



Part 1 – ASB Crime and Policing Act 2014 Injunctions

Introduction



This Practitioner Guide has been developed to assist officers in making applications for Injunction Orders under the provisions of Part 1 of the ASB, Crime and Policing Act 2014.

The guide contains information about legal requirements and also tips on practical implementation and best practice. It is compatible with the ASB, Crime and Policing Act itself and the Home Office Statutory Guidance which was published in July 2014. A link to this document is available here <http://goo.gl/JC6WH6>

Included towards the end of the document is a quick reference flow chart and copies of template documents that may be useful for officers in their case management.

Anthony Collins Solicitors has kindly provided a legal edit of this document however it is not meant to replace the legal advice that you should seek in relation to individual cases.

Resolve Antisocial Behaviour would also like to thank the members of the ASB working group who assisted in providing the content for the document.

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Criteria

Definition of ASB

Where the ASB is housing related or linked to a residential property, the definition is behaviour causing or likely to cause a nuisance or annoyance.

In all other cases, the definition is behaviour causing or likely to cause harassment, alarm or distress.

For both definitions of ASB, you will need to prove that the incidents have occurred on the balance of probabilities i.e. that it is more likely than not that the incident/s have occurred.

Behaviour that might be suitable for an injunction:

- Noise nuisance (loud music, DIY at unreasonable hours, dogs barking, fighting / shouting etc.)
- Foul and abusive behaviour towards others
- Threats of violence or actual violence
- Overgrown/hazardous gardens
- Littering / fly-tipping

Injunctions can also be used to hold someone responsible for others e.g. an injunction can be sought against a tenant to restrict how many visitors they can have at their address and when.

In an application for an injunction, the perpetrator is called the “Respondent” and the person applying for the order is the “Applicant”.



Which Court?

10-17 years old = Youth Court
Adult = County Court

If there are multiple respondents, who are both adults and juveniles, the youth court can be asked to hear all of them together if the evidence is broadly the same and is in the “interests of justice”.

To be able to apply for an injunction under Part 1 ASB Crime and Policing Act 2014, you must be able to show all the following:

- That the respondent is 10 or over
- That they have engaged in, or threatened to engage in antisocial behaviour (ASB), and
- That it is just and convenient to grant the order for the purpose of preventing further ASB
- A housing management link if you are a registered provider

An injunction against a young person (under 18) can last up to 12 months. There is no minimum or maximum duration for an adult – the Court will decide what they think is proportionate and necessary.

The Court will only grant an injunction if the respondent has mental capacity. There is an assumption in law that someone has capacity, unless there is evidence to the contrary. If you have reason to be concerned, you should try to check with the mental health team and document your findings.



Content – Prohibitions

You can include any prohibitions that you can evidence as being necessary to prevent further ASB – make sure that everything you ask for is:

- Clear and specific enough for the Respondent to know what they cannot do
- Is linked to your evidence e.g. if you want to stop the Respondent using foul language, have you got examples in your evidence of foul language being used before?

Exclusions:

- You can exclude someone from somewhere if you can prove that it is necessary to prevent further ASB. Areas might include shops, certain streets, community buildings, entire estates or sometimes a wide area such as a town or local authority area.
- You can exclude an adult from the place where they live if their behaviour is serious enough. In order to do this you must be able to show that there have been threats of or actual violence or a significant risk of harm.
- A registered provider can only exclude someone from a home if they own or manage the property concerned.
- You cannot exclude a minor from their home address.
- Exclusion should only be used in “extreme cases where proportionate.” (p24 Home Office Guidance)



Be reasonable – if you are asking for exclusion from a large area, make sure you can evidence why it is proportionate. If the area includes the homes of close family members or access to GP/ dentist etc consider allowing the respondent a route in and out of the exclusion area or specified times/days when they can enter the area.



The Judge will want to see that the areas you wish to exclude from are reasonable and proportionate. You may wish to produce a “hotspot” map – using red dots to indicate where incidents have occurred. This will visually show the Judge areas where the incidents have occurred and therefore where it is proportionate to exclude the Respondent from.

If seeking a non-association clause make sure you have the name, addresses and dates of birth of the associates and have evidence of each causing problems with the Respondent.

