



Guidance for Local Authorities and Housing Management Organisations

Contracting out of Anti-social
Behaviour Order functions

housing



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Contents

Purpose of the guidance	5
Who is the guidance for?	5
Brief description of the regulations	6
Considerations to be made when contracting out ASBO functions	7
Operation of contracting out agreements	7
Probity and accountability	9
Consultation and partnership working	9
Monitoring of contracted functions	10
Support for victims and witnesses	11
Human rights and data protection	11
Litigation and legal support	12
Resources	13

Purpose of the guidance

1. The Secretary of State is issuing this guidance to local authorities and housing management organisations who manage their housing stock (housing managers) in England in pursuance of s1F(9) of the Crime and Disorder Act 1998 (as amended by s142 of the Serious Organised Crime and Police Act 2005).
2. Section 1F(9) provides that any person with whom arrangements are made pursuant of any Order made under s1F generally (The Local Authorities (Contracting Out of Anti-social Behaviour Functions) (England) Order 2007 made under s1F(1)), must have regard to any guidance issued by the Secretary of State for the purpose of this section.
3. This guidance outlines what considerations local authorities and housing managers should make when contracting out Anti-social Behaviour Order functions.
4. In so far as this guidance comments on the law, these comments can only reflect the Department's understanding at the time of issue.

Who is the guidance for?

5. This guidance is issued specifically for local authorities that may decide to contract out some or all of their Anti-social Behaviour Order functions to housing management organisations, as well as those housing management organisations to whom functions are contracted. They are: Arms Length Management Organisations (ALMOs), Tenant Management Organisations (TMOs) and Private Finance Initiative Consortia (PFIs).
6. **Please note that for information and advice about the use of ASBOs in general you should consult Home Office guidance – *A Guide to Anti-social Behaviour Orders*, August 2006**

The legislation in context

Background

7. The focus of housing management is increasingly shifting to become more closely linked with wider neighbourhood management objectives, such as tackling crime and anti-social behaviour, in addition to the more traditional tenancy and property management that housing managers undertake.
8. Where a local authority delegates its housing management functions, it may also make sense to delegate responsibility for taking action to tackle anti-social behaviour (ASB) as part of the housing management agreement. The government believes that those managing housing stock on a day to day basis are often best placed to tackle ASB (working in partnership with other agencies). Accordingly, it is essential that local authorities are in a position to ensure that housing managers are properly equipped to do their job, subject of course, to proper controls and accountability.

9. Through the *Local Authorities (Contracting Out of Anti-social Behaviour Functions) (England) Order 2007*, local authorities may contract out all or some of their Anti-social Behaviour Order (ASBO) functions to housing management organisations.

Objective

10. The Government's intention is to enable those best placed to tackle anti-social behaviour to be able to do so as effectively and efficiently as possible. The Government believes contracting out of ASBO functions, where appropriate, may help reduce operational inefficiencies that might otherwise be caused by the need for local authority officers to become heavily involved in cases that would best be led by housing managers.
11. Local authorities are free to choose whether or not they wish to contract out their ASBO functions to housing management organisations. Where they do, it is important to remember that local authorities will remain ultimately responsible for the service that housing managers deliver in this respect.

Brief description of the regulations

12. The *Local Authorities (Contracting Out of Anti-social Behaviour Functions) (England) Order 2007* provides the local authority with the flexibility to ensure any arrangements it may wish to enter into are tailored to best fit local circumstances.
13. The Order enables the local authority to enter into contracting arrangements with one or more housing management organisations with which it holds housing management agreements.
14. The Order enables the local authority to retain the power to discharge its Anti-social Behaviour Order functions in its own right regardless of whether or not it has also entered into a contracting out arrangement.
15. The Order allows local authorities the flexibility to restrict the circumstances in which the specified organisations are able to discharge the contracted out functions if it so wishes.
16. The Order also allows a local authority to attach other conditions as it considers appropriate. These conditions must be adhered to by the housing management organisation by way of the housing management agreement.
17. Also included on the face of the Regulations is a duty on the part of the housing manager to which the local authority contracts its ASBO functions, to consult with the "parent" local authority every time they wish to apply for an ASBO. Consultation requirements are considered in further detail later in this guidance.

Considerations to be made when contracting out ASBO functions

18. This guidance provides a non-exhaustive list of considerations which the Government would expect local authorities, in partnership with housing management organisations, to take full account of in reaching a decision on whether to contract all or some of their ASBO functions. It also covers operation of the housing management agreement once in place. There may be other considerations which authorities will want to address in line with local circumstances.

Housing Management Organisation's competence to undertake ASBO functions

19. Local authorities should assure themselves that housing management organisation staff are capable and competent to undertake functions which may be contracted to them. It is imperative that ensuring quality of service to the public in delivering interventions to tackle anti-social behaviour is at the forefront of the decision-making process. Housing managers need to have a proper understanding of how ASBOs fit within broader policies and procedures (please see paragraph 25 below) to address anti-social behaviour as well as the practicalities of their use.
20. Local authorities should satisfy themselves that housing management organisation staff to whom ASBO functions are contracted are competent in:
 - case management procedures
 - information management procedures (including data protection and data sharing with other agencies)
 - gathering, processing and use of evidence
 - familiarity with and, where appropriate, competence to conduct court processes and procedures (in both the civil and criminal jurisdictions where required).

