

Report re: The Compatibility of Acceptable Behaviour Contracts with Article 6.1 of the European Convention on Human Rights

By Jan Cosgrove and Matthew Cosgrove

A senior Police Officer's response to the original Report:

Jan,

*I am writing in a non official capacity - my role is that of *** in *** (Force).*

If I can take the opportunity to comment on your ABC report. I thought it was spot on and I will ensure it will be sent to my officers responsible for delivering and working with those who deliver ABCs.

I do see a use for ABCs but as you point out, when the system is vague and threatening it does nothing to inspire me that this is a tool that will be of any merit or worth.

Surely children who may be experiencing problems in their lives require support and should not be growing up in an authoritarian environment?

Thank you for a thought provoking report.

DB

Introduction:

This is a revised and updated version of the Report published October 2011. The main data provided by Police Forces remains unchanged. We have added sections on the Home Office response to a Freedom of Information request concerning collection of Force data and on their use of legal advice re- human rights aspects of the use of ABCs. Additionally, a section has been added concerning the outcome of a particular case, this being the one that first prompted Fair Play's interest in the use of ABCs in 2002. Also expanded, a recent case that has come to our attention.

Fair Play for Children has undertaken a comprehensive review on the issuing by local police forces across England of Acceptable Behaviour Contracts with particular focus on whether the forces involved have taken into account Article 6.1 of the European Convention on Human Rights (ECHR). In total 40 forces across England were surveyed across a number of questions under the Freedom of Information Act. 34 replied, one with separate data from 4 Divisions, one based on one Division.

To date 6 have not replied. These have been contacted and three are in the process of responding. Only 2 refused to respond at all - claiming exemption on grounds that to provide the information would exceed the time/cost limit prescribed by the Act. Some claimed partial exemption on parts of the survey.

One Police Force initially claimed exemption on the grounds the FoI request was vexatious but after representation supplied the answers. Some Forces went beyond what was asked of them, and to these we are very grateful and also to all Forces who responded.

For the purposes of this report the following will use as shorthand: Forces (Police Forces), ECHR (European Convention on Human Rights), ABCs (Acceptable Behaviour Contracts and Agreements), HRA (Human Rights Act 1998), UNCRC, United Nations Convention on the Rights of the Child, FoI (Freedom of Information), S12 (Schedule 12 FoI Act exemption). A6.1 will mean Article 6.1 etc

In the Report we refer to the number of responses submitted which can be regarded as separate, so that in the case of the 4 Divisions there was sufficient difference between all four to warrant separate answers.

Article 6.1 of the ECHR states: *In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgement shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.*

The aim of the study was to ascertain whether in issuing ABC's that the above had adequately been taken into account. Fair Play for Children asked a number of questions in order to do so. The Survey questionnaire as it appeared online is at Appendix 1 (link to webpage). Some Forces made their responses online - this simplified collation considerably. Others either could not (for technical reasons) or did not do so, but responded either by post or mainly by email (with/without attachments).

The Police Force FoI Survey

This was sent out in early 2011. We found that Force email systems determined whether the first wave was received - some Forces web/email management seems to pose high threshold levels which leads to rejection. Indeed we had to send again, and also send to individual Forces for many weeks thereafter to address this problem, and even at the stage of writing the report some 9 months on, we are unsure concerning three Forces and will be following this up. This does suggest some need for Forces to review this matter to ensure legitimate FoI requests are not rejected/ignored.

In passing, we would observe that Forces might well adopt a common system of e.g. foi@forcename.pnn.gov.uk. We also observe that the practice of providing an online response via a boxes-and-submit system has shortcomings for the requester unless there is an option for the information to be sent back to the requester. The wish to avoid spam use of FoI email is recognised but the usual system employed is to require the sender to complete some form of task e.g. repeat word(s) or addition task etc prior to submission. This could easily be employed by all Forces.

Numerical answers:

"Is your force involved in the issuing of ABC's to people under 18 years of age?"

The number issuing them was 34, with only The City of London Police not issuing them and 2 forces above refusing to respond.

"If Yes, is your Force part of partnership of bodies?"

The number of forces who were in partnership was 28, with 10 not in partnerships or giving a vague answer to the question or invoking Section 12 of the FOI - grounds of time and/or cost.

"Where a minor is involved, does your Force or any other Partner ever warn parents that the option of loss of tenancy is a possibility in relation to your ABC procedure?"

The number of forces indicating that a loss of tenancy in relation to ABC procedure was 17, with 16 forces where this was not an option, or where the answer was unsure or not given at all.

"In developing ABCs were children and young people consulted by your Force or Partnership?"

Of the Forces who responded 4 said that children and young people were consulted, 6 said no children and young people were not consulted, 2 gave answers that were uncertain or referred to a website and 26 either gave no answer, did not reply or had no information held or simply did not know.

"Does your Force or Partnership submit any reports or statistics to the Home Office concerning your use of ABCs ?"

12 Forces did submit statistics or reports to the Home Office., 6 did not submit reports or statistics, 2 Forces answered don't know and 16 Forces either gave no reply or did not answer or did not hold information on the above question.

"Is the Person who is to be interviewed regarding a possible ABC informed of a right to be represented at such a meeting?"

Of the Forces who responded 13 indicated yes to the right of representation and 24 indicated that the right to representation is not given, or was unclear or was not answered.

On the Survey key issue of Article 6.1 of the ECHR being taken into account when issuing ABCs Fair Play for Children asked two questions.

The first question:

"Please read the text below and answer whether your Force takes it into account in the operation of ABCs?" A6.1 as quoted above followed.

The number of Forces who took the above text into account when issuing ABCs was 16, the number of forces who did not take the above text into account, did not answer or gave qualified answers was 19.