Make sure you attend Court prepared – take plenty of copies of a map, clearly marking the areas where you want the exclusion to apply in red pen and also unmarked copies. Make sure:

- The road names are clear and legible
- Maps are copied in colour so the red line is still visible
- You draw the line on the correct side of the road so as not to miss an area you want including

Remember that “significant risk of harm” includes psychological harm so you may be able to exclude someone from their home even where there is no violence, or threats of violence, as long as you can show the behaviour is having a serious psychological impact on the victim/s e.g. racial abuse or harassment.

Content – Positive Requirements



In order to meet all the criteria for positive requirements, it would be good practice for the person/organisation responsible

for the requirement to fill out a report, including:

- An overview of the respondent's needs
- The positive requirements suggested and why you think these will assist in meeting the need and reducing the likelihood of reoccurring ASB
- Who is the named individual responsible for each requirement
- Confirmation that any resource required is available
- Confirmation that none of them conflict with any other order, education or employment, caring responsibilities etc.

This can then be exhibited to the most appropriate witness statement to illustrate to the Court your actions.

See example towards the end of this guide.

An injunction, whether for an adult or a minor, can include positive requirements e.g. making it a legal requirement for them to do something. The following must be shown:

- If more than one positive requirement exists then they must be compatible with each other
- Each positive requirement must specify a person or organisation responsible for supervising it. This 'Responsible Person' / organisation must supply evidence of the suitability and enforceability of the requirement
- That the requirements won't interfere with the respondent's work or education
- That the requirements won't conflict with the terms of any other Court order

A positive requirement can require someone to do anything which you believe will assist in preventing further ASB. It may be the opportunity to make something that you identify as being beneficial for the Respondent, but is otherwise voluntary, into a legal requirement. Examples may be compelling the Respondent to attend an alcohol awareness course, accept tenancy support, or attend an initial assessment with a support worker.



Make sure that the Responsible Person understands what will be required of them, including that they will be legally bound to inform the Applicant of whether the order is being complied with or not, that they make necessary arrangements and that they promote compliance (e.g. reminding the Respondent of their obligations or when an appointment is due).

Positive requirements can only be ordered at a final hearing (not without notice or on an interim basis).

No power of arrest can be attached to a positive requirement.

A Respondent to an injunction must:

- Keep in touch with the 'Responsible Person' or organisation specified for each requirement
- Notify the same of any change of address

If the respondent does not comply with the above it is treated as a breach of the injunction.

Consultation

There are certain people that you must consult with or inform of your actions.

The difference is:

CONSULT

You have taken that person's/organisation's views on board when making a decision (although they need not agree with your actions).

INFORM

Telling a person information.



Think about the forums that you may already attend that have multi agency representation – can you add consultation on to the agenda, rather than arranging a separate meeting?

Who do I need to speak with?

Minors	Adults
<p>CONSULT</p> <p>The Youth Offending Team (YOT) for the area where the Respondent lives; and</p> <p>INFORM</p> <p>Any other person you think appropriate – this may include:</p> <ul style="list-style-type: none">• Parent / Guardian• Police• Local Authority• School• Support Worker / Social Care	<p>INFORM</p> <p>Any person that you think appropriate – this may include:</p> <ul style="list-style-type: none">• Police• Local Authority• Support Worker• Adult care• Probation

You will have probably already spoken with the people who are “appropriate” to inform as part of your case management process. It is therefore even more important to make sure that these conversations and meetings are documented through file notes and minutes.



Get a certificate of consultation signed to evidence you have met the requirement.

If an organisation is refusing to consult with you, make sure you have evidence of this, through copies of emails, file notes from conversations etc. Exhibiting these to the relevant statement will show the Court your attempts to meet the consultation requirement.

Make sure you speak to partners such as the Police, Local Authority and Registered Providers at an early stage to make sure that you are not duplicating action. Identify who is going to lead on the matter and gather all known information to make the order as fit for purpose as possible.

The Consultation Meeting



It is best practice to invite everybody who has an interest in the matter to the meeting. This is so you can make a fully informed decision, ensure everyone is aware what is happening and deliver consistent messages to the Respondent.

