

# MENDING FENCES

## Practice & Policy Guides

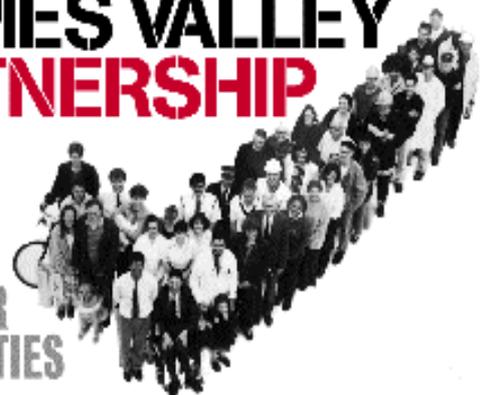
# Anti-social Behaviour

Some guidance  
notes for probation  
staff

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July 2004

**THAMES VALLEY  
PARTNERSHIP**

WORKING  
FOR SAFER  
COMMUNITIES





# Contents

	<u>Page</u>
<b>1. Introduction</b>	5
<b>2. Some Useful Definitions and Abbreviations</b>	7
Anti-social Behaviour Orders (ASBOs)	7
Acceptable Behaviour Contracts (ABCs)	7
Crime and Reduction Partnerships (CDRPs)	7
Confidentiality and Protocols	8
Section 17	8
<b>3. Strategies on Anti-social Behaviour</b>	9
<b>4. Provisions of the Anti-social Behaviour Act 2003</b>	11



# 1. Introduction

Anti-social Behaviour is a major concern for Government and other agencies. There has been little specific advice or information for the Probation Service on this subject and the purpose of this guide is to provide basic information, not only about the main legal powers and orders, but also about the implications for Probation staff. With the extension of provisions under the Anti-social Behaviour Act 2003 it has become much more likely that Probation as an agency will be dealing with people who are the subject of anti-social behaviour controls and enforcement.

There has never been a fully comprehensive definition of anti-social behaviour and since the problem is manifested in hundreds of ways and locations, as well as being affected by local circumstances, such a definition is unlikely. The main definition in use is that provided by the Crime and Disorder Act 1998.

*“Behaviour which causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household as the offender”.*

It is clear from this definition that a wide range of behaviour is included and this may cover behaviour chargeable as a criminal offence. Some examples are as follows:-

- Harassment and intimidating behaviour
- Behaviour that creates alarm or fear
- Noisy neighbours
- Drunken and abusive behaviour
- Vandalism, graffiti and other deliberate damage to property
- Dumping rubbish or litter

The new legislation extends some of the areas covered, including for example behaviour related to substance misuse.



## 2. Some Useful Definitions and Abbreviations

### **Anti-social Behaviour Orders (ASBOs)**

This is the strongest power available to deal with anti-social behaviour, and could apply to a wide range of abusive behaviour including persistent racial harassment or homophobic behaviour. The order is available for those age 10 years or over, though in reality more orders are made against adults than young people. Orders can restrict behaviour in very specific ways including banning people from going to particular areas or undertaking certain actions. Orders are for a minimum of two years and although the original legislation fixed a maximum of five, case law has extended this for much longer periods, depending on circumstances. Breach of an ASBO is a criminal offence, which may attract a maximum penalty of five years imprisonment. ASBOs are intended to be made in situations where behaviour has been serious or persistent. Information is given later about the implications for Probation practice since ASBOs can now be ordered by criminal courts on conviction for an offence as well as in the civil courts.

### **Acceptable Behaviour Contracts (ABCs)**

Acceptable Behaviour Contracts (ABCs) were first introduced in Islington, North London and are now used widely across the country. Though particularly used with young people they are also used for adults and the central idea is that a contract is drawn up specifying the type of behaviour which is the problem. The subject of the ABC agrees to desist from the behaviour. The contract is not in itself legally enforceable but failure to co-operate may be cited as evidence if the behaviour persists and an ASBO is then applied for. Probation staff are not likely to become directly involved in ABCs but it is certainly possible that offenders or their children will be involved in them. Sometimes ABCs include additional action to address the causes of the problem e.g. work on leisure activities, participation in a programme or extra support. With younger people the involvement of parents is seen as vital and ABCs can include the sanction of eviction from local authority or Housing Association property.

