

Interim YOT Practitioner's Guide: Anti-Social Behaviour, Crime and Policing Act 2014

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Introduction

This guidance is for youth offending teams (YOTs), YOT managers and operational managers with responsibility for anti-social behaviour (ASB), and liaising with the courts. It should be read in conjunction with:

- the [Anti-social Behaviour, Crime and Policing Act 2014](#)
- the Home Office statutory guidance '[Anti-social Behaviour, Crime and Policing Act 2014: Reform of anti-social behaviour powers statutory guidance for frontline professionals](#)'

Other agencies have developed operational guidance to support the statutory Guidance, including the Crown Prosecution Service (CPS), police and Judicial College. It is recommended that the YOT have sight of these as this guidance is aligned with those documents.

The Anti-social Behaviour, Crime and Policing Act 2014 (ASBCPA 2014) replaces the old ASB powers with six new ASB options, set out in Table 1 below:

Table 1	
Old powers	New powers
ASBO on application	Civil Injunction
ASBO on Conviction	Criminal Behaviour Order
Drinking Banning Order on application	
Drinking Banning Order on Conviction	
Individual Support Order	
Intervention Order	
Litter Clearing Notice	
Street Litter Clearing Notice	
Litter Abatement Notice	
Graffiti/Defacement Removal Notice	
Designated Public Place Order	Community Protection Notice
Gating Order	Public Spaces Protection Order
Dog Control Order	New Closure Power
ASB Premises Closure Order	
Crack House Closure Order	
Noisy Premises Closure Order	
Section 161 Closure Order	
Section 30 Dispersal Order	
Section 27 Direction to leave	Dispersal Powers

All references in this guidance relate to provisions in ASBCPA 2014.

The purpose of this document is to highlight areas in the ASBCPA 2014 which are relevant to actions and requirements where a young person is involved and therefore YOTs. The two orders most relevant to the work of YOTs are the Civil

Injunction and the Criminal Behaviour Order (CBO) under Parts 1 and 2 of the Act. They replace the Anti-social Behaviour Orders (ASBO) on application and conviction respectively.

The key differences in these two new orders are summarised in Annexe 1 of this document. Prohibitions and the absence of automatic reporting restrictions remain a feature of the Civil Injunction and the CBO. It is important therefore that YOTs fully understand the provisions on reporting restrictions. They are addressed in more detail on page 16 of this document.

Breach of the Civil Injunction and CBO can lead to further sanctions for the young person, including custody in the most serious cases.

This guidance relates to Civil Injunctions and CBOs for young people under the age of 18. YOTs should consult the Home Office website for details of the commencement date for the different parts of the ASBCPA 2014.

Background to legislative changes

The document, 'The Coalition: Our Programme for Government' in 2010 outlined a commitment to reform the powers available to deal with anti-social behaviour. Specifically it said: "We will introduce effective measures to tackle anti-social behaviour and low-level crime".

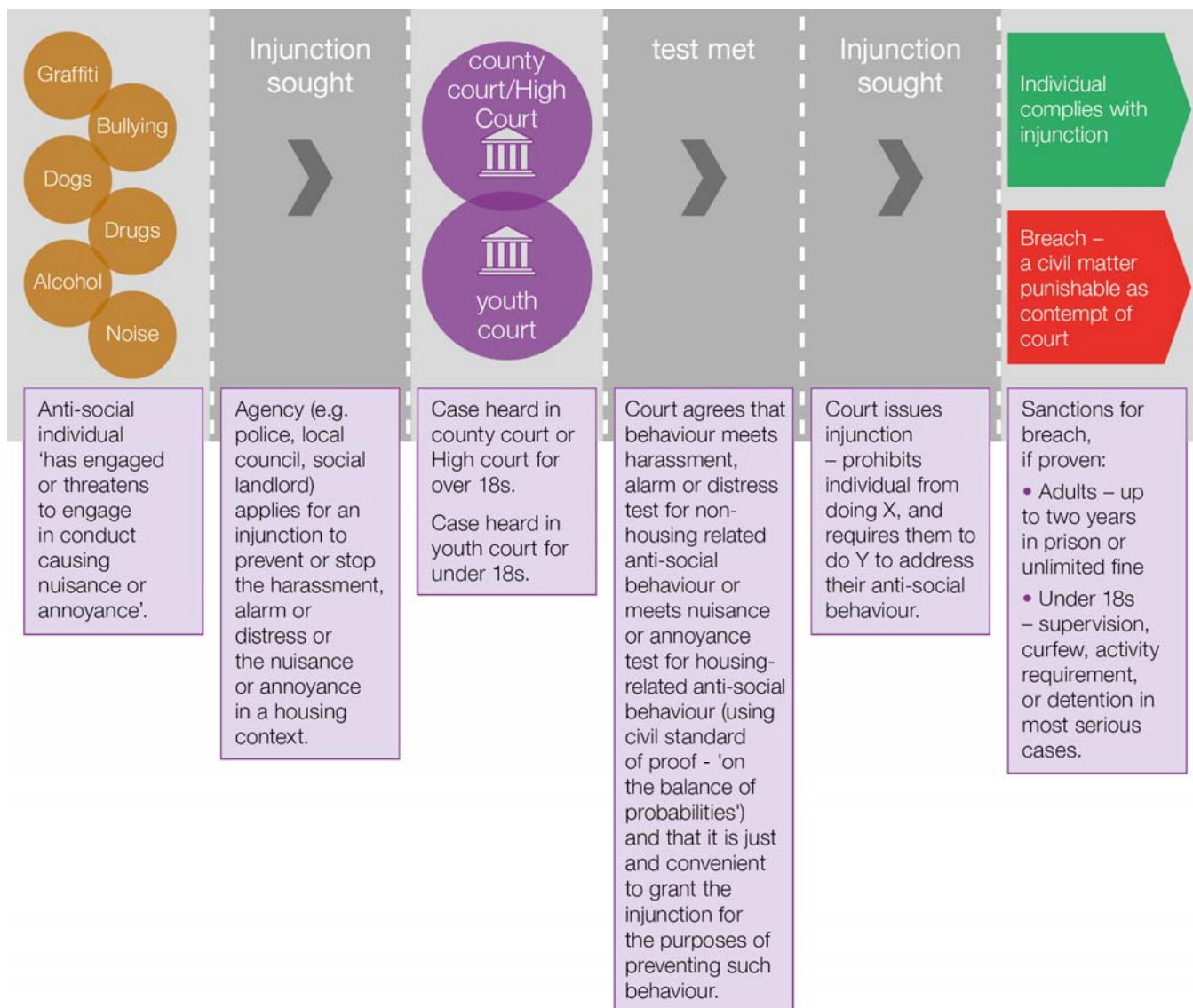
In response to this, a consultation document was published in February 2011 called 'More effective responses to anti-social behaviour'. The consultation outlined proposals to streamline radically the current range of powers available to tackle anti-social behaviour. In particular, the consultation sought views on the replacement of the current tools for tackling anti-social behaviour such as ASBOs with a new suite of powers, which included the criminal behaviour order and the crime prevention injunction.