We also asked. ***"Has your Force sought legal opinion/advice concerning the applicability of the Human Rights Act 1998 to the operation of ABCs by your Force?"***

Legal opinion/advice was sought in regard to the above by 8 of the Forces survey, whilst 30 of the Forces surveyed either gave a No answer, did not answer at all, answered don't know or gave a qualified answer.

Background

Acceptable Behaviour Contracts (ABCs) were pioneered in London Borough of Islington in early part of the 2000 decade. An initiative of a Metropolitan Force sergeant, the aim was to provide a means of earlier intervention to prevent young people from becoming involved with the criminal law through providing a means of contacting the young person and parents to discuss identified behaviour problems. This would lead to the young person signing a contract (an ABC) where s/he would agree not to commit identified behaviours.

The Islington ABCs were undertaken in partnership with the Housing Department of LB Islington and others.

The ABC soon became established in the Borough and the Home Office took notice so that this intervention tool was soon recommended and described in the Home Office publication **A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts**: (Home Office March 2003).

"ASBOs and ABCs are both comparatively recent developments designed to put a stop to anti-social behaviour by the individuals on whom they are imposed. But they work in very different ways, and these differences will inform the judgement of professionals on which of them may be the best option in any particular case.

The most obvious difference is that the ASBO is a statutory creation, and carries legal force; the ABC is an informal procedure, though not, as will be made clear, without legal significance. Both types of intervention are aimed at stopping the problem behaviour, rather than punishing the offender. Because the ABC is a voluntary contract, it has greater flexibility, while the ASBO, because of its more formal status, offers advantages in terms of enforcement.

"Acceptable behaviour contracts are voluntary agreements made between people involved in anti-social behaviour and the local police, the housing department, the registered social landlord, or the perpetrator's school. They are flexible in terms of content and format. Initially introduced in the London Borough of Islington to deal with problems on estates being caused by young people aged between 10 and 17, they are now used with adults as well as young people, and in a wide variety of circumstances. They have proved effective as a means of encouraging young adults,

children, and importantly, parents to take responsibility for unacceptable behaviour.

They are being used to improve the quality of life for local people by tackling behaviour such as harassment, graffiti, criminal damage and verbal abuse."

The document says of ABCs, in terms of procedure ...

"What are Acceptable Behaviour Contracts?"

"An ABC is a written agreement between a person who has been involved in antisocial behaviour and one or more local agencies whose role it is to prevent such behaviour. ABCs are most commonly used for young people but may also be used for adults. The contract is agreed and signed at a meeting with the individual and the lead agencies. Where the person whose behaviour is at issue is a child or young person, parents or guardians should be encouraged to attend. The contract specifies a list of anti-social acts in which the person has been involved and which they agree not to continue. Where possible the individual should be involved in drawing up the contract. This may encourage them to recognise the impact of their behaviour and take responsibility for their actions.

"Support to address the underlying causes of the behaviour should be offered in parallel to the contract. This may include diversionary activities (such as attendance at a youth project), counselling or support for the family. It is vital to ascertain which agencies are already involved, especially where the individual is aged between 10 and 17 years.

"Legal action in the form of an anti-social behaviour order or possession order (if the young person is in social housing) should be stated on the contract where this is the potential consequence of breach. The threat of legal action provides an incentive to ensure that the contract is adhered to. "

Nowhere in the document is there mention of the HRA 1998, the European Convention etc in relation to ABCs. Nor of obligations the UK has under the UN Convention on the Rights of the Child.

Fair Play for Children's Involvement with ABCs

Fair Play, founded in 1972, exists to promote the Child's Right to Play as stated in A31.1 of the UNCRC. However, we recognise that this Right is not in isolation from other Rights of the UNCRC - for example, freedom of assembly, education, childcare, freedom of expression, and the right to be consulted - nor indeed other Conventions and enactments such as the ECHR and the HRA 1998.

Our belief, based on decades of experience, is that early intervention, based on play, is one of the most effective tools for encouraging children to develop and behave "acceptably", some 28 years spent by one of the authors and around 20 by the other on a children's mobile project being the basis for such an understanding. In this model, longitudinal contact with children and then as young people in their own communities, according to their agendas, produces the soundest results. "You brought us up" as one young man told us after 14 years of contact, and who was not unknown to trouble and close encounters with the police. He is now in his 30s, family, children, holding a good job - the early years were not that encouraging.

In 2002, Fair Play was contacted by a mother from LB Islington who had received an ABC letter from the Borough Housing. The initial article in our then-quarterly printed *PlayAction* journal is at: **Easy as ABC?** http://www.fairplayforchildren.org/pdf/02_autumn.pdf (autumn 2002) It is suggested that reading this article is essential for understanding the purpose of this current Report.

Without rehashing the points of that *PlayAction* item in full, one of this Report's authors notes:

- The mother contacted Fair Play because she was deeply concerned at the way this had been done - a letter stating (not alleging) her sons had committed anti-social behaviour, and no prior contact
- The threat to remove tenancy for non-attendance
- No mention of right to representation of the two boys, aged 13 and 14
- The certainty that one son had not been present at an possible incident
- The kafka-esque nature of the interview, attended by the author with the boys and mother

- The refusal of the boys to sign the proffered ABCs because they did not understand what it was they were supposed to have done
- The threat (and probable implementation) of employing 'professional witnesses'
- The disturbing possibility that the (sole?) complainant was a lady who had recently had a baby, had started to behave strangely and thus who may have been experiencing post-natal depression, and thus her real need perhaps overlooked.

