

ANTI-SOCIAL BEHAVIOUR: CRIMINAL BEHAVIOUR ORDERS

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A note on criminal behaviour orders introduced under Part 2 of the Anti-social Behaviour, Crime and Policing Act 2014.

Practical Law Public Sector, with thanks to Richard Hanstock, Cornerstone Barristers

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SCOPE OF THIS NOTE

This note covers criminal behaviour orders (CBOs), a measure to tackle anti-social behaviour introduced by the Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA 2014).

It covers what CBOs are, how they can be applied for and the CBO application procedure in the case of those under the age of 18.

This note does not cover all aspects of the ASBCPA 2014, just those relating to CBOs under Part 2.

For more information on the ASBCPA 2014 generally, see *Anti-social behaviour toolkit* (www.practicallaw.com/4-519-5627).

PURPOSE OF CRIMINAL BEHAVIOUR ORDERS

CBOs are intended to tackle more serious anti-social behaviour and to be used post-conviction. CBOs can be applied for by the prosecution on conviction for any criminal offence in a criminal court (that is, the magistrates' court, Crown Court or Youth Court). They can include both prohibitions and positive requirements intended to stop the anti-social behaviour itself, and also to address its causes.

CBOs replace:

- ASBOs on conviction (see *Practice note, Anti-social behaviour orders (ASBOs)* (www.practicallaw.com/7-505-7889)).
- Drinking banning orders on conviction.
- Breach of a CBO is a criminal offence, unlike breach of an injunction preventing nuisance and annoyance (see *Practice note, Anti-social behaviour: civil injunctions: Breach: adult offenders* (www.practicallaw.com/7-557-1656) and *Breaching a criminal behaviour order: adult offenders* below).

The government has published statutory guidance on the reforms introduced by the ASBCPA 2014, including CBOs (see *Home Office: Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers: Statutory guidance for frontline professionals* (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final_2_.pdf)) (Reform of anti-social behaviour powers guidance).

CONDITIONS FOR MAKING A CRIMINAL BEHAVIOUR ORDER

A criminal court can make a CBO against an offender following conviction if both of the following two conditions are met:

- The court is satisfied beyond reasonable doubt that the offender has engaged in behaviour that has caused or was likely to cause harassment, alarm or distress to any person.
- The court considers that making the order would help prevent the offender from engaging in behaviour likely to cause harassment, alarm or distress to any person. For more information on this, see *Legal update, Criminal behaviour orders: High Court clarifies matters to be taken into account* (www.practicallaw.com/0-618-0349).

(Section 22, ASBCPA 2014.)

The court cannot make an order of its own initiative, only on the application of the prosecution (section 22(7), ASBCPA 2014).

WHO CAN APPLY FOR A CRIMINAL BEHAVIOUR ORDER?

A CBO can only be made against an offender on the application of the prosecution (section 22(7), ASBCPA 2014). Where a case is prosecuted by the Crown Prosecution Service (CPS), it is a matter for the CPS whether to apply for a CBO, but it is possible for a relevant local authority or police force to ask the CPS to apply for a CBO in a particular case. Where a case is prosecuted by a local authority or other prosecutor, the decision vests with that prosecutor.

There is no power to entertain an application for a CBO by another defendant or an interested non-party (such as a local authority that is not the prosecutor). In such cases, the party seeking the CBO should write to the prosecutor to invite it to consider making such an application, or seek to use another power (for example, a civil injunction, see *Practice note, Anti-social behaviour: civil injunctions* (www.practicallaw.com/7-557-1656)).

CRIMINAL BEHAVIOUR ORDER APPLICATION PROCESS

An application for a CBO must be made as soon as practicable, and without waiting for verdict. The court will consider the application after conviction and subsequent sentencing for a criminal offence (or following a conditional discharge order). Once made, the order takes effect as an ancillary order to the sentence (*section 22(6), ASBCPA 2014*).

The CBO application procedure is governed by Part 31 of the Criminal Procedure Rules (CrimPR). The prosecutor must serve upon the defendant notice of its intention to apply for a CBO in the event of a conviction as soon as practicable, and without waiting for the verdict (*CrimPR 31.3(2)*). The CrimPR provides *Form CBO002* (<https://www.justice.gov.uk/courts/procedure-rules/criminal/docs/october-2015/cbo001-eng.pdf>) for this purpose. This notice must summarise the relevant facts, identify the relevant evidence, specify the proposed wording of the CBO, and attach any new evidence relevant to the application that has not already been disclosed.