Following the consultation, In May 2012, the Home Office published a White Paper, 'Putting victims first: more effective responses to anti-social behaviour' (the White Paper included a summary of responses to the earlier consultation). Under the White Paper's proposals, 19 orders would be reduced to six.

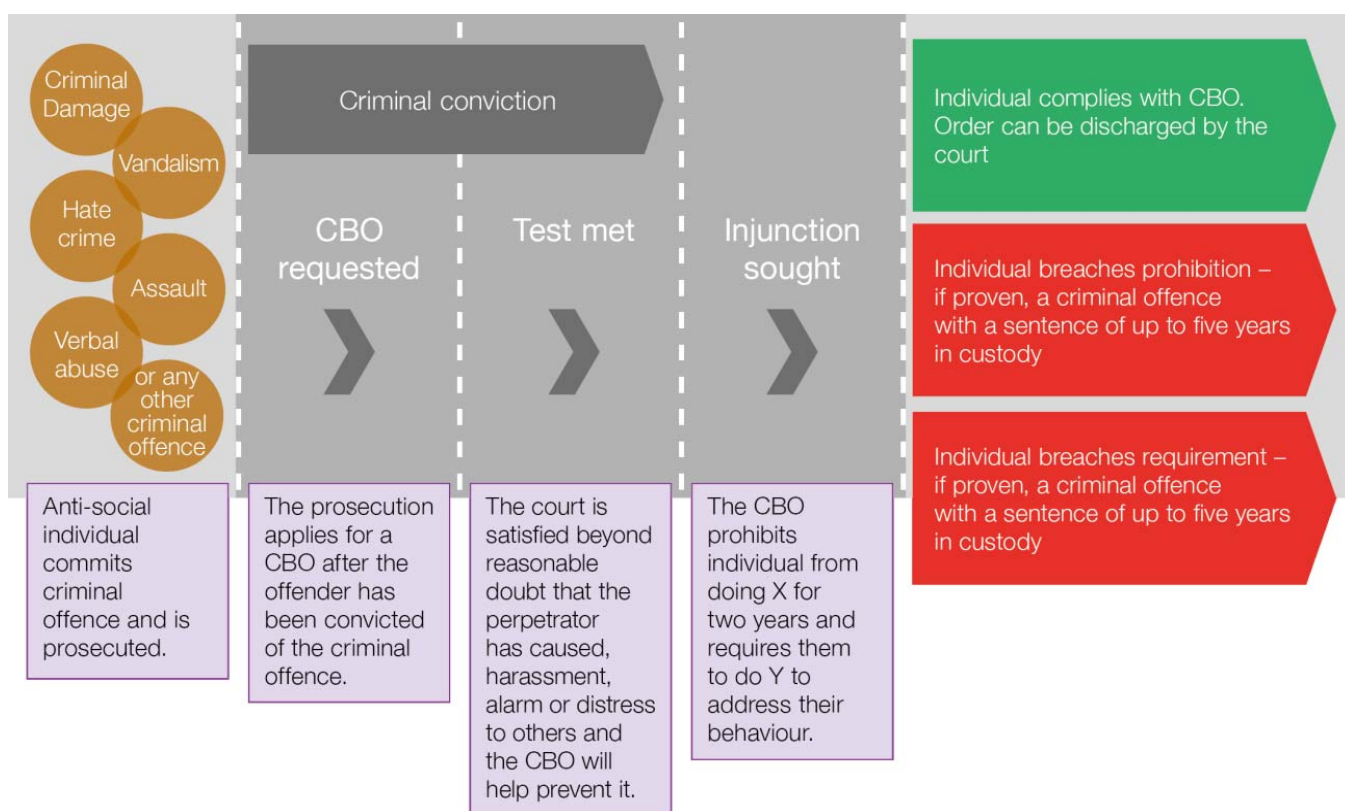
Overview of the Civil Injunction and Criminal Behaviour Order

