close and effective partnership working and in line with Home Office guidance, an ASB co-ordinator is necessary to co-ordinate information sharing, consultation and to drive the strategy. The designated ASB co-ordinator is:

Andy Thomas.
ASB Team Manager,
Derby Youth Offending Service,
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Tel 01332 717582/ 07766 132897.

Inter-agency and partnership working needs to take place at two different levels.

- Strategic, ensuring that the structures and processes are in place for information sharing, consultation and problem solving
- Operational, ensuring joint working and that designated officers have the tools, training and competence to fulfil their role in tackling ASB.

EQUALITY AND DISCRIMINATION.

3.1 Under this protocol an ASBO will be considered where it is necessary to protect individuals or communities who are experiencing anti-social behaviour and whose quality of life is suffering. Applications for ASBOs will not be made simply because people are different or that they have differing cultural lifestyles. When investigating complaints about anti-social behaviour, partner

agencies will take into consideration whether the complaints are motivated by discrimination on the grounds of race, culture, religion, age or sexual orientation.

HUMAN RIGHTS.

4.1 The Human Rights Act makes 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 ASBO process.

4.2 Whoever is responsible for a case at any given stage will, in agreement with legal advice, 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 ECHR.
- The proposed terms of the ASBO are reasonable and proportionate to the anti-social behaviour being investigated
- The defendant will not be able to argue that he or she will, or might suffer as a result of the ASBO
- The ASBO being applied for is not in such terms that the defendant is bound to breach it.
- The terms of the ASBO are reasonable, clear and unambiguous.
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A crucial consideration will be that people other than the defendant have the right not to be disturbed by anti-social behaviour

INFORMATION SHARING.

5.1 Effective sharing of information between partner agencies is central to the success and working of ASBOs and is also a crucial element of the consultation process.

5.2 Section 115 of the Crime and Disorder Act provides that any person can lawfully disclose information, where necessary or expedient, for the purposes of any provision in the Act, to a relevant authority. Under the Act "relevant authority" means: the chief officer of police, the police authority, the local authority, the probation committee or the health authority. Added to this, the 1998 Data Protection Act allows for exemption of disclosures where it is connection with criminal proceedings.

5.3 When a partner agency becomes aware of behaviour, serious and persistent, which may require an ASBO, that agency will notify the ASBO Co-ordinator. Each partner agency will have a designated officer, ideally the representative on the ASB Steering Group. The ASB Co-ordinator will send relevant information to those designated officers, containing details of the Co-ordinator, details of the defendant, reason for a possible application and a brief summary of the behaviour. This ensures the good exchange of information, ownership of the process and an early warning system.

5.4 Personal information, which is not immediately relevant to the consideration of an ASBO application, or about victims, witnesses or complainants will not be shared amongst partner agencies, unless those individuals have given their consent. Care should be taken, when disclosing personal information about individuals or families not actively involved in crime or anti-social behaviour, that they are not identified by mistake.

CONSULTATION AND PROBLEM SOLVING.

6.1 The police and local authority are required to consult each other before an ASBO application is made, it is desirable, wherever possible that each application is agreed upon and based upon effective co-operation and partnership working. It has been agreed, that within the Crime and Disorder Strategy, a problem solving approach is taken, to implement the overall strategy.

6.2 Given the central importance of consultation in the ASBO process, there is a need for identifiable key players, or designated officers. The designated officers, from the most significant partners: YOS, Police, Housing and Legal Services will form a group, tasked with problem solving. This group will work to shared criteria and an agreed threshold for ASBO applications. It is recommended that this sub-group of the wider Steering Group will not simply replicate the wider group, but is a problem solving group that will discuss new cases and review progress on existing ones. This provides consistency and develops expertise and knowledge. The ASB Co-ordinator will chair, convene and lead the group. Notes will be taken of the meeting and the agreed action plan.

6.3 The role and function of the Problem Solving Group will be to:

- Assess evidence and that ASBO threshold has been met.
- Identify lead agency.
- Implement problem solving approach. Supporting victims, target hardening and preventing further anti-social behaviour.
- Agree an action plan.