### **Crime and Reduction Partnerships (CDRPs)**

CDRPs were set up following the Crime and Disorder Act in 1998. The Act recognised that if crime prevention and community safety initiatives were to work effectively a number of partners would need to work together. There was recognition that the police could no longer be the primary crime prevention agents. The Act advocated the use of a holistic approach to crime and disorder and the partnerships are the statutory embodiment of this. They provide the framework for partnership working at a local level. Within the Thames Valley each unitary authority has its own CDRP. In Oxfordshire and Buckinghamshire there is a CDRP for each district.

Partners in the CDRP include the Local Authority and Police, as well as Probation and now Primary Care Trusts and the Fire Service. The CDRP is responsible for a

strategy in each area on crime and disorder which has to be reviewed regularly and reported on to the Home Office. Every three years a full audit is prepared which pulls together data from all the partners and also includes local consultation.

Priorities across the Thames Valley have reflected Government requirements so far as vehicle crime and burglary are concerned but anti-social behaviour has been a priority in all the sixteen Thames Valley CDRPs and this is likely to continue being the case.

Most CDRPs have sub-committees and working groups including an implementation group, which monitors the progress of the local strategy. Probation is usually represented at ACO or SPO level.

### **Confidentiality and Protocols**

You will often hear reference to Section 115 of the Crime and Disorder Act 1998 which provides that any person can lawfully disclose information to a chief officer of police, a police authority, local authorities, Probation Service or Health Authority even if they do not otherwise have this power. In other words, sharing information on individuals within a CDRP does not infringe the Data Protection Act. In practice most areas have protocols in place which lay down how this responsibility is carried out.

### **Section 17**

Again reference is frequently made to this part of the Crime and Disorder Act 1998. Section 17 lays a duty on each of the authorities covered under the Act to "exercise its various functions with due regard to the likely effect of the exercise of those functions on and the need to do all it can reasonably can to prevent crime and disorder in its area". In plain English, everyone, whatever their role working for partner agencies has a duty to consider crime and disorder issues in everything they do. This applies to everyone from the local Authority Planning Department to local Parish Councils.

### 3. Strategies on Anti-social Behaviour

All 16 CDRP areas are now developing a range of responses to ASB. Ideally these should range from preventive approaches such as prompt referral to mediation through to the use of community conferencing, restorative justice approaches and community development initiatives. Once stronger action is required ABCs are used and then as necessary ASBOs.

Key people in each area are as follows: -

- **Community Safety Manager**

The lead officer in the operation of the CDRP and in the bigger partnerships there is likely to be a team of people carrying out the range of functions.

- **Anti-Social Behaviour Co-ordinator**

The Government has recently provided money to ensure that each CDRP has an Anti-Social Behaviour Co-ordinator.

- **Police Anti-Social Behaviour Co-ordinator**

Each of the current ten police areas has a lead ASB Co-ordinator who links with their CDRP based equivalent and it is worth getting to know these respective roles and how they fit together.

- **Street Wardens**

Government funding has enabled street wardens to be employed in some areas and evaluations of this role suggest that they have an important part to play in increasing public confidence and tackling ASB. The next year will see the introduction within the Thames Valley of uniformed Community Support Officers, who unlike the wardens will have some powers of arrest. Again it is intended that they will impact on anti-social behaviour.

Structures and job titles will vary from area to area as will details of local protocols and it is helpful to be aware of these. As information sharing increases it becomes clear that Probation does know families and individuals involved in ASB and an awareness of the key issues is useful in dealing with offenders and other agencies in a helpful way. While the Probation Service may be particularly concerned with the management of serious and higher risk offenders, anti-social behaviour is a major problem, which can have a major lasting impact on victims. While Probation is not usually going to be a lead on ASB its contribution can often be very important indeed.



## **4. Provisions of the Anti-social Behaviour Act 2003**

This is designed to be a brief guide about the main powers and if you require further information please contact either Headquarters or your local CDRP.

