

ANTI-SOCIAL BEHAVIOUR ORDERS IN WILTSHIRE

The Role of Publicity – Good Practice Guidelines

1. Introduction

The Legal Context - Adults

- 1.1 The law imposes no restrictions on the reporting of civil or criminal court proceedings:
- where an application is made for an anti-social behaviour order on an adult aged 18 years or over, whether the application is for an interim order or a full order;
 - where an ASBO is made, as part of civil proceedings or on conviction;
 - where proceedings are taken for breach of an ASBO.
- 1.2 The law imposes no explicit restrictions on subsequent publicity in the case of adult perpetrators, for example in the form of leaflets or posters which provide personal details about perpetrators. However, the European Convention on Human Rights¹, which has legal force as a result of the Human Rights Act, requires that any interference with the rights set out in the Convention which is necessary for the prevention of disorder or crime must be 'justified and proportionate'. These rights include the right to a fair trial (although these rights are less extensive in the case of civil proceedings, as in an application for an ASBO, than in criminal proceedings); the right to freedom of expression; the right to freedom of assembly and association; and, most relevant for the purposes of publicity, the right to respect for private and family life.
- 1.3 A landmark High Court hearing in October 2004, in a case involving adults and young people subject to ASBOs brought by Liberty against Brent Council and the Metropolitan Police², ruled that the respondents were not acting unlawfully in publicising the names, partial addresses and photographs of the claimants and details of the orders against them in leaflets, a newsletter and on a website. Lord Justice Kennedy said: "It is clear to me that, whether publicity is intended to inform, to reassure, to assist in enforcing the existing orders by policing, to inhibit the behaviour of those against whom the orders have been made or to deter others, it is unlikely to be effective unless it includes photographs, names and at least partial addresses." He went on to say that the publicity's colourful language was "entirely appropriate, and the colour was needed in order to attract the attention of the readership".

The Legal Context – Young People Aged Under 18

- 1.4 An application for an ASBO on an under 18 year old made in the magistrates' court acting as a civil court can be reported and the perpetrator identified *unless* the court makes an order under s.39 of the Children and Young Persons Act 1933 – and "the court would have to have good reason, aside from age alone,

¹ Find at <http://www.pfc.org.uk/legal/echrtext.htm>

² Stanley & others v Metropolitan Police & Brent Borough Council: find at <http://www.brent.gov.uk/bhp.nsf/0/f59d888ef2ecd6e880256f470049ee56?OpenDocument>

to impose reporting restrictions”³. In particular, if the effectiveness of the order will largely depend on the wider community knowing the details of it and the enforcement of the order is necessary to protect the community, the court is unlikely to impose restrictions on reporting. The magistrates dealing with a child or young person in ASBO proceedings “may be called upon to balance the interests of the community with that of the young person against whom the order has been made”⁴. In *R v St Albans Crown Court*, the judge said that s.39 restrictions will often be inappropriate – “this is not simply publicity to satisfy a prurient public: the local community has a proper interest in knowing who has been seriously and persistently damaging its fabric”.

- 1.5 If an ASBO is made on an under-18 year old on conviction, this can be reported and the perpetrator identified as in para 1.4 – but the details of the *criminal offence* itself, insofar as they identify the offender, remain subject to the automatic reporting restrictions contained in s.49 of the C & YP Act 1933. These restrictions can only be lifted at the explicit direction of the court, in the interests of justice and having regard to the welfare of the young person⁵.
- 1.6 Since 1st July 2005, as a result of section 141 of the Serious and Organised Crime and Police Act 2005, an under-18 year old subject to ASBO breach proceedings can be identified in the media and elsewhere, unless the court uses its powers to prevent identification under section 39.
- 1.7 The law imposes no explicit restrictions on publicity *after* the court hearing in relation to under-18 year olds – but see para 1.2 for the implications of the European Convention on Human Rights. Article 40 of the UN Convention on the Rights of the Child⁶ refers to the right of children to have their privacy fully respected at all stages of legal proceedings – but this applies to criminal, not civil proceedings, so is not of relevance with regard to applications for ASBOs.
- 1.8 If publicity can be shown to reduce the likelihood that named perpetrators can be reintegrated into the mainstream of society, and/or to work contrary to their welfare or well-being, sections 10 and 11 of the Children Act 2004 will be of some relevance:
 - Section 10 (which came into force on 1st April 2005) requires each children’s services authority and its partners (which include all the ‘responsible authorities’) to co-operate “with a view to improving the well-being of children [i.e. under-18s] relating to physical & mental health and emotional well-being; protection from harm & neglect; education, training & recreation; the contribution made by them to society; and social and economic well-being”. This duty applies to all young people, including those subject to ASBOs and those with criminal convictions.
 - Section 11, subsection 2, (which comes into force on 1st October 2005) says: “Each person and body to whom this section applies must make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children.”