6.4 In agreeing an action plan to prevent further anti-social behaviour, the group 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 household in circumstances where there is no reasonable explanation.
- Is there evidence that the actions of the individual have had a serious, negative impact upon other individuals within the community?
- What action (if any) has been taken to either prevent the anti-social behaviour, engage or divert the individual? Involvement with the Youth Service, YIT, YOS, Probation or Social Services.
- Are there courses of actions or interventions other than an ASBO that are available and more appropriate, such as
- Warnings.
- Acceptable Behaviour Contracts.

- Mediation
- Injunctions
- Possession Orders.
- Criminal Prosecution.
- Has the threshold been met for an ASBO application?
- Is there agreement that an ASBO is the most appropriate course of action?
- If an ASBO application agreed, are there other actions that need to be taken in conjunction.

6.5 The group will agree to apply for an ASBO only where it decides that it is necessary to protect an individual, a group of people or the community and that it is a proportionate response in achieving the target. The legal representatives on the group will ultimately determine whether there is sufficient evidence. The most significant test is that there is a pattern of behaviour that continues over a period of time, which cannot be dealt with adequately through prosecution of a one-off incident or criminal event. Added to this, the group will not agree to an ASBO to settle private disputes.

6.7 Where the potential subject of an ASBO is a child or young person under the age of 18, the Social Services Department, YOS and Education Dept will be invited to attend the group.

6.8 Where the individual is a child who is subject to a local authority Care Order, or is accommodated under the Children Act, the written consent of the Director of Social Services to an ASBO application will be required, where the SSD has not been involved in the group decision. Also it will be required, that the SSD conduct a full CIN assessment prior to an ASBO application being made.

6.9 Where the individual has mental health and/or drug related problems the PCT and DAT will be invited to attend the group.

6.10 Where the harassment is of a racial nature, the group will consult any relevant organization representing the needs of the community. To assess their view regarding an ASBO and any support required for victims of anti-social behaviour

6.11 Where the perpetrator is residing in accommodation provided by an RSL, not Derby Homes, the RSL will be invited to attend the group.

6.12 In all cases, the Probation Service will be contacted. The Service will be expected to provide an assessment as to the possibility of alternative action, level of co-operation and the attitude, if known, of the parents or guardians if the individual is under 18.

PROBLEM SOLVING GROUP.

7.1 The problem solving group will include the following representatives:

- ASBO Co-ordinator.
- Derby Homes; Tenancy Enforcement Team
- Derby City Council (legal)
- Derbyshire Constabulary D Division.

CRIMINAL PROCEEDINGS.

8.1 Seeking an ASBO is one of a range of options available to prevent and tackle anti-social behaviour. ASBOs are not intended to replace existing criminal actions or decriminalise activities, which are criminal offences. Where the individual is also the subject of criminal proceedings the group must consider whether likely sentencing outcomes can address the anti-social behaviour. However, prior to conviction, the group may decide to proceed with an ASBO instead of the criminal prosecution if it is agreed with the Crown Prosecution Service that:

- An ASBO application is likely to be a more effective means of tackling anti-social behaviour.
- An ASBO would be equally effective as criminal prosecution, but would have the advantage of not immediately criminalizing the defendant.

8.2 As an ASBO is a civil, not a criminal action, it falls outside of the double jeopardy rule preventing repeat prosecutions based upon the same evidence. Where a criminal prosecution fails, the group will take into account the legal implications of proceeding with an ASBO application. There needs to be consideration of the following:

- The length of the proceedings and the effect on the individual.
- The reasons why the prosecution failed.

8.3 Where the individual is the subject of a successful criminal prosecution, it will not normally be appropriate to seek an ASBO, except where there is the threat of further anti-social behaviour and the offender's sentence is insufficient to protect the community.

RECORDING AND IMPLEMENTING THE GROUP'S DECISION.

9.1 When the group has met, minutes of the meeting and the action plan will be distributed to all the members. The ASBO co-ordinator will obtain a completed certificate of consultation from the Police and Derby City Council.

9.2 Where an ASBO application is to be made the lead agency will ensure that complainants are kept informed of the progress and in consultation with the co-ordinator manage any media involvement. The lead agency will also:

- Maintain information sharing with the ASBO co-ordinator, in terms of evidence, monitoring and progress of the application

- Make the application to the Magistrates Court.
- Request that the case be heard before a District Judge.
- Contact the Social Services Dept to request a CIN assessment is, or has been carried out.
- Notify the YOS, interventions Team Manager, in order that an assessment for a Parenting Order is prepared for submission as part of the ASBO application.