An overview of the Civil Injunction and CBO and some differences between the two are set out in the diagrams below, (source - Home Office statutory guidance):

The Civil Injunction



The Criminal Behaviour Order



The Civil Injunction

The powers relating to the Civil Injunction are contained in Part 1 of the ASBCPA 2014. Civil Injunctions are available in the youth court for 10 to 17 year olds. Applications are made by a wide range of agencies, including the police, local authorities and housing providers.

As stated, the Civil Injunction is applied for in the youth court (sitting in its civil capacity). In considering an application the court must be satisfied that the following two conditions have been met:

- on the balance of probabilities the young person has engaged or threatens to engage in anti-social behaviour
- the court considers it is just and appropriate to grant the injunction for the purpose of preventing the person from engaging in further anti-social behaviour

Note: Anti-social behaviour under Part 1 of the ASBCPA 2014 means that:

- conduct that has caused, or is likely to cause, harassment, alarm or distress to any person
- conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises

- conduct capable of causing housing-related nuisance or annoyance to any person¹

The Civil Injunction has a maximum duration of 12 months. As well as prohibitions to prevent ASB, the court can include positive requirements in the order to engage the young person in addressing the underlying reasons for their ASB.

If you are seeking a Civil Injunction the following steps should be taken:

1. Applicants must seek the views of the local YOT before applying for the injunction. YOTs do not have the power to veto an application. The requirement to consult does not apply to 'without-notice' applications where there is a need to tackle serious problems urgently.
2. Alongside the formal consultation requirement, the applicant must also inform other agencies or individuals before an application is made, if they (the applicant) think it is appropriate, for example, social services, mental health teams.

It is expected that informal measures will have been fully explored (such as working with the young person and/or their family on a voluntary basis, or by the use of Acceptable Behaviour Contracts (ABCs) before considering an application for a Civil Injunction.

A power of arrest can be attached to a 'requirement' or 'prohibition' in the Civil Injunction if the young person's threatened or actual anti-social behaviour consists of or includes the use or threatened use of violence against other persons, or there is a significant risk of harm to other persons from the respondent. "Harm" includes serious ill-treatment or abuse, whether physical or not.

The Civil Injunction Process

It is a requirement that before an injunction application is made to court, that the views of the YOT are sought, as stated in section 14 of the ASBCPA 2014. How this consultation is developed should be determined locally. However, we would recommend that the following process is considered as a minimum to ensure that all appropriate checks and issues have been fully explored and resolved before the application is made to the youth court:

Table 2: Civil Injunction – suggested process

Applicant notifies the YOT ASB lead of intention to apply for a Civil Injunction against a young person
YOT ASB lead adds the application to the agenda for the next 'prevention' panel (or equivalent, which may need to sit at short notice or take place 'remotely' if timescales are tight; should include representatives from the

¹ The second and third conditions can only be used when the application for the Injunction is made by the Police, Local Authority and Housing Providers.

police, housing, YOT, education and children's services)
<p>At the panel the discussion is focused on:</p> <ul style="list-style-type: none"> • are the panel satisfied that all pre-court/ voluntary options been fully explored? • prohibitions and positive requirements. If the YOT already provide the requirements, they will need to prepare evidence on how they will supervise and promote compliance and make the necessary arrangements for notification of non-compliance. • publicising orders made against under-18s (see page 24 of the Home Office statutory guidance and p16 of this guidance) • the responsible person for supervision of the Civil Injunction
<p>At the court hearing:</p> <ul style="list-style-type: none"> • the case is presented by applicant as agreed at multi-agency panel • the court must receive evidence about the suitability and enforceability of the proposed requirements from the person – the individual or individual representing the organisation responsible for supervising compliance
Civil Injunction granted

It is important to make best use of existing structures i.e. the local authority's existing, multi agency approach to prevention. Where multi agency panels/meetings already exist, they can consider proposals to apply for a Civil Injunction or CBO.

How the Civil Injunction works

Before an application is made to the court it is important that the YOT is aware of what can be included in Injunctions so that when the applications are heard in court the YOT are fully aware and content that the proposed requirements are appropriate.