A defendant served with such a notice should consider whether adequate notice has been given in the correct form. If it has not, the prosecutor may need to apply under CrimPR 31.11 for leave to vary the procedural requirements. On an application under that rule, a court may extend (or shorten) the applicable time limits, and may allow notice to be given in a non-prescribed form (even orally).

Assuming that valid notice has been given, CrimPR 81.3(4) provides that the defendant must respond in kind by serving any evidence upon which they intend to rely in resisting the application that has not already been served as soon as practicable, without waiting for the verdict.

Any party that wishes to rely on hearsay evidence must give notice of their intention to do so under CrimPR 31.6, in order that the other party can consider whether to apply under CrimPR 31.7 to require the attendance of that witness for cross-examination. Special measures for vulnerable witnesses (such as screens or video link) may be applied for in appropriate cases, with the modifications set out at CrimPR 31.3(6) (see *Special measures for vulnerable or intimidated witnesses* below and *CPS: Special measures: legal guidance* (http://www.cps.gov.uk/legal/s_to_u/special_measures/)).

A CBO is not available where an offender is given an absolute discharge order. A CBO can be made where there is a conditional discharge order, or where there is a sentence. It does not appear to be available where the court orders a deferred sentence under section 1 of the Powers of Criminal Courts (Sentencing) Act 2000. Given that in most cases an application for a CBO will be made prior to sentence, it may be that the court does not have the power to entertain an application even where the notice provisions have been observed. The fact that the prosecutor has chosen to apply for a CBO should not influence the sentence that the court decides to pass.

The anti-social behaviour upon which the application for a CBO is based, does not have to form part of the criminal offence for which the offender was convicted, but the court must consider that it is reasonable to make a CBO in respect of the behaviour complained of, and it must be likely that it will stop the anti-social behaviour from recurring or continuing (*Part 2, Reform of anti-social behaviour powers guidance*) (see *Conditions for making a criminal behaviour order* above).

A court cannot consider a CBO application made after an offender has been sentenced (unless proceedings have been adjourned from the date of the sentencing hearing to allow the CBO application to be considered). Therefore it is important for there to be good communication between the prosecution and LAs or police forces to ensure that a CBO application is considered in each case that an anti-social behaviour offender appears before a criminal court (*Part 2, Reform of anti-social behaviour powers guidance*).

In the case of a CBO application relating to an offender under 18, the views of the local youth offending team (YOT) must be sought by the relevant LA or police force prior to the application by the prosecutor (*section 22(8), ASBCPA 2014*) (see *CBOs: under 18s* below).

Evidence

When deciding whether to make a CBO, a court is entitled to hear evidence led by both the prosecution and the offender (*section 23(1), ASBCPA 2014*).

The statutory guidance states that although formal consultation requirements have been kept to a minimum, LAs and police forces are likely to wish to consult with other relevant bodies, such as social services, schools and housing providers, before asking the CPS to apply for a CBO (*Part 2, Reform of anti-social behaviour powers guidance*).

Evidence that may not have been admissible in the original criminal proceedings in which the offender was convicted may be admissible as part of a CBO application, for example, *hearsay evidence* (www.practicallaw.com/8-205-5143) or bad character evidence (*section 23(2), ASBCPA 2014*).

A court is able to make special measures directions in the case of vulnerable or intimidated witnesses to enable them to give their best evidence in court (see *Special measures for vulnerable or intimidated witnesses* below).

Adjourned criminal behaviour order application hearings: non-attendance by offender

Where a CBO hearing has been adjourned and the offender fails to attend the subsequent hearing, a court will have the following options:

- Adjourn the hearing for a second time.
- Issue a warrant for the offender's arrest.
- Hear the proceedings in the offender's absence, provided it is satisfied that the offender had adequate notice of the time and location of the proceedings and was previously informed of the possibility of proceedings being heard if he failed to attend.

(*Section 23(4)-(6), ASBCPA 2014*.)

Where an application for a CBO has been adjourned, the court may make an interim order if it "thinks it just to do so" (*section 26(2), ASBCPA 2014*).

CRIMINAL BEHAVIOUR ORDER PROHIBITIONS AND REQUIREMENTS

A CBO can both prohibit an offender from doing something or require them to do something, for example:

- Attending an anger management course.
- Undertaking youth mentoring.
- Attending substance misuse awareness classes.
- Attending a job readiness course.
- Prohibiting them from being in possession of a can of spray paint in a public place.