LEAD AGENCY.

10.1 To ensure efficient consultation and a clear focus regarding action and responsibility, clear guidelines are necessary to identify the lead agency and the costs of the application should be met. In considering the costs of an ASBO application account should also be taken of the likely or potential costs of alternative action. Whilst an ASBO may be seen as expensive, partner agencies need to be aware of current expenditure in dealing with anti-social behaviour, which may not be successful. Under such circumstances ASBOs could be seen as good value and partnership working contributing to added value, in terms of solving problems. It has been agreed, in principle that ASBO applications should be jointly funded between the police and Derby City Council. It will be for the problem solving group to agree, following discussion who should be the lead agency to apply for the ASBO

EVIDENCE AND THE ASBO APPLICATION.

11.1 Evidence has to be sufficient to prove harassment; alarm or distress was caused or likely to be caused and sufficient to satisfy the court that an order is necessary. Evidence gathering is a crucial aspect to a successful application. Evidence does not have to reach the criminal standard of proof, that of `beyond reasonable doubt`, but should be assessed by the court on the balance of probabilities. Inevitably, the better the evidence the better the chance of a successful application. In R v McCann, the House of Lords have ruled that the criminal burden of proof should apply in ASBO applications. Hearsay and professional witness evidence is allowed for the identities of witnesses to be protected, where there is fear of reprisal and intimidation.

11.2 The lead agency in a case will be responsible for gathering and presenting the evidence, in consultation with the other statutory partner and other interested agencies. Evidence may include the following elements:

- Witness statements, including diary sheets.
- Reports from officers regarding previous incidents within the particular area.

- Evidence of complaints received and recorded by the Police, Derby Homes or other RSLs.
- Statements from professional witnesses (especially when there is fear of reprisals in the community), such as council officials, health visitors, education welfare, environmental health etc
- Video/surveillance evidence.
- Information from other agencies with involvement in the case, such as the YOS and Probation.
- Previous civil actions that are relevant, from another authority, for similar anti-social behaviour.
- Previous convictions, cautions and criminal proceedings relevant to the ASBO application.
- Custody records of previous arrests relevant to the application.
- Breach of an Acceptable Behaviour Contract

11.3 Although the proceedings are civil, not criminal, the quality of evidence needs to be of a high standard. Consultation with legal advisors is of high importance.

11.4 When applying for an ASBO the lead agency, in consultation with the problem solving group, will take into account the following:

- Statutory time limits which apply to criminal cases do not apply to civil proceedings. However the ASBO application must be made within 6 months of the last incident.
- The Court will need to be satisfied that the individual has acted in the manner stated.
- Witnesses need not prove that they were alarmed or distressed themselves, but that the behaviour they witnessed was likely to produce such an effect on others.
- Professional witness evidence is allowed if the witness has observed the behaviour
- Hearsay evidence, or reports of a third party may be used.
- Records of convictions and cautions may be used as evidence.
- Following consultation with the CPS, an application can be supported with evidence produced at previous criminal hearings, irrespective of conviction.
- PACE does not apply to civil proceedings but, in view of the powers of arrest, the Police should as a matter of good practice conduct interviews according to PACE.
- There is no requirement to interview the defendant about the ASBO application, but good practice suggests that this should be done. If the defendant is under 18, the ASB Team will interview both defendant and parents/guardian.

It is important to note, that the Rehabilitation of Offenders Act does not allow evidence of spent convictions to be admissible in an ASBO application.

WITNESS SUPPORT.

12.1 The Local Authority and the Police will encourage and support witnesses by using existing local arrangements, such as Victim support and Witness Support Schemes, local Beat Officers and Tenant Support Officers. Support is crucial in protecting and reassuring victims of anti-social behaviour, especially with regard to reprisals. This is particularly important in civil cases, as bail conditions cannot be imposed.

APPLYING FOR AN ORDER.

13.1 The lead agency, will appoint a solicitor in charge of the case; this will either be the Police Force solicitor or a solicitor from the local authority. This officer will be responsible for preparing the ASBO application. The following are key elements in preparing an application:

- Case summary.
- Certificate of consultation
- Evidence in support of the application
- Proposed terms of the ASBO.
- ASBO application form
- Summons form
- Certificate of service.

