

- works with court clerks and magistrates in improving their response to anti-social behaviour.

In addition to the 14 specialist prosecutors, anti-social behaviour co-ordinators have now been appointed CPS-wide to ensure that there is a focus on anti-social behaviour issues in every CPS area. Their role is to drive this work forward. Further information can be obtained from Sarah Johnston at sarah.johnston@cps.gsi.gov.uk.

Standard ASBO form

A copy of the order form used by the magistrates' courts can be found at Appendix C.

Disposals

The maximum penalty for breach of an order is five years' imprisonment for an adult offender. A conditional discharge is not available for breach of an ASBO.

The full range of disposals of the youth court is available, and custody should only be considered as a last resort in cases of serious and persistent breach (if appropriate, breach may be dealt with by way of a final warning). Where custody is deemed by the court to be necessary, the maximum sentence for breach by children and young people is a detention and training order (DTO), which has a maximum term of 24 months - 12 months of which is custodial and 12 months is in the community. The DTO is available for 12 to 17-year-olds (although 12 to 14-year-olds must be persistent (criminal) offenders to be given a DTO). A 10 to 11-year-old can be given a community order for breach of an ASBO. The sentence given should be proportionate and reflect the impact of the anti-social behaviour. It must relate to all the relevant circumstances, such as the number of breaches and how the breach relates to the finding of anti-social behaviour. Proceedings should be swift and not fractured by unnecessary adjournments either during the proceedings or before sentencing. Information on how to handle breaches of ASBOs by young people is contained in page 26 of the anti-social behaviour guidance issued by the Youth Justice Board, Home

Office and Association of Chief Police Officers.⁴

The leading precedent for the approach on sentencing on this point is *R v Lamb* [2005] EWCA Crim 2487. In this judgment the court drew the distinction between a breach that represents further anti-social behaviour and those that are merely breaches of the terms of an order, for instance, as in that case, not to enter a particular metro system. Differing from earlier decisions - in particular from the case of *R v Morrison* [2005] EWCA Crim 2237 - the court held that the orders are properly designed to protect the public from frequent and distressing repeated misbehaviour.

In the case of *Morrison*, it was determined that if the breach amounted to a specific criminal offence that carried a particular penalty, the sentence for breach of the ASBO could not be greater than that.

As the court in *Lamb* pointed out, this would merely encourage people to commit criminal offences rather than breach their ASBOs in other ways. The court has therefore laid down a series of steps for consideration prior to the imposition of a sentence.

Where a breach does not involve harassment, alarm or distress, a community order may be considered to assist the defendant to learn to live with the terms of the ASBO. This is entirely consistent with the guideline on breach proceedings issued by the Sentencing Guidelines Council, where it is pointed out that custody should be used as a last resort, and the primary purpose of breach proceedings should be to ensure that the order itself is observed.

However, *Lamb* confirmed that where there is a persistent breach without harassment, alarm or distress, it may become necessary to impose custody to preserve the authority of the court. In those circumstances, the sentence should be as short as possible, and in *Lamb* the individual sentences were reduced to two months in custody. However, where the new breach amounts to further harassment, alarm or distress, then the court thought orders of eight months, on a guilty plea, were appropriate, applying *R v Braxton* [2005] 1 CR APP R (S) 36, *R v Tripp* [2005]

⁴ Youth Justice Board, Home Office and Association of Chief Police Officers (2006) *Anti-social Behaviour: A guide to the role of Youth Offending Teams in dealing with anti-social behaviour*. This can be downloaded at www.youth-justice-board.gov.uk/Publications/Scripts/prodView.asp?idproduct=212&ep=