The following items may be discussed at the meeting:

- The behaviour that has led to the meeting, the interventions already tried and remaining options
- Whether there is already an order in place (e.g. through the YOT or probation) and what is contained in it so you can make sure you do not duplicate anything or contradict existing terms
- The terms appropriate for the injunction
- Whether any positive requirements should be contained, who will complete an assessment and be the Responsible person for them?
- What other actions might also be considered e.g. if the problem relates to a Registered Provider's property, will tenancy warnings be considered, is a parenting tool also required?
- How any breaches might be managed and possible consequences?
- Whether the order is to be publicised and how?



If you follow the agenda suggested and illustrate this in your injunction application (e.g. through exhibiting the minutes and certificate of consultation to the most appropriate witness statement), you will comply with a number of the legal criteria, including:

- Showing why the application as a whole is proportionate and necessary
- Illustrating that each individual prohibition and positive requirement has been discussed and is believed necessary
- That no terms conflict with the Respondent's education or employment
- That it does not conflict/duplicate any other order
- That a named person / organisation is allocated to each positive requirement



Whilst it is best practice to have a meeting to consult, there may be some occasions where it is simply not possible or would unduly delay matters. In these circumstances consultation could occur remotely e.g. via email but make sure you clearly document your actions and the reasons why.

Without Notice Applications



General points

- The Home Office Statutory Guidance states without notice applications should be used in “exceptional cases to stop serious harm to victims”
- A without notice injunction means it is obtained without telling the Respondent – the first time they will know about it is when they are served with the order
- It is an interim order – this means that it is temporary and a full hearing date will be set, giving the respondent the chance to attend and defend
- At the without notice hearing you are not required to call evidence to prove that the incidents have happened but that there is a significant risk of harm or there has been a use or threat of violence and immediate protection is required
- The without notice terms granted at this stage will be just enough to provide protection/prevent further issues – the final order may contain more conditions than the interim order
- You will generally need to apply for the order within a short timeframe (24-48 hours) after the incident, in order to justify the application



You do not have to consult before making an application for a without notice injunction but you will have to make sure that you have consulted before the first on notice hearing.



Dealing with Breaches – Power of Arrest

Not all terms in an injunction will have a power of arrest attached to them – you must show that the behaviour which the term relates to consists of threats of or actual violence OR represents a significant risk of harm (which includes psychological harm). A positive requirement cannot have a power of arrest attached to it.



- Find out whether you have legal cover on a Saturday and an out of hours contact – if someone is arrested on a Friday, they may be produced to the Court on a Saturday to fulfil the 24 hours timescale. Usually Saturday cases are just adjourned for a few days.
- Make sure that the Police are aware of the process for dealing with breach of injunctions.
- Speak to the victims and witnesses to make sure they know what to say when reporting a breach and have a copy of the power of arrest order to show any attending police officers.

The process

Injunction with Power of Arrest attached - give copy to the Police to place on their system (usually the Police National Computer). Serve the order on the Respondent first, then serve on the Police

Breach of term with power of arrest attached, Police should arrest the Respondent and take them to the County Court if an adult or Youth Court if a juvenile

The Respondent must be brought before the Court within 24 hours of the arrest (excluding Christmas Day, Good Friday and Sundays).

The Judge can decide to deal with the matter immediately or adjourn it for a later hearing where the Applicant can attend. The Court can impose bail conditions or remand in interim.



Dealing with Breaches – No Power of Arrest

If a breach occurs and there is no power of arrest attached to it, an application must be made to the Court before the Respondent can be arrested for the matter or a committal application made (details of which fall outside the scope of this document).

The process for warrant applications

The Applicant must make an application for an arrest warrant to the Court which made the Order.

The warrant will be issued if the Court believes there are reasonable grounds to believe the order has been breached.

Where the warrant is issued, the police can arrest the Respondent and bring them to Court – they must tell the Applicant when they have made the arrest.

The Judge can decide to deal with the matter immediately or adjourn it for a hearing and bail/remand in the meantime.



A breach of injunction must be proven beyond reasonable doubt. This means that you will need first hand evidence of the breach.

A breach of an injunction is contempt of court, NOT a criminal offence.

If the Respondent was a minor when the order was obtained but is over 18 when the order is breached, the breach hearing is dealt with by the County Court.

You can vary and extend an injunction if the terms included do not cover a situation or the order is coming to an end and you want it to continue. You can do this in a separate application, making sure you include evidence of why the variation or extension is necessary. If you are already dealing with a breach of an injunction, you can apply for a variation or extension as part of the breach application.