Operation of contracting out agreements

21. All contracting out agreements will be made under section 27 (Housing Act 1985), which regulates the process by which a local authority appoints a housing management organisation to manage its housing stock. The main feature of this process is that it protects the interests of tenants.
22. Section 27 agreements ensure that housing management responsibilities are delegated to only those with appropriate skills and resources.

23. Where a local authority does decide to contract out its ASBO functions, then the housing management agreement between the local authority and the housing management body will need to set out in detail the terms of that arrangement. This should include issues such as:
- its duration;
 - the responsibility delegated and restrictions (if any) on the use of the power;
 - the process for monitoring and reviewing it;
 - standards of performance which the housing manager must achieve; and
 - the approach to enforcement, which should be clearly set out in the housing management agreement, if these standards are not met.
24. Local authorities and housing management organisations should also have regard to all relevant national and local strategic policies that may have an impact on the exercise and contracting out of ASBO functions. This includes:
- guidance issued by the Home Office on the use of ASBOs;
 - Community Crime and Safety Strategies led by the local Crime and Disorder Reduction Partnership;
 - Local Area Agreements which include mandatory outcomes on Respect;
 - anti-social behaviour policies and procedures made under s218A of the Housing Act 1996;
 - the model of best practice provided through the Respect Standard for Housing Management;
 - Housing Inspection criterion as outlined through the Audit Commission's Key Line of Enquiry 6 – Tenancy and Estate Management;
 - the local authority's own mandatory policies and procedures for tackling anti-social behaviour.
25. Local authorities should also satisfy themselves that any decision to contract out ASBO functions pay due regard to obligations beholden on them in relation to relevant equality, diversity and human rights legislation. Please see the section below on "human rights and data protection" and page 51 of the Home Office guidance on ASBOs.
26. Housing management agreements between authorities and housing management organisations should fully address data protection issues, human rights legislation and use of any covert surveillance (Regulation of Investigatory Powers Act 2000).

27. Where the housing manager is a Tenant Management Organisation, local authorities should give consideration to any provisions contained in their Management Agreements in relation to the discharge of ASBO functions.

Probity and accountability

28. Local authorities should strongly encourage housing managers to designate a lead officer who will have overall responsibility for the delivery of ASBO functions under the housing management agreement.
29. Local authorities should also ensure that in contracting out ASBO functions they make it absolutely clear through the housing management agreement the respective responsibilities and duties (including reporting lines and monitoring arrangements) of the local authority and the housing management organisation. All staff involved in delivering the relevant functions should be made familiar with these arrangements (please see the “monitoring” section below).

Consultation and partnership working

30. The Order specifies a duty upon any housing management organisation to whom a local authority contracts ASBO functions to consult the parent local authority ‘before exercising any relevant function (Article 3(2)(a)). Local authorities must ensure that housing management organisations are aware of this duty and that proper arrangements are in place to facilitate it.
31. In practical terms this duty requires that the housing management organisation consults the local authority prior to making an ASBO application to the Courts. The point at which they decide to do so is a matter for local discretion (subject to agreement with the authority) but should allow sufficient time for the proper considerations to be made by the authority in line with the particulars of each case.
32. While not explicit on the face of the Order, under the Crime and Disorder Act local authorities have a duty to consult the police when they decide to apply for ASBOs. Arrangements for conducting this duty should follow the guidance provided above in addition to broader Guidance issued by the Home Office on use of Anti-social Behaviour Orders.
33. Housing management organisations should be encouraged to keep accurate and easily accessible records on who has been consulted about the exercise of ASBO functions for future reference.
34. The government encourages the development of multi-agency partnerships by landlords and other local agencies as they have proved to be an effective tool against ASB. Local authorities should ensure housing management organisations have established strong working links with relevant partner agencies primarily (though not exclusively) through their local Crime and Disorder Reduction Partnership (CDRP). This will help to promote best practice and help ensure effective information sharing and case management.

35. Some housing management organisations may be relatively small with limited resources to enable them to engage with partnerships on a regular basis (this might, for example include smaller tenant management organisations (TMOs) with responsibility for managing a small estate). Local authorities should consider giving direction as to which partnership meetings they should attend or feed into so as to ensure that they gain maximum benefit from partnership working.