There is the added concern that an 11 year-old girl, living in the same street, known to the boys, signed such a contract, and who told the author she did not understand what it was about, she signed it because her mother said they could lose their home if she didn't.

That is by any analysis severe cause for concern, that coercion played any role in a child agreeing to sign a supposedly voluntary agreement, and a complete negation of the rationale as expressed in the Home Office document above.

The girl's mother wrote: **"I am very distressed reading over again what I have made my daughter sign. I have issues nothing to do with those allegations going on with Islington Council and felt under complete duress to do what was asked at this meeting, and although I was defending my daughter, anything [daughter] or myself said seemed to be ignored."**

The girl's ABC stipulated:

1. *She will not hang around in groups of six or more*
2. *She will not kick the ball around in the street*
3. *She will not bang on dustbins in the evening*
4. *She will not be abusive to other residents*
5. *She will not make excess noise in the street*
6. *She will be off (sic) good behaviour while in the area*

Further [name] enters into a commitment with the Council not to act in an manner which causes or likely to cause harassment, alarm or distress to one or more persons in the same household.

The contract then went on state that an ASBO could be sought using breach of the ABC as evidence and that breaching an ASBO could lead to a term of imprisonment up to five years or a fine or both.

The overwhelming impression given to one of the authors who was present at the boys' ABC interview and who met with the 11 year old girl was of confusion and inability to grasp what it was they were supposed to have done, hardly the basis for genuine intervention in terms relevant to the supposed purpose of ABCs.

Since writing the first edition of this Report, one of the authors has been able to contact the mother who originally contacted Fair Play in 2002. Kathy Thornton is mother of Ashton and Perry, who at that time were 14 and 13. The case is fully described in the article link above, **Easy as ABC?** Kathy has told us that after the episode, there was further 'interplay' with Islington, but her sons did not go back on their decisions not to sign.

What have found interesting is that some of those kids who did sign later went on to have problems and engagement with authority, whereas her 2 sons remained clear of that. She puts it down very much to parental influence and, yes, authority which she appears to feel is not what it should be in too many cases, hardly a new discovery or sentiment. As for her sons, both have done well, Ashton is at University and Perry at College. They had no further trouble with the law.

The author who visited them 7 years back: "No surprise, I know kids pretty well, not too-much wool-over-eyes possible on me, and it was clear to me the whole thing from LB Islington was nonsense in their case which is why I felt so concerned they were being subjected to such heavy-handed and inappropriate treatment."

Fair Play examined these cases in the light of obligations held by UK councils and police forces as regards both the UNCRC and the ECHR. The UK's signing of the UNCRC is to be celebrated this year as the 20 Anniversary of accession. However, the UNCRC is not incorporated into UK domestic law as such and courts may not use it to make rulings on alleged breaches. This was also the situation with the ECHR from our accession in the late 1940s until the incorporation of A's 1-12 and 14 in the HRA 1998.

As the original version of this Report was being completed, quite coincidentally Fair Play was contacted by another parent living in LB Islington, expressing similar concerns about his child and threat of ABC,

tenancy loss etc. Whilst we are still awaiting fuller details, what has emerged so far appears to show little movement after nine years in the Borough's ABC approach. However one area of concern may be that when the father asked whether his child could be represented, he was told that if anyone came in such a capacity the meeting would not take place. That, at least, did not happen in 2002. Islington's response to a recent FoI suggests (see below) suggests such representation would be granted normally, but the wording makes it seem that it is for the authority to decide on whether or not this would happen. The wording does not suggest choice by the child or indeed parent.

As we understand it, the dad was contacted by LB Islington Housing Dept that his 13 year old daughter had been displaying anti-social behaviour, and wanted him to attend a meeting. He went, but without his daughter, refusing to take her out of school until he had more detail. At the meeting, he says that when he asked about representation for his daughter, he was told "point blank" that the meeting would not happen if this was required. He also asked about the detail of the complaint(s) and was told he'd have to ask for that in writing. The meeting terminated acrimoniously apparently. Two or three days later he received a letter from the Council requiring possession of his property, suspended for 2 years. Whatever one says about ABCs etc, surely such oppressive action is unacceptable in a free society.

Fair Play has taken the view that the operation of ABCs more than likely will have relevance to key provisions of the ECHR:

- Freedom of Assembly
- Protection of Reputation, Privacy etc
- Due process

There are also UNCRC implications also relating to all of the above plus that of consulting children about administrative and legal matters which will affect them.

An **earlier survey carried out by Fair Play with local authorities**, not under FoI, yielded the following responses:

With 443 councils mailed by post, just 54 responded (12.1%).

- **Does the Authority state that it may use sanctions available to it should people refuse or fail to attend meetings?** 35

stated Yes. Sanctions included ASBO, Injunction, Tenancy demotion, Loss of tenancy

- **Are those invited, or their parents/carers, ever threatened with loss of tenancy?** 40 said YES, 7 No
- **Had this ever been carried out?** 16 said Yes, 7 No.
- **Where loss of tenancy is not available, what other sanctions may be threatened?** ASBO, Injunction, parenting orders etc
- **Are those asked to attend, or their parents/carers advised whether they can bring a representative or a friend or adviser to such a meeting?** 26 said Yes, 12 No.
- **Has the Authority/Partnership sought any legal advice on the use of ABC's?** 36 said Yes, 15 No.
- **Has the Authority/Partnership considered any Human Rights aspects re use of ABC's?** 35 Yes, 10 No.
- **With reference to Article 6.1 of the European Convention on Human Rights, does the Authority/Partnership consider this to have any relevance to its use of ABC's?** 27 Yes, 27 No.
- **If a person refuses to co-operate by signing an ABC does the Authority/Partnership Employ Professional Witnesses to gather information?** 8 Yes, 15 No.
- **Do the ABC's contain a warning/statement that an ASBO may be sought if there are breaches of the ABC?** 40 Yes.
- **Do the ABC's contain a warning that a breach of an ASBO may result in prosecution possibly leading to fine and/or imprisonment?** 36 said Yes, 4 said No

Analysis

By Question:

"Is your force involved in the issuing of ABC's to people under 18 years of age?"

