

# 8. Applying to the courts

## Summons procedure

### Magistrates' court (acting in its civil capacity)

The lead individual in charge of the case should arrange for an application form and three copies of the summons form to be completed and served upon the court. Once these proceedings have been issued, the applicant should serve the defendant with the following:

- <sup>3</sup> the summons;
- a copy of the completed application form;
- documentary evidence of statutory consultation;
- <sup>3</sup> guidance on how the defendant can obtain legal advice and representation;
- <sup>3</sup> notices of any hearsay evidence; <sup>a</sup> detail of evidence in support of the application as agreed with the applicant agency's solicitor; and
- a warning to the defendant that it is an offence to pervert the course of justice, and that witness intimidation is liable to lead to prosecution.

Wherever possible, the lead officer in charge will ensure that service of the summons is made on the defendant in person. If personal service is not possible, the summons should be served by post as soon as possible to the last known address.

Where a child or a young person is concerned, a person with parental responsibility must also receive a copy of the summons. This could be a local authority social worker in the case of a looked-after child as well as, or instead of, the parent. ('Parent' has the same meaning as under section 1 of the Family Law Reform Act 1987, and 'guardian' is defined in section 107 of the Children and Young Persons Act 1933.)

The summons forms are set out within the Magistrates' Courts (Anti-Social Behaviour Orders) Rules 2002. See Appendix D.

### County court

The process for the county court is set out in the Practice Direction of the updated Civil Procedure Rules at 65.21-65.26.

## Disclosure

Before evidence is disclosed, the applicant should

consult the police and other agencies to ensure that all reasonable steps have been taken to support witnesses and minimise any potential for witness intimidation. Evidence should not be disclosed without the express permission of the witness. However, evidence that is not disclosed cannot be relied on.

The applicant should seek to maintain witness anonymity and ensure that it does not identify them by default (for example through details of location, race, personal characteristics or age).

## Court procedures

It is important that those hearing the case are fully briefed on the purpose of an order. There should be no confusion as to the purpose of the order, which is to protect the community. Where the case concerns a child, the welfare of the child is, of course, to be considered, and indeed the making of the order should contribute to this by setting standards of expected behaviour. But the welfare of the child is not the principal purpose of the order hearing.

Whether or not the subject of the application is present, the court should be asked to make the order. Adjournments should be avoided unless absolutely necessary.

### Magistrates' court (acting in its civil capacity)

An application for an order in the magistrates' court is made by complaint. This means that the court will act in its civil capacity. The provisions governing civil applications for orders in magistrates' courts are set out in the Magistrates' Courts Act 1980.

The application, under section 1(3) of the Crime and Disorder Act 1998, should be made to the magistrates' court whose area includes the local government area or police area where people need to be protected from the anti-social behaviour.

The lead officer in charge of the case should ensure that all the evidence and witnesses are available at the hearing, including evidence in support of any need for the court to make an immediate order.

Under section 98 of the Magistrates' Courts Act 1980, evidence will be given on oath. Any magistrate or judge may hear the case.