

DEALING WITH ANTI SOCIAL BEHAVIOUR PROTOCOL

1 INTRODUCTION

- 1.1 This report presents the draft of the 'Dealing with Anti Social Behavior Protocol' for the New Forest area and Basic Command Unit. The document is attached as Appendix 1
- 1.2 In the New Forest area Divided We Fall Partnerships have been tackling neighbour nuisance and anti social behaviour for a number of years however with the introduction of the Crime and Disorder Act in 1998 the District Council became a statutory partner on the Community Safety Partnership with a remit to work to reduce crime and disorder. The subsequent introduction of Anti Social Behaviour Orders and the development of Acceptable Behaviour Contracts gave new tools to the Partnership to use in the intervention of anti social behaviour.
- 1.3 Initially the Partnership worked under a general protocol adopted by all authorities in Hampshire, however this is not entirely suitable for the established Divided We Fall structure. Partners have also requested more detailed guidance on the development procedures of ABCs and ASBOs.
- 1.4 In January 2003 the Divided We Fall Partnerships were reviewed and re-energised under the guidance of the New Forest Community Safety Partnership. The Groups have had successes and the first ASBO for the New Forest has recently been granted.

2 THE PROTOCOL

- 2.1 The Protocol is written in accordance with guidance from the Home Office and is a statutory requirement if New Forest District Council acts as lead agency within the Partnership and seeks action through the courts in the form of an ASBO.
- 2.2 The Protocol consists of 22 sections and appendices and gives details of:
 - How the Community Safety Partnership works;
 - How the Divided We Fall Groups work;
 - How partners work together to tackle anti social behaviour
 - The procedure for seeking ABCs and ASBOs.
- 2.3 The Protocol is written in a form that will enable updating to be undertaken without reproduction of it as a whole.

3 CONSULTATION AND DEVELOPMENT OF THE PROTOCOL

- 3.1 The Divided We Fall Core Group has guided the development of the Protocol and the final draft was assessed by the Youth Offending Team Manager and New Forest District Council Legal Services.

3.2 As stated earlier the Protocol was written in accordance with Home Office guidelines.

4 FINANCIAL IMPLICATIONS

4.1 The cost of producing the Protocol folders is contained within existing approved budgets.

4.2 Future updates will be assessed by the Divided We Fall Core Group and undertaken by the Community Safety Co-ordinator. There are no staffing implications.

5 ENVIRONMENTAL IMPLICATIONS

5.1 There are no direct environmental implications however tackling anti social behaviour of individuals within a community will improve both the physical and social environment

6 CRIME AND DISORDER IMPLICATIONS

6.1 The District Council is a statutory partner of the Community Safety Partnership and tackling anti social behaviour is a key priority of the adopted Community Safety Strategy.

6.2 The Protocol is a key document that will enable the District Council to act through the courts in order to tackle anti social behaviour.

7 PORTFOLIO HOLDER COMMENT

7.1 Cllr Jeremy Heron, portfolio holder Crime and Disorder, is pleased to see this matter taken forward and fully supports the Protocol which will not only enable the District Council to take appropriate action through the courts but is certain to be adopted and used by our partners as a benchmark in partnership working to tackle anti-social behaviour.

8 RECOMMENDATION

8.1 That the Cabinet approves the 'Dealing with Anti Social Behaviour Protocol' as attached as Appendix 1 to this report.

Further Information

Stephanie Sutton
Community Safety Co-ordinator
Telephone: 02380 285148
E mail: Stephanie.Sutton at NFDC

Background Papers

Crime and Disorder Act 1998 Police
Reform Act 2002



Dealing with Anti Social Behaviour Protocol

Divided We Fall
Ringwood/Fordingbridge
Totton/Hythe
Lymington/New Milton



Dealing with Anti Social Behaviour Protocol

		<i>Edition</i>
Abbreviations		
Section One	General Introduction	Oct 2003
Section Two	Divided We Fall and Partner Agencies	Oct 2003
Section Three	Purpose of the Protocol	Oct 2003
Section Four	Equality and discrimination	Oct 2003
Section Five	Human Rights and European Convention of Human Rights considerations	Oct 2003
Section Six	Information Sharing	Oct 2003
Section Seven	Consultation – the problem solving group	Oct 2003
Section Eight	Specific consultation considerations for the Group	Oct 2003
Section Nine	Where there are related criminal proceedings	Oct 2003
Section Ten	Recording and Implementing the group's decision	Oct 2003
Section Eleven	Lead agency	Oct 2003
Section Twelve	Evidence in support of an ASBO application	Oct 2003
Section Thirteen	Victim and Witness support	Oct 2003
Section Fourteen	Applying for an order	Oct 2003
Section Fifteen	Summons procedure	Oct 2003
Section Sixteen	Procedure on hearing an application for an order	Oct 2003
Section Seventeen	Appeal against an order	Oct 2003
Section Eighteen	Post order procedure	Oct 2003
Section Nineteen	Breaches of an ASBO	Oct 2003
Section Twenty	Prosecution of ASBO breaches	Oct 2003
Section Twenty One	Variation and discharge of an ASBO	Oct 2003
Section Twenty Two	Monitoring and evaluation	Oct 2003

APPENDICES

Abbreviations used throughout the text

ABC	Acceptable behaviour contract
ASB	Anti –social behaviour
ASBO	Anti-social behaviour order
BCU	Basic Command Unit (New Forest Division of Hampshire Constabulary)
CDRP	Crime and Disorder Reduction Partnership
CPS	Crown Prosecution Service
CSC	Community safety co-ordinator
DWF	Divided We Fall (Local Partnership that aims to tackle ASB)
ECHR	European Convention on Human Rights
NFDC	New Forest District Council
PACE	Police and Criminal Evidence Act
RIPA	Regulation of Investigatory Powers Act
RSL	Registered Social Landlord
YOT	Youth Offending Team

1.0

General Introduction

1.1 Section 5 of the Crime and Disorder Act 1998 provides that the local authority, New Forest District Council (NFDC), should act in co-operation with the Hampshire Constabulary, Hampshire Probation Service, Hampshire Fire Service and the relevant Primary Care Trusts in producing a local crime and disorder strategy. Such partnership working offers the best foundation and framework for tackling criminal and anti social behaviour. The resulting Crime and Disorder Reduction Partnership has been set up and is called the New Forest Community Safety Partnership. It produced the latest strategy in 2002 and this can be accessed at [nfdc.gov.uk/media/adobe/Com Safe Strat 2 colii.pdf](http://nfdc.gov.uk/media/adobe/Com_Safe_Strat_2_colii.pdf).

1.2 The Community Safety Partnership of the New Forest area consists of three separate and distinct layers.



1.3 The Group that deals with incidents and projects concerning anti social behaviour is 'Divided We Fall' and this protocol is intended to explain how this group:

- Considers reports of anti social behaviour
- Acts to intervene early
- Undertakes the process of Acceptable Behaviour Contracts
- Undertakes the process of applying for and monitoring an Anti Social Behaviour Order

- 1.4 When the Divided We Fall groups are developing or delivering projects they report to the Operational Group of the CDRP.

However when the local Divided We Fall groups are taking action regarding patterns of anti social behaviour they are operating under an Information Sharing Protocol and report to the Divided We Fall Core Group as well as the delegated police and authority officers.

- 1.5 The Community Safety Partnership forms the Crime and Disorder Reduction Network of the District Local Strategic Partnership. The New Forest Basic Command Unit Chief Inspector acts as the liaison between the LSP and the Community Safety Partnership.

2.0

Partner Agencies

2.1 The agencies which are members of Divided We Fall are:

- New Forest District Council
- Hampshire Constabulary
- Hampshire Social Services
- New Forest Adolescent Mental Health Team
- New Forest Adult Mental Health Team
- Youth Offending Team
- Local registered social landlords
 - Twynham Housing Association
 - Swaythling Housing Association
 - Hyde Housing Association
 - Western Challenge Housing Association
 - Raglan Housing Association
 - Stonham Housing Association
 - Hampshire Voluntary Housing Society
- Hampshire Youth Service
- Hampshire Probation Service
- Victim Support

2.2 Before the implementation of the Crime and Disorder Act 1998 NFDC had been operating the local Divided We Fall groups in order to tackle anti social behaviour. These groups continue and whilst being reactive to patterns of anti social behaviour they have now encompassed a project development role that seeks to undertake early interventions.

The Divided We Fall groups are incorporated into the Community Safety Partnership structure; they are the only action groups undertaking an enforcement role.

2.3 The designated post that co-ordinates the Divided We Fall groups is the Community Safety Co-ordinator, situated in New Forest District Council, Appletree Court, Lyndhurst.

2.4 Divided We Fall Local Groups are:

- Ringwood and Fordingbridge
- New Milton and Lymington
- Totton and Hythe.

These local groups are operational groups and meet on a quarterly basis with the ability to meet monthly if circumstances require.

2.5 Divided We Fall Local Groups are monitored by the Divided We Fall Core Group. Partners that sit on the Core Group are:

- New Forest District Council
- Hampshire Constabulary
- Hampshire Social Services
- Hampshire Youth Offending Team
- A registered social landlord

The purpose of the Core Group is:

- To ensure the involvement of all relevant agencies in identifying anti social behaviour and the prioritising of work to tackle it
- To ensure that all partners are aware of their respective roles and responsibilities
- To agree a mechanism for sharing and using information in tackling anti social behaviour
- To agree a range of remedies, both early intervention and legal, for deterring criminal and anti social behaviour
- To monitor the progress of ABCs and ASBOs
- To monitor the effectiveness of ABCs and ASBOs as tools in tackling ASB in general
- To monitor the activities of Local Groups and ensure their co-operation

2.6 The Core Group is also responsible for the implementation of a local media and information strategy, in order to promote awareness of anti social behaviour orders. This will include information on what the orders are designed to achieve and information to the local community on the content of orders that are granted by the courts. The designated officer responsible for delivery of the local media and information strategy is the Community Safety Co-ordinator.

2.7 The Core Group will implement local training programmes to keep partners and operational officers up to date on the methods of tackling anti social behaviour.

2.8 Although the following are not partners to Divided We Fall they are, on occasions, key players in tackling anti social behaviour. Contacts with each organisation are in place for appropriate information sharing when required

- All Town and Parish Councils
- Hampshire Fire and Rescue Service
- Community First New Forest
- Hampshire Police Authority
- Crown Prosecution Service
- New Forest Domestic Violence Forum
- The Handy Trust
- The New Forest Committee
- Fordingbridge Youth Action Group

3.0

Purpose of Protocol

- 3.1 This protocol sets out agreed procedures for:
- Considering the value of, and negotiating and agreeing a voluntary Acceptable Behaviour Contract
 - Considering and making an application for an ASBO, and applying for the variation and discharge of an ASBO.

- 3.2 Section 1 (1) of the Crime and Disorder Act 1998 provides that an ASBO can apply only to a person aged 10 or older and ABCs will be used under the same guidance. In the case of a child under 10 years being the perpetrator of anti social behaviour parents will be asked to enter into a 'Parental Responsibility Agreement'.