(*Section 22(5), ASBCPA 2014*.)

It is up to the relevant court to decide which measures would be most appropriate to tackle anti-social behaviour in each particular case and also to ensure that the selection of measures chosen are tailored to the offender (*Reform of anti-social behaviour powers guidance*). CBOs are not intended to be punitive, but instead instruments to stop the anti-social behaviour from recurring or continuing.

Any CBO should, as far as reasonably practicable, avoid any conflict with the respondent's religious beliefs, their education or work or any other court order (*section 22(9), ASBCPA 2014*). Particular care should be taken not to interfere with any bail conditions to which the defendant might be subject in other proceedings. Other issues that should be considered include an offender's caring responsibilities and, if they have a disability, whether certain requirements or prohibitions would be appropriate (*Reform of anti-social behaviour powers guidance*).

Requirements

A requirement in a CBO (for example, attending a particular course) must:

- Be suitable and enforceable (*section 24(2), ASBCPA 2014*). If an applicant proposes including two or more requirements in a single CBO, a court must consider the compatibility of the suggested requirements (*section 24(3), ASBCPA 2014*).
- Specify who will be responsible for supervising compliance with it (an individual or an organisation), for example, LAs or recognised providers of substance misuse recovery. An offender subject to a CBO is required to keep in touch with their supervisor and to notify them of any change of address (*section 24(1), ASBCPA 2014*).

A court, when hearing a CBO application, must be given evidence relating to the suitability and enforceability of any requirement from the person responsible for ensuring compliance (*Reform of anti-social behaviour powers guidance*).

- Specify the duties of the person responsible for supervising compliance in relation to:
 - promoting compliance by the offender with the terms of the CBO; and
 - taking responsibility for informing the chief officer of police for that police area, and the prosecution, whether the offender has complied with the requirement.

(*Section 24(4), ASBCPA 2014*.)

CRIMINAL BEHAVIOUR ORDER DURATION: ADULT OFFENDERS

A CBO must specify its duration (*section 25, ASBCPA 2014*). This includes specifying periods during which particular prohibitions or requirements will have effect.

A CBO will take effect on the day it is made, and will last for a fixed period of at least two years to an indefinite period. (For more information on the duration of CBOs in the case of offenders under the age of 18, see [CBO duration: under 18s](#) below).

If an offender is already subject to a CBO, then a new CBO can be made to take effect on the day the previous order ceases (*section 25(2), ASBCPA 2014*).

VARYING OR DISCHARGING A CRIMINAL BEHAVIOUR ORDER

A court is able to vary or discharge a CBO on the application of an offender or the prosecution (*section 27, ASBCPA 2014*). Varying a CBO may include adding another prohibition or requirement to extend its effect.

Where an initial application to vary or discharge a CBO has been dismissed, no further application can be made without the consent of the court or the agreement of the prosecution or offender (depending on who made the initial application) (*section 27(2)-(3), ASBCPA 2014*).

Appealing against a criminal behaviour order

Where an offender believes that the conditions for a CBO were not met, or that there was some other reason that the court should not have made the order, the offender may wish to challenge the CBO on appeal.

In the magistrates' court, section 108(3) of the Magistrates' Courts Act 1980 confers a right of appeal lies against any order made on conviction, including a CBO. Appeal against a CBO made in the Crown Court is to the Court of Appeal (*sections 9-11, Criminal Appeal Act 1968*), as the order is ancillary to sentence (*section 22(6), ASBCPA 2014*).

In practice, however, it may be more efficient for an offender to adduce new evidence to show that the order is no longer appropriate, or that its terms should be made less onerous (see *Varying or discharging a criminal behaviour order* above).

BREACHING A CRIMINAL BEHAVIOUR ORDER: ADULT OFFENDERS

Breach of a CBO is a criminal offence (unlike breach of an injunction preventing nuisance and annoyance (see *Practice note, Anti-social behaviour: injunctions to prevent nuisance and annoyance: Breach (www.practicallaw.com/7-557-1656)*)). Therefore an offender who, without reasonable excuse, breaches a CBO (by either doing something they are prohibited from doing or failing to do something they are required to do) will be liable:

- On summary conviction in the magistrates' court, to imprisonment of up to six months or a fine, or both.
- On conviction on indictment in the Crown Court, to imprisonment for up to five years or a fine, or both.