If a Civil Injunction is made to the court, agencies will need to tailor the positive requirements in each case to address the young person's individual circumstances, behaviour and needs to ensure they are suitable. Positive requirements could include the following:

- the young person attending alcohol awareness classes for alcohol-related problems
- attendance at a recreational activity to encourage more positive use of the young person's free time

The prohibitions or negative requirements in the Civil Injunction must not, so far as practicable:

- interfere with the times at which the respondent normally works or attends school or any other educational establishment
- conflict with the requirements of any other court order or injunction to which the young person may be subject

In addition to these factors, applicants should consider the impact on any caring responsibilities the young person may have and, in the event that they have a

disability or specific learning need, whether he or she is capable of complying with the proposed prohibitions or requirements.

A draft of the Civil Injunction should include all proposed prohibitions and requirements, their duration and any anticipated powers of arrest. Applicants will need to be prepared for the court to examine each prohibition and requirement, and will need to be able to prove how each will prevent the young person from engaging in or threatening to engage in anti-social behaviour in the future. The responsible officer who will supervise the requirements will need to be identified at the pre-planning stage. It is anticipated that, in the majority of cases, this will be the YOT due to their expertise and access to appropriate intervention packages. However, it should not be assumed this will be the case. If it is identified at the pre-court planning meeting that another agency is best equipped and more appropriate to lead on the positive requirement, this should be clearly stated.

The automatic reporting restriction provision applicable to youth court proceedings and appeals from the youth court, does not apply in Civil Injunction hearings. Detailed guidance on reporting restrictions is set out below.

Hearsay evidence

Hearsay and professional witness evidence allows for the identities of vulnerable or reluctant witnesses to be protected. This is especially important as cases can involve anti-social behaviour in residential areas where local people and those targeted by the behaviour may feel unable to come forward for fear of reprisals. Hearsay evidence could be provided by a police officer, healthcare official, or any other professional who has interviewed the witness directly.

Variation and Discharge of Civil Injunctions

The court has the power to vary or discharge a Civil Injunction on application by either the young person or the applicant. Again, the YOT must be consulted on any proposed variation or discharge of the injunction (s14). Applicants may consider applying to vary an injunction in response to changes in the respondent's behaviour. The powers of the court to vary an injunction include:

- to remove a prohibition or requirement in the injunction
- include a new prohibition or requirement in the injunction
- reduce the period for which a prohibition or requirement has effect
- extend the period for which a prohibition or requirement has effect
- attach a power of arrest, or extend the period for which a power of arrest has effect

If the court dismisses an application to vary or discharge the Civil Injunction, the party who made the application is not allowed to make a further application without the consent of the court or the agreement of the other party.

Power of arrest

The court can only attach a power of arrest to a prohibition or requirement in the Civil Injunction if:

- the anti-social behaviour in which the young person has engaged, or threatens to engage, consists of or includes the use, or threatened use, of violence against other persons
- there is a significant risk of harm to other persons from the young person

If the applicant believes a power of arrest is appropriate, they should consult the YOT as above, and present this to the court by way of written evidence. Such evidence may indicate that the young person poses a high level of risk to the victim or the community should any of the conditions in the Civil Injunction be breached, for example, a history of violent behaviour or threats of violence towards others. Where a power of arrest is attached to a condition of the injunction, a police officer can arrest the young person without warrant if he or she has reasonable cause to believe that a breach has occurred. The police must present the respondent to court within 24 hours of their arrest (except on Sunday, Christmas Day and Good Friday).

Breach of a Civil Injunction

It is recommended that an effective warning system is locally agreed and applied before a decision to make an application to court on breach is taken.

If the applicant thinks that the young person has breached a term of the Civil Injunction to which a power of arrest has not been attached, they may apply to the youth court to issue a warrant for the young person's arrest. The police must inform the applicant (if the applicant is not the police) when the young person is arrested. Before an application can be made to the youth court to start breach proceedings, the applicant must consult the YOT (Schedule 2). Prior to the application going to court, consideration should be given to the family circumstances and likely effect on such of a civil supervision order, and also check that the requirements do not conflict with the times that the young person normally goes to work or school, and any other court order or injunction.

The supervision order must also specify the YOT area where a young person lives. A breach of a Civil Injunction is not a criminal offence. However, due to the potential severity of the penalties which the court can impose on young people, the criminal standard of proof – 'beyond reasonable doubt' – is applied in breach proceedings. Breach proceedings are dealt with in the youth court and could result in a civil supervision order or a civil detention order.

The court has the power to issue a Civil Supervision Order (Schedule 2), which consists of one, or more of the following:

- Supervision Requirement (Paragraph 3)
- Activity Requirement (Paragraph 4)
- Curfew Requirement and Electronic Monitoring (Paragraphs 5 & 6)

Supervision Requirement

Under this requirement, a young person must attend appointments with the Responsible Officer.

Activity Requirement

Again, this requirement states that a young person must do a particular activity on particular days and times, including a residential exercise, for a total of between 12 and 24 days. The young person must also comply fully with instructions and behave in a reasonable manner for the duration of the activity. There can only be an activity requirement where the YOT have been consulted, compliance is likely (i.e. you are not setting a young person up to fail), and the proposed activities can be provided by the YOT or another suitable provider.