Anti social behaviour under the Act 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 harassment, alarm or distress to one or more persons not of the same household' as the perpetrator. Section 1 (1) (b) provides that it is necessary to show that an ASBO will protect persons in the local government area in which the harassment alarm or distress was caused or was likely to be caused from further anti social acts by the perpetrator. The Police Reform Act 2002 now allows for an ASBO to apply to areas that include those outside the local authority area; in fact the whole of the UK can be covered by one ASBO.

- 3.3 Section 1 (2) of the Crime and Disorder Act 1998 provides that ASBOs may be applied for only by the police or local authority after having consulted the other. However the Police Reform Act 2002 now allows registered social landlords and British Transport Police to apply for ASBOs, but again only after consulting with the local authority and/or police. Under section 127 of the Magistrate's Court Act 1980, an application for an ASBO (by complaint) must be made within six months of the behaviour taking place, although earlier incidents may be used as background information to support a case.

- 3.4 Anti-social behaviour should be taken to mean behaviour, whether or not in itself criminal, that causes or is likely to cause harassment, alarm or distress to other people. Anti social behaviour should include behaviour that is likely to put people in fear of crime, since this causes alarm or distress. An ASBO is unlikely to be suitable for settling a private dispute between two or more neighbouring families (for example over boundary lines), unless the dispute escalates into anti social behaviour.

4.0

Equality and Discrimination

- 4.1 Under this protocol an ABC or ASBO application will be considered where it is necessary to protect individuals or families who are the targets of anti social behaviour or whose lives or communities are being blighted by such behaviour.

- 4.2 Action will not be taken against people just because they are different from their neighbours or engage in activities that 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, employment or creed.

5.0 Human Rights and ECHR Considerations

- 5.1 As of October 2000, the Human Rights Act made it unlawful for a public authority to act or fail to act in a way that is incompatible with the ECHR. All partner agencies will comply with the ECHR at all stages of the processes of an ABC and an ASBO, taking into account the need to protect the rights and freedoms of members of the community at large as well as those of the defendant.
- 5.2 The lead agency in charge of a case at any given stage will, in consultation with legal advisers, therefore 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 provisions of the ECHR
 - The proposed terms of the ASBO are reasonable and proportionate to the anti social behaviour in question
 - The ASBO being applied for is not in such terms that the defendant is bound to breach it
- 5.3 In assessing what is reasonable and proportionate those in charge of a case will bear in mind the need to uphold people's rights not to be disturbed by anti-social behaviour.
- 5.4 The Articles of the ECHR incorporated into UK Law by the Human Rights Act are set out at Appendix M together with an example of a checklist for practitioners, which is taken from the Human Rights Task Force Core Guidance for Public Authorities.

6.0

Information Sharing

- 6.1 Effective exchange of information between partner agencies is central to the working of ABCs and ASBOs and is also a necessary part of proper consultation
- 6.2 The two most relevant statutory provisions are section 115 of the Crime and Disorder Act and the Data Protection Act 1998:
- Section 115 provides that any person (whether a private individual or member of a public body) can lawfully disclose information, where necessary or expedient, for the purposes of any provision of the Act, to a relevant authority or a person acting on behalf of such an authority, even if he or she would not otherwise have this power. Under the Act "relevant authority" means: the chief officer of police, the police authority, the local authority, the probation committee or the health authority.
 - The Data Protection Act exempts from its normal restrictions the disclosure of personal information, the provision of such data for the purposes of the prevention or detection of crime, or the apprehension or prosecution of offenders, and where failure to disclose would be likely to prejudice those objectives in a particular case.
- 6.3 Section 115 is particularly useful in protecting information received by a relevant authority about potential ASBO cases. The provision "or a person acting on behalf of such an authority" enabled the New Forest CDR Partnership to decide at a strategic level to make the Community Safety Co-ordinator the single point of contact for information from members of the public, private landlords, local businesses and voluntary organisations.
- 6.4 The provisions of the Data Protection Act are helpful in the case of the exchange of processed or readily retrievable information between partner agencies - whether or not they are relevant authorities for the purpose of section 115. Whereas it may often be appropriate to provide only generic or non-personal information to such an agency, there may be occasions where it is necessary to disclose personal information in the interests of a successful ABC contract or ASBO application and, by extension, in the interests of preventing crime.
- 6.5 Where a partner agency receives information about, or becomes aware of, behaviour that might require an ABC or an ASBO, it will immediately notify the Community Safety Co-ordinator and the police in all cases, and other partner agencies as agreed with the Co-ordinator. The Co-ordinator will appropriately agenda the issue for the relevant DWF local group. Each partner agency will have a Designated Officer relevant for each/all of the three areas for the purpose of exchanging information quickly and in confidence. In the case of the police, this is the Inspector for the relevant station.

- 6.6 Information shared between the partner agencies should be accurate and relevant to the problem and should be exchanged only between designated officers. The format in which information is provided, its legal status, and the method of its secure transmission (eg by letter or e-mail) is decided by the Core Group and set out in an Information Sharing Protocol for the Divided We Fall Partnership. (See Appendix O.)
- 6.7 The protocol is signed by all the partner agencies, whether or not they are relevant authorities under section 115 of the Crime and Disorder Act. Any breach of the protocol is a disciplinary offence.

7.0 Consultation – Divided We Fall Local Group

- 7.1 Hampshire Constabulary and the New Forest District Council are required to consult each other before an application for an ASBO is made. A registered social landlord or British Transport Police are required to consult with the police and the local authority before they make application for an ASBO. There does not need to be agreement on an application, although it is clearly desirable that, wherever possible, each application is based on effective co-operation between all partners. Consultation is required, but to a lesser extent, for all ABCs.
- 7.2 Given the central importance of consultation in the ASBO process, the Divided We Fall Core Group agrees the composition of the Divided We Fall Local Groups. The delegated officers of the partner agencies should work to the agreed Action Plans for dealing with the anti-social behaviour and to shared criteria for when to implement an ABC or apply for an ASBO. The processes are intended to be as quick and as simple as possible.
- 7.3 The Divided We Fall Local Groups are not simply consultation groups but also undertake problem-solving. They hold quarterly business meetings with the opportunity for agencies with a specific interest in certain priority or urgent cases to meet at interim periods of 1 month. The Groups meet to discuss new cases and review progress with existing ones, reporting back to the Core Group through the Community Safety Co-ordinator.
- 7.4 The partner agencies will each provide a delegate as a member of the relevant Divided We Fall Local Group. The local police inspector will normally chair meetings of the Local Group and the Community Safety Co-ordinator will arrange for notes to be taken of the proceedings and devised Action Plans.
- 7.5 The purpose of the Divided We Fall Local Group will be to:
- ensure a complaint has not been made as a result of malice or discrimination
 - decide which is the lead agency where the Community Safety Co-ordinator has been unable to verify this
 - Agree an Action Plan aimed at:
 - a. supporting the victims and witnesses of anti-social behaviour
 - b. preventing further anti social behaviour
- 7.6 The originating agency, the local police inspector and the Community Safety Co-ordinator will decide on the urgency of the case. Where a case is designated as urgent the Community Safety Co-ordinator will, if necessary, assume the lead agency role and ask agencies for urgent comments. If necessary the Co-ordinator will convene an interim meeting of the relevant Divided We Fall Local Group.
- 7.7 If there is a possibility that the anti-social behaviour is also affecting people in an adjoining local authority area, the Community Safety Co-ordinator will consult the equivalent officer in that area at the same time as taking the action set out in the

paragraphs above, in case there is a need for an ABC or ASBO applying to more than one local government area.

- 7.8 In all cases involving an adult the lead agency will ask the Probation Service whether the individual is known to it and, if so, ask for an assessment of the prospect of securing a positive outcome by a direct approach.
- 7.9 If the individual is under the age of 18 years, information about the case will be sent to the Youth Offending Team at the earliest opportunity through the ABC Co-ordinator with a request that they contact the key agencies involved with young people in the area and co-ordinate their responses in time for the meeting of the Local Group.
- 7.10 Where the case is judged not to require immediate action the case will be considered at the next meeting of the relevant Divided We Fall Local Group.
- 7.11 There is no absolute requirement to interview or write to a person about the fact that an ASBO application is to be considered in his or her case and to offer that person a chance to comment on the matter, but there may be advantage in doing so:
- where the individual may not be aware of the moves to deal with his or her behaviour, and
 - in order to take his or her views into account when considering an action plan
- It is to be hoped that previous to an ASBO being considered an Acceptable Behaviour Contract had been developed and agreed and that an individual would be aware of the issues with his or her behaviour.
- 7.12 In agreeing an action plan designed to prevent anti-social behaviour the Divided We Fall Local Group will take the following into consideration:
- is there evidence that an identified individual has acted in a manner that caused harassment, alarm or distress to another person not of the same household in circumstances where there is no reasonable excuse for the conduct?
 - is there evidence that the actions of the individual have had a serious negative impact on others?
 - what action (if any) has been taken in the past to restrain this type of conduct or to divert the individual's activities to more positive ends (e.g. outreach youth work and intervention by the YOT, involvement of the Social Services or the Probation Service, cautions by the police)?
 - are there courses of action other than an ASBO which are available and (at this stage) more appropriate? The Group will consider options, whether on their own or in tandem with others, such as:
 - a. Acceptable Behaviour Contracts (ABCs) – see Appendix G
 - b. Challenges
 - c. Warnings
 - d. Mediation
 - e. Injunctions
 - f. Criminal Prosecution
 - g. Eviction

- does the Group agree that it is appropriate and necessary in the circumstances to apply for an ASBO?
- if so, and the Group decides to apply for an ASBO, are there any other actions that should be taken at the same time?
- if so, but the Group decides against an ASBO, what alternative action is agreed and why?

7.13 The purpose of using an ASBO is to resolve a problem caused by a pattern of anti-social behaviour. In broad terms therefore there should be a reasonable expectation that in any given case an ASBO will either nip anti-social behaviour in the bud or will provide the tools for a criminal prosecution if the anti-social behaviour does not stop.

7.14 Alternatives to an ASBO application, such as drawing up an ABC, should not be viewed as a means of delaying decisive action but of bringing it forward. Any interviews with the individual need not be tape-recorded but should end with either a written agreement or a letter from the interviewer to the individual setting the key details on record.

7.15 The Group will agree to implement an action plan to seek an ASBO only where it concludes that it is necessary to protect an individual, a group of people or a community in its area of responsibility, and it is a proportionate step to take in order to achieve this objective.

7.16 This is a more onerous burden than simply showing it is desirable, and evidence will be required to show why an ASBO is necessary. Use of the checklist above (7.12) should provide the sort of evidence needed. ***NB: there is no requirement for an agency to demonstrate that it has exhausted every other remedy before applying for an order***

7.17 The Home Office Guidance booklet of March 1999 provides examples of cases where an ASBO might be appropriate:-

- where individuals intimidate neighbours and others through threats or violence or a mixture of unpleasant actions;
- where there is persistent unruly behaviour by a small group of individuals on a housing residential estate or other local 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;
- where there are families whose anti-social behaviour, when challenged, leads to verbal abuse, vandalism, threats and graffiti, sometimes using children as the vehicle for action against neighbouring families;
- where there is persistent abusive behaviour towards elderly people or towards mentally ill or disabled people causing them fear and distress;
- where there is persistent bullying of children on an organised basis on public recreation grounds or on the way to or from school or within school grounds if normal school disciplinary procedures do not stop the behaviour;

- where there is persistent racial harassment or homophobic behaviour;
- where there is persistent anti-social behaviour as a result of drugs and alcohol abuse.