Consequences of Breach

1. Sentence

Respondent Age	Possible Consequences
Minor	10 -13 years Supervision Order
	14 years and over Supervision Order or Detention Order (up to three months)
Adult	Unlimited fine and/or custodial sentence of up to 2 years



- The injunction breach must have been proven in Court to be able to use the absolute ground
- The Possession Notice must have been served within 12 months of the breach finding (or outcome of any appeal)
- The ground only applies where a breach of a prohibition has occurred, not a breach of a positive requirement
- The Court may still consider Human Rights challenges so ensure you can show that your actions are “proportionate” – you may wish to complete a proportionality assessment to evidence your considerations

2. Potential Use of Absolute Ground for Possession

If the Respondent is a social housing tenant OR a household member OR a visitor to a social housing tenant and a breach of their injunction occurs which is:

- In the locality of the tenant's property; or
- Outside the locality but is a breach of a term intended to prevent nuisance or annoyance to someone who lives in the locality of the property (e.g. a neighbour); or
- Outside the locality but is a breach of a term intended to prevent nuisance or annoyance to the landlord or someone employed to carry out the landlord's duties

Then the new absolute ground for possession may be relied upon by the landlord.

The aim of the absolute ground for possession is to make it quicker to obtain possession as the incident has already been proven elsewhere. See Section 2.8 Home Office Statutory Guidance.



Certificate of Consultation – Injunction Order

In the County Court [or the Youth Court at [insert name]]

In the matter of an application for an Injunction Order, pursuant to s1 of the ASB Crime and Policing Act 2014

Applicant

Respondent

The following have consulted in respect of this application, pursuant to s14 of the ASB Crime and Policing Act 2014:

To be completed by the representative of the Applicant

I, [insert name], [insert role], hereby certify that I am duly authorised to consult on behalf of [name of applicant]. I consulted with [insert name and role] of [insert agency/organisation name] on [insert date]

Signature.....

Print name.....

Date.....

To be completed by the representative of the Youth Offending Team

I, [insert name], [insert role], hereby certify that I am duly authorised to consult on behalf of [name of Youth Offending Team]. I have been consulted by [insert name and role] of [name of applicant] on [insert date]

Signature.....

Print name.....

Date.....

Positive Requirements Report – ASB Crime and Policing Act 2014

This is a report prepared to assist the Court in deciding the suitability and content of positive requirements in an Injunction under the ASB Crime and Policing Act 2014.

The Respondent

Name	
Tenant/ household member/ visitor?	
Age	
Date of Birth	
Address	
Postcode	

Sources of Information for Report

Who has been spoken to when preparing this report? Has the respondent been assessed by any agency? Has the parent/guardian been involved if a minor?	
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The Requested Terms:

<p>REQUIREMENTS</p> <p>The specific positive requirement(s) that is being asked for</p>	<p>E.g. to attend a 1 hour drug awareness session with the Young Persons Drug and Alcohol Service on a weekly basis</p>
<p>EVIDENCE OF NECESSITY</p> <p>Why is the positive requirement(s) believed necessary?</p>	<p>E.g. Callum has been seen frequently smoking Cannabis (re. PC Cooper's evidence). It is believed that this is contributing towards the ASB he is committing and reducing his intake would assist in preventing further ASB.</p>
<p>RESPONSIBLE PERSON OR ORGANISATION</p> <p>For promoting compliance and monitoring adherence.</p>	<p>E.g. Cherry Wilson – Young Persons Drug and Alcohol Service Worker</p>
<p>PROPOSED LENGTH</p> <p>How long is the requirement(s) needed for?</p>	<p>E.g. Sessions will run weekly for a period of three months.</p>

All of the above requirements are available, are compatible with each other and there is no known conflict with:

- the times when the Respondent must attend school or any other educational establishment
- the times when the Respondent attends work
- any known caring responsibilities.

[We are satisfied that although the Respondent has a disability they are capable of complying with these proposed terms]

OR

[We are not aware that the Respondent has any disability].

Existing Orders

<p>Is the Respondent subject to any existing Court imposed Orders?</p>	
<p>If yes, what are the terms of the Orders?</p> <p>Confirm that the proposed terms above will not conflict, duplicate or contradict anything in any existing Orders.</p>	<p>E.g. Johnny is currently subject to a Supervision Order that is managed through the Youth Offending Team. The terms of this order are:</p> <ul style="list-style-type: none"> • To attend an emotional well-being session once per week • To be subject to a curfew from 8pm through until 7am. <p>I confirm that none of the requirements of this Order conflict with any of the proposed requirements for this Injunction application.</p>

I confirm that the information contained in this document is true to the best of my knowledge.