CASE SUMMARY AND FILE OF EVIDENCE.

14.1 The case summary will include the following:

- Details of the individual.
- Outline of the incidents.
- Demonstration of consultation between SSD and YOS (CIN and Court reports) identifying any welfare considerations.
- Evidence to demonstrate that defendant has not been discriminated against or victimised, according to their race, sex, disability, religion or sexual orientation.

The officer in charge of the case will ensure that the file of evidence is prepared with documents in chronological order and related documents kept together.

PROPOSED TERMS OF THE ASBO.

15.1 The Court will decide on what prohibitions apply, but the lead agency will contribute to the decision making by including proposed conditions as part of the application. The problem Solving Group, when agreeing an ASBO application will discuss and agree on potential prohibitions. The prohibitions must relate specifically to tackling the behaviour and must be no more than necessary and proportionate.

15.2 Within the application the document will outline:

- The prohibitions being applied for, which are necessary to protect people, within the area, from the anti-social behaviour of the defendant.

- The requested length of the ASBO. Based upon the seriousness, persistence, age and maturity of the defendant.

15.3 The solicitor in charge, in consultation with the Problem Solving Group and CPS will draw up proposed prohibitions. They must:

- Relate to actions already committed by the defendant and which the applicant believes will be committed again if an ASBO is not imposed.
- Be reasonable and proportionate
- Be realistic, practical, concise and in plain language.
- Be specific in regard to times and places (OS maps will be used to identify areas which are subject to prohibitions)
- Be worded to prohibit the defendant from engaging in anti-social behaviour. An ASBO cannot compel specific actions, conditions can only be negative.
- Not prohibit acts that are already criminal, but may prohibit acts that could lead to criminal offences.

SUMMONS PROCEDURE.

16.1 The solicitor in charge of the case will ensure that a summons form is completed and retained in the application file. The summons will be served on the defendant, with a copy of the ASBO application, certificate of consultation and as much evidence as can be safely disclosed in advance of the hearing. If the evidence is not served, the application will not proceed at the first hearing

16.2 The officer in charge will need to take legal advice on the extent to which the evidence of local residents needs to be disclosed in advance. Evidence should not be disclosed unless the officer is assured that all appropriate steps have been taken to prevent victimization.

16.3 Wherever possible the officer in charge of the case will ensure that the service of the summons is made in person to the defendant. If not possible, the summons will be served by first class post to the last known address. This process needs to be evidenced

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

PROCEDURE ON HEARING AN APPLICATION.

17.1 Application for an ASBO is by complaint to the Magistrates Court acting in its civil capacity. Youths still appear before the Magistrates Court, not the Youth Court ,except for breach proceedings.

The officer will note that:

- The court does not have any powers to impose reporting restrictions, except for cases concerning children or young people. Cases take place in open court. The solicitor, applying for the ASBO will not oppose the lifting of the reporting restrictions, enabling the local press to identify the defendant, which in turn allows for the community to be made aware of the Order. This enables better enforcement, deterrent for potential defendants and recognition for the victimised community. Restrictions should only remain in exceptional circumstances, where the welfare of the child or young person is a consideration.
- Evidence will be given on oath, under section 98 of the Magistrates Court Act 1980. The evidence of an under 14 year old 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 defendant under 16 years of age. The ASB Team at the YOS will ensure parental attendance at court, to avoid any unnecessary delays.
- In the case of a child or young person, the court will require information about them and the family circumstances. A CIN assessment from Social Services must accompany an application, again to avoid adjournments.

The officer in the case will ensure that all evidence and witnesses are available at the hearing.

17.2 When an ASBO is granted, the Court Clerk will serve a copy of the Order on the defendant prior to leaving court. If the defendant is a child, young person or vulnerable adult a copy will also be given to the appropriate adult. A copy of the ASBO will also be given to the agency's legal representative.

APPEAL AGAINST THE ORDER.

18.2 The Lead agency that applied for the Order will consider and deal with defending any subsequent appeal.

POST ORDER PROCEDURE.

19.1 An ASBO is effective on the date it is made, but the calculation of length starts from the date of service. If the Order has not been served personally, the lead agency will arrange personal service as soon as possible. Proof of service of the ASBO is vital, since any criminal proceedings for breach may fail if service is challenged by the defence and cannot be proved by the prosecution.