7.18 This is not a definitive list; its intention is to illustrate the type of behaviour involved. The main test is that there is a pattern of behaviour which continues over a period of time and which cannot be dealt with adequately through the prosecution of those concerned for a one-off incident or criminal act.

Specific Consultation Considerations for the Divided We Fall Local Groups

8.0

- 8.1 Where the individual under consideration is a child or young person under the age of 18 years, the relevant YOT and the Social Services Department will be represented in the Group.
- 8.2 Where the individual is a child who is subject to a local authority Care Order or accommodated by the local authority, the Director of Social Services will either be represented in the Group or consulted by the YOT in advance of any Group discussion or decision.
- 8.3 Where the individual is considered to be vulnerable (eg by reason of age or disability) or to have significant social or health problems (including those due to drugs, alcohol misuse or mental health), the relevant Social Services and Primary Care Trust will be consulted. The Group will pay particular attention to the likely ability of the individual to understand the terms of an ABC or ASBO.
- 8.4 The above considerations should not override the implementation of an ABC or the making of an application for an ASBO where it is otherwise justified as a proper and proportionate response to the problem.
- 8.5 Where the harassment is of a racial nature, the Group will consult relevant ethnic minority organisations for their view on whether the use of an ABC or ASBO is appropriate and for any help and support they can give to the victims, taking due account of the victim's own views.
- 8.6 Where the accommodation in which either the individual or the victim is residing, is not a local authority property, but that of a Registered Social Landlord, then the RSL will be part of the Group's consultation process from the outset. This will ensure that the RSL has access to the relevant partner agencies for advice on the best way forward. It also enables the RSL to consult the Group as a whole on whether to proceed also with an application for a possession order should the anti-social behaviour warrant such action.

9.0 Where there are related criminal proceedings

9.1 Implementing an ABC or seeking an ASBO is one of a range of options available to prevent anti-social behaviour. Although ASBOs are orders obtained through the courts they are not intended to replace existing criminal remedies or decriminalise activities which are criminal offences. There is also a possibility that disclosure of criminal evidence in an ASBO application may prejudice a future criminal trial, particularly where the case receives extensive media coverage.

9.2 Where the individual is also the subject of related criminal proceedings or is appealing against conviction, the Group will take advice from the Police and, if it is felt to be in the interests of reducing crime and disorder and nuisance behaviour, will normally hold over the ASBO application and let the criminal proceedings take their course. However the Group can apply to the court for an ASBO on conviction.

There will be no need to consult the Crown Prosecution Service as a matter of routine in such circumstances, but only in the more difficult cases.

9.3 In certain cases where there has been no conviction as yet, 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 the anti-social behaviour and the CPS are content for any criminal evidence to be used in connection with the application; or
- an ASBO would be equally effective as the criminal proceedings in tackling the anti-social behaviour and there would be advantage, in the form of preventing immediate criminalisation of the defendant, in opting for an ASBO; or
- where several perpetrators are involved and a mix of criminal proceedings and ASBOs, depending on levels of involvement, is appropriate.

9.4 As an ASBO is a civil application, it falls outside the double jeopardy rule that prevents repeat prosecutions based on the same evidence. However, care should be taken to avoid action that could be successfully challenged under the ECHR as abusive oppressive behaviour.

Care should also be taken, where criminal proceedings are terminated, not to raise an expectation that no further action will follow.

9.5 Where a criminal prosecution fails, the Group will take due account of the legal, procedural and ECHR implications of mounting an ASBO application in respect of a related matter. Factors which will be considered are:

- the length of the criminal proceedings and their effect on the individual;
- the reason why those proceedings failed; and
- any representations made to the individual about future action.

9.6 Where the individual is the subject of a successful criminal prosecution the Group will consider whether it is appropriate to possibly implement an ABC or seek an ASBO, for instance where there is a threat of further anti-social behaviour and the offender's sentence does not, or is unlikely to, offer sufficient safeguards to the public.

Recording and Implementing the decisions of the Divided We Fall Local Groups

10.0

- 10.1 Where there has been a meeting of the Local Group, the notes (for supporting the victim and dealing with the anti-social behaviour) will be circulated within 10 working days unless greater urgency is requested by the Group. The action plan will commence from the date of the meeting and its duration is where possible that as determined by the Core Group.
- 10.2 Where there has been no meeting, the lead agency or if no lead agency, the Community Safety Co-ordinator, will review the responses from the members of the Local Group as a matter of urgency with the police and the local authority. In a case where the Local Group agrees on seeking an ASBO, the Community Safety Co-ordinator will, where necessary, convene a meeting as early as possible to assess the needs of victims and witnesses and discuss future handling of the case. In a case where the Local Group agrees to implement an ABC the Community Safety Co-ordinator will liaise with the ABC Co-ordinator and check on support services required
- 10.3 If a decision is taken to apply to the court for an ASBO, the delegated officer for the lead partner agency will obtain a completed certificate of consultation from the Chief Inspector or Assistant Director, Environmental Health. An example of the certificate of consultation, which is evidence of compliance with section 1(2) of the Crime and Disorder Act, is attached as Appendix H.
- 10.4 If the Group is unable to agree on a course of action, the lead agency will need to review whether there are reasons for implementing an ABC or applying for an ASBO despite the absence of a consensus.
- 10.5 If it is decided to apply for an ASBO the **lead agency** will also:
- a) ensure that complainants are kept informed of the progress of the case and take responsibility for handling the media, given that there will normally be no reporting restrictions in court;
 - b) convene a further meeting no later than 3 months from the date of the decision in order to monitor progress against the action plan (this can be part of the DWF meeting); 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 and Disorder Act) for submission to the court when the ASBO application is made;

- d) appoint an officer or solicitor in charge of the case, who will
- keep the CSC and partner agencies in touch with the preparation of the ASBO application, including any witness statements and any other evidence;
 - notify the justices' clerk of the decision to apply for an ASBO in order to discuss a listing arrangements for the hearing; and
 - 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.

11.0

Lead Agency

11.1 To ensure productive consultation with a clear focus on effective and prompt action this protocol includes below clear guidelines on which agency is to be the lead and how costs should be met. In considering the costs of an ASBO application account should also be taken of the likely costs of alternative action. The alternative could be more expensive, for instance, where eviction is involved.

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

A suggested approach is that it should be:

- the **local authority** where the incidents take place on council housing estates or on local authority land
- the **RSL** where incidents take place in RSL housing areas
- the **police** where the incidents occur in shopping precincts or other community areas
- the **police** where the individual is also subject to related criminal proceedings
- **British transport police** where incidents take place that affect the railway

In cases where the incidents take place in non local authority residential areas the Divided We Fall Local Group will decide who will be the lead agency.

11.3 The costs of organising and co-ordinating DWF and the ABC Co-ordinator are, at the present time, covered by NFDC, YOT and the police. Most of these costs are 'in kind' contributions from staff. The ABC Co-ordinator is funded from Home Office Crime Building Safer Communities funding.

11.4 Partners need to recognise that the New Forest Crime and Disorder Reduction Partnership does not operate a general fund from which ABC implementation work or ASBO development work can be funded.

Any such work by a partner acting as lead agency will need to be funded from their own budgets or by utilising their own staff.

12.0 Evidence in support of an ASBO application

- 12.1 Evidence is crucial to the success of the application. The better its quality, the greater the chance of the court agreeing to an ASBO.
- 12.2 When applying for an ASBO the lead agency will be required to prove its case under civil rules of evidence and according to civil standards of proof. The following points will be borne in mind:
- the safety of witnesses from harassment and intimidation is a central concern;
 - the court will need to be satisfied that:
 - a. the defendant has acted as stated
 - b. harassment, alarm or distress was caused or was likely to be caused; and
 - c. an order is necessary.
 - although the statutory time limits which apply to criminal cases are not relevant, an application for an ASBO must be made within six months of the behaviour giving rise to the complaint - section 127 of the Magistrate's Court Act 1980;
 - however earlier evidence may be used to support the case that there is a pattern of behaviour;
 - hearsay evidence may be used in accordance with the Magistrates' Court (Hearsay Evidence in Civil Proceedings) Rules 1999; and
 - the Police and Criminal Evidence Act (PACE) does not apply to civil proceedings but, in view of their powers of arrest etc, the police could as a matter of good practice conduct interviews of defendants applying the basic principles of PACE - eg advising them of the purpose of the interview and that they are not under arrest, allowing a legal adviser to be present.
- 12.3 The lead agency will be in charge of gathering and presenting the evidence, but in consultation and with assistance from other partner agencies as necessary. Although the proceedings are civil, the application for an ASBO will be based on good-quality evidence, which is capable of being presented to a court in a professional manner. Any covert evidence gathered by a partner agency will comply with the Regulation of Investigatory Powers Act. Covert investigations by a public authority must be authorised and conducted in accordance with the statutory framework and Code made under that legislation. Where there are concerns about the standard or integrity of evidence the lead agency will seek further evidence before the ASBO application is made.
- 12.4 Careful consideration should be given to the welfare and safety of members of the local community whose complaints and evidence gave rise to the ASBO application. Wherever possible, the lead agency should use professional witnesses, but there may be cases where direct evidence from members of the public is required. In such circumstances the witnesses should be given full support – see Section 13 – but with care taken not to influence their evidence.

- 12.5 The evidence in support of an ASBO application should prove step by step:
1. that the defendant acted in a specific way on specific dates and at specific places;
 2. that the defendant's acts caused or were likely to cause harassment, alarm or distress to one or more persons not in the same household as the defendant;
 3. that an ASBO is necessary in order to protect persons in the New Forest District area from further anti-social acts by the defendant.
- 12.6 Step 1 will be all the easier to achieve if a witness gives his or her evidence for this in person, so that what is said can be tested. The lead agency should therefore consider using a police officer, official or other professional witness who can present his or her records of complaints (with details of the complainants omitted) supplemented by his or her direct observation or video footage of anti-social acts.
- 12.7 For Step 2 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. The defendant may try to argue that his or her behaviour was uncharacteristic. Evidence to show that the defendant's act was part of a pattern of behaviour may include:
- reports of officers or officials who attended at previous incidents within the area and witness statements from them as appropriate;
 - evidence of complaints recorded by police, housing etc;
 - statements from professional witnesses for example council officials, health visitor, truancy officers, etc;
 - statements from contracted external witnesses for example security officers;
 - video evidence
 - reports from other agencies – eg probation reports;
 - previous successful (or failed) civil proceedings which are relevant such as an eviction order in another local authority area for similar behaviour;
 - previous convictions, and other criminal proceedings, including letters, applicable to the defendant, but only if relevant to the application;
 - copy of custody records of previous arrests relevant to the application;
- 12.8 For Step 3 the lead agency should build up evidence of the likelihood of further anti-social behaviour in the view of the local community and/or the local agencies using the following:
- witness statements (which can be anonymous) from local residents or businesses about their fears and why they feel in need of protection from further harassment;
 - information from other agencies, including the YOT if a juvenile is involved, with their view on the application.
- 12.9 The lead agency will note that the Rehabilitation of Offenders Act 1974 does not allow evidence of spent convictions to be admissible in the case of an ASBO application (unlike in applications for sex offender orders). This includes Referral Orders, Reprimands and Final Warnings.