&

"If Yes, is your Force part of partnership of bodies?".

The large majority of forces are party to issuing of such agreements. Most are in some form of partnership arrangement which will always include the local housing authority - the form of partnership varies considerably.

"Where a minor is involved, does your Force or any other Partner ever warn parents that the option of loss of tenancy is a possibility in relation to your ABC procedure?"

This was done by over half the issuing partnerships, probably more. It is instructive to note that this reflects an emphasis from the early use of ABCs as recognised in the Home Office document above: "Legal action in the form of an anti-social behaviour order or possession order (if the young person is in social housing) should be stated on the contract where this is the potential consequence of breach. **The threat of legal action provides an incentive to ensure that the contract is adhered to.**" [Our emphasis]. Is this a sample of the 'flexibility' the Home Office suggests above as an advantage of the ABC?

That biases the use of ABCs towards those in social housing, Fair Play will be addressing this in a forthcoming FoI to all Councils. This will also apply to social landlords. This has not been our foremost concern but as a fact emerging from this and the previous survey, we are struck by the question of discrimination under A14 of the ECHR, and we will make this Report available to the Equality and Human Rights Commission accordingly.

"In developing ABCs were children and young people consulted by your Force or Partnership?".

The small number replying Yes or No and the large number of non-replies etc suggests this was not high on the agenda. Yet A12 of the UNCRC makes it clear that the UK and all its public authorities are obligated to consult children (under 18 years) on administrative and legal issues which

will affect, taking into account their age and level of understanding. The UK has been criticised by the UN Human Rights monitoring machinery in this matter and in respect of educating the young about the UNCRC and its relevance to them. This is an administrative matter even if it is not a legal one (arguable) and it cannot be advanced, in case it is, that each child is 'consulted' at the stage of being summonsed/ invited to a first meeting. The true meaning of this requirement is that councils and police consult properly before the use of such agreements is finalised.

It is well-known enough to be axiomatic that such devices will only work properly/ effectively if children understand and accept both their purpose and fairness. On that test, the 11 year-old girl at Islington was poorly served.

"Is the Person who is to be interviewed regarding a possible ABC informed of a right to be represented at such a meeting?"

This is clearly worrying in that many situations seem not to allow for that possibility in terms of parental and/or child choice. Certainly all the summoning letters we have seen have not mentioned this at all.

These are some of the comments:

- *"If under 18yrs, Parent / Guardian or appropriate Adult would be present. Since the meeting is voluntary, and is not an interview or a legal process, representation is not an issue."*
- *"This is not an interview under PACE. The whole point of an ABC is that it is a lower level intervention than a criminal sanction. We are not looking to prove a case, we are just seeking agreement that an individual will behave and providing support to help him / her to do so. People under 18 will have an appropriate adult present"*
- *"we follow Home Office best practice advice but in the main YES"*
- *"Area1 - Yes - Invite sent via the parent/Appropriate adult Area2 - No - Although appropriate adult has this function Area3 Yes - Juveniles are always represented usually by a parent or other appropriate adult, adults are also able to bring another adult with them" (Same Force)*
- *"Yes. If the person is aged under 18 years of age or has any mental health issues, they will be interviewed with a parent/guardian or person acting as an appropriate adult present."*
- *"No. They are not interviewed; a meeting is held in the presence of a parent or guardian if a juvenile"*

- *"No not legally represented but parent or guardian must attend the meeting"*
- *"Yes – Young people are always represented by an appropriate adult" "It is advised that a parent/guardian, youth worker, social worker or school rep be present where applicable"*
- *"procedure must follow PACE".*

It can be concluded that understanding and practice here vary widely. What is meant by "appropriate adult" for example? This may mean a parent/carer but also is shown to mean e.g. a youth or social worker. These often being statutory workers and part of the same local council system as the housing department and part of a partnership, it is hard to understand how there can be any semblance of representation of choice which will take the child's part, that is, be truly representative.

We also asked whether there was someone independent present at the interview stage, the large majority stating there was not, though one or two cited e.g. youth workers as such a person. This answered the question whether someone independent, having heard the discussion/interview, evidence etc, decided whether or not the alleged behaviour had occurred.

In the original Islington case above, one author became rather convinced that it had not and that the ABC process was being used to tidy up a problem by reigning in perfectly reasonable behaviour by children based on allegations by one person.

We also asked if the young person was given prior written details of allegations? This evinced the following range of responses:

- *"YES They will have received a letter and probably a home visit shortly after the Behaviour under discussion. This is not an interview in respect of legal proceedings. It is a step to get agreement for the Behaviour to stop, before an ASBO or other legal process is considered."*
- *"Rarely. I think the word "allegations" is too harsh here. Again, an ABC is not a punishment. It is an attempt to resolve issues, often involving ASB perpetrated by the person being spoken to. The individual is not and cannot be forced to agree to conditions of an ABC and there is no sanction in itself for any breach of the agreement. There are no fairness or jeopardy issues at stake by not providing a written account of the behaviour complained of. "*

