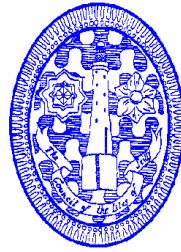


# Anti-social Behaviour Order (ASBO) Policy

1<sup>st</sup> September 2005



## INTRODUCTION;

The take-up of ASBOs by Police and Local Authorities has varied considerably around the country. There have been close to 4000 ASBOs in England and Wales since they began in 1999. A large metropolitan area such as Greater Manchester uses them extensively (608) whereas some quiet rural counties use them very little, e.g. Wiltshire (13), Dorset (28). So far there has been one post-conviction ASBO and 2 Acceptable Behaviour Contracts on the islands, obtained by the police in consultation. The Council of the Isles of Scilly has sought no ASBOs so far.

This may be about to change, so the partnership is seeking to agree a policy outlining the circumstances in which ASBOs might be used. Much of the material in this policy is taken from the templates available on the Home Office website [www.crimereduction.gov.uk](http://www.crimereduction.gov.uk)

The 2005-8 Isles of Scilly Community Safety strategy relies on a survey carried out on the islands by the Partnership. It was analysed by Professor Rob Mawby, a criminologist at Plymouth University and runs to 80 pages. The survey did not specifically test public attitudes to ASBOs but it did ask about some of the other new measures available in ASB cases. For example, the survey showed that public confidence in bylaws to control drinking in public places is much lower here than on the mainland. (48% support here compared to 68% in Cornwall) However the survey does show growing concern about graffiti, and continuing concern about other manifestations of ASB. These are the percentages of local people reporting 'fairly big' or 'very big' problems in their neighbourhood;

- Dog fouling 42%
- Drunks in public places 23%
- Congestion 21%
- Teenagers hanging around 20%
- Noisy neighbours/parties 13%

This informs us that the public are concerned about issues in the mainstream of Antisocial Behaviour, but are not yet convinced of the benefits of using the legislation that has come in over the past seven or eight years.

## Partner Agencies

The agencies (and officials) which are members of the Community Safety partnership are:

The Council of the Isles of Scilly (Assistant Chief Technical Officer is chairman of the Community Safety Partnership)  
The Devon and Cornwall Police (the local Sergeant in the Islands)  
The Cornwall Probation Service  
The West of Cornwall Primary Care NHS Trust (GP from island health centre)  
Isles of Scilly Fire Brigade (brigade manager)

The agencies/departments that can be consulted over ASBOs are;

The Social Services dept of Council of the Isles of Scilly, Housing dept of Council of the Isles of Scilly, and the Education Service will be contacted by the Anti-Social Behaviour Co-ordinator automatically, as part of the Council, and will decide their own level of interest in the case and confirm their attendance at any multi-agency meetings.  
Youth Offending Team will be contacted for all juvenile cases.

Other consultees likely to be invited to multi agency meetings (this list is not exhaustive);

Hanover Housing Association & other local Housing Associations  
Duchy of Cornwall (a private landlord, not a registered social landlord)  
Drug and Alcohol Action Team

## ASB Co-ordinator

The designated ASB Co-ordinator is the person employed by the Council of the Isles of Scilly in that role.

The ASB co-ordinator is in the Chief Executive's department in accordance with Home Office guidance *'It is recommended that the co-ordinator should have clear lines of communication with both the LA chief executive and the area police commander, in view of their responsibility for the partnership. Where the co-ordinator is a council official he or she should not owe first allegiance to a particular LA department<sup>1</sup>.*

## The Multi-Agency Meeting

The ASBO process begins with a multi agency meeting. The chair of this meeting should be an employee of one of the statutory ASB partners; police and the Council of the Isles of Scilly. Information can be shared at this meeting for the purpose of preventing crime and disorder. Normally the person who organises and takes the chair of this meeting is the Anti-Social Behaviour Co-ordinator. Agencies should come to the meeting ready to share personalised information within the confines of the meeting. In all cases, the

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<sup>1</sup> **Guidance on drawing up Local ASBO Protocols - Home Office**

Probation Service will be informed of any intention to apply for an ASBO on an adult, and the Youth Offending Team on any person under 18.