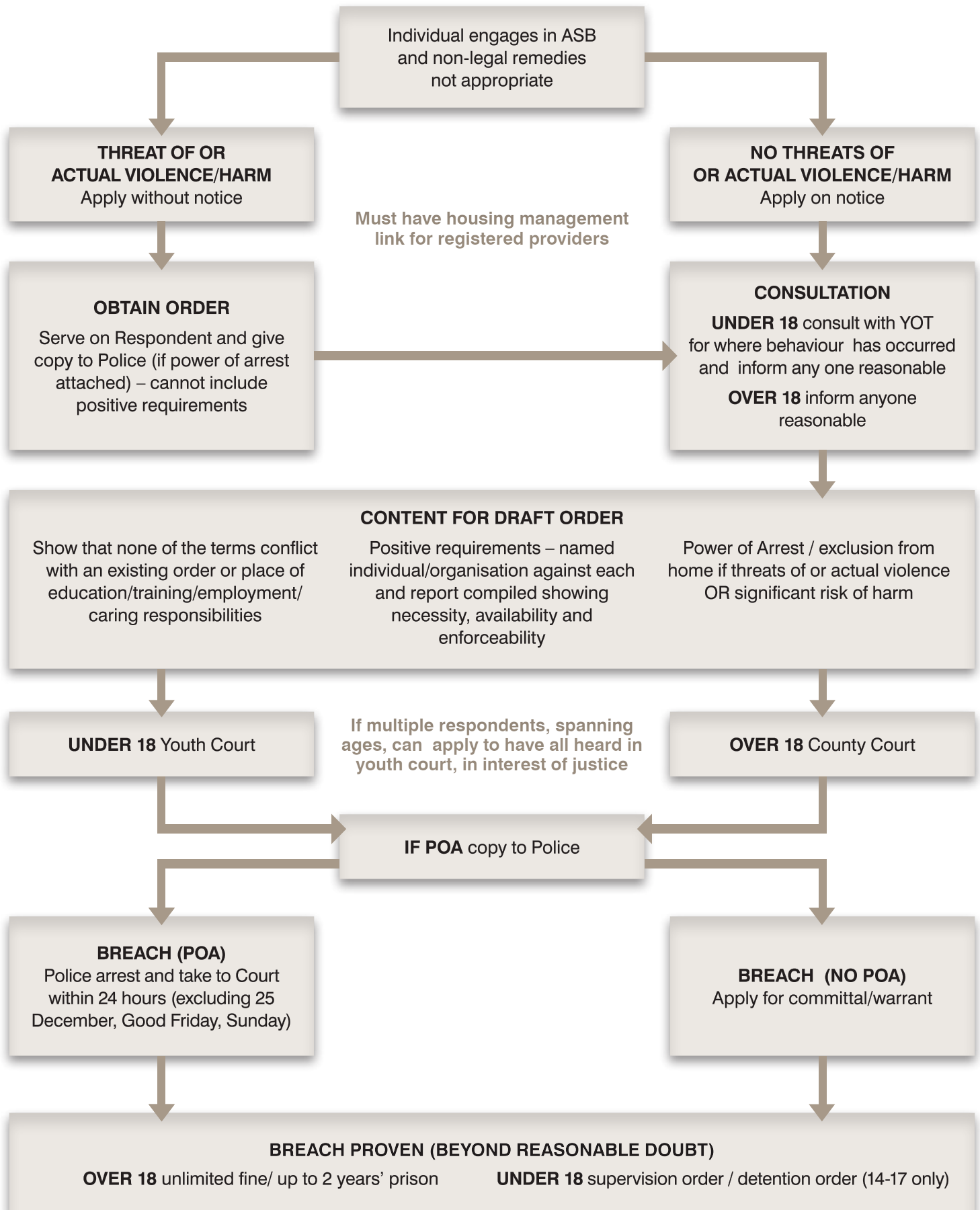
Signed

Print name

Role

Date

Injunction – Process Map for Registered Providers



Notes



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