(*Section 30(2), ASBCPA 2014.*)

The guidelines for breach of an anti-social behaviour order, published by the Sentencing Guidelines Council, are relevant to sentence (see *Sentencing Guidelines Council: Breach of an Anti-Social Behaviour Order: definitive guideline (https://www.sentencingcouncil.org.uk/wp-content/uploads/web_Breach_of_an_Anti-Social_behaviour_order.pdf)*).

The police should be informed where a CBO breach has occurred, who will have the power to arrest and charge a suspected offender with a view to prosecution.

For more information on breach of a CBO by an offender under the age of 18, see *Breaching a CBO: under 18s* below.

INTERIM CRIMINAL BEHAVIOUR ORDERS

A court may choose to make an interim CBO if it considers it is just to do so, for example, in order to protect victims or the community (*section 26, ASBCPA 2014*). An interim CBO will generally be made where a hearing of a CBO application has been adjourned and the court decides to put an interim CBO in place until the final hearing of the application or until a further order is made.

An interim CBO is much the same as a full CBO but does not:

- Require a court to seek the views of the local YOT in respect of an offender under the age of 18, as is the case with a full CBO (see *CBOs: under 18s* below).
- Have to specify the period for which it will have effect.

(*Section 26(3), ASBCPA 2014.*)

For more information on what happens where a CBO hearing has been adjourned but the offender then fails to attend, see [Adjourned CBO application hearings: non-attendance by offender](#) above.

CRIMINAL BEHAVIOUR ORDERS: UNDER 18S

The CBO process in relation to offenders under the age of 18 is different from the process in relation to adults.

In the case of an offender under the age of 18, the prosecution must, before applying for a CBO, seek the approval of the local YOT (*section 22(8), ASBCPA 2014*). However, this will not give the team a right to veto CBO applications. The YOT's views must be included in the file of evidence forwarded to the prosecution as part of a CBO application.

Criminal behaviour order duration: under 18s

A CBO will take effect on the day that it is made and will last for a fixed period of between one to three years (this can be contrasted to a CBO made against an adult, which can last indefinitely) (*section 25(4), ASBCPA 2014*).

For more information on the duration of CBOs in the case of adult offenders, see [CBO duration: adult offenders](#) above.

Breaching a criminal behaviour order: under 18s

Breach hearings involving under 18s will take place in the Youth Court with a maximum possible sentence of a two-year detention and training order (*Part 2, Reform of anti-social behaviour powers guidance*). Breach proceedings can be reported in the case of under 18s, see [Reporting restrictions and publishing a CBO: under 18s](#) below.

For more information on breaching a CBO in the case of adult offenders, see [Breaching a CBO: adult offenders](#) above.

Annual review of criminal behaviour orders: under 18s

There is a requirement to periodically review CBO compliance in the case of an offender under the age of 18 (*section 28, ASBCPA 2014*). This will occur where an offender will be under 18 at the end of a "review period" and the CBO will last until the end of the review period or beyond.

A review period will be 12 months from the day on which the CBO took effect or, if it has been varied, then the date on which it was most recently varied (*section 28(2), ASBCPA 2014*).

A review should include consideration of:

- The extent of compliance with the CBO.
- The adequacy of support available to the offender to help them with compliance.
- Any other matters relevant to whether an application should be made to vary or discharge the CBO (see [Variation and discharge](#) above). It is therefore possible that following a CBO review, an application may be made to vary or discharge the order.

(*Section 28(3), ASBCPA 2014.*)

A review must be carried out by the chief officer of police for the police force in the area in which the offender lives or appears to be living together with the relevant LA for that area (who must co-operate in the carrying out of the review). Other persons or bodies can also be invited to take part in the review, for example, YOTs or educational establishments (*Part 2, Reform of anti-social behaviour powers guidance*).

Those responsible for carrying out reviews should also ensure that they have regard to any guidance issued by the Secretary of State (*section 28(4), ASBCPA 2014*).

Reporting restrictions and publishing a criminal behaviour order: under 18s

The automatic reporting restrictions in legal proceedings under section 49 of the Children and Young Persons Act (CYPA) 1933, which would normally apply in respect of someone under 18, will not apply in the case of a CBO application or hearing (*section 23(7)-(8), ASBCPA 2014*).

The decision to publicise a CBO imposed on someone under 18 will be taken by the relevant LA or police force unless an order has been granted under section 39 of the CYPA 1933 prohibiting the publication of certain information that could identify a child or young person.