- *"We follow HO advice but Yes they are given opportunity to question during the ABC meeting and challenge the evidence"*
- *"Area1 - No presented at the meeting Area2 - Sometimes Area3 - Yes" "Person being interviewed is given prior warning of meeting and advised accordingly in relation to any representation the individual may wish to make, and to challenge and introduce any evidence they may have available"*
- *"It is not a formal interview but representations can be made both by the individual and/or parents if a juvenile (or appropriate Adult)"*
- *"Every opportunity is given to the young person/parent/guardian to challenge any of the evidence or the process. Parents/Guardians are provided with contact telephone numbers to discuss any issues prior to a meeting where all issues can be discussed face-to-face."*
- *"Schedule of incidents is brought to the meeting. Offender is asked about the incidents and given the opportunity to provide an explanation. Case file is also brought to the meeting with evidence available – this could be CCTV evidence, statements or pocket note book entries."*
- *"The circumstances that form the basis for the ABC are discussed and Parents /Guardian/ Young Person can question the accuracy of the reports"*
- *"The interview gives the young person full opportunity to challenge evidence and give their side of the complaints which have been made."*
- *"Opportunity is given at the interview, they are actively encouraged to question or challenge any question they are asked, they are treated with the utmost respect."*
- *"From Home Office Archive-
<http://webarchive.nationalarchives.gov.uk/20100418065544/http://www.homeoffice.gov.uk/anti-social-behaviour/penalties/acceptable-behaviour-contracts/> An acceptable behaviour contract (ABC), also known as an acceptable behaviour agreement, is an intervention designed to engage the individual in recognising their behaviour and its negative effects on others, in order to stop the offending behaviour. An ABC is a written agreement between an anti-social behaviour perpetrator and their local authority, Youth Inclusion Support Panel, landlord or the police. ABCs are usually used for young people but can also be used for adults. The ABC consists of a list of anti-social acts that the offender agrees not to continue and outlines the consequences if the contract is breached. Contracts usually last for six months but*

can be renewed if both parties agree. ABCs are not legally binding, but can be cited in court as evidence in ASBO applications or in eviction or possession proceedings."

- *"They have a right to speak at any time "*
- *"The Prevention youth worker and ASBU member will fully explain what an ABC is, the nature of the complaints and behaviour we wish to address and offer the ABC. An ABC is not a sanction or enforceable and can and is on occasion declined by the young person. The bottom line is whether or not they agree to sign an ABC, if the behaviour discontinues, then there is no further action. If it continues and we can evidence their ASB beyond reasonable doubt, we take the young person to court, providing all interventions have been offered."*
- *"THE PERSON IS INVITED INTO A POLICE STATION, HOUSING OFFICE, WHERE THE ALLEGATIONS ARE READ OUT TO THEM. THAT PERSON CAN ASK QUESTIONS OF THE POLICE OFFICER, HOUSING PROVIDER REGARDING THE ALLEGATIONS MADE."*
- *"The Acceptable Behaviour Contract is an intervention designed to engage an individual in acknowledging their behaviour and its effect on others with the aim of stopping that behaviour. This necessitates input from the individual. It is a mutually agreed contract between the interested parties and not something that can just be imposed."*

The above again display a confusing range of approaches and attitudes. One response mentions the word 'offender' but the last comment of all perhaps sums up the purpose of the ABC as seen from those who invoke the process that can lead to them being signed. The two key phrases in this are "acknowledging their behaviour" and "aim of stopping".

We deal with the impact of this as regards A6.1 below.

The legal status of the ABC

Like the ASBO, the ABC is not part of criminal law. The breaching of the ASBO can, however, lead to criminal sanctions, an issue that continues to exercise those who believe there must be a clear distinction between criminal and civil law and that neither should ever be substituted in place of the other.

The ABC has no sanctions such as the ASBO has, but it clearly is linked with the ASBO and thence to the criminal justice system as stated in the Islington girl's contract.

The European Convention on Human Rights

Its provisions have been largely incorporated through the HRA 1998.

Clause 6 Acts of public authorities.

(1) It is unlawful for a public authority to act in a way which is incompatible with a Convention right.

In the FoI Survey, we asked whether the Forces took into account A6.1 of the Convention (stated above) and also had they sought legal advice as regards this.

Some responses:

- *"Guidance issued by the Home Office is used. "*
- *"we have not. ABC is voluntary"*
- *"No, participation is entirely voluntary and carries no legal sanction if involved is declined, ceased etc There is no legal process involved."*
- *"Not to my knowledge"*
- *"NOT KNOWN (NO INFORMATION HELD)"*
- *"The ABC process is a voluntary arrangement under guidance from the Home Office and is accepted as an intervention policy to stop future offending."*
- *"An ABC does not represent a criminal charge and is not a method of proving guilt. Persons subject of an ABC would not be named in the press"*
- *"No recorded information held. However, our community partnership department have supplied the following information in order to assist: The Human Rights Act is considered in all aspects of the Constabulary's operations. The section you have provided relates to criminal charges. An ABC is not a charge, it is a voluntary agreement entered into by the individual and, if applicable, their parents. If the 'guilt' is contested an ABC will not be an appropriate course of action to take."*

- *"NO. THIS IS A PROCESS THAT IS NOT IMPOSED ON PEOPLE. IT IS A VOLUNTARY AGREEMENT SO A COURT HEARING HAS SO FAR NOT BEEN NECESSARY"*
- *"All of [X] Police's Policies, Guidelines and Procedures are checked for compliance with the European Convention"*
- *"The use of ABC's as a way of enforcing civil obligation and the inference that such a process should then take account of a persons human rights is an ongoing debate however any conditions placed are required to be justifiable and proportionate and of course consideration needs to be balanced between the rights of the individual and the rights of the wider community ."*
- *" An ABC is a totally voluntary option with no legal standing other than it can be used to evidence that you have tries communicating to the person their unacceptable behaviour and that it may lead to an order at court if they continue to behave in this manner, or are arrested and this results in court proceedings. ABC's are the very first tool in a long line of preventative measures and almost always used on young people not adults."*
- *"when ABCs are considered we work with the family to ensure fair to individual, family and community"*
- *"no direct correlation between ABCs and A 6.1"*

In the case of the Force response above *"If the 'guilt' is contested an ABC will not be an appropriate course of action to take"* the authors are concerned at the implication that, in such cases, the alternative might be eviction of a whole family. Collective punishment of families is an issue which ABCs pose, not for the offences themselves, but because either family or child has refused to acknowledge that the child was responsible.