³ See para 3.6 at http://www.jsboard.co.uk/publications/rmmc/mf_03.htm

⁴ Judicial Studies Board: “Reporting Restrictions in the Magistrates’ Court” <http://www.newspapersoc.org.uk/Documents/Publications/reporting-magistrates.pdf>

⁵ See <http://www.homeoffice.gov.uk/docs/ythcrt01.pdf>

⁶ See <http://www.unhchr.ch/html/menu3/b/k2crc.htm>

The National Policy Context

1.9 The Home Office's Anti-Social Behaviour Unit, through its 'Together' campaign, has set the national policy context for the use of publicity in supporting the effectiveness of anti-social behaviour orders. The Unit's "Guidance on Publicising Anti-Social Behaviour Orders" published in March 2005 says that "publicity is essential if local communities are to support agencies tackling anti-social behaviour...A case by case approach should be adopted and each individual case should be judged on its merits as to whether or not to publicise the details of an individual subject to an ASBO – [but] publicity should be expected in most cases". The guide identifies the following objectives and benefits of publicity:

- **Enforcement** – local people can identify and report breaches.
- **Public reassurance about safety** – both for victims and witnesses, who know that action has been taken to protect them and their human rights, and for other local people who have experienced anti-social behaviour in the past or live in fear of it.
- **Public confidence in local services** – local people are reassured that action is taken when anti-social behaviour is reported.
- **Deterrent to the subject of the order** – the perpetrator knows that breaches are more likely to be reported.
- **Deterrent to other perpetrators** – publicity spreads the message that ASBOs are being used and is a warning to others causing a nuisance.

The guidance stresses that disclosure of information should be "necessary and proportionate" to the aim of preventing crime and disorder⁷: "publicity is not intended to punish the individual".

1.10 In respect of under-18 year olds, the guidance states that "the age of the person against whom the order was obtained should be a consideration when deciding whether or how to inform people about the order", especially if the individual is particularly vulnerable. But "the fact that someone is under the age of 18 does not mean that their anti-social behaviour is any less distressing or frightening than that of an adult".

1.11 With regard to members of the perpetrator's family, the guidance suggests that "normally the consideration of the effect of publicity on family members should not deter decision makers on the stated aim of publicising the ASBO. However consideration of the impact of publicity on vulnerable family members should be made [*sic*] and recorded".

⁷ Section 17 of the Crime and Disorder Act 1998: "It shall be the duty of each authority...to exercise its various functions with due regard to...the need to do all that it reasonably can to prevent crime and disorder in its area."

2. Policy Guidelines for Wiltshire

Preamble

2.1 National policy guidance provides a backcloth against which policy guidelines appropriate to the county of Wiltshire should be devised. *Local* factors will however have a bearing on the use of publicity in supporting the effectiveness of ASBOs, including:

- the prevalence of antisocial behaviour across the county as a whole and in particular neighbourhoods within it;
- the number of anti-social behaviour orders made;
- the differential impact of publicity on communities and perpetrators in rural areas and market towns when compared to urban and metropolitan areas;
- broader partnership and county-wide policy considerations relating e.g. to children and young people which will need to be borne in mind in considering the role of publicity, including strategies to promote positive images of children and young people.

In places where the population is more scattered, the incidence of anti-social behaviour less widespread and the number of anti-social behaviour orders comparatively low, the benefits and drawbacks of extensive publicity may be different from those in areas facing more extensive problems of anti-social behaviour.

2.2 For the purposes of these policy guidelines, 'publicity' should be seen as referring to **the publication of personalised information which identifies the recipients of anti-social behaviour orders (ASBOs) and/or their associates through the media, websites and/or the distribution or public display of leaflets, newsletters and/or posters**. Nothing in these guidelines should be seen as inhibiting or discouraging the proper and prompt communication of detailed information about the imposition and progress of anti-social behaviour orders to **victims and witnesses**, or the dissemination of **generalised information** about the use and impact of anti-social behaviour orders to the general public and to local communities. The needs and interests of victims and witnesses are paramount, and the general public needs information, and thus reassurance, about the full range of measures being used to tackle anti-social behaviour including anti-social behaviour orders, and about their effectiveness.

General

2.3 Decisions about the role of publicity in supporting the reduction of anti-social behaviour in Wiltshire through the use of ASBOs will be taken on a **case by case basis**. In most cases, there will be no prior presumption in favour of or against publicity – instead, decisions about the extent and type of publicity to be used in each case will be made by those agencies with a direct interest in the outcome of the ASBO, taking account of the factors set out in the table on page 8 below. In every case involving under-18 year olds, the Wiltshire Youth Offending Services *must* be involved in these discussions. In cases involving under-18 year olds where the court has imposed reporting restrictions under section 39 of the Children and Young Persons Act 1933, there is a strong presumption against the use of subsequent publicity even though the law does not prohibit it.