- 12.10 Evidence from criminal proceedings that have failed may be used in support of an ASBO application, provided the lead agency consults the police and the CPS. For example, subject to it being available for use in a civil court, a video film presented in a criminal trial to prove drug dealing at an address may be useful in an ASBO application, if it shows large numbers of callers there at unsociable hours, probable drug dealing and threats to neighbours. Even if the film did not satisfy the higher burden of proof required by a criminal court, it may serve as evidence of anti social behaviour.
- 12.11 The case file requirements should be the same as for all civil cases. The file needs to show that the anti-social behaviour is persisting. Keeping file records in a way that can be used as evidence is a helpful process and the DWF Partnership has developed a proforma of evidence sheets that can be reproduced as a part of the ASBO application. (See Appendix G).
- 12.12 If, after consultation with the CPS, it is decided to proceed with an ASBO application instead of a criminal prosecution, the lead agency will consult the CPS, via the police, as to what criminal evidence, including witnesses, may be used. **It is important that witnesses are aware that their evidence may be used for either civil or criminal proceedings, and give their consent to either use.**
- 12.13 Where the CPS agrees to the use of the evidence the agreement of the police will also need to be obtained and recorded on the criminal case management form.

13.0

Victim and Witness support

- 13.1 New Forest District Council and Hampshire Constabulary are investigating the provision of Victim and Witness Support schemes. The local authority and the police will encourage and support victims by following the recommendations relating to witness intimidation in 'Speaking up for Justice (Home Office 1998). homeoffice.gov.uk/docs/sufj.pdf
- 13.2 An information paper 'Tackling Witness Intimidation' has recently been released and we are awaiting the detailed guidance on action expected from the Divided We Fall and Crime and Disorder Reduction Partnerships.
- 13.3 With effect from 1 August 2001 sections 39, 40 and 41 of the Criminal Justice and Police Act 2001 create two new offences intended to increase protection for witnesses in all proceedings other than proceedings for a criminal offence. Section 51 of the Criminal Justice and Public Order Act 1994 provides protection for witnesses in proceedings for an offence, and these new offences, which apply to all other court proceedings, are similar in nature to the ones contained in that Act.
- 13.4 The sort of proceedings covered by the new provisions include civil proceedings for an injunction or an anti social behaviour order and criminal proceedings for breach of an order.
- 13.5 Section 39 makes it an offence for a person to intimidate another person (the victim) where he knows or believes that the victim is, or may be a witness in any relevant proceedings, with the intention of perverting, obstructing or interfering with the course of justice. **An offence is committed only where an act of intimidation occurs after proceedings are commenced.**
- 13.6 For the purpose of section 39 a witness is defined as a person who provides, or is able to provide, information or documentation which might be used in evidence in proceedings, or might:
- Confirm other evidence which will or might be admitted in those proceedings;
 - Be referred to in the course of evidence given by another witness in those proceedings; or
 - Be the basis for any cross examination during those proceedings.
- 13.7 The definition of witness includes, for instance, someone who gives, or is able to give, hearsay evidence.
- 13.8 Intimidation includes threats against a person, or against a person's finances or property. It is irrelevant whether the act of intimidation is carried out in the presence of the victim, whether it is done to the victim, or through a third party.

13.9 Section 40 of the Act makes it an offence for a person to do an act which harms, and is intended to harm another person, or, if intending to cause another person to fear harm, he threatens to do an act which would harm the other person. In order to commit the offence, the person doing or threatening to do the act must do so knowing or believing that another person (regardless of whether they are the person against whom the harm is threatened) has been a witness in relevant proceedings and he must do or threaten that act because of that knowledge or belief.

13.10 The witness intimidation offences set out above apply from the commencement of relevant proceedings, and this is defined as the earliest time at which one of the following occurs:

- An information is laid, or an application, claim form, complaint, petition, summons or other process is made or issued for the purpose of commencing the proceedings; or
- Any other step is taken by means of which the subject matter of the proceedings is first brought to the attention of the court, whether as part of the proceedings before them.

14.0

Applying for an Order

14.1 The officer in charge of the case will be responsible for preparing the ASBO application. The following are the key element documents on the application file;

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

(See Appendix J for a checklist sample)

14.2 The case summary is to include the following:-

- details of the individual or individual members of a group or family
- outline of the incidents involved
- welfare issues relating to the defendant, demonstrating that there has been consultation between appropriate agencies eg Social Services and YOT.
- adequate and appropriate information about the defendant and his or her family circumstances, eg to enable the court to discharge its duty under the Children Act
- evidence that consideration has been given to ensure that the defendant has not been victimised or discriminated against on the grounds of race, sex, disability, creed, religion, sexual orientation or other grounds, since the court will scrutinise the application with this in mind
- evidence, where available, of attempts at mediation and of warnings etc.

14.3 The officer in charge of the case will ensure that the file of evidence is prepared with related documents grouped together and in chronological order. For instance all documents relating to a failed council attempt at eviction should be kept together. He or she will also be required to complete a case summary. All the evidence must be referred to in the case summary. An example of a checklist for drawing up the case summary is included as Appendix K.

14.4 It will be for the court to decide what prohibitions to apply, but the lead agency is able to help inform that decision by including in its ASBO application a document setting out:-

- the prohibitions being applied for, which are necessary for and proportionate to the aim of protecting people within the area from the anti social acts of the defendant;
- the requested duration of the ASBO, the minimum being two years and the maximum being indefinite (arrangements for review need to be stipulated in the case of an indefinite ASBO)

- 14.5 It is recommended that the lead officer in charge of the case obtains advice from the case solicitor on drawing up the proposed prohibitions which:
- must relate to actions already committed by the defendant and which the applicant thinks will be committed again if no ASBO is granted
 - must be reasonable and proportionate
 - must be realistically practical
 - must be clear, concise and accurate
 - must be particularly specific about matters of time and place (scale OS maps will be used to mark out roads and areas which are subject to any prohibitions)
 - must not be mandatory - ie not worded to compel the defendant to do specific actions
 - need not be confined to acts which are already criminal, but may also prohibit actions which, although not criminal themselves, would be necessary precursors to a criminal act - eg a prohibition on entering a shop rather than on shoplifting
- 14.6 In case of any doubt about the terms of the proposed ASBO the lead agency will consult the CPS, as they will be responsible for prosecuting any breaches.
- 14.7 Unless there are exceptional circumstances the lead agency is to resist any applications for reporting restrictions to be made by the Court. Automatic reporting restrictions do not apply in the case of ASBOs and it is fundamental to the monitoring of the conditions that the Community can identify the individual and that they are aware of the nature of the Order.

15.0

Summons Procedure

- 15.1 The officer in charge of the case (or another designated officer eg the case solicitor) will arrange for a summons form to be completed, with a copy retained on the application file, and for the defendant to be served with the following:
- The summons
 - A copy of the completed ASBO application
 - A copy of the certificate of consultation
 - Guidance on how the defendant may obtain legal advice and representation
 - Any notice of hearsay evidence
 - Such details of evidence in support of the application as agreed with the lead agency's solicitor
 - A formal warning to the defendant that it is a common law offence to pervert the course of justice, and that witness intimidation is liable to lead to prosecution
- 15.2 The lead agency should take legal advice on the extent to which the evidence of local residents and other victims should be disclosed in advance, in the interests of justice and of avoiding a delay in the proceedings, to allow the defence to consider the evidence. **No such evidence should be disclosed, however, before the lead officer/case solicitor has also consulted the police and other agencies on what steps can be taken to prevent victim and witness intimidation.**
- 15.3 Care should be taken, even when disclosing evidence which mentions no names, such as a map showing 'hot spots' of crime, that innocent individuals are not able to be identified, eg if a single isolated residential building is highlighted.
- 15.4 Wherever possible the service of the summons is to be made on the defendant in person. If personal service is not possible, the summons will be served by first class post to the last known address. The officer serving the summons completes the certificate of service which will then be placed on the file.
- 15.5 Where a child or a young person is concerned, a person with parental responsibility must also receive a copy of the summons.
- 15.6 The lead officer will inform the case solicitor of the availability of every witness involved prior to the date of hearing. Liaison will be required with the justices' clerk on whether witnesses will be required at the first hearing. If it is to be held simply to take a plea and consider any preliminary legal issues, the clerk should be asked to consider an early resumption of the case.

Procedure on hearing an application for an order

16.0

- 16.1 Application for an ASBO is by complaint to the magistrates' court acting in its civil capacity, whether or not defendant is 18 or over. Where the defendant is under 18, the Youth Court may or may not hear the case, since the jurisdiction is civil. The lead officer/case solicitor should therefore contact the justices' clerk in advance of the hearing to ensure that it will be conducted in a way which is suitable for the child or young person.
- 16.2 It is to be noted that:
- unlike a Youth Court, which is closed to the general public, there will be no reporting restrictions in the Magistrates Court unless the court decides to impose them under section 39 of the Children and Young Persons Act 1933 to protect the identity of a person under 18;
 - although the question of reporting restrictions is for the court, the lead agency may need to resist a call from the defence for such restrictions if the effectiveness of the ASBO will largely depend on a wider community knowing the details;
 - under Section 98 of the Magistrates' Courts Act 1980 evidence will be given on oath. The evidence of a child (under 14 years) 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 person under 16 years of age. Every effort should be made before a hearing to ensure this takes place to avoid unnecessary adjournments.
 - in the case of a child or young person, the court will require information about his or her background, home surroundings and family circumstances. Such information should be offered in support of an application or be available to avoid the need for an adjournment.
- 16.3 The forms for use in an ASBO application are set out in schedules 4, 5 and 6 to the Magistrates' Courts (Sex Offender and Anti Social Behaviour Orders) Rules 1998 and are included as Appendix I.
- 16.4 The lead officer/case solicitor will ensure that all the evidence and witnesses are available at the hearing, including any evidence in support of the need for the court to make an immediate order.
- 16.5 Where the court has decided to adjourn the hearing and the defendant (with responsible person if required) fails to appear at the resumed hearing, it is advised that the lead agency's legal representative should ask the court for a decision in his or her absence.

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

17.0

Appeal against an Order

17.1

Section 4 of the Crime and Disorder Act provides that an appeal against the making of an ASBO is to the Crown Court. The appeal will be in the form of a re-hearing of the case. The agency that brought the initial application, will consider and take charge of defending any appeal which may be lodged against an ASBO. It will also lead in action to guard against witness intimidation and to monitor possible breaches in the case of the ASBO being upheld on appeal.