When taking the decision about whether to publicise a CBO in the case of someone under 18, consideration must be given to whether it would be reasonable and proportionate to do so, balancing the offender's right to privacy against the need to reassure victims and the local community that anti-social behaviour is being dealt with and encouraging them to report any breaches (*Part 2, Reform of anti-social behaviour powers guidance*) (see [Practice note, Article 8 of the ECHR: right to respect for private and family life \(www.practicallaw.com/0-500-6346\)](#)).

Section 45 of the Youth Justice and Criminal Evidence Act 1999 applies in the case of breach proceedings, allowing a court to restrict publication of certain information in order to protect the identity of the child or young person. Where a court chooses to exercise its powers under section 45 it must give reasons for deciding to do so (*section 30(6), ASBCPA 2014*).

SPECIAL MEASURES FOR VULNERABLE OR INTIMIDATED WITNESSES

Chapter 1 of Part 2 of the *Youth Justice and Criminal Evidence Act 1999* ([www.practicallaw.com/9-511-1135](#)), which deals with special measures directions in the case of vulnerable or intimidated witnesses, applies to CBO proceedings in the same way as it does to criminal proceedings (except in relation to those provisions that are only appropriate in criminal proceedings) (*section 31, ASBCPA 2014*).

Special measures are also available in CBO proceedings concerning under 18s, but a court must consider whether the special measures will maximise the quality of the witness' evidence before granting an application (*Part 2, Reform of anti-social behaviour powers guidance*) (see [CBOs: under 18s](#) above).

TRANSITIONAL AND SAVING PROVISIONS: EXISTING ORDERS AND INJUNCTIONS DEALING WITH ANTI-SOCIAL BEHAVIOUR

Section 33 of the ASBCPA 2014 makes transitional and saving provisions in respect of:

- ASBOs on conviction.
- Individual support orders.
- Drinking banning orders.

Five years after the commencement of Part 2 of the ASBCPA 2014, any of the above orders still in force will be automatically treated as CBOs.

WHEN A CBO MAY BE APPROPRIATE: EXAMPLES

The following case studies gives an example of when a CBO might be used.

“Case study – Drunk group

A group of drunk young men and women have targeted some elderly neighbours. In one incident, they dug up flowers from the garden and threw stones at one victim’s house, breaking a window and causing criminal damage.

Some of them are subsequently convicted of criminal damage. The prosecutor also produces evidence that the young people had persistently harassed and intimidated other people in the neighbourhood for a sustained period. The prosecutor successfully applied for a CBO to prevent future ASB. The court also included positive requirements in the CBO against the convicted youths to require them to make good the damage to the victim’s home and engage with a mentoring programme to address the reasons why they were persistently harassing people.

The local authority also successfully applied for an injunction [to prevent nuisance and annoyance under section 1 of the ASBCPA 2014] against other members of the group who were not charged but who had also committed ASB against the elderly neighbours. The injunction included similar positive requirements to the CBO to get the young people to address the underlying causes of their behaviour.

The YOTs were consulted in both the CBO and injunction proceedings.”

(Anti-social Behaviour, Crime and Policing Bill Fact sheet: Replacing the ASBO (Parts 1 and 2) (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/251312/01_Factsheet_Replacing_the_ASBO_-_updated_for_Lords.pdf)).

Example of a community behaviour order in practice: London Borough of Hackney

On 3 February 2015, the London Borough of Hackney applied for and was awarded a CBO against an individual who had targeted vulnerable residents and taken over their homes. The individual had originally been taken to court for breaching an existing ASBO and being in possession of Class A drugs. The terms of the CBO (which was granted until a further CBO is made) were that the individual could not:

- Enter any residential property in Hackney other than the address specified in the order.
- Harass, assault, threaten intimidate or cause annoyance or nuisance to any employee or agent of Hackney Council (including Hackney Homes), other social landlord or any other Hackney resident in the Hackney area.
- Enter Arcola Street, Shacklewell Lane, E9, Colvestone Crescent, E9 and Ball Pond Road, N1.

(See Hackney Council press release, Man who preyed on vulnerable tenants given Hackney’s first Criminal Behaviour Order, 19 February 2015 (<http://news.hackney.gov.uk/man-who-preyed-on-vulnerable-tenants-given-hackneys-first-criminal-behaviour-order/>)).