- 2.4 Publicity will only be actively sought where it will contribute to more effective enforcement; and/or where it will act as an effective deterrent to the subject of the order and/or others; and/or where identifying the perpetrator will increase public reassurance. **It will never be the purpose of publicity to increase the punitive impact of the order, or to expose the perpetrator to shame, humiliation, stigmatisation or ridicule.**

Court Reporting - Adults

- 2.5 With regard to adults over 18, there can be no restrictions on the media reporting of court hearings relating to **applications for ASBOs, the imposition of post-conviction ASBOs and proceedings for breach of ASBOs**. The extent to which the media are actively encouraged to be present at ASBO-related court hearings will depend on the seriousness of the behaviour in question and the role that high-profile publicity will play in aiding enforcement or reassuring the public.
- 2.6 The media are entitled to make use of their own **photographs** in support of an ASBO-related case, or can request a photograph from Wiltshire Police. The release of such photographs is subject to a Wiltshire Constabulary procedure which sets out the process and criteria to be used in deciding whether such photographs should be released.

Court Reporting – Under 18s

- 2.7 When an **application for an ASBO** on an under-18 year old is made in a magistrates court acting as a civil court or when an ASBO is made **post-conviction**, the perpetrator can be identified by the media unless the court makes an order under section 39 of the Children and Young Persons Act 1933 – and “the court would have to have good reason [for this] aside from age alone”. However, in the case of a post-conviction ASBO, the details of the criminal offence itself, insofar as they identify the offender, cannot be published unless the court has lifted reporting restrictions under section 49 of the Children & Young Persons Act 1933. Since 1st July 2005, as a result of section 141 of the Serious and Organised Crime and Police Act 2005, an under-18 year old subject to **ASBO breach proceedings** can be identified in the media and elsewhere, unless the court uses its powers to prevent identification under section 39.
- 2.8 When a multi-agency group considers that an ASBO should be applied for on an under-18 year old or anticipates that an ASBO may be made post-conviction, consideration should be given to the advice that might be given to the court about the use of section 39 to restrict the identification of the perpetrator, taking account of the factors set out on page 8 below and bearing in mind that, in most cases, young people who are convicted of serious and/or persistent *criminal* offences will not be identified when these offences are reported in the media.
- 2.9 The application of sections 39 and 49 in ASBO-related proceedings should be the subject of regular discussion between the magistracy, court administrators, the CPS and agencies with an interest in the imposition and implementation of ASBOs so that decisions about the imposition or removal of reporting restrictions are consistent and based on sound principles.

Proactive Publicity (Leaflets, Posters, Newsletters, Websites etc)

- 2.10 In making a judgement about the use of post-court publicity to support the effectiveness of ASBOs on a case by case basis, strenuous efforts should be made to **achieve agreement** amongst all those agencies which have a direct interest in the outcome of the proceedings. Particular weight should be given, in the case of a civil ASBO application, to the views of the agency which is making the application and, in every case, to the views and interests of the communities affected by the anti-social behaviour. **In the event of disagreement**, no one agency should be seen as having a right of veto in favour of or against the use of publicity and the eventual decision should be based on the views of the majority of agencies directly involved in the case.
- 2.11 Where all relevant agencies have agreed to the use of publicity, such publicity should be undertaken under the **auspices of the partnership** and appropriate logos used on leaflets, posters etc. Where not all agencies are in agreement, the resultant publicity should only identify those agencies which have endorsed its use.
- 2.12 Wherever possible, provisional decisions about the use of publicity should be made in the course of review groups/multi-agency meetings **prior to the relevant court proceedings**, whether this is an application for a civil ASBO or a criminal hearing at which the imposition of an ASBO has been anticipated. When an ASBO is made post-conviction and this has not been anticipated, those agencies which will be involved in monitoring the ASBO and supporting its effective implementation should communicate with each other as soon as possible to agree an approach to the use of publicity. If it is to serve a legitimate purpose, publicity needs to be in place as soon as possible after the ASBO is made.
- 2.13 The overriding test for the use of publicity in each case is this: **“Is the proposed level and type of publicity necessary⁸ and proportionate⁹ to the aim of reducing crime, anti-social behaviour and the fear of crime, and has proper weight been given to the potential conflict between individual and community rights?”** Particular factors which should be borne in mind in deciding whether proactive publicity is appropriate in a particular case are set out in Table 1 on page 8.
- 2.14 Care should be taken to **record the key points** raised in multi-agency discussions about the use of publicity to support an ASBO, in particular the grounds for reaching a decision in favour of or against publicity. The agreed **methods of publicity** should also be recorded – print, radio and television media; leaflets; posters; newsletters; websites – as should the **extent of the publicity**: whether it incorporates immediate neighbours; the street; the housing estate or village (whole or in part); a wider area; households; businesses etc. In these respects too, the tests of ‘necessity’ and ‘proportionality’ must be satisfied – who needs to know and for what purpose?