Both this comment and our LB Islington experience at ABC interview suggest that then pressure is there to sign (in which case nothing happens) but if one will not sign, regardless of proof and in the absence of due process, a severe sanction will be applied'. That cannot be acceptable, as an administrative procedure it is oppressive.

The survey also asked questions about numbers of ABCs issued, the proportion under 18 years of age and the proportion of males. This proved impossible to collate - many Forces did not have the records, others invoked limitation of time and/or cost (5). (However, we are concerned at the discrepancy between Force explanations to us and the figures subsequently given to us by the Home Office which show Forces did have data to give to the Home Office. We feel uncomfortable that this

might be indication that some Forces may not have felt it necessary to take our FoI request seriously enough to make the effort.

Of the 9 Forces who gave figures:

<u>Force</u>	<u>Total ABC 2008-10</u>	<u>Male</u>	<u>U-18</u>	<u>%U18</u>
1	158	123	102	65%
2	18	15	15	83%
3	234	190	224	96%
4	642	478	508	79%
5	372	302	355	95%
6	1042	sch12sch12exemption		
7	36	29	27	75%
8	73	21	37	51%
9	504	340	351	70%

Also, we were not able to get any idea of the range of behaviours addressed, for much the same reasons. Some Forces stated they provided statistics to the Home Office, others said not or did not answer.

One impression overall is that there may have been too ready an acceptance in some Forces and Councils that the Home Office advice (or lack of it) was adequate in terms of fixing the legal status of the ABC contract as entirely unaffected by the HRA 1998. (See below for further consideration of this point.)

Home Office FoI Request

As part of the follow-up to the first Report, we asked the Home Office for information and they have given the following response:

Freedom of Information request from Mr Jan Cosgrove

Reference: CR20139

Information requested

You ask for Home Office figures for the numbers of people who have signed Acceptable Behaviour Contracts (ABCs) by year since they came into being. You also ask for other related information.

Response to your questions in the order they appear in your e-mail.

1. Does the Home Office have figures for numbers of people who have signed ABCs by year since they came into being?

The Home Office holds some statistical information on ABCs (and Acceptable Behaviour Agreements) issued from October 2003 to September 2009, which was collected through voluntary surveys of Community Safety Partnerships (formerly called Crime and Disorder Reduction Partnerships (CDRPs)). The majority of this data was published in 2009 on the Home Office website <http://webarchive.nationalarchives.gov.uk/20100405140447/asb.homeoffice.gov.uk/survey.aspx?id=12864>.

2. If so, please provide these.

Please see the attached spreadsheet Annex B. [Appendix 3 of this Report]

3. Are these available by local authority areas and police force areas – please provide if so.

The statistical information contained in the attached spreadsheet Annex B is broken down according to: the CDRP area; geographical region; and police force area.

4. Similarly what break downs are there by age of those signing and by gender –please provide any statistics held by the department.

We do not have any statistical information of ABCs broken down by age and gender.

5. Are police forces and local authorities:

a) required to send reports on ABC usage to the Department? If yes, how often and what is required?

b) requested to do so? If so, how often and what is requested?

c) and if no to a and b, do forces and councils send information on usage voluntary at their own initiative?

Police forces and local authorities are not required to send reports on ABCs to the Home Office. Between April 2003 and September 2009, the Home Office asked CDRPs to provide data voluntarily. From 1 October 2006, these returns were requested on a quarterly basis. The Home Office stopped requesting this data in September 2009. CDRPs have not subsequently submitted further data on their own initiative.

6. Has the Department endorsed the use of ABCs? If yes, please indicate where and how and when this has been done.

ABCs are recognised as part of the toolkit available to the police and other frontline practitioners to deal with anti-social behaviour. As such, the Home Office has previously provided high-level guidance to practitioners on key factors to bear in mind when drawing up an ABC, should they choose to use one (e.g. this document, published in 2003

<http://webarchive.nationalarchives.gov.uk/20100413151441/>

<http://crimereduction.homeoffice.gov.uk/asbos/asbos9.pdf>

It is not for the Home Office to tell local areas when or how to use ABCs, but practitioners report that they can offer a useful and proportionate response to low level incidents, giving perpetrators a chance to change their problem behaviour before more serious sanctions are considered.

7. Before doing so, or since, has the Department sought any legal advice or view concerning the legal status of these agreements, and concerning the human rights implications of use of these agreements?

No.

8. What legislative basis exists for their use by local authorities and police forces?

ABCs have no specific statutory basis – they are an informal, voluntary agreement between an individual who has committed anti-social behaviour, and a local agency whose role includes protecting victims and communities from such behaviour.

Date: 26 October 2011

The table of Police Force responses between 2003 and 2009 is shown at Appendix 3 and fills in considerably on the data provided by Forces under our FoI request to them. The only total figure we had for England was 19,000 ABCs issued. **The Home Office responses shows that, in the period of Home Office returns, the figure reached 55,223 in England.** If there are 11.3 million children under 16 in England, it raises the question of what proportion of them have had an ABC in that period?

