

Anti-Social Behaviour Orders

1. Anti-social behaviour orders (ASBOs) were introduced by Part 1 of **the Crime and Disorder Act 1998** (C&DA). Both the magistrates' court and county courts are empowered to make an ASBO against a person aged 10 or older either on application from local authorities, the chief officer or chief constable of any police force; the chief constable of the British Transport Police, and persons registered under section 1 of **the Housing Act 1996** such as a social landlord. The criminal courts are empowered to make an ASBO at the conclusion of criminal proceedings on conviction of the offender in addition to the sentence imposed for the offence.
2. ASBOs are civil sanctions but have been classed as criminal proceedings for funding purposes due to the restrictions that they can place on individual liberty. An ASBO does not itself give the defendant a criminal record, but contains conditions prohibiting the offender from specific anti-social acts or entering into defined areas, and is effective for a minimum of two years. Breach of an ASBO is, however, a criminal offence.
3. Proceedings to apply for an ASBO are conducted in the magistrates' court or Crown Court under sections 1, 1D, 2 or 2A of **the Crime and Disorder Act 1998** (C&DA) or in the county courts within existing county court proceedings under section 1B of that Act (inserted by section 63 of **the Police Reform Act 2002** and came into force on 1 April 2003).
4. An ASBO can be made by the magistrates' criminal court or the Crown Court under section 1C of the C&DA (inserted by section 64 of **the Police Reform Act 2002**) where an offender is convicted of an offence and the court considers that he/she has acted in an anti-

social manner and an order is necessary to protect the public from further anti-social acts by him/her.

Work Not Covered by General Criminal Contract

5. Applications to apply for an ASBO in the county court under section 1B of C&DA do not fall within the scope of the General Criminal Contract but are funded by the Community Legal Service. These proceedings are equivalent to securing ancillary relief such as, for example, an injunction in existing housing litigation. Civil funding is available to firms holding a Civil Contract under the Housing category, where the proceedings have been brought in a county court, or under the Family Law category, where the proceedings have been brought in a youth court and the offender is a minor.

Work Covered by the General Criminal Contract

6. Part A, Rule 3.2.1(b) of the General Criminal Contract provides that the following work undertaken by a solicitor for a respondent in relation to an ASBO falls within the scope of the Criminal Proceedings Class of the General Criminal Contract:
 - a) Proceedings to apply for an ASBO under sections 1 and 1D of C&DA,
 - b) Appeals against the making of an ASBO in the Crown Court, and
 - c) Applications to vary an ASBO.
7. Proceedings in relation to an ABSO made by the magistrates' (criminal) court under section 1C of the C&DA on a client's conviction are considered incidental to the main proceedings and are funded by the Commission in terms of Part A, Rule 3.2.1(c) of the Contract under the Representation Order granted in the main proceedings. Work undertaken in relation to ASBO proceedings under section 1C in the Crown Court, however, do not fall within the scope of the Contract but are assessed and paid by the National Taxing Team under the Crown Court Representation Order.

Claiming**(a) Proceedings to apply under ss. 1,1D,2 or 2A**

8. Work carried out for qualifying clients in respect of proceedings to apply for an ASBO (except in the county court, and where an ASBO is made at the conclusion of criminal proceedings) may be done under self-granted Advocacy Assistance and claimed in accordance with the rules applying in Part B, Section 4 of the General Criminal Contract. There is no means test for Advocacy Assistance, although the client must meet the Advocacy Assistance Merits Test set out in Part B, Rule 4.3. The work is subject to an extendable upper financial limit of £1,500.

(b) Applications to vary/ discharge an ASBO

9. An applicant or respondent may apply under section 1(8) of the C&DA to the court that made the ASBO for it to be varied or discharged. A solicitor may self-grant Advocacy Assistance for the purposes of proceedings to vary or discharge an ASBO, and the application is to be treated as part of the same case as the original proceedings, although the additional work may be claimed by way of a supplemental claim using the same UFN as the main proceedings. Applications to vary or discharge an ASBO made in the county court under section 1B(5) of C&DA are not within the scope of the General Criminal Contract.
10. Applications to vary or discharge an ASBO made in the magistrates' (criminal) court under section 1C(6) of the C&DA are treated as part of the original criminal proceedings and funded under the original Representation Order. As above, additional work may be claimed by way of a supplemental claim using the same UFN as the original proceedings.

(c) Appeals

11. An appeal against the making of an ASBO lies to the Crown Court under section 4 of the C&DA. A solicitor may also self-grant

Advocacy Assistance using devolved powers for an appeal against an ASBO to the Crown Court. The Advocacy Assistance merits test must be applied, and for proceedings in the Crown Court, this is based only on the general reasonableness test (See GCC, Part B, Rule 4.3 and 6.3.20).

Rates Applicable

12. A written application (CDS Form 3) is required for the grant of Advocacy Assistance, solicitors may instruct counsel and the magistrates' court hourly rates specified in Part E, Section 3.3 of the Contract would apply. The solicitor may not claim time spent accompanying counsel (Part B, Rule 4.8 of the Contract Specification). Although the Commission is empowered to grant representation orders, it is unlikely that it would, given that self-granted Advocacy Assistance is available. However, in certain circumstances, for example, where equality of arms is in issue, the Commission may consider granting a representation order. Applications for representation orders in these circumstances should be made to the appropriate Processing Centre on Form CDS3 and the work claimed as a non-standard fee. The Crown Court is not empowered to grant representation orders in relation to appeals against ASBOs. Where the Crown Court has granted a representation order in these circumstances, both the supplier and the court should be informed that the order is *ultra vires*, and the supplier should be advised to seek an *ex gratia* payment from the Court Service.

Breach of an ASBO

13. If without reasonable excuse the defendant breaches the terms of the ASBO he/she shall be liable on summary conviction to imprisonment for a term not exceeding 6 months or to a fine or to both, or on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both. A breach of an ASBO is a recordable and arrestable criminal offence that will be tried

summarily in the magistrates' court or on indictment in the Crown Court. Cases against children will be heard in the youth courts. As breach of an ASBO is a criminal offence, the proceedings fall within the definition of 'criminal proceedings' in section 12(2) of **the Access to Justice Act 1999**, and a Representation Order should be sought from the relevant court, which may be either the magistrates' court or the Crown Court, to cover the breach proceedings. The work undertaken in either the magistrates' court or the Crown Court should be claimed from the Commission as breach proceedings under the Standard Fee Scheme in the usual way (see Section 3.8 of the Criminal Bills Assessment Manual).