19.2 The agency obtaining the ASBO will ensure that a copy is forwarded immediately to:

- ASBO Co-ordinator.
- Partner agencies involved in the application.
- Police area command.

19.3 The ASBO Co-ordinator will ensure that the above takes place and those witnesses and community groups are notified. The ASBO Co-ordinator will, following consultation, decide upon a media strategy and liaise with the local press. The Home Office are making arrangements to enable ASBOs to be recorded on the PNC.

MANAGEMENT AND ENFORCEMENT OF THE ASBO.

20.1 ASBOs will only be successful if they are appropriately managed, monitored and enforced. Added to this, an ASBO places restrictions on behaviour but for more long-term change, more cognitive interventions are necessary. Following an ASBO being made on a child or young person the ASB Team will:

- Allocate an ASB officer.
- Liaise with Police Beat Officers, Youth Involvement Officers, TSOs and Community Watch Patrols and other interested parties to ensure enforcement of the order.
- Make a full assessment of the defendant using Asset and identify risk factors.
- Complete a plan of intervention aimed at reducing the risk of anti-social behaviour.
- Inform the problem-solving group of progress and any breaches.

BREACH OF AN ASBO.

21.1 The problem-solving group will meet at regular intervals to discuss the progress of ASBOs. Any potential breach must be discussed and consultation takes place. Consideration will be placed on any alternative preventative, remedial or alternative action. Information on breaches can be received from any source. Information regarding breach must be passed immediately to the ASBO Co-ordinator. The problem-solving group will also consider any discharge or variation of the order. It will be for the police and CPS to determine what action to take on the breach in terms of criminal prosecution

21.2 A breach of an ASBO is a criminal offence and therefore the Police will be the lead agency in an investigation. The Section Inspector where the breach has occurred will identify an Officer to conduct the investigation. The Officer will keep the Co-ordinator and therefore the problem-solving group aware of progress and any difficulties.

21.3 Where the Police consider that there has been a breach, the issue will be referred back to the problem-solving group and the ASBO Co-ordinator will consider whether the defendant should be prosecuted or if appropriate finally warned. A reprimand would not be appropriate.

21.4 Usually, as a breach of an ASBO is in itself a serious offence, prosecution will be recommended. An ASBO is a Court Order and therefore the Court should deal with its breach.

PROSECUTION OF ASBO BREACHES.

22.1 Responsibility for prosecuting a breach of an ASBO lies with the Crown Prosecution Service. The prosecution will be subject to the usual case review in accordance with CPS guidelines. Prosecutions must therefore pass both the evidential and public interest tests.

22.2 The standard of proof is the criminal one, beyond all reasonable doubt and cases will be tried summarily or on indictment in the Crown Court. Cases against children and young people will be in the Youth Court. Legal Aid may be available to the defendant for representation.

VARIATION AND DISCHARGE.

23.1 Variation or discharge of the order is by complaint to the court. The Police, the Local Authority or the respondent can make such applications. An order cannot be discharged within 2 years of its service without the agreement of both the Police and Local Authority. The process for variation or discharge is set out in the Magistrates Court Rules Act 1998.

23.2 If any partner agency believes it necessary to vary or discharge the order, the matter should be put to the problem-solving group, who in turn will consult with the CPS. The ASBO Co-ordinator will then refer the matter to the local authority and obtain a certificate of consultation to evidence agreement regarding the proposed discharge or variation.

23.3 If the individual requests variation or discharge, the lead agency will ensure that a considered response is given to the court, including details of compliance, breach and progress, following consultation with the problem-solving group and CPS.

MONITORING AND EVALUATION.

24.1 The ASBO Co-ordinator will develop procedures for monitoring ASBOs, both successful and unsuccessful. Quality information will benefit and contribute to good practice and inform audits and the Crime Reduction Strategy. It will also ensure that ASBOs are used correctly. As a minimum, the information will include.

- Details of the defendant, including gender and ethnicity.
- Victim profile.
- Details of anti-social behaviour.
- Date and conditions of the ASBO.
- Details of any breach, variation or discharge.
- Defendant assessment
- Aggravating features.
- Did the ASBO prevent anti-social behaviour?