Curfew Requirement and Electronic Monitoring

This requires the young person to remain in a specific place for specified periods of time. Curfew requirements can also contain a requirement for electronic monitoring. The court must be notified by the YOT that electronic monitoring is available in the area. The injunction is a court order and must be supported by tough sanctions such as a supervision order for breach of the injunction (power under Schedule 2 of the Act). There are a number of requirements (set out in Schedule 2, Part 2, paragraph 6) which need to be complied with when attaching EM to a curfew requirement in a supervision order - the maximum length of which is 6 months.

Responsible Officer for Civil Supervision Orders

This is likely to be the YOT, except where only a Curfew Requirement is made. The young person must keep in touch with the YOT as per their instructions and notify any change of address.

Civil Detention Order

It is only in the most serious or persistent cases of a breach that a court will order that a young person is detained. Schedule 2 makes it clear that a court may not detain a young person for breach of the injunction, "unless it is satisfied that, in view of the severity or extent of the breach, no other power available to the court is appropriate".

The statutory guidance notes that in the most serious cases, (that is, 'where the court determines that because of the severity or extent of the breach no other power available to it is appropriate') the court may impose a detention order on a young person for breaching the terms of the injunction – including breach of a positive requirement. Only those between 14 and 17 years of age can be detained for breaching the injunction and they cannot be detained for longer than three months. The court also has the power to grant an application to revoke a Detention Order made under Schedule 2, if it appears to be in the interest of justice to do so (Part 3, paragraph 15).

Before a Detention Order is made, the court must consider any representations made by the YOT. An applicant must also consult with the YOT before applying to the youth court to have a detention order revoked. A Detention Order, as stated above, is to be viewed as a last resort.

Breaching a Civil Supervision Order

If a young person breaches a Civil Supervision Order, they can receive a further supervision order or, because of the seriousness of the breach and the court believes that no other penalty available to it is appropriate, it can impose a civil detention order on the young person provided they are aged between 14 and 17.

Remands

The court only has the power bail a young person after they have been arrested for suspected breach of a Civil Injunction (with or without warrant). The power to remand to custody is specifically excluded in the case of a young person. There is a very limited exception to this when court needs a report on the young person's mental health, after obtaining evidence from a registered medical practitioner and it is impracticable to get a medical report for the young person on bail (Schedule 1).

The Criminal Behaviour Order (CBO)

A criminal court (Crown Court, magistrates' court or youth court) has the power to make a CBO where young person is convicted of an offence. The court may make a CBO against a young person only on application by the prosecution. Two conditions must be met:

- that the court is satisfied, beyond all reasonable doubt that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person
- that the court considers that making the order will help in preventing the offender from engaging in further such behaviour

A CBO can prohibit the young person from doing anything described in the order (which might include a condition preventing specific acts which cause harassment, alarm or distress or preparatory acts which the offending history shows are likely to lead to offences; (for example entering a defined area). A CBO can also include positive requirements to engage the young person in activity described in the order (for example, attendance at a course to educate on alcohol and its effects).

A CBO is not a criminal sanction and is not intended to punish the individual. It is designed to be preventative, not punitive.

The CBO is intended for those young people who are engaging in serious anti-social behaviour and who are now involved in the criminal justice system.

The court may issue a CBO against the young person only if it is made in addition to:

- a sentence imposed in respect of the offence
- an order discharging the offender conditionally

It follows that an order may not be combined with an absolute discharge nor be imposed at the same time as the court defers sentence. The automatic reporting restriction, which normally applies in legal proceedings for offenders aged under-18, does not apply in CBO hearings (Initial application or breach proceedings). Please refer to the section on Reporting Restrictions below for detailed information.

In deciding whether to issue a CBO a court may take account of conduct that has occurred since 20 October 2013. It is anticipated that every opportunity has been explored to address the anti-social behaviour by other means, including a Civil Injunction and voluntary engagement with the family, before a CBO is considered.

The CBO Process

Before, a CBO application is heard at court, the prosecution (in practice the police or the local authority) must seek the views of the YOT (s22(8) of the Act). The CPS should establish a process by which police/local authority can seek these views.

How this consultation is delivered is a local issue and should be agreed locally, in partnership. However, it is recommended that the following process is seen as the minimum requirement to ensure that all appropriate checks and issues have been fully explored before the application is heard in court:

Table 3: Criminal Behaviour Order (CBO) – suggested process
Police/local authority notifies the YOT ASB Lead and CPS of intention to request the prosecution apply for a CBO against a young person
YOT ASB lead adds the application to the agenda for the next 'prevention' panel (which may need to sit at short notice or take place 'remotely' if timescales are tight, and should include representatives from the police, housing, YOT, education and children's services and others as depending on local structures)
At panel – Discussion focuses on: <ul style="list-style-type: none"> • whether a CBO should be applied for – have all pre-court/voluntary options been fully explored? If not, this is fed back to the CPS • prohibitions and positive requirements. If the YOT already provide the requirements, they will need to prepare evidence on how they are suitable and enforceable and make the necessary arrangements for notification of non-compliance • publicising orders made against under-18s: (see page 30 of the Home Office statutory guidance) • the responsible person for supervision of the CBO (likely to be the YOT if young person also subject to a Community Order)
CPS informed of outcome of discussions
Court Hearing for Offence
Young Person Convicted or Given Conditional Discharge
CPS makes application for a CBO
Court consider CBO application