## Information Exchange

It is vital in considering ASBOs that the partners have a willing attitude towards information sharing. Protocols are in place to share specific, personalised information with a number of agencies here in the interests of reducing crime and disorder. Nominated Officers exist for the handling of information requests at the police, the council, probation, and the Health Authority.

## The circumstances that might justify an ASBO

Anti-social behaviour under the law<sup>2</sup> is defined as behaving in a manner "**that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as the perpetrator**". It is necessary to show that an ASBO will protect persons in the local government area from further anti-social acts by the perpetrator. In line with the Home Office guidance these are examples where an ASBO might be sought by the police or local authority:

- individuals who intimidate neighbours and others through threats or violence or a mixture of unpleasant actions;
- persistent unruly behaviour by a small group of individuals in a specific area, who may dominate others and use minor damage to property and fear of retaliation, possibly at unsociable hours, as a means of intimidating other people;
- families whose anti-social behaviour, when challenged, leads to verbal abuse, vandalism, threats and graffiti, sometimes using children as the vehicle for action against neighbours and their children;
- persistent abusive behaviour towards elderly people or towards mentally ill or disabled people causing them fear and distress;
- serious and persistent bullying of children on an organised basis in public recreation grounds or on the way to school if normal school disciplinary procedures do not stop the behaviour;
- persistent racial harassment or homophobic behaviour;
- persistent anti-social behaviour as a result of drugs or alcohol misuse.

Before an ASBO is sought, the Home Office guidelines urge that alternatives are considered. However, no one agency in the partnership can veto another

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<sup>2</sup> **Crime and Disorder Act 1998 section 1 (1)**

which wants an ASBO. Alternatives might include an Acceptable Behaviour Contract. An ABC has no legal force but can be cited as evidence in subsequent ASBO applications. Further alternatives are Parenting Orders, child curfew schemes, Drug Treatment and Testing Orders, mediation, challenges, warnings, eviction and criminal prosecution.

An ASBO can apply only to a person aged 10 or older.

A Flowchart of the ASBO process can be viewed on the Home Office website at [www.homeoffice.gov.uk/docs/asboapc.html](http://www.homeoffice.gov.uk/docs/asboapc.html)

## **Equality**

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. When investigating complaints about anti-social behaviour, the partner agencies must satisfy themselves that they have not been motivated by discrimination/victimisation on the grounds of, for example, race, disability, sex, sexual orientation, age, religion or creed. *Partner agencies will consider training for their staff in order to help them assess whether complaints about anti-social behaviour are being driven by discrimination.*

## **Consultation**

The Community Safety Partnership has a Certificate of Consultation form which agencies can use to prove in court that the ASBO has been discussed with relevant partners. The very least that the law requires is consultation between police and local authority.

Wider consultation is highly desirable. For example, in a case of anti social behaviour around a specific address, it would be wise to consult the landlord of that property. Registered Social Landlords can apply for ASBOs after consulting with police and local authority. (NB the Duchy of Cornwall is not a registered social landlord and does not see any advantage in being one)

## **Reducing the fear of crime**

An ASBO is designed to deter an individual from further anti-social behaviour. But it also has the effect of re-assuring the victims and the wider community that something has been done to address their concerns. Therefore publicity is a vital part of the ASBO process. In our island context this is particularly valuable as a counter to the rumour mill and the monopolistic nature of the local print media. In each case partners should agree an appropriate publicity plan. This may have one or more of the following elements;

- Letters to people in the immediate area
- Information on the ASBO posted on notice boards/library/website
- A public meeting in the affected area
- Press Release with a nominated media spokesperson
- A generic leaflet from the Partnership explaining the ASBO process