18.0

Post Order Procedure

- 18.1 An ASBO is effective on the date it is made but the period it lasts for commences from the date of service. Where an individual has not been personally served with the Order at the court, the court will be asked to arrange for personal service as soon as possible thereafter. Proof of service of an ASBO is important, since any criminal proceedings for breach may fail if service is challenged by the defence, and cannot be proved by the prosecution.
- 18.2 The lead agency, if not the police, will ensure that a court copy, not a photocopy, of the ASBO is forwarded immediately to the police inspector responsible for the area in which the ASBO applies. The agency will also give details of the ASBO to the CSC, the other partner agencies, and to the victims and witnesses, so that breaches can be reported and acted upon. The police will notify the appropriate police area command the same working day so that details of the defendant and the conditions of the ASBO are recorded on their local force database.
- 18.3 The Local Divided We Fall Group will draw up a plan to ensure that the ASBO is effective and to provide any necessary support to victims.
- 18.4 In addition to monitoring the defendant's compliance with the prohibitions, by means of visits and other checks, the Group will consider whether any help can usefully be given to diverting him or her from further anti-social behaviour. This type of positive action at the operational level may need to be mirrored at the strategic level, where consideration should be given by the Divided We Fall Core Group and the Community Safety Strategy Group for using ASBOs as catalysts for wider-ranging action with local communities in order to involve local people in crime reduction and self help initiatives.
- 18.5 Where an ASBO is in respect of a juvenile the lead agency will immediately inform the relevant YOT. This is necessary since the YOT has the aim of preventing offending by young people and a breach of the ASBO would be a criminal offence.
- 18.6 The YOT will arrange for action to be taken by an appropriate agency (eg Social Services) to ensure that:
- the young person understands the seriousness of the ASBO; and
 - appropriate support programmes are put in place to avoid a breach of the ASBO by diverting him or her from the behaviour that led to it.

If no other agency agrees to take action the YOT will step in, where appropriate, to do so itself.

19.0

Breaches of an ASBO

19.1 Information on breaches can be received from any source including housing and other local authority officers, partners of Divided We Fall, neighbours and other members of the public. Any information received by a partner agency about a breach will be passed immediately to the police and the CSC, who will inform the other agencies involved.

19.2 A breach of an ASBO is a criminal offence, which is both arrestable and recordable. The police will therefore be the lead agency in its investigation and prosecution. The commander of the New Forest BCU has nominated Inspector Buckle at Hythe Police Station to take charge of ASBO related work and investigations. The lead officer will inform other relevant agencies of progress and of the outcome of the breach investigation through the DWF Local Group meetings.

A particular consideration will be the need to protect members of the community from harassment wherever possible. It may, for instance, be possible for the police to gather direct evidence of a breach or further breach without needing to use a member of the community as the chief prosecution witness.

19.3 Where the police consider there has been a breach, they may consult the CPS on whether to prosecute and will also consider police bail. In considering what action is appropriate the police will need to take into account the fact that breach of an ASBO is itself a serious offence and that it should normally be the subject of a prosecution. In that way the court will be able to decide how to deal with a breach of its order.

19.4 Where the defendant is under 18 the police may also consult the YOT on whether to prosecute. If the young person is a first offender, the YOT may advise that a final warning with an intervention programme is appropriate, provided the breach was not a flagrant one. Where the breach was flagrant, then the expectation would be a prosecution and a court appearance, unless some very unusual circumstances existed.

20.0

Prosecution of ASBO breaches

- 20.1 Responsibility for prosecuting a breach of an ASBO lies with 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.
- 20.2 The standard of proof is the criminal one ie. beyond reasonable doubt, and 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.
- 20.3 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.

21.0 Variation and discharge of an ASBO

- 21.1 Variation or discharge of an order is by complaint to the court. Under section 1(8) of the Crime and Disorder Act the application can be made 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. The process for variation or discharge is set out in the Magistrates' Courts (Sex Offender and Anti-Social Behaviour Orders) Rules 1998.
- 21.2 If the lead agency, or other partner agency, considers that it is necessary to vary the conditions of an ASBO or that an ASBO should be discharged, it will consult the Divided We Fall Local Group, the Asst Director Environmental Health/Chief Inspector and the CPS as necessary. The relevant application will be made to the Magistrates' Court by the lead agency.
- 21.3 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 Divided We Fall Local Group, the Asst Director Environmental Health/Chief Inspector and 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.
- 21.4 The Magistrates' Court Clerk will send details of the variation or discharge of any ASBO to Hampshire Police and the New Forest District Council within 24 hours.

22.0

Monitoring and Evaluation

22.1 Divided We Fall will monitor both their successful and unsuccessful ASBO applications. Details of each case monitored will be collated by the police, the lead agency and the CSC as appropriate. The following information will be recorded:

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

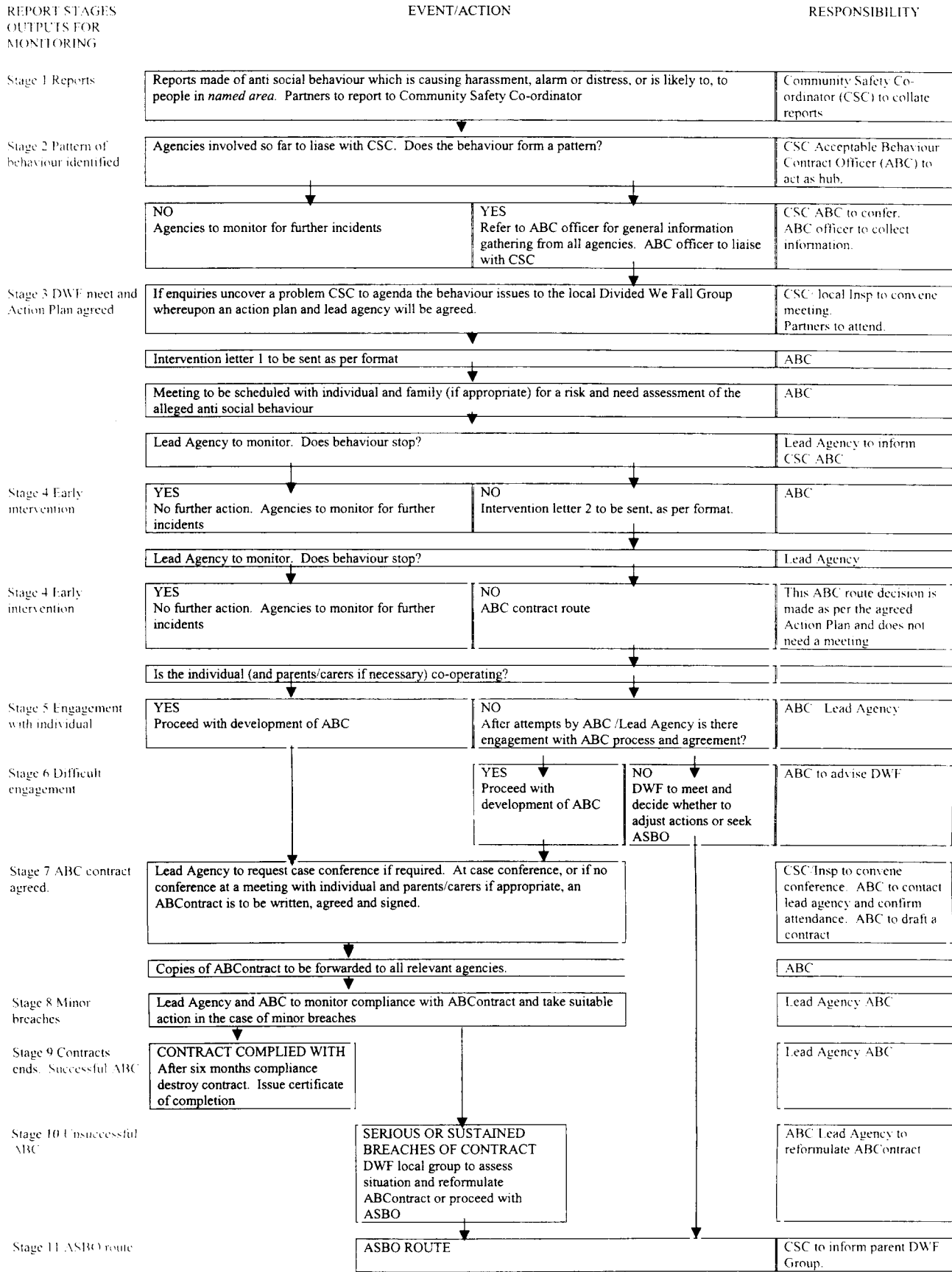
22.2 Consistency of information will help inform future audits and crime reduction strategies. It will also ensure that ASBOs are being used appropriately and to their best advantage.

APPENDICES

- A** Acceptable Behaviour Contracts – step by step process with notes
- B** Example Acceptable Behaviour Contract
- C** Anti Social Behaviour Orders following breach of Acceptable Behaviour Contract - step by step process with notes
- D** Anti Social Behaviour Orders no previous behaviour contracts - step by step process with notes
- E** Example of ASBO case conference agenda
- F** Example ASBO
- G** Evidence sheet
- H** Certificate of consultation
- I** Example of summons and ASBO application
- J** ASBO application checklist
- K** Case summary
- L** Responsible officers and contact details
- M** European Convention on Human Rights and Check List for local authorities

- N** Information Sharing Protocol

Acceptable Behaviour Contracts Procedure



APPENDIX B

ACCEPTABLE BEHAVIOUR CONTRACTS – an example

THIS CONTRACT is made on [date]
BETWEEN [Partner Agency]
AND [name and address of young person]

AGREES the following in respect of future conduct -

1. I will not write graffiti or damage any property *[specify where]*
2. I will not climb on rooftops or enter lift shafts or other prohibited areas.
3. I will not throw anything at residents or passers-by *[specify where]*
4. I will not threaten or abuse residents or passers-by. This includes swearing.

FURTHER, [] enters into a commitment with *[agency]* not to act in a manner which causes or is likely to cause harassment, alarm or distress to one or more persons not in the same household.

FURTHER, if [] does anything which he/she has agreed not to do under this contract which *[agency]* considers to amount to anti-social behaviour, this may result in an application to the Magistrates' Court for an Anti-Social Behaviour Order to prohibit [] from acting in a manner likely to cause harassment, alarm or distress to one or more persons not of the same household

FURTHER, [] acknowledges that where an Anti-Social Behaviour Order is made in the Court and breached he/she will be liable on conviction to terms of imprisonment not exceeding five years or to a fine or both

DECLARATION

I confirm that I understand the meaning of this contract and that the consequences of breach of the contract have been explained to me.

Signed [] Young Person Date:.....

Signed [] Parent/Social Worker Date:.....

WITNESSED

Signed [] Partner Agency Official Date:.....

Signed [] Police Officer Date:.....

Notes

Acceptable Behaviour Contracts (ABCs) are a way in which Crime and Disorder Partnerships can tackle anti-social behaviour, particularly among teenagers. The contracts may serve as a useful alternative to Anti-Social Behaviour Orders where the latter are not considered justified.

