



Anti-social behaviour orders – key human rights considerations

QUICK REFERENCE

Which Articles from the ECHR might I need to consider?

Absolute

- Article 6 – Right to a fair trial

Qualified

- Article 8 – Right to respect for private and family life
- Article 10 – Freedom of expression
- Article 11 – Freedom of assembly and association

What is the relevant case law?

- *Clingham v Royal Borough of Kensington and Chelsea*
- *R (Stanley) v Metropolitan Police Commissioner*
- *Anufrijeva v Southwark LBC*

The Anti-social Behaviour Order (ASBO) is a civil order designed to protect communities and individuals against anti-social behaviour. There have been legal challenges against particular orders and the conditions they impose but as long as the conditions are proportionate in preventing crime and disorder or protecting the rights of others they may be upheld.

Article 6 – Right to fair trial

How does this right impact on what I can do?

An ASBO attracts the requirements of a fair trial under Article 6 because the individual's rights and obligations are being determined.

Is this an absolute right?

Yes. Article 6 is an **absolute right** but the extent of safeguards necessary to ensure a fair trial varies according to whether the process is deemed to be civil or criminal.

An ASBO is a civil order – this was confirmed by the House of Lords in *Clingham v Royal Borough of Kensington and Chelsea*

Article 6 is satisfied for ASBO applications if the individual is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law, and if judgment is pronounced publicly (save that the press and public may be excluded from all or part of the trial in certain prescribed circumstances).



As only the civil limb of Article 6 is triggered, **hearsay evidence can be used** in applications without the makers of such statements being subjected to cross examination in court.

But **ASBOs require the heightened civil standard of proof** which is all but indistinguishable from the criminal standard.

Article 8 – Right to respect for private and family life

How does this right impact on what I can do?

Article 8 rights might be engaged if, for example, the ASBO restrains an individual from associating with certain persons, or from entering an area where he or his family lives.

Is this an absolute right?

No. Article 8 is a **qualified right** and may be interfered with in accordance with law and under prescribed circumstances such as when necessary for the **prevention of disorder or crime and the protection of the rights and freedoms of others**.

As long as the ASBO is proportionate to achieving these legitimate aims it may be justified.

Article 10 – Freedom of expression

How does this right impact on what I can do?

If an ASBO prohibits the individual from expressing himself in a particular way, or from being in specified places, this Article will be engaged.

Is this right absolute?

No. Article 10 is a **qualified right** and may be subject to restrictions and conditions prescribed by law and necessary for the **prevention of disorder or crime or for the protection of the rights of others**.

As long as the ASBO is proportionate to achieving these legitimate aims it may be justified.

Article 11 – Freedom of assembly and association

How does this right impact on what I can do?

If the ASBO prohibits an individual from being in specified areas and from associating with other named individuals this right may be engaged.

Is this right absolute?



No. Article 11 is a **qualified right** which may be interfered with in accordance with the law when it is necessary for the **prevention of disorder or crime or for the protection of the rights and freedom of others.**

As long as the ASBO is proportionate to achieving these legitimate aims it may be justified.

Striking a balance

In considering whether to award an antisocial behaviour order (ASBO) a balance needs to be struck between the rights of the community to be free from the menace of anti-social behaviour and the rights of the individual being restrained.

When striking a fair balance between the general interests of the community and the protection of the defendant's rights. **As long as the ASBO is proportionate to achieving the aims of preventing disorder or crime or protecting the rights of others then the ASBO may be justified.**

In considering whether an ASBO is proportionate the following relevant factors need to be considered:

- ***The necessity of restraining the individual***
- ***The extent of interference involved***

Can an ASBO be publicised?

Yes. If publicity is, based on the facts, considered necessary and proportionate for public safety, to prevent disorder or crime or protect the rights of others then it could be justified to reassure, to assist in the public enforcement of the order and to deter others. (See ***R (Stanley) v Metropolitan Police Commissioner.***)

When making the decision to publicise, you should consider the Convention rights of the individual but also those of the wider public (including past and potential victims of ASB) under Articles 8, 10 (freedom to receive information), 11 (freedom of assembly and association) and 17 (prohibition on the abuse of rights) under some of which the state has a positive obligation to protect the public. (See ***Anufrijeva v Southwark LBC.***)

Further information

More detailed information can be found in the document 'Human Rights and ASBOs' that can be accessed via CJS online.