## **Human Rights**

The Partners recognise that ASBOs are part of the civil law. Standards of evidence are not as high as would be needed for a criminal prosecution. For example professional witnesses such as Police, Police Community Support Officers, Housing Officers and so on can give hearsay evidence, if the victims of the anti-social behaviour are unwilling to come forward. And yet the breach of an ASBO is a criminal offence for which a person can be deprived of his liberty for as much as five years. Several Articles of the European Convention on Human Rights are relevant here and are noted by the partners;

Article 6 'a fair and public hearing....by an independent and impartial tribunal...the accused to be informed of the nature of the accusation in a language he can understand...adequate time and facilities to prepare his defence'

Article 8 'respect for private and family life, home and correspondence...except in the interests of national security, public safety...prevention of crime and disorder'

Article 14 'no discrimination on grounds of sex, race, colour, language, religion political or other opinion, national or social origin, property, birth or other status.'

### **Witness Support**

The use of ASBOs has implications for witness support, especially in a small close knit community. The partnership will have to take this task into account when considering ASBOs. The Home Office publishes guidance on witness support schemes; for example 'Speaking up for Justice' 1998. We will endeavour to support people through visits by Victim Support volunteers.

### **Problem solving group**

The Community Safety partnership will act as a *problem solving group* to monitor the progress of ASBOs. The ASBO co-ordinator will normally chair meetings of the Group and arrange for minutes to be taken of the proceedings and a note of the action plan agreed. The purpose of the Group will be to:

- a) ensure a complaint is not the result of malice or discrimination;
- b) confirm which agency is in the lead;
- c) support the victims and witnesses of anti-social behaviour;
- d) prevent further anti-social behaviour.
- e) plan the necessary support for the person subject to the ASBO

### **Choosing the lead agency**

The following considerations will apply in determining whether the police or the local authority should be the lead agency in a case:

***the local authority*** where incidents take place on council housing estates or on local authority land, schools, youth club or privately owned accommodation.

*the police where the incidents occur in shopping streets, greens, quays, beaches or other community areas OR where the individual is also subject to related criminal proceedings*

### **The duty of the lead agency**

In applying for an ASBO the lead agency (be it council or police) will:

- a) ensure that complainants are kept informed of the progress of the case
- b) convene a (further) meeting no later than 12 weeks from the date of the decision in order to monitor progress against the action plan; and
- c) where the individual is a child or young person under 18 years, ask the YOT to arrange for an assessment for a parenting order to be prepared (Section 8 Crime & Disorder Act) for submission to the court when the ASBO application is made; and
- d) keep the ASB co-ordinator and partner agencies in touch with the preparation of the ASBO application, including any witness statements and other evidence;
- e) notify the justices' clerk of the decision to apply for an ASBO in order to discuss a listing arrangements for the hearing; and
- f) in the case of someone under 18, discuss with the justices' clerk the arrangements for ensuring that the court proceedings are tailored to the needs of a child or young person.

### **Breach of an ASBO**

Prosecution of persons breaching an ASBO is done by the Crown Prosecution Service. The prosecution or otherwise of a breach will be the subject of a review carried out in accordance with the Code for Crown Prosecutors and such prosecutions must therefore pass both the evidential and public interest test. The standard of proof is the criminal one i.e. beyond reasonable doubt. Cases will be tried summarily in the Magistrates' Court or on indictment in the Crown Court. Cases against children will be in the Youth Courts. The proceedings may be subject to reporting restrictions.

A defence of 'reasonable excuse' may be made in a prosecution for breach. Legal aid will be available to the defendant for representation subject to the usual tests.

### **Variations and discharge of an ASBO**

Variation or discharge of an order is by complaint to the court, either by the original applicant in the case or the defendant. An order cannot be discharged within two years of its service without the agreement of the original applicant.

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 problem-solving group, including the CPS as necessary. The relevant application will be made to the Magistrates' Court by the lead agency.