Monitoring of contracted functions

36. Regular reviews held between local authorities and housing management organisations are essential in supporting delivery of policies and procedures and continuous improvement in the quality of service delivery. They will also be the key in assessing the effectiveness of the contracting out ASBO functions, both in terms of operational practicalities and outcomes in securing safer communities. Local authorities should therefore ensure that regular reviews are built into their housing management agreements.
37. Housing management organisations will already be subject to reporting procedures within specific intervals as part of the housing management agreement process. It is up to the contracting parties to agree a mutually agreeable reporting process based on individual local circumstances.
38. The need to undertake reviews should be commensurate with the frequency and level of activity (ie a high ASBO caseload may require more frequent monitoring). The Government would expect a review of any contracting out of ASBO functions to be carried out at least on an annual basis.
39. In order to properly inform reviews authorities and housing management organisations should take due account of the latest policies of the local CDRP, including any neighbourhood specific action plans. Any available evidence of the effectiveness of the use of ASBOs should also feed into reviews (for example resident satisfaction surveys).
40. Housing managers should be clear about what information the authority expects them to provide in order to inform the review process. This could include :
- the number of ASBO applications made and a brief summary of each case;
 - the number of successful applications (ie where the court awarded an order);
 - evaluation of any unsuccessful applications (ie judgments provided by the courts and lessons learnt in informing future applications);
 - breach rates / enforcement of breaches and assessment of outcomes in stopping anti-social behaviour and reassuring the community;

- issues relating to the use of ASBOs to tackle the anti-social behaviour of children and young people;
- effectiveness of multi-agency working and information sharing, and how where necessary, it might be improved; and
- diversity issues (for example monitoring applications by gender and ethnicity).

Support for victims and witnesses

41. The involvement of victims and witnesses is often of great importance in providing robust evidence to inform anti-social behaviour cases (including cases where an Anti-social Behaviour Order application is relevant). Therefore, contracting parties should give serious consideration to the provision of or the referral to support services for victims and witnesses.
42. While many housing management organisations to whom ASBO functions are contracted will already have well established victim/witness support procedures the impact of the contracted functions should be taken into account in reassessing this provision.
43. For example housing management organisations may have previously been primarily engaged with their local County Court in working to ensure support is offered to those witnesses and victims involved in court proceedings. As ASBO applications may be made in the Magistrates Courts, new working relationships may need to be established, for example participation in the relevant Court User Group.

Human rights and data protection

44. Local authorities should impress upon housing management organisations that, because they will be delivering a public service, they should give careful consideration to the applicability of Human Rights legislation when performing any contracted functions.
45. Issues include, but are not limited to Convention Rights protected under the Human Rights Act 1998:
 - Article 8 of the Convention on Human Rights: “the right to privacy” in relation to decisions to make information public about obtaining ASBOs against certain individuals, for example minors. Whether you disclose information should be considered on a case by case basis. In accordance with the Convention, disclosure of information must be factually accurate, necessary and proportionate to the aim it seeks to achieve. Publicity (in relation to civil orders) must not unnecessarily punish the ASBO recipient as the aim of the order is not to punish behaviour but to stop it from occurring in the future.

- Section 29 of the Data Protection Act 1998 DPA provides an exception to protection of privacy in order to allow the release and publication of information for the purposes of prevention or detection of crime.
 - Article 6: “the right to a fair hearing” could also be engaged in relation to “review” policies, where the housing manager employs them as a precursor to applying for an ASBO. In civil applications for ASBOs only Article 6(1) applies, as it does to any determination of an individual’s civil rights and obligations, but Articles 6(2) and 6(3), which contain extra rights for someone charged with a criminal offence, do not apply.
46. An assessment as to any training needs required by the housing management organisation to which ASBO functions are contracted on the implications of Human Rights legislation may need to be undertaken by the local authority. Where it is deemed necessary a training plan should be enacted as soon as possible.
47. Local authorities should seek to ensure that housing management organisations take proper account of diversity in their delivery of ASBO functions. This might include ensuring robust information is held on persons against whom ASBOs are sought according to age, gender, ethnicity and disability in support of duties under equalities legislation. For information on local authority duties under Disability Discrimination Act 2006 and Race Relations (Amendment Act) 2000, please see page 51 of the Home Office ASBO guidance.
48. All organisations are obliged to adhere to the provisions of the Data Protection Act when it comes to the “processing” of personal information. The Government would expect housing management agreements to contain directions on adherence to data protection principles (please see the Information Commissioner’s website – www.ico.gov.uk for further information).
49. Housing management organisations should be enjoined to feed into local protocols on information exchange and CDRP protocol (for example access to Police and social services databases) and relevant guidance on the duty to share information and Freedom of Information (please see Home Office guidance on ASBOs for more information).

Litigation and legal support

50. The respective roles and responsibilities of the local authority and housing management organisation regarding taking ASBO cases to court should be covered in the housing management agreement. A number of options are open to housing managers in conducting litigation and appearing before the court (which are likely to be dependent on the specifics of each individual case). In many instances its own staff (where suitably trained or experienced) will be responsible for managing cases themselves but sometimes it may be appropriate to continue to utilise the local authority’s legal team or commission private legal assistance.

51. The parties to the housing management agreement should give due regard to the principles of value for money. For example, where appropriate, placing housing management staff in the lead on conducting litigation may provide savings over commissioning specialist legal support.
52. Local authorities may wish to consider offering appropriate training to the officers of housing management organisations so that they too can undertake court work in less complex cases.

Resources

53. Local authorities through the housing management agreement will need to make an assessment of any costs incurred by the decision to contract out ASBO functions by the housing management organisation and accordingly make due provision of funds.