### **Closure of premises where drugs are used unlawfully**

This gives senior police officers the power to issue a closure notice on properties, which have been taken over by drug dealers and users of Class A drugs. The police have to apply within 48 hours for a closure order. They must prove that the premises have been used in connection with production, supply or use of Class A drugs and that the premises are associated with this order or serious nuisance. Closure can apply for up to three months with the ability to extend to six months and during the closure period entering or remaining in the property is an offence and the premises are sealed. Early experience has shown that close liaison with local authority housing needs to accompany action under these powers.

### **Housing**

There are new powers for social landlords. The Act gives all social landlords considerable new powers of injunction and other sanctions. Civil Courts must give particular consideration to the impact of ASB on victims, witnesses and the wider community in all nuisance related housing possession cases. It should be noted that all social housing providers now have to have a policy on ASB, which is published and available to tenants. Social landlords include not only local housing authorities but also housing associations, more normally known as registered social landlords (RSLs). It is clearly useful for probation case managers and housing staff to be aware of these issues and the requirements of housing providers in supporting offenders in tenancies.

### **Parental responsibility**

The Act gives schools and local education authorities new powers over truancy as well as extending provision for parenting orders. Youth Offending Teams are able to enter into parenting contracts with the parents of a child who is engaged or is likely to engage in criminal contact or anti-social behaviour. Parenting orders now apply to ASB as well as criminal contact and the idea is that this will enable earlier intervention before there has been a conviction.

### **Dispersal – Powers of Police to deal with intimidating groups**

This provision under part 4 of the Act creates the power for a senior police officer to designate an area with the agreement of the local authority where there is persistent anti-social behaviour and a problem with groups causing intimidation. The designation of the area must be publicised and in that area for a period of up to six months officers have a power to disperse groups, including the ability to exclude individuals for up to 24 hours. In such areas children can be taken home after 9pm at night if they are not under the control of an adult.



## **Firearms**

These new powers deal with air guns and imitation weapons and give powers of arrest where an air weapon or imitation firearm is being carried in a public place. The powers impose an age limit of 17 before a person can own an air weapon. Bans were also introduced in respect of self-contained gas cartridge guns.

## **Part 6 of the Act – Environment, clean and safer communities**

These powers extend measures to deal with noise including the closure of licensed premises where a public nuisance is being caused by noise. Fixed penalty notices are also introduced for graffiti and fly posting and the Act enables removal notices to be given. Section 54 creates a new offence of selling spray paints to someone under 16. New powers are introduced on fly tipping and litter.

## **Public order and trespass**

Part 7 of the Act extends police powers to impose conditions on a public assembly of more than two people. There have to be reasonable grounds that the assembly may result in serious public disorder; disruption to the life of the community, or that the intention is intimidation. Powers are also extended in respect of illegal raves. Aggravated trespass is now committed where a person trespasses either in a building or in the open air and the intention is to intimidate or prevent people from lawful activities. Police now also have the power to move-on unauthorised encampments, if they are trespassing and there is a suitable pitch available and relevant site in the local authority's area. An encampment is defined as two or more people with one or more vehicles.

## **High hedges**

Part 8 of the Act gives local authorities powers to deal with complaints and they will have the power to enforce people to cut hedges where their height seriously impacts on a neighbour's enjoyment of his property. If the local authority has to do this it will be able to charge a fee for the service.

## **Other powers in the Act – Part 9**

Automatic reporting restrictions are lifted in respect of ASBOs made against juveniles but this is at the courts discretion. Housing Action Trusts and County Councils can now apply for ASBOs as well as RSLs and the British Transport Police.

Until now local authorities have had to rely on the CPS to prosecute breach of ASBOs where they were the applicant and will now have the right to prosecute instead of the CPS.

A significant issue for Probation is that CPS will have a clear role in bringing forward additional evidence seeking an ASBO following a criminal conviction. This is dealt with in a later section of these guidance notes. The prosecutor will be able to ask

the court to make an order on conviction and present evidence for this purpose. This can include evidence inadmissible in the criminal proceedings.

Where a court is issuing an ASBO on a young person between the ages of 10 and 15 it has also has the power to impose a Parenting Order. Additional powers on Curfew Orders and Supervision Orders are introduced for younger offenders with increased powers for Youth Offending Teams.