How the CBO works

Only the prosecutor may apply for a CBO after the young person has been convicted of a criminal offence. The CBO must clearly describe the details of what the young person is not allowed to do (prohibitions) as well as what they must do (requirements). The court must be satisfied that the requirement(s) are necessary to help prevent the Anti-Social Behaviour and enforceable. The minimum term is one year and the maximum term is three years.

If the young person will still be under the age of 18 at the end of 12 months after the date the CBO was made or varied if applicable, there is a requirement to carry out a review unless the order has been discharged.(section 28). Section 29 states that the review is to be carried out by the Police in the area in which the young person lives or appears to be living; (this requirement falls on the chief constable but in practice will be delegated locally to the most appropriate person or post within the police and YOTs are advised to establish where this responsibility will rest). The police, in carrying out the review, must act in co-operation with the local authority in which the young person lives or appears to be living, and the local authority must co-operate in the carrying out of the review. The police may invite the participation in the review of any other person or body. We would recommend that the members of the initial panel (as above) are invited to the annual review.

The review should consider the extent to which the young person has complied with the order, the adequacy of any support available to them to help comply with the CBO, and any matters relevant to an application to vary or discharge the CBO.

Breach of a CBO is a criminal offence. Breach proceedings for under 18s will take place in the youth court, where the maximum custodial sentence that a young person may receive is a two year detention and training order although the whole range of 'community based' sentences or fines are available to the court.. These tough sanctions demonstrate to offenders and the community the seriousness of breach and, as it is an order on conviction, there is no risk of criminalising someone for breach of the order.

YOT responsibilities during the CBO application process

The YOT have a number of responsibilities:

- during the application process (see Table 3 above), the YOT must consider whether prohibitions or requirements conflict with the work or education commitments of the young person
- In court, the YOT should advise on compliance procedures and arrangements for notification of non-compliance

Hearsay Evidence

For the purpose of deciding whether to make a criminal behaviour order the court may consider evidence led by the prosecution and evidence led by the young person. It does not matter whether the evidence would have been admissible in the proceedings in which the young person was convicted. For example, evidence of other anti-social behaviour by the young person and information about why an order is necessary in the terms asked for. Witnesses reluctant to give evidence in person may have their evidence delivered by a third party i.e. a police officer.

Interim Orders

Where the hearing of an application for a CBO is adjourned, even after sentence is imposed, an interim order can be granted. The prosecution can apply for the interim order; there must be particular reasons to compel the court to do so - to protect the victim(s) or community. The court must consider that it is just to impose an interim order.

Applications to Vary or Discharge the Order

A CBO may be varied or discharged by the court which made the original order. Either the offender or the prosecution can make an application, but if this is dismissed by the court neither party can make a subsequent application without the consent of either the court or the other party. The power to vary the order includes extending the period that a prohibition or requirement has effect or including additional prohibitions or requirements in the order. This flexibility allows for those monitoring the progress of offenders to apply to the court to alter the terms of the order to address any new circumstances.

Breach of CBOs

As Breach of a CBO is a criminal offence, we would recommend that a warning system is in place that mirrors the YRO warning system (i.e. first written warning, Final Written Warning, Breach).

If a young person breaches a CBO, the full range of sentencing options are available to the court. The court has the option to make a Detention and Training Order, a Youth Rehabilitation Order, a Referral Order or any other sentence available to the youth court in criminal proceedings. The court will order an electronic monitoring requirement be attached to curfew or exclusion requirement of a YRO subject to this being considered appropriate and it being available locally.

See above section on Civil Injunctions. Particular attention should be paid to the general advice that communication channels should be agreed prior to commencement of the order and that the process for feedback is agreed.

Key issues

Transitional Arrangements for ASBOs on Conviction

The new Anti-Social Behaviour Powers came into force on 20 October 2014 (except injunctions) and from that date there may be no variation of ASBOs on conviction, drinking banning orders on conviction or individual support orders that extends the period of these orders or of any provision in those orders.

Section 33 states that the repeal or amendment of provisions relating to the old style ASBOs on conviction, drinking banning orders on conviction or individual support orders does not:

- prevent an ASBO on conviction, drinking banning order on conviction or an individual support order from being made in connection with criminal proceedings begun before 20 October 2014
- apply in relation to the above orders which have been made in connection with criminal proceedings begun before that day
- apply in relation to anything done in connection with the orders in the information listed above

Any applications for ASBOs on conviction which are already underway at the commencement date can continue. After that date, breaches of ASBOs on conviction and drinking banning orders on conviction will be dealt with as if they were breaches of a CBO.