ABCs can be put into effect within days and at little cost. Where an ABC is breached by an individual who continues to act in a manner which causes harassment, alarm or distress to people in another household, that fact can be used as evidence in support of an ASBO application.

Additional points to note:

- An ABC is an individual written agreement by a young person with a partner agency and the police not to carry on with certain identifiable acts, which could be construed as anti social behaviour.

- It has been designed for 10 to 18 year olds, although it is flexible and can be used occasionally, where appropriate, for over 18s if they still live at home in council, rented or privately owned property with their parents.

- In cases where a child is under 10, the parents could be asked to sign up to a parental responsibility contract. This would be the same as an ABC except that the parents take full responsibility for their child's behaviour.

- An ABC is not legally binding but it can be cited in proceedings such as for an Anti-Social Behaviour Order.

- An ABC should normally be effective for up to six months, although it can be renewed.

- Arrangements should be made by the partner agency and the police to monitor the ABC's effectiveness and to keep its terms under review.

- It should be signed on the premises of the partner agency following an interview, with an agency official and police officer present, as well as the young person's parent or guardian and any other appropriate adult, such as a social worker, concerned for the young person's welfare.

- If the young person fails to attend despite a letter of invitation sent to him or her and to the parent or guardian, the non-appearance should be documented and used at any future proceedings.

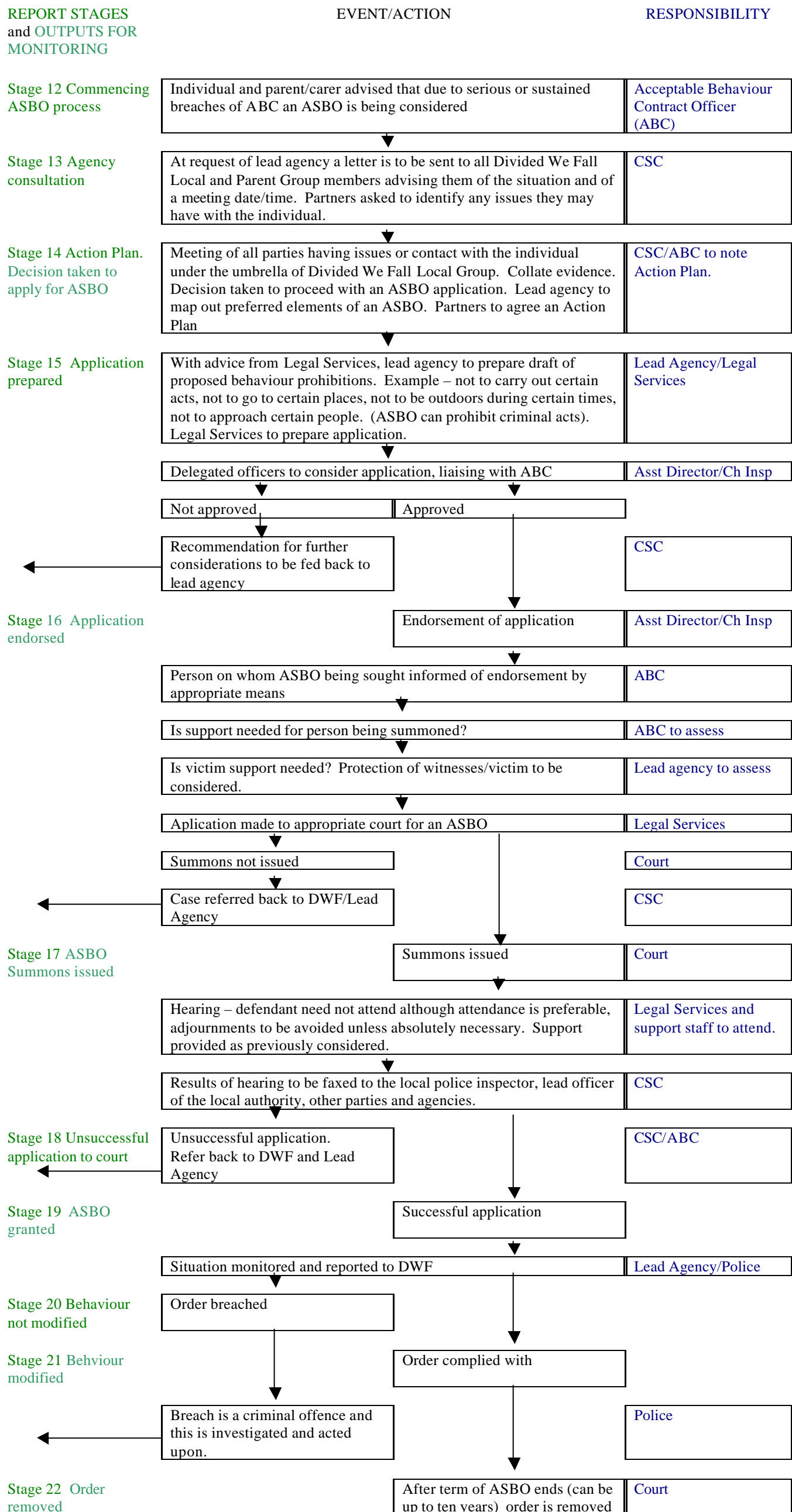
- If the young person attends but the parents refuse to then the contract signing may still go ahead, provided an appropriate adult is present.

- The original contract is kept by the partner agency, a copy kept by the police and a copy is given to the parent/guardian of the youth concerned.

- If the ABC is breached, and the breach is serious, the matter should be referred to the partnership's problem solving group for a decision as to the most effective course of action, including an ASBO

- If the breach is not serious, the parents and young person should either be interviewed or sent a letter reiterating the conditions of the contract

Anti-Social Behaviour Order Procedure following breach of ABC



Anti-Social Behaviour Order Procedure (no previous behaviour contracts)

REPORT STAGES and
OUTPUTS FOR MONITORING

EVENT/ACTION

RESPONSIBILITY

Stage A Reports

Reports made of anti social behaviour which is causing harassment, alarm or distress, or is likely to, to people in <i>named area</i> . Partners to report to Community Safety Co-ordinator	Community Safety Co-ordinator (CSC) to collate reports
---	--

Agenies involved so far to liase with CSC. Does the behaviour form a pattern?	CSC/Acceptable Behaviour Contract Officer (ABC) to act as hub.
---	--

Stage B Pattern of behaviour identified.
Intervention

NO Agencies to monitor for further incidents	YES Refer to ABC officer for intelligence gathering from all agencies. ABC officer to liaise with CSC	CSC/ABC to confer. ABC officer to collect information.
---	--	--

Stage C DWF meet

If enquiries uncover a wider problem CSC to convene a meeting of interested parties (under the 'umbrella' of the local 'Divided We Fall' Group) whereupon an action plan and lead agency will be agreed.	CSC/ local Insp to convene meeting. Partners to attend.
--	---

Intervention letter 1 to be sent as per format	ABC
--	-----

Meeting to be scheduled with individual and family (if appropriate) for a risk and need assessment of the alleged anti social behaviour	ABC
---	-----

Lead Agency to monitor. Does behaviour stop?	Lead Agency to inform CSC/ABC
--	-------------------------------

Stage D Early intervention results

YES No further action. Agencies to monitor for further incidents	NO Intervention letter 2 to be sent, as per format.	ABC
---	--	-----

Lead Agency and ABC officer to monitor. Does behaviour stop?	Lead Agency
--	-------------

Stage Dd Early intervention results

YES No further action. Agencies to monitor for further incidents	NO ASBO Route	
---	------------------	--

Individual and parent/carer advised that due to behaviour problems an ASBO is being considered; recorded incidents to be discussed with individual.	ABC
---	-----

At request of lead agency a letter is to be sent to all Divided We Fall Local and Parent Group members advising them of the situation and of a meeting date/time. Partners asked to identify any issues they may have with the individual.	CSC
--	-----

Stage E Proceeding with ASBO

Meeting of all parties having issues or contact with the individual under the umbrella of Divided We Fall Local Group. Collate evidence. Decision taken to proceed with an ASBO application. Lead agency to map out preferred elements of an ASBO. Partners to agree an Action Plan	CSC/ABC to note Action Plan.
---	------------------------------

With advice from Legal Services, lead agency to prepare draft of proposed behaviour prohibitions. Example – not to carry out certain acts, not to go to certain places, not to be outdoors during certain times, not to approach certain people. (ASBO can prohibit criminal acts). Legal Services to prepare application.	Lead Agency/Legal Services
--	----------------------------

Delegated officers to consider application, liaising with ABC	Asst Director/Ch Insp
---	-----------------------

Stage F Officer Consideration

Not approved	Approved	
--------------	----------	--

Recommendation for further considerations to be fed back to lead agency	CSC
---	-----

Stage G Application endorsed

Endorsement of application	Asst Director/Ch Insp
----------------------------	-----------------------

Person on whom ASBO being sought informed of endorsement by appropriate means	ABC
---	-----

Is support needed for person being summoned?	ABC to assess
--	---------------

Is victim support needed? Protection of witnesses/victim to be considered.	Lead agency to assess
--	-----------------------

Application made to appropriate court for an ASBO	Legal Services
---	----------------

Summons not issued	Court
--------------------	-------

Case referred back to DWF/Lead Agency	CSC
---------------------------------------	-----

Stage H ASBO Summons issued

Summons issued	Court
----------------	-------

Hearing – defendant need not attend although attendance is preferable, adjournments to be avoided unless absolutely necessary. Support provided as previously considered.	Legal Services and support staff to attend.
---	---

Results of hearing to be faxed to the local police inspector, lead officer of the local authority, other parties and agencies.	CSC
--	-----

Stage I Unsuccessful application

Unsuccessful application. Refer back to DWF and Lead Agency	CSC/ABC
---	---------

Stage J ASBO granted

Successful application	
------------------------	--

Situation monitored and reported to DWF	Lead Agency/Police
---	--------------------

Stage K Behaviour not modified

Order breached. Breach is a criminal offence and this is investigated and acted upon.	Police
---	--------

Stage L Behaviour modified

Order complied with	
---------------------	--

Stage M Order removed

After term of ASBO ends (can be up to ten years) order is removed	Court
---	-------

Divided we fall

Ringwood and Fordingbridge



Community Safety
New Forest District Council
Appletree Court
Lyndhurst
Hants
SO43 7PA

PRIVATE AND CONFIDENTIAL

Dear

date

What to do on receipt of this letter

1. Consider the named individuals.
2. If you have contact with, or an interest in, a named individual it is essential that your representative attends the case conferences.
3. Be prepared to discuss the pattern of anti social behaviour at the case conferences.
4. Be prepared to committing to seeking ASBO if the case conference results in a decision that this would be beneficial to halting the ASB.

In accordance with the decision made by the Divided We Fall Group, Ringwood and Fordingbridge, I have arranged to hold ASBO case conferences on(date) ... at ...(location) starting at ... (time)...

