

10. Immediate post-order procedure (adults and young people)

Where an ASBO or similar order is granted, it is preferable for a copy of the order to be served on the defendant in person prior to his or her departure from court. It is essential to ascertain that the defendant understands the nature of the prohibitions and the order.

Good practice – managing procedures and timescales

Practitioners handling such orders have taken a range of measures to minimise paperwork and delays, including:¹²

- breaking down the process into clear, manageable stages that are easy to follow for those unfamiliar with the process;
- setting timeframes for each stage of the application to keep the process focused, including a commitment to arrange problem-solving meetings at short notice;
- releasing key staff so that they can concentrate on the application process – this should result in evidence gathering being conducted quickly and efficiently;
- using other agencies, such as neighbourhood wardens and station staff, to collect additional evidence where required (evidence gathering and attending incidents are tasks that local authorities, registered social landlords (RSLs) and the police are already involved in and therefore involve no additional cost);
- adopting strategies to overcome challenges to witness evidence such as ensuring that witness statements corroborate;
- minimising court delays by forewarning the courts of application and using pre-trial reviews;
- sharing costs between partner agencies and utilising the expertise from each agency; and
- not engaging in non-essential problem-solving meetings in more serious cases in order to get to court more quickly.

Where an individual has not been personally served with the order at the court, the court should be asked to arrange for personal service as soon as possible thereafter.

In without notice proceedings, 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. While all other orders do not need proof of service in order to prove breach of an order, lack of knowledge of existence of an order will contribute to a reasonable excuse for the defence. In the case of a child or young person, the order should also be served on the parent, guardian or an appropriate adult, and such service should be recorded.

An order comes into effect on the day it is made. But the two-year period during which no order shall be discharged except with the consent of both parties starts from the date of service.¹³

The lead agency, if not the police, should ensure that a copy of the order is forwarded immediately to the police. The agency should also give copies of the order to the anti-social behaviour co-ordinator of the local crime and disorder reduction partnership, the other partner agencies and the main targets and witnesses of the anti-social behaviour, so that breaches can be reported and acted upon. The Justices' Clerks' Society guidance states that it is the responsibility of the court to inform the police of the making of an order.¹⁴

The police should notify the appropriate police area command on the same working day so that details of the defendant and the conditions of the order can be recorded.

A copy of the order should be provided to the lead agency's legal representative on the same day as the court hearing, and in the case of a child or young person, the court will provide a further copy for the youth

¹² Campbell, S. (2002) *Implementing Anti-social Behaviour Orders: messages for practitioners*. Home Office Findings 160.

¹³ Sections 1(9), 1B(6) and 1C of the Crime and Disorder Act 1998, as amended.

¹⁴ Justices' Clerks' Society. *Good practice guide – Anti-Social Behaviour Orders. A Guide to Law and Procedure in the Magistrates' Court*, 4.5(V).