Transitional Arrangements for ASBOs

The provisions on Civil Injunctions will not apply to:

- an application for an Anti-Social Behaviour Order or other order defined in s21(1) of this Act before it comes into force
- an existing order
- anything done in respect of these orders

After ASBPCA comes into force no variation which extends the period of the order or any of the terms can be made.

In deciding whether to grant a Civil Injunction under section 1 of ASBPCA the court may take account of conduct occurring up to 6 months before the date the Act comes into force.

Reporting Restrictions

It is crucial that YOTs fully understand the reporting restrictions and the powers of the court. The provisions differ dependent on when an application is made for a civil injunction or for a CBO.

Civil Injunction

The prohibition on reporting proceedings in Section 49 of the Children and Young Persons Act 1933 does not apply to Civil Injunction/CBO court hearings. However, the court does have a general discretion in section 39 of the 1933 Act to restrict the publication of certain information, such as his or her name; address; school, etc., that is calculated to lead to the identification of the child or young person as being concerned in the particular court proceedings.

The discretion in section 39 also enables the court to restrict the publication of information about any other child/young person concerned in the proceedings, including victims or witnesses who are under 18.

The same applies to an initial application for a CBO and the criminal proceedings that arise on a breach of a CBO although the law will be changing in respect of Criminal Proceedings early in 2015.

The decision to inform the community of a young person's CBO or Injunction will be made by the Police or Local Authority.

If the YOT consider that publication of a Civil Injunction or CBO to be detrimental to the young person it will be necessary for a section 39 application to be made to the court.

The issue of reporting restrictions should be discussed and agreed by the applicant, YOT, and other relevant agencies as part of the pre-court discussions. If it is agreed that a section 39 application should be made the following areas should be addressed:

1. Should a ban of all publications or media reporting which could potentially identify the young person as a person concerned in those court proceedings be applied for? If so, what is the rationale for this? The court will consider matters such as the public interest, the balance between freedom of expression/open justice and the welfare of the young person.
2. If it is felt by all relevant agencies that publication of certain matters should be allowed, and this could lead to the identification of the young person, consideration should be given to who needs to know? It may be specifically named individuals/ agencies that need to be aware of the civil injunction / CBO. It should only be in limited cases that publication of the Order to the general public will be necessary or appropriate.

The application of section 39 of the Children and Young Persons Act 1933 where a child or young person is the subject of an ASBO was considered in *R v St Albans Crown Court, ex parte T and Chief Constable of Surrey v J H-G and D H-G* [2002] EWHC 1129 (Admin); [2002] All ER (D) 308 (May). The judge stated that:

“Whilst the court plainly does not have to refer to every factor which may weigh in favour of a section 39 direction being made, it is necessary, in my view, that it should briefly summarise the principal factors weighing in favour, even if the

decision finally is that these factors are outweighed by the public interest in disclosure.”

The following considerations were identified as relevant by the court in *St Albans* when considering imposing or removing reporting restrictions:

- in deciding whether to impose or thereafter to lift reporting restrictions, the court will consider whether there are good reasons for naming the defendant
- in each case there will be a wide variety of factors which have to be considered, and in each case the balance has to be struck between the desirability of public disclosure on one hand and the need to protect the welfare of the youth on the other after a full appreciation of the relevant considerations
- in reaching that decision, the court will give considerable weight to the age of the offender and the potential damage to any young person of public identification as a criminal before the offender has the benefit or burden of adulthood
- by virtue of section 44 of the C&YPA 1993 Act, the Court must 'have regard to the welfare of the child or young person'
- the prospect of being named in court with the accompanying disgrace is a powerful deterrent and the naming of a defendant in the context of his punishment serves as a deterrent to others. These deterrents are proper objectives for the court to seek
- there is strong public interest in open justice and in the public knowing as much as possible about what has happened in court, including the identity of those who have committed crime
- the weight to be attributed to the different factors may shift at different stages of the proceedings, and, in particular, after the defendant has been found, or pleads, guilty and is sentenced. It may then be appropriate to place greater weight on the interest of the public in knowing the identity of those who have committed crimes, particularly serious and detestable crimes
- the fact that an appeal has been made may be a material consideration
- where an ASBO has been imposed, that is a factor which reinforces, and in some cases may strongly reinforce the general public interest in the public disclosure of court proceedings
- the court should not have regard to the impact of publicity on the other members of the youth's family

There may be a few cases where the YOT feel that restricted reporting of requirements is appropriate. In these cases, consideration as to who needs to be informed, and why they need to be informed should be discussed and agreed. For example, if a young person is subject to a Civil Injunction which prevents them from entering a school premises, the head teacher/senior staff members should be informed. However, it would be disproportionate for the entire school community to be aware of the Civil Injunction and or its specific requirements. In the majority of cases, it is anticipated that reporting will not be necessary, and a section 39 application should be made.

The responsibility for submitting a section 39 application rests with the CPS for CBOs and the applicant for Civil Injunctions.

CBOs and Reporting Restrictions

The proceedings for the criminal conviction that triggered the making of the order on conviction are still subject to section 49 Children and Young Persons Act 1933 unless the court specifically lifts the reporting restriction. The mere reporting of the fact that an order was made will, however, reveal that the youth has been convicted of an offence, because the CBO can only be made following a conviction.