As this brief summary shows, very wide powers now exist in relation to ASB and ASB itself has been broadened to cover a much wider range of activity. This does reflect the very widely held concern across the country about ASB. British Crime Survey data and Thames Valley Police community response information suggest that the prevalence of anti-social behaviour is one of the major causes behind high levels of fear of crime, even though crime figures overall have been falling. While it would be wrong to suggest that there is any automatic connection between offenders on the probation caseload and anti-social behaviour, there is clearly a significant crossover in a number of respects. The notes which follow are intended to help Probation Case Managers deal with the certainty that ASB issues will have a higher profile in the coming years.

### **Anti-social Behaviour Orders made following conviction**

No guidance has yet been issued from the Home Office or the NPD in respect of PSR writing where CPS may seek an ASBO on conviction. So far relatively few orders have been made in the Thames Valley. It will be appropriate however for there to be liaison both with the courts and CPS about good practice in this area, and a protocol between Police, CPS and Magistrates Courts is currently being prepared under the auspices of the Thames Valley Criminal Justice Board. The following practice points are likely to be important for Probation staff:

- Where an ASBO on conviction has been mentioned as a possibility Court Duty Officers will need to note full details.
- PSR writers may be asked to comment on the possibility of an ASBO and will need to address this in PSR's. Factors, which should then be considered, are the likelihood of compliance, the impact on the individual and how this will relate to any other penalties which might be imposed.
- Although guidance has not yet been issued the relative merits of an ASBO as against a Curfew Order, and other restrictions of liberty will have to be assessed. It should be borne in mind that an ASBO will run for longer and will have substantially more sanctions attached to it than other penalties.
- Liaison with Police and CDRP Anti-Social Behaviour Co-ordinators will clearly be extremely valuable in these circumstances, not least because the full picture of impact on victims will become plain. In some of the larger areas an ASB Team exists, and it would be sensible for Probation Teams to establish contact with the key people locally.

Examples of ASBOs on conviction so far have included imposition of a restricted area for an offender who was stealing from cars repeatedly, and exclusion from

particular localities where violence or persistent threatening behaviour had occurred.

The role and duty of the courts in making an ASBO are expressed in five principles laid down in the case of R v Parkin (2004). These are as follows: -

- Is it necessary to impose an Order to protect the public from further anti-social acts?
- The terms of the Order need to be precise and capable of being understood and acted upon.
- The terms of the Order will be recorded and contain the facts on which the Order is to be based.
- The terms of the Order will be explained to the defendant.
- The written terms of the Order will reflect the Order made in open court.

#### **PSRs resulting from breach from ASBOs whether imposed following conviction or on a free-standing basis for anti-social behaviour**

However ASBOs originate, all the breaches are considered as criminal offences. CPS are responsible for prosecution of alleged breaches, and the standard of proof is the same as for any other criminal allegation. No national guidance has yet been issued but a number of PSR's have already resulted from ASBO breach. Since the penalty can be a period of imprisonment for up to five years, courts are quite likely to seek a PSR assessment and guidance before imposing a penalty. The following points should be borne in mind:

- It is extremely important that the full history of the case including the reasons for the ASBO and the nature of the breach are understood. It is likely that the police will need to be consulted as well as the CDRP officials, since stand alone ASBOs require consultation with the local authority before they can be made.
- Information should be available from CPS, and each CPS office has a co-ordinator for ASBO work.
- Community penalties can be imposed instead of immediate imprisonment for a breach and this can be a challenge particularly if community supervision appears appropriate but the case has a number of difficult community needs issues. A good example is the situation where breach results for somebody who has been evicted and the ASBO prevents them from returning to the area. Since eviction relating to an ASBO implies that re-housing options are likely to be limited, it is important for PSR writers to be realistic about what probation supervision can actually contribute. Nonetheless there may be some circumstances where practical support and help through supervision can contribute to the ASBO getting back on track following breach.