Unfortunately, as the Home Office was not able to supply a breakdown by age, we cannot say. If the majority of ABCs are in the under-18 age group, then it seems possible that as many as 1 in 226 who were aged

under 18 years in that period have had such a contract, if the population of under 18's in that period was around 12.5 million in England.

If ABC terms have included not gathering in public with more than a stated number of other children, this will have implications for their rights under the ECHR and the UNCRC. Likewise, not responding to verbal attacks by adults, whilst the requirement to be 'of good behaviour' whilst in an area begs the issue of who defines what this may be.

Usage of the device appears to vary widely, with Rotherham "topping the table" in terms of % use and Sheffield in actual numbers (but the Met figures are split by London Borough).

There is no data available to us that throws any light on why some areas use ABCs more heavily than others, and no pattern of consistency apparent from examination of the Home Office figures. This must pose questions of consistency – what may be acted upon in some areas may be left alone in others, or at least not dealt with using ABC intervention. Home Office response and guidance explains that they expect this *laizzez-faire* but it seems to us to be a matter for concern if there is major inconsistency and discrepancy.

It must also be of great concern that the Home Office tells us that they have not sought legal advice re the status and human rights implications of ABCs. Surely, such a move ought to have been axiomatic in a Department of State? What we appear to have is widespread use of a device whose legal status has not been examined by the Government Department advocating its use as a means of changing the behaviour of young people. We are told they have "no specific statutory basis", we are following up the question of "general basis" in law. The position of parents who co-sign such agreements with their minority children?

Freedom of Information Request to London Borough of Islington

This was made in early December 2011, and the following response received:

Dear Mr Cosgrove,

FREEDOM OF INFORMATION REQUEST REF No: 373820

Thank you for your information request, received on 2 December. Please accept my sincere apologies for the confusion regarding this request.

In your request, you asked us:

In 2011, have there been any occasions where a parent was written to about a child's behaviour and asked to attend an interview but refused to bring the child with them? How many?

Have there been any such occasions where the parent asked about his child being represented by someone from an outside body? Have there been any such occasions where the parent was told that the meeting would cease if this was insisted upon?

Have there been any such occasions where the parent received within a few days a notice requiring possession of council-rented property?

In 2002, an officer of Fair Play for Children accompanied 2 children and parent to an ABC interview. The interview ended with the children not signing the proffered ABC - has Fair Play been blacklisted re such situations since then?

In situations of non-signing, have there been occasions when 'professional witnesses' (a term used by your officers) have been used to collect information on such children (this would include housing officials, park keepers and similar)?

Please supply any reports, emails etc from 2002 onwards concerning council consideration of whether Article 6.1 is applicable to the ABC situation, and have councillors been made aware of this specific concern at any time?

Our response is:

For the various anti-social behaviour (ASB) interventions the Council's Community Safety Partnership's Unit (CSPU) collates figures and some details. This includes numbers of Acceptable Behaviour Contracts including age, gender, and social landlord details where appropriate. Unfortunately we do not collate information about who attends the interview and whether any requests are made for outside bodies to attend the interview.

If a parent/young person fails to attend and there is evidence of breach of social tenancy a Notice of Seeking Possession (NSP) may be served. However, social landlords judge each case on its merits and work with partners such as the Police to determine whether the issue is serious enough to warrant such enforcement action. In other situations they may, however, choose an ABC as an alternative to enforcement action. For

example, in a case where criminal damage was evident and the normal course of action would have been to issue an NSP against the tenant the landlord set up an ABC interview with the involvement of support agencies as an alternative intervention. Unfortunately the CSPU does not collate details of cases where a family fails to attend and tenancy action was taken.

Professional witnesses can be employed to gather information about those responsible for ASB where we have hotspot areas and the identification of offending individuals is not known. We do not, however, target or aim at specific children.

The Council does not have a process for 'black listing' organisations. A decision about whether it was appropriate or not for a family to be accompanied by someone at an ABC interview would be considered on an individual basis. I would have thought that if the family requested that a third party be involved this would be considered favourably.

The Council supports the use of ABCs as an early intervention tool for dealing with anti-social behaviour. The contracts are voluntary and not legally-binding. Should breaches take place and enforcement action be taken there is a requirement to provide sufficient evidence of ASB to be able to do this. The CSPU is not aware of any reports, emails or councillors enquiries relating to concerns about the ABC scheme within the context of Article 6.1 of the Human Rights legislation, other than your letter to the Council following the incident you described in your request for information.

If you require any further information please let me know.

The ECHR and ABCs

At this stage, we can return to the core of this study, the applicability or otherwise of A6.1 of the ECHR. Some Forces clearly are under an erroneous impression that A6.1 only refers to criminal charges. But the wording is unambiguous - In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Then there is the 'voluntary' aspect of the claims made - that applies to the individual not the public authority. In the latter case Clause 6 of the

HRA 1998 above makes it clear that authorities must not act in any way that is incompatible with the ECHR. All of an authority's actions are covered by the ECHR, it remains to decide which Article(s) apply in the case of involvement in securing an ABC from an individual.

What is an ABC? One force describes it perfectly: **"The Acceptable Behaviour Contract is an intervention designed to engage an individual in acknowledging their behaviour and its effect on others with the aim of stopping that behaviour."**

In other words, *a means of determining an individual's civil obligations*. If X commits behaviour which distresses/ alarms etc others, s/he will be held to account, asked to admit what they have been doing and then agree not to do so again. Parents do this, schools and others having authority (eg employers, sports clubs etc).

