

12. Breaches

Breaches by adults

Breach of an order is a criminal offence, which is arrestable and recordable. Prosecutions for breaches of orders can be brought by the Crown Prosecution Service (CPS), although a local authority may also do so by virtue of section 1(10A) of the Crime and Disorder Act 1998 (as inserted by section 85(4) of the Anti-social Behaviour Act 2003), which states that prosecutions can also be brought by:

- (a) a council which is a relevant authority;
- (b) the council for the local government area in which a person in respect of whom an order has been made resides or appears to reside.

The lead officer managing the case should keep the other partner agencies informed of the progress and outcome of any breach investigation. A particular consideration will be the need to protect witnesses. The standard of proof for prosecution of a breach of an order is the criminal standard - 'beyond reasonable doubt'. Provision is made in section 1(10) of the Crime and Disorder Act 1998 for a defence of reasonable excuse.

The maximum penalty on conviction in the magistrates' court is six months in prison or a fine not exceeding £5,000 or both; at the Crown Court the maximum penalty is five years in prison or a fine or both. Community penalties are available but a conditional discharge is not.

Agencies and courts should not treat the breach of an order as just another minor offence. (It should be remembered that the order itself would normally have been the culmination of a course of persistent anti-social behaviour.) An order will only be seen to be effective if breaches are taken seriously.

Information on breaches can be received from any source, including the local authority

housing department and other local authority officers, neighbours and other members of the public. Any information received by a partner agency should be passed immediately to the police and lead officer, who should inform the other agencies involved. Breach penalties are the same for all orders, including the interim order. Court proceedings should be swift and not fractured by unnecessary adjournments either during the proceedings or before sentencing.

Where the offender is found guilty of the breach, the court may take reports from the local authority or police and any applicant agency before sentencing. The court should also consider the original reasons for making the order. A copy of the original order as granted (including any maps and details of any prohibitions) can be put before the court as evidence that an order has been made without the need for a statement formally proving that an order was made (section 139 of the Serious Organised Crime and Police Act 2005).

The sentence given should be proportionate and reflect the impact of the behaviour complained of.

Breaches by children and young people

Breach proceedings for children and young people will be dealt with in the youth court. Breach proceedings in the youth court are not subject to automatic reporting restrictions. The Serious Organised Crime and Police Act 2005 removed automatic reporting restrictions for children and young people convicted of a breach of an ASBO (section 141), and thus details about the perpetrator can be made public. The court may still impose reporting restrictions, particularly if they were put in place when the order was initially imposed in a civil court.