- Where the breach is a significant one and the impact on the community or key witnesses is grave, then probation staff need to be realistic about whether a community penalty would be sufficient to restrain the behaviour. In those circumstances a custodial sanction may be the only option.
- It would be important for the service to give thought as to how those who are serving time for ASBO breach will be accessed to resettlement provision, particularly as they are likely to be demanding or needy and will quite often serve short periods. Where the sentence imposed is longer licence will follow, but it needs to be remembered that the ASBO will remain in force.

- While neither “civil” ASBOs nor those imposed on conviction easily fit OASys assessment, breach of an ASBO is a significant criminal offence, and risk assessment does need to be undertaken.

### **Inter-agency contribution by case managers**

In some CDRP areas there are panels or inter-agency meetings which address anti-social behaviour cases. Each area office needs to have an arrangement with the CDRP whereby Probation can contribute within information sharing protocols about cases known to the agency. This can be extremely constructive, and may well contribute to preventive work.

### **Case management and work on ASB in supervision**

Offenders under probation supervision may have children where there is ASB concern or where there are disputes within the local community which affect them. Again it is potentially very important that the Case Manager supports action being taken in the community to control anti-social behaviour and it should be possible to reinforce messages from other agencies, as well as undertaking motivational work to help offenders co-operate. Good examples are support for those involved in parenting orders and those who have children under ABCs. Again, good practice would suggest close liaison with ASB Co-ordinators and the Police.

### **Offenders as victims and witnesses**

Offenders will quite frequently be the victims of anti-social behaviour. This may occur because of the neighbourhood they live in, ongoing problems with neighbours or indeed because of unreasonable local reaction to their offending. Most research on victims of violent behaviour indicates that the most at risk group are young men who have themselves committed offences of violence and similar considerations apply to anti-social behaviour. Case Managers may well have a key role to play in supporting those who wish to take action, including sign-posting them to sources of help and supporting them through the process. One of the key issues about anti-social behaviour is that it is hardly ever an isolated act and there is much emerging evidence about the pressure and intimidation placed on witnesses. This is usually because unlike many crimes the victim will be known to the perpetrator who may well live nearby. Again the Case Manager may need to offer support or work with other agencies to provide help.

It may be that Case Managers could encourage those who are involved in disputes to seek help from their local Mediation Scheme as mediation is a very effective preventive intervention with much anti-social behaviour.

### **And finally...**

Anti-Social Behaviour is a relatively new field with a number of new staff and new responsibilities in different departments. The point of this guide has been to provide some contextual information and basic advice. This is an area of work

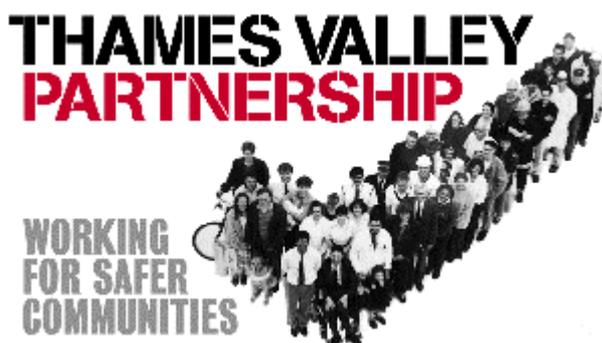
where all agencies are having to learn about what works best and how to co-operate effectively.

While working with anti-social behaviour issues is unlikely to be an issue in the majority of probation cases, an awareness of the issues and who to contact when necessary will enable probation staff to contribute effectively in an area of concern, which has high priority for the public particularly in areas of high deprivation. If you would like to know more, information can be obtained from the Anti-Social Behaviour Unit of the Home Office via the Anti-Social Behaviour section on [www.homeoffice.gov.uk](http://www.homeoffice.gov.uk) Documents from the Anti-Social Behaviour Units Together campaign can be obtained via [together@homeoffice.gsi.gov.uk](mailto:together@homeoffice.gsi.gov.uk) The main source of advice is likely to be your local CDRP and the Anti-Social Behaviour Co-ordinator and it would make sense to make contact with them. If you require general advice about the position within the Thames Valley feel free to contact John Hedge at the Thames Valley Partnership on 01844 202001.

With thanks to

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For their support to the Mending Fences  
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