If the individual asks for a variation or discharge of an ASBO, the agency that obtained the ASBO will ensure that a considered response is given to the court, after consulting the Group, 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, supported as appropriate by evidence gathered in the course of monitoring the effectiveness of the ASBO.

The Magistrates' Court Clerk will send details of the variation or discharge of any ASBO to the local police Force and local authority within 24 hours. The police will record any discharge or variation of the ASBO on their computer system.

### **Sources for this policy**

This policy summarises and localises guidance given by the Home Office on ASBOs, which can be read at <http://www.homeoffice.gov.uk/docs/asbo1.html>  
The ASB co-ordinator has a printed copy of the guidelines.

The signatories to the policy are entitled to go to current and future Home Office guidance on ASBOs to clarify any matters they consider are not fully covered in the local policy.



## Checklist for lead officer seeking an ASBO

Respondent: .....

Address: .....

.....

Date of Birth .....

Please attach and tick as appropriate:-

- Completed case summary by Officer in Case
- Completed Anti-Social Behaviour Order Application form
- Copy Signed Certificate of Consultation
- Copy of completed Summons
- Completed certificate of service of Summons
- Completed case management form
- Completed minutes of the case conference
- Full list of witnesses and availability
- All original witness statements relating to the anti-social behaviour subject to the application
- Any other reports relevant to the application
- Custody records from previous arrests relating to application
- If applicable, copy of prosecution file in failed criminal or civil proceedings relevant to the application
- Any known records of other proceedings via other agencies relevant to application
- List of previous convictions relevant to the application

Signature of Officer in Case: .....

Print name: .....

# CERTIFICATE OF CONSULTATION

## Anti-Social Behaviour Order



(name).....

I the Lead Officer of.....Police/Council/Agency/Trust etc

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

[Redacted address information]

Signed.....

Date.....

*Notes; Section 1E of the Crime and Disorder Act 1998 (as amended by the Police Reform Act 2002) requires that the police and local authorities consult over ASBOs. Registered social landlords seeking ASBOs must consult both the police and the local authority in the area where the person subject to the proposed order resides, or appears to reside. The Police Sergeant on St Mary's (tel 422444) and the Antisocial Behaviour Co-ordinator of the Council of the Isles of Scilly (tel 423730) are the nominated contacts.*

*Whilst no agency has a veto over another's application for an ASBO, the expectation is that any reservations or alternative proposals should be discussed carefully. The case conference procedure is designed to ensure that this happens. For more detailed guidance visit [www.crimereduction.gov.uk](http://www.crimereduction.gov.uk)*

Community Safety Partnership, Town Hall, St Mary's, Isles of Scilly TR21 0LW

## Isles of Scilly ASBO Protocol Parties/Signatories

It will be the responsibility of the named signatories to ensure that:

- Realistic expectations prevail from the outset - a balance between the statutory power of Section 115, Crime & Disorder Act and the requirements of the Data Protection Principles;
- Ethical standards are maintained;
- A mechanism exists by which the flow of information can be controlled;
- Appropriate training is provided;
- Adequate arrangements exist to test adherence to the Code of Practice.

### LOCAL AUTHORITY

( ) [ ] (Position) [ ]

Signature [ ]

### POLICE:

(IoS Sergeant) [ ] (Position) [ ]

Signature [ ]

### HEALTH Trust

(West of Cornwall) [ ] (Position) [ ]

Signature [ ]

### POLICE AUTHORITY

(Devon and Cornwall) [ ] (Position) [ ]

Signature [ ]

### PROBATION SERVICE

(Name) [ ] (Position) [ ]

Signature [ ]

### OTHER BODIES WHICH MUST CO-OPERATE UNDER THE CRIME & DISORDER ACT (SECTION 5(2)(C))

ORGANISATION [ ] Name [ ]

(Signature) [ ]

ORGANISATION [ ] Name [ ]

(Signature) [ ]

ORGANISATION [ ] Name [ ]

(Signature) [ ]

[REDACTED]