Similarly, where a young person is prosecuted for a breach of a CBO under section 30 of the ASBCPA 2014, there are no automatic reporting restrictions on the proceedings in respect of the breach (section 30(5)), although any other charges heard at the same time will still be subject to section 49 Children and Young Persons Act 1933). The court does, however, retain the power to make a section 39 order.

Other ASB powers – Community Protection Notices and Dispersal Powers

Community Protection Notices

The purpose of a CPN is to stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life. police officers, council officers, and designated landlords and police and community support officers can issue a CPN.

The test for a CPN is that the behaviour has to:

- have a detrimental effect on the quality of life of those in the locality
- be of a persistent or continuing nature
- be unreasonable

The process for a CPN is:

- written warning issued informing the perpetrator of problem behaviour, requesting them to stop, and the consequences of continuing
- community protection notice (CPN) issued including requirement to stop things, do things or take reasonable steps to avoid further anti-social behaviour
- can allow council to carry out works in default on behalf of the young person

What a CPN includes

A CPN can be drafted from scratch if necessary so that it is appropriate to the situation and can include any or all of the following:

- a requirement to stop doing specified things
- a requirement to do specified things
- a requirement to take reasonable steps to achieve specified results

Breach of a CPN:

- breach is a criminal offence
- a fixed penalty notice can be issued of up to £100 if appropriate
- a fine of up to level 4 (for individuals), or £20,000 for businesses

There is no direct role for YOTs in the management of these notices, but breach could lead to a young person appearing in the youth court.

Dispersal Powers

The purpose of Dispersal Powers requires a person committing or likely to commit anti-social behaviour, crime or disorder to leave an area for up to 48 hours. Police Officers and designated PCSOs can use dispersal powers.

The test for the use of dispersal powers is:

- contributing or likely to contribute to members of the public in the locality being harassed, alarmed or distressed (or the occurrence of crime and disorder)
- direction necessary to remove or reduce the likelihood of the anti-social behaviour, crime or disorder

Key provisions:

- must specify the area to which it relates and can determine the time and the route to leave by
- can confiscate any item that could be used to commit anti-social behaviour, crime or disorder
- use in a specified locality must be authorised by a police inspector and can last for up to 48 hours
- a direction can be given to anyone who is, or appears to be, over the age of 10
- a person who is under 16 and given a direction can be taken home or to a place of safety

Breach of Dispersal Powers:

- breach is a criminal offence
- failure to comply with a direction to leave: up to a level 4 fine and/or up to three months in prison although under 18s cannot be imprisoned
- failure to hand over items - up to a level 2 fine

There is no direct role for YOTs in the management of these powers, but breach could lead to a young person appearing in the youth court.

Annexe 1

Table 2 Key Differences between ASBO/ CRASBO and Civil Injunction and CBO	
ASBO	Civil Injunction (CI)
Heard in adult County Court/ Magistrates Court sitting in civil capacity.	Heard in Youth Court sitting in civil capacity.
No duty for applicant to seek the views of the Youth Offending Team.	Applicants must seek the views of the Youth Offending Team before applying for, varying or discharging, or breaching a young person on a CI.
ASBO mainly contained restrictions, and did not focus on positive changes to behaviour.	The CI may contain positive requirements, with the aim of bringing about a positive change to the young person's anti social behaviour. Therefore the YOT are most likely to oversee the positive requirements.
Minimum length of an ASBO is 2 years, with no maximum term specified.	Maximum term for a CI is 12 months.
Breach of an ASBO constitutes a criminal offence and can lead to a maximum 6 months in custody. Application for a breach is by the applicant of the ASBO, and there is no duty to consult the YOT.	Breach of a CI is not a criminal offence, however may result in a Supervision Order or in the most serious cases relating to young people between the ages of 14-17 a 3 months Detention Order Application for a breach is made by the applicant for the CI, with the YOT consulted throughout.
CRASBO	Criminal Behaviour Order (CBO)
Heard in adult County Court/ Magistrates Court sitting in civil capacity.	Heard in Youth Court sitting in civil capacity.
No duty for applicant to seek the views of the Youth Offending Team.	Applicants must seek the views of the Youth Offending Team before applying for or varying or discharging a CBO. The CPS do not have to seek the views of the YOT before a breach.
CRASBO mainly contained restrictions, and did not focus on positive changes to behaviour.	The CBO may contain positive requirements, with the aim of bringing about a positive change to the young person's anti social behaviour. As the CBO will be attached to a Community Order, the YOT are also most likely to supervise the positive requirements in the CBO.
Minimum length of a CRASBO is 2 years, with no maximum term specified.	Minimum term of a CBO is 1 year and maximum term is 3 years.
Breach of a CRASBO is a criminal offence, punishable by up to a 2 year DTO. Breach is brought by the CPS.	Breach of a CBO is a criminal offence, punishable according to the usual sentencing powers of the court which can include a 2 year DTO. The CPS apply for the breach.