If X is a minor and is required to refrain from specified actions, we would suggest that this involves A6.1 if it is a public authority that has intervened with the child. The remit of A6.1 is well understood in British law - there is a requirement for due process, which will include that allegations are brought before an independent body. The child should understand what is being alleged, there has to be presumption of innocence until otherwise admitted and determined, allegations have to be detailed and clear, the child should have proper independent representation.

In the case of the Islington child above, she signed an agreement which did not state she had committed anti-social behaviour, but that she would not do certain things which included perfectly lawful actions such as gathering with others in public, or which specified limitations which would be a matter of personal interpretation and judgement, such as noise level, what someone believes to be 'good behaviour'.

It has to be asked also whether ABCs in some areas contain catch-all requirements not related to what a child has been accused of. Such requirements are oppressive and not in conformity with the ECHR or indeed the UNCRC. In determining a child's civil obligations, it cannot be just for any provision to be made which imposes a blanket catch-all restriction on the rights set out.

The issue of coercion is another worrying aspect. One of the authors witnessed an ABC interview where not only did the boys not seem to understand what it was they were alleged to have done but one of their

friends admitted she also had not understood what it was she was accused of and who signed under duress of loss of home.

The use of the term 'proportionate' has been noted as regards ABCs during our study. A careful distinction must be applied. There are two types of right in the ECHR, one being absolute, the other subject to provisos such as the protection of rights of others. For example, in the latter case, the right of assembly is capable of restriction but the right of due process, 6.1, is absolute. If ABCs come within the scope of A6.1, then there can be no restriction, its provisions are binding.

If the ABC process is to be effective and fair, and, crucially, to impart to the child any understanding of civil obligation, it has to be based in the rule of law, a key aspect of which is enshrined not only in British law but also in the ECHR's A6.1

The connection of ABCs through ASBOs etc with the criminal law makes this doubly important. At this time, ABCs are muddled by being part of a process where civil and criminal law become intertwined. The child needs to understand that what is happening is fair and proportionate.

Otherwise, the message to the child is that authority obtains its way through processes which are confusing, unfair, arbitrary and threatening.

Parents living in council/rented properties will also understand that their status enables a threat for signing and compliance to be made, and enforced, which is not available for those in private rented or owner-occupied property.

However, in one telephone conversation with a local authority in the South East, we asked how they handled complaints about people in private rented accommodation. We were told that they had contacted private landlords about allegations. Given that most private tenancies are assured shorthold where, if a landlord applies for possession to a court after due notice, the court *has* to grant possession, this is most worrying. Allegations may be made, unproven, a private landlord made aware of this, and within months the family is homeless. That **cannot** be acceptable – unproven allegations in camera leading to homelessness.

ABCs surely can have a useful place in avoiding children becoming involved with the criminal justice system, Fair Play supports this aspect. But ABCs should not be used as an easy option to clear streets or remove children in order to reduce complaints about behaviours which are entirely lawful.

There are also other forms of intervention and prevention, the role of playwork in the community being one we know is poorly understood by authorities, one at this time subject to cuts well beyond those being experienced e.g. by adult leisure provision by councils.

In its recent report **Stolen Streets, Stolen Childhood**
<http://www.fairplayforchildren.org/pdf/1312920585.pdf>

Fair Play has indicated a massive loss of street play space in England, so the use of ABCs, for example, which reinforce the removal of the child from that street scene (kicking balls near cars being a common complaint) should be carefully monitored (the **Right to Play** being involved along with the other UNCRC rights affected by ABCs).

Summary

In ***Human Rights Day - Things Britain can do for its Children***

http://www.fairplayforchildren.org/index.php?page=HTML_News&story_id=6444

(10th December 2010) Fair Play observed ***There are over 19,000 Acceptable Behaviour Contracts (ABC's) in the UK, a large proportion affecting children. We need some control and accountability on the use of these devices, there is no national data to enable us to say how they are being applied nationwide, about consistency or, crucially, whether they are being applied with regard to ECHR obligations.***

This revised report now shows there have been ***at least 55,000*** such agreements.

That statistic comes from Government sources, Fair Play has now gathered data from both local council and police force sources which suggests:

- inconsistency and wide variety of approach where activities ignored in one area are unacceptable in another
- Home Office advice which is inadequate in terms of the ECHR implications of ABCs
- lack of understanding of the relevance of the ECHR
- Opportunity for, and some practice of, coercive measures by councils
- failure to adhere to basic requirements of the rule of law and the ECHR and the UNCRC

We must also be concerned at the possibility of such measures being used to secure social and policing objectives in an oppressive manner. Many involved in Forces and Councils apropos ABCs may bridle at such a

suggestion but we feel the evidence is there that such things have occurred, and that children and parents have felt confused and wronged.

The development of agreed national practices is one important route to ensure that that positive aspects of ABCs are not countered or undermined by these negative ones.

Fair Play for Children's recommendations:

1. The Home Office, all Councils and Police Forces should ask their legal advisers to examine the use of ABCs with regard to the ECHR, the HRA 1998 and the UNCRC.
2. The Local Government Association should work with ACPO to advise and coordinate good practice and to ensure a common legal framework for 1 above.
3. The Home Office should work with ACPO and the LGA etc to develop consistent guidance for the use and implementation of ABCs where A6.1 and the other relevant rights are addressed.
4. The threat of loss of tenancy in the issuing of 'invitation' letters should be stopped forthwith as coercive and as discriminatory.
5. Councils must be told by the Government that passing of unfounded allegations to private landlords is not acceptable.
6. The ASBO and criminal punishment/ fines element of ABC contracts should be dropped as both conflating/confusing civil procedure with criminal, and as potentially coercive, also as wholly age-inappropriate in many cases.
7. An independent element should be introduced in the