The individuals that have been invited to attend are:

- **Name**, Address, dob
- **Name**, Address, dob

The case conferences will be chaired by and will follow the format:

1. Introductions around the table
2. Explanation of Divided We Fall and how it operates
3. Why the case conference has been called
4. Do they understand what anti social behaviour is?
5. Do they understand what an ASBO is?
6. Production of the evidence concerning their anti social behaviour
7. Break in proceedings
8. Opportunity for a response to the evidence
9. Where do we go from here?

The timetable for the day is:

0930 Arrival of partners and discussion on processes of day.
1000 – 1100 Name
1130 – 1230 Name
1230 – 1300 Break
1300 – 1400 Name
1430 Partners to discuss the way forward

I would be grateful if you could confirm your attendance and I look forward to seeing you there. We will forward further information, a location map and evidence to all partners nearer to the conference date.

Yours sincerely

Stephanie Sutton
Community Safety Co-ordinator

Tel: 023 80 285148
Fax: 023 80 285596
Email Stephanie Sutton at NFDC

ANTI-SOCIAL BEHAVIOUR ORDER
MADE PURSUANT TO
THE CRIME AND DISORDER ACT 1998 SECTION 1(1)(as amended)

Dated : 31st July 2003

Defendant :

Address : Southampton Hampshire

Local Government Area
In respect of which Order
is made: New Forest District

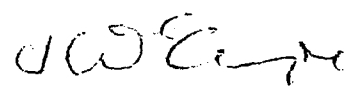
Relevant Authorities Consulted: Hampshire Constabulary

This Order is made as the undersigned Justice of the Peace is satisfied that:

- (a) the Defendant has acted on various dates, in the locality of the New Forest in an anti-social manner, that is to say, 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 himself, and;
- (b) that an Anti-Social behaviour Order is necessary to protect relevant persons from further anti-social acts by him.

Accordingly an Anti-Social Behaviour Order is hereby made prohibiting the Defendant, for a period of two years, from doing any of the following acts:-

1. Engaging in any conduct which causes or is likely to cause annoyance, harassment, alarm or distress to any person other than a member of his own household.
2. Threatening any person other than a member of his own household with violence or damage to his or her property.
3. Swearing at or using abusive language to any person other than a member of his own household.
4. Damaging, defacing, or attempting to damage or deface property or buildings, public areas or parts thereof.
5. Trespassing on land belonging to another.
6. Carrying matches or lighters in public places.
7. Entering Forest Front. This area is coloured yellow on the attached plan.



Justice of the Peace

Appendix G

Evidence Sheet

Name of Individual :

It is alleged:

That the defendant has acted on various dates set out below in the locality of the New Forest in an anti-social manner, that is to say, 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 himself by:

Short description of acts

Evidence Reference

1.

(date)

Using foul abusive and offensive language and gestures including:

(offence)

Miscellaneous

2.

(date)

Using Threatening Behaviour including:

(offence)

Miscellaneous

3.

(date)

Assaulting or Attempting to Assault Persons including:

(offence)

Miscellaneous

4.

(date)

Committing/Attempting to Commit Criminal Damage including:

(offence)

Miscellaneous

5.

(date)

Theft/Attempted Theft including:

(offence)

Miscellaneous

6.

(date)

Engaging in General Anti-Social Behaviour including:

(offence)

Miscellaneous

CERTIFICATE OF CONSULTATION

Anti-Social Behaviour Order

*(delete where appropriate)

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

Name Date of Birth

Address

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

Signed Date

APPENDIX J

ASBO application checklist

Respondent:
Address:
.....

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:

**Summons on Application for ~Anti-social Behaviour
Order (Crime and Disorder Act 1998, s1)**

SOUTHAMPTON AND NEW FOREST MAGISTRATES' COURT

Date: ² 24 APR 2002

To the Defendant :

Address:

You are hereby summoned to appear on Tuesday 14th May 2002 at 11.00 am before the Southampton and New Forest Magistrates' court at 100 The Avenue, Southampton SO17 1EY to answer an application for an Anti-Social Behaviour Order, which application is attached to this summons.

I. A. Fowler
Court Legal Adviser
Justice of the Peace
[Justices' clerk]

NOTE. Where the court is satisfied that this summons was served on you within what appears to the court to be a reasonable time before the hearing or adjourned hearing, it may issue a warrant for your arrest or proceed in your absence.

If an anti-social behaviour order is made against you and if, without reasonable excuse, you do anything you are prohibited from doing by such an order you shall be liable on conviction to imprisonment for a term not exceeding five years or to a fine, or to both.

Miscellaneous Also on dates too numerous to mention using foul and abusive language to others

2. Using threatening behaviour including:-

08/05/01 Threatening to fire bomb residential premises

13/07/01 Preventing a resident driving away in a vehicle by kicking the car and subjecting the resident to verbal abuse

30/08/01 Making a threat of criminal damage 'you'd better get to your car or I'm going to kick it in'

01/01/02 Trying to force entry to of the shop staff in the attempt injuring a member

12/02/02 Threatening to scratch a police car driven by PC of the Hampshire Constabulary

03/11/02 Saying to the owner of residential premises 'if you don't let me have the wood I'll break your windows'

3. Assaulting or attempting to assault persons including:-

08/05/01 Throwing stones at residents

06/11/01 Spitting at the owner of the

09/02/02 { Hitting the owner of the across the arm
and shoulder with a towel
Hitting the owner of the with a stick

09/02/02 Violently resisting arrest by the police

4. Committing / Attempting to commit criminal damage including:-

On or about 02/07/98 Setting fires around the

15/04/01 Throwing a projectile at shop window so as to crack the

08/05/01 Vandalising cars in the

08/05/01 Vandalising fences around

14/05/01 Trespassing on to a resident's garden in and causing criminal damage to the plants and the garden generally

19/06/01 Damaging newly laid turfs by digging his heels into the turf and twisting and lifting the turfs

- 26/07/01 Damaging a parked car, namely damaging the mirror, windscreen wipers, headlamps and petrol cap
- 30/08/01 Sitting on the bonnet of a car belonging to a personnel advisor at the Shop and kicking the driver's side door
- 24/11/01 Kicking and vandalising a telephone kiosk in
- 05/01/02 Aiding and abetting forced entry into a block of flats in acting as a look out for the principle offenders by
- 18/01/02 { Kicking the inside of the front door
Pulling a fire extinguisher off the wall inside the and throwing it to the floor
Throwing stones at the windows of the
Kicking and stamping on a length of guttering causing it to break at the School.
- 20/01/02 Leaning on the window of an existing crack to worsen. so as to cause
- 24/01/02 Smashing the driver's side window of a parked car in
- 09/02/02 Attempting to damage the shutters of the

5. Theft / Attempted theft including :-

- 24/01/00 Attempting to steal a motor vehicle, forcing entry with a screwdriver and attempting to start the engine
- 07/05/01 { Vehicle interference and theft of a car from
Driving a stolen vehicle into parked cars
Theft of a car stereo
- 13/06/01 Attempting to start an abandoned stolen vehicle
- 03/11/01 Theft of firewood from residential premises in the tea
- 27/11/01 Attempting to steal items from
- 09/12/01 Stealing a box of wine from residential premises in the

6. Engaging in General Anti-Social Behaviour including:-

Between 29/01/98 & 02/02/98 Killing a rabbit and a guinea pig belonging to a neighbour

07101/01	Urinating in the communal area and making excessive noise in the block at Southampton	
15/04/01	Continually kicking a ball against the door of	
09/05/01	Trespassing and loitering in the grounds of the doctors surgery in Southampton	
06/07/01	Loitering and causing a nuisance on the staircase of the block of flats in preventing residents from getting past	
13/07/01	Exposing himself	
14/07/01	{ Loitering in the block of flats consuming alcohol Locking himself in the toilet at the	
30/08/01		to leave the premises when asked
	{ a file of papers without permission and throwing the contents around Trespass to private residential premises.	
03/11/01		
09/12/01		
03/11/01	Refusing to leave private residential premises when asked by the owner to do so	
06/11/01	Entering whilst banned, running around the store and refusing to leave when asked to by shop staff	
24/11/01		
28/11/01		
06/11/01	Attempting to put objects in the deep fat fryer at the Southampton. Annoying shop staff.	
17/11/01	Crawling in and out of on hands and knees, hiding behind customers	
17/11/01	Loitering outside	
19/11/01	Pushing a youth into	
03/01/02	Pushing the shop window of making it vibrate	
12/01/02	Pretending to steal items from	
18/01/02	Resisting arrest by a police officer	
18/01/02	Preventing customers from entering through intimidation.	
27/01/02	Loitering around in a group outside when banned	

02/02/02	Loitering around the entrance to banned	when
02/02/02	Throwing a live frog into	
09/02/02	Acting in a disorderly manner, ignoring police requests to refrain from anti-social behaviour or requests to leave the area.	
	Running from the police	
	Throwing food and condiments around the the shop door	and banging
	Attempting to goad police into pursuing him	
	Ignoring 'no ball games' signs and continually playing ball games	
	Kicking a football against shop shutters	
	Pretending to kick a football at a police vehicle	
12/02/02	Disrupting a meeting between PC (youth worker – making faces at the window	of the Hampshire Constabulary and by repeatedly bouncing a ball and
	Refusing to leave premises when asked to do so by Hampshire Constabulary	of the
	Preventing and attempting to unbalance him	of the Hampshire Constabulary from leaving premises

and (b) that an anti-social behaviour order is necessary to protect persons in the Southampton City Council local government area(s) in which the harassment, alarm or distress was caused, or was likely to be caused from further anti-social acts by him, and accordingly application is made for an anti-social behaviour order to prohibit the Defendant for a period of 3 years from doing any of the following acts in the Local Government Area of Southampton

1. Engaging in any conduct which causes or is likely to cause annoyance, harassment, alarm or distress to any person other than a member of his own household
2. Threatening any person other than a member of his own household with violence or damage to his or her property
3. Swearing at or using abusive language to any person other than a member of his own household
4. Damaging, defacing or fouling property or buildings or public areas or parts thereof or attempting to do so
5. Writing graffiti or similar on any building or object.
6. Trespassing onto land belonging to another
7. Entering the area as shown hatched red on the plan attached

8. Entering

Southampton

9. Entering

Southampton

10. Inciting or encouraging others to do any of the acts in paragraphs 1 – 6 inclusive above.

.....
.....

The complaint of:

.....

Address:

.....
.....
.....
.....

Who states that the defendant was responsible for the acts of which particulars are given above, in respect of which this complaint is made.

Taken before me

I. A. Fowler
Court Legal Adviser

~~Justice of the Peace~~
~~[Justices Clerk]~~

CASE SUMMARY

ANTI-SOCIAL BEHAVIOUR ORDER APPLICATION

BY

..... - v - A.N. OTHER

- Documents
Numbered 1-5

1. The respondent in this case is *full name, date of birth, of full postal address*. He is represented in this matter by *legal representative's full name and postal address*
- Documents
Numbered 6-39

2. At a multi-agency case conference dated *day, month, year* Police/Council made the decision to apply for an anti-social behaviour order against the defendant.

3. The circumstances giving rise to this application are fully described in the applicant's file which has been prepared to support this application.