⁸ In the guidance on publicising ASBOs published by the Anti-Social Behaviour Unit in March 2005, the necessity test is described as follows: “What is the least interference with privacy that is possible in order to promote the identified purpose/s?”

⁹ The European Convention on Human Rights refers to the need to show that any measures taken are “a proportionate response to a pressing social need”.

An “**authorisation form**” should be signed by all those agencies agreeing to the use of publicity in a particular case.

2.15 The language used in publicity should reflect its practical purposes – factual, informative and non-alarmist, having regard to the fact that its purpose is not to denigrate and shame the perpetrator, and taking account of the need to avoid increasing the public’s worries about crime or causing disproportionate damage to the reputation of the neighbourhood.

2.16 Where practicable, the perpetrator and his/her family should be informed in advance about the use to be made of publicity, if any.

2.17 In most cases, publicity materials are likely to include:

- the date of publication
- the name and age of the individual
- a brief description of the individual and/or a recent photograph
- a summary of the individual’s anti-social behaviour
- a summary of the terms of the ASBO
- the identification of any relevant exclusion zone, supported by a map
- the expiry date of the order
- the names of the agencies responsible for obtaining the ASBO
- the ways in which the public can report breaches, including the possibility of anonymous reporting if available
- contact numbers for e.g. victim support, the community beat officer.

In some cases, additional information might be included, e.g:

- the address of the individual (although care should be taken to avoid any risk of vigilante action or reprisals, or of harm to members of the perpetrator’s family)
- the names and other details of those with whom the perpetrator is prohibited from associating
- extracts from the findings or the comments of the magistrates or judge.

FACTORS TENDING TO SUPPORT ASBO PUBLICITY (ALL AGES)	FACTORS TENDING TO OPPOSE ASBO PUBLICITY
Is publicity in this case likely to contribute to a reduction in the level of anti-social behaviour and crime in the relevant locality?	Will publicity make the perpetrator's reintegration into the mainstream of community life less likely to be achieved (work, housing, education etc)?
Will publicity make it more likely that breaches of one or more of the ASBO prohibitions will be identified and reported to the relevant authorities?	In the case of vulnerable perpetrators (e.g. those with a dependency on drink or drugs or those with mental health problems) will publicity damage their prospects for rehabilitation and recovery and/or increase the risk of self-harm?
Will the perpetrator be less likely to behave anti-socially because s/he knows that his/her identity has been the subject of publicity?	Will publicity increase the risk of retaliation or vigilante behaviour directed towards the perpetrator?
Will publicity increase the perpetrator's determination to change his/her behaviour for the better?	Will publicity damage the well-being of members of the perpetrator's family?
Will publicity have a deterrent effect on other people in the locality who are behaving anti-socially or who have the potential to do so?	Will publicising the ASBO be interpreted by the perpetrator and/or his associates as a 'badge of honour' and thus a source of status?
Will publicising the identity of the perpetrator increase the confidence of those affected by the anti-social behaviour that appropriate enforcement action has been taken, and that they are better protected than before against a repetition of the behaviour?	Will the human rights of the subject of the ASBO be undermined by publicity, in particular the rights to a fair trial, to freedom of expression, to freedom of assembly & association, and to respect for private & family life and home?
Will the human rights of residents and local communities be better served by the use of publicity, in particular the right to freedom of assembly and the right to respect for private & family life and home?	Will publicity exaggerate the prevalence of anti-social behaviour locally, thus increasing a disproportionate fear of crime, or reinforce the negative reputation of a neighbourhood as a crime hotspot?
<u>ADDITIONAL</u> FACTORS IN THE CASE OF UNDER-18 YEAR OLD PERPETRATORS....	
	Will publicity aggravate the 'labelling' effect on a child or young person subject to an ASBO, making it harder for them to outgrow a problematic period in his/her life?
	Is publicity compatible with the requirements of sections 10 and 11 of the Children Act 2004 which refer to the need "to safeguard and promote the welfare of children"? (see para 1.8 above)
	Will publicity contribute to the negative stereotyping of young people and thus undermine Wiltshire's policy of promoting positive images of young people?
IN THE CASE OF PEOPLE WITH WHOM THE PERPETRATOR IS NOT ALLOWED TO ASSOCIATE....	
Are the "non-associates" themselves subject to ASBOs?	Will publicising the identities of the non-associates implicate them unfairly in the anti-social behaviour of the perpetrator?
Will publicising the names of the non-associates make it more likely that breaches of a 'non-associating' prohibition will be identified and reported?	Will publicity disproportionately damage the well-being and welfare of the non-associates and/or members of their families?