4. Briefly, between *day, month, year* and *day, month, year* the respondent has been involved in a number of incidents which have cause alarm, harassment and distress to other residents around *the locality of Anytown Road shops* and the police have been called on a number of occasions.
- Documents
Numbered 40-44

5. The respondent was arrested under S5 of the Public Order Act 1986 by *Constable 123 Smith* on *day, month, year* and taken to *Anytown Police station* where his detention was authorised on a custody record.

6. The respondent was charged with Section 5 Public Order Act 1986 and bailed to appear at *Anytown* magistrates' court on the *day, month, year*.

7. The case was heard at *Anytown* magistrates' court on the *day, month, year* whereby the respondent was given a conditional discharge subject to his agreement to be of good behaviour
- Documents
Numbered 45-47

8. *Anytown* Council attempted to operate a mediation scheme between the respondent and local shopkeepers to resolve the problem between *day, month, year* and *day, month, year*. This course of action has failed to address the respondent's behaviour.
- Documents
Numbered 48-50

9. The local authority served a noise abatement notice on the respondent on the *day, month, year* with regard to his excessive use of a loudspeaker system outside the shops on *Anytown Road*.

10. All the measures tried by the various agencies have failed to curtail the respondent's behaviour. This led to the case conference upon which the decision to apply for an order was

Documents
Numbered 51

based
11. A full list of the respondent's previous convictions relevant to
this application is attached.

Appendix L

Responsible Officers and Contact Details

Community Safety Co-ordinator

Ms Stephanie Sutton
New Forest District Council
Appletree Court
Lyndhurst
Hants
SO43 7PA

Tel: 02380 285148
E mail: stephanie.sutton at NFDC

Acceptable Behaviour Contracts Co-ordinator

Mr Jon Wood
C/o YOT
33 Selbourne Ave
Harefield
Southampton
SO2 5DZ

Tel: 023 80 463336
E mail: jon.wood@hants.gov.uk

Police Inspectors

Call 0845 0454545 and ask to be put through to the police inspector at the relevant station.

Appendix M

European Convention on Human Rights

The Human Rights Task Force Core Guidance for Public Authorities, attached, offers a common sense approach to the issues and suggests a logical series of questions authorities need to ask in trying to identify if they may be interfering with a Convention right.

Articles 6, 7, 8, 10 and 14 are most likely to impact on the ASBO process and need to be assessed prior to any action being taken. The text of each of these Articles is shown below:

Article 6

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights;

a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

b) to have adequate time and facilities for the preparation of his defence;

c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

Article 7

1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.

2. This Article shall not prejudice the trial and punishment of any person for any act or omission which at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations.

Article 8

1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Article 10

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

Article 14

The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.

Convention Check List

Am I interfering with a Convention right?

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 Convention rights.

2. Everyone working in a public authority needs to make sure that everything they do reflects a respect for human rights and is compatible with the Convention rights.

3. It will not always be easy to tell if this is the case. The need for early and appropriate legal advice cannot be over-emphasised. However, we all need to take responsibility for our own actions, and we must get into the habit of thinking for ourselves about the human rights implications of our work.

4. There is a logical series of questions you can ask yourself in trying to identify if you may be interfering with a Convention right. By following the steps outlined below, you should be able to carry out at least an initial assessment of the compatibility of your work.

• **Could what you are doing touch on one of the Convention rights?**

5. You need to know enough about the Convention rights to tell when they might come into play. For example, if your policy or procedure affects someone's ability to carry on a trade, Article 1 of Protocol 1 could be relevant.

• **Is there a victim?**

6. Could someone argue that they have suffered, or might do, as a result of what you are doing? For example, if your tribunal or decision-making body is not independent and there is no right of appeal to an independent body, someone might be able to show a reasonable likelihood that their Article 6 right to a fair trial had been infringed.

• **Are there circumstances when the right can legitimately be limited or interfered with?**

7. Convention rights are formulated in three broad ways:

- Some, such as the right to freedom from torture (Article 3), are absolute.
- Some are subject to express exceptions.

These are constructed with a protected right (in the first paragraph) followed by permitted exceptions (in the second). For example, the right to liberty and security (Article 5) clearly defines the six circumstances when it is acceptable for someone to be detained

- Others are subject to implied exceptions.

These usually follow general principles established in the Strasbourg case law. For example, the right to respect for private and family life (Article 8) can be interfered with, but only in a way that is in accordance with the law and necessary in a democratic society in certain interests, such as national security.

• **Does the interference meet the general criteria established by the Strasbourg authorities?**

8. You may need to show that:

• **The action is prescribed by law.** This does not just mean that it must be lawful. You also need to think about the clarity, accessibility and foreseeability of the law. The law must be expressed in a way that people understand.

• **It pursues a legitimate aim.** Look at the wording of the individual rights to find out what might be a legitimate reason for interfering with them. These differ from Article to Article. In the case of Article 8, for example, legitimate grounds for interference with the right to privacy include acts done in the interests of national security or for the prevention of disorder or crime. No restriction is ever justified if it impairs 'the very essence of a right'. For example, the Strasbourg Court has held that a temporary ban on re-marriage following divorce was disproportionate on the grounds that it impaired the very essence of the right to marry under Article 12.

• **It is necessary in a democratic society.**

There are three aspects to this:

- Does it pursue a pressing social need?
- Is your policy, procedure or action proportionate to the aims you are pursuing? Are you using a sledgehammer to crack a nut?
- Do you have relevant and sufficient reasons for the interference?

9. By following these basic steps you should at least be able to tell if a particular policy or procedure has Convention implications, and if so, what they may be. Legal advice may be needed to ensure that what you are doing is compatible with the Convention rights.

10. If you believe that a law you are working under, or one of your policies or procedures, is incompatible with the Convention, there are a number of steps you should take:

- Alert your line manager, explaining why you think an incompatibility arises
- Take legal advice as soon as possible
- Agree on a course of action for addressing any incompatibility. This could involve changing a procedure, or finding a way to interpret a law compatibly with the Convention rights

- Alert any colleagues who deal with similar issues and who could also be affected

- Working through your line manager, or departmental Human Rights Act point of contact, make sure that the issue is reported in any corporate monitoring or reporting of Convention issues being done by your Department or public authority.

11. Remember that if the law cannot be read compatibly, and is a piece of primary legislation, or subordinate legislation which is inevitably incompatible, you are still required to apply it.

12. By becoming familiar with the Convention rights and what they mean in practice you will be in a much better position to identify a potential Convention issue and take action quickly to ensure that it is resolved.

CRIME AND DISORDER ACT 1998

JOINT PROTOCOL ON INFORMATION EXCHANGE

1. Agencies which are Parties to the Protocol

Hampshire Constabulary
Hampshire County Council
Isle of Wight Council
Southampton City Council
Portsmouth City Council
Hampshire and Isle of Wight Probation Service
District Authorities in Hampshire
Health Authorities in Hampshire

2. Purpose

The purpose of this protocol is to facilitate the disclosure of information between the parties in connection with the discharge of their functions under the Crime and Disorder Act 1998 (“the Act”).

3. Requests for Disclosure of Information

A request by one agency (“the requesting agency”) for the disclosure of personal information by another agency should be made at the earliest possible opportunity. The requests shall be in writing and shall contain the following information: -

- The date of the request
- The name of the individual about whom the information is requested
- Other identifying information e.g. date of birth, address, etc.
- The purpose for which the information is required.
- How that purpose will assist the requesting agency in the discharge of its responsibilities under the Act.
- The name and designation of the person requesting the information.

In every case, disclosure should not be sought unless it would support the effective implementation of the strategy to reduce crime and disorder, the youth justice plan, or any other provision of the Act.

4. Consideration of Requests

The agency receiving the request (“the disclosing agency”) shall consider it and determine whether the information requested shall be disclosed. In general, disclosure will be appropriate (subject to the general principles in paragraph 5) where the disclosing agency is satisfied that it is necessary or expedient for the purposes of any provision of the Act, i.e. where it would support the effective implementation of the strategy to reduce crime and disorder, the youth justice plan, or any other provision of the Act.

5. General Principles

- 5.1 Each agency is responsible for ensuring that any specific legal requirements regarding the disclosure of information, to which that agency is subject, are complied with in considering and responding to any request. In particular, each agency shall ensure that legal requirements in respect of the obtaining of any necessary consents, and the circumstances in which disclosure can be made without such consent, are complied with.
- 5.2 Where the Data Protection Act 1984 (or, in due course, the Data Protection Act 1998) applies, the receiving agency shall ensure that any disclosure is made in compliance with its responsibilities under the Act.
- 5.3 Personal information shall only be disclosed to the extent that it will enable the requesting agency to achieve its objectives under the strategy to reduce crime and disorder, the youth justice plan, or any other provision of the Act.
- 5.4 No secondary use or other use may be made unless the consent of the disclosing party to that secondary use is sought and given.
- 5.5 Retention should be for the minimum period required to achieve the objectives of the purpose of the sharing of information after which the information disclosed will be returned to the originator or destroyed as agreed.
- 5.6 Each agency is responsible for ensuring that any information disclosed by it is accurate, complete and up to date. Information discovered to be inaccurate or inadequate for the purpose will be notified to the information owner who will be responsible for correcting the information and notifying all other recipients of it, who must ensure that the correction is made.
- 5.7 Each agency shall ensure that appropriate training is provided to its staff in connection with the operation of this Protocol, and that adequate arrangements exist to monitor that agency's compliance with it.

6. Security

6.1 Security Statement

Each agency shall take appropriate measures to ensure that security arrangements are in place to prevent unauthorised access to and disclosure of personal information and will be open to scrutiny by other parties to this protocol upon request.

6.2 Designated Officers

Each agency shall nominate a designated officer or officers who shall assume responsibility for the operation of this protocol and for the requesting and disclosure of information, security and confidentiality, compliance with legislation.

6.3 Indemnity

Where a disclosing agency provides information to a requesting agency which is inaccurate and the requesting agency incurs liability, cost or expense as a result of its reliance upon the information provided, the disclosing agency shall indemnify the requesting agency against any such liability, cost or expense reasonably incurred, provided that this indemnity shall not apply:

- Where the disclosing agency did not know and acting reasonably, had no reason to know, that the information provided was inaccurate.
- Unless the request agency notifies the disclosing agency as soon as practicable of any action, claim or demand to which it considers this indemnity may apply, permits the disclosing agency to deal with the action, claim or demand by settlement or otherwise and renders all reasonable assistance in so dealing:
- To any admission which may be prejudicial to the defence of the claim or demand, to the extent that the requesting agency claiming the benefit of the indemnity makes.

6.4 Documentation

Disclosures and requests for disclosures must be recorded and retained by each agency. Decisions on disclosures reached at meetings must be minuted.

7. **SUBJECT ACCESS**

If an agency received a subject access application and personal information is identified as belonging to another agency, it will be the responsibility of the agency receiving the application to contact the information owner to determine whether the latter wishes to claim an exemption under the provisions of the Data Protection Act. Where a data controller cannot comply with the request without disclosing information relating to another individual who can be identified for that information, he is not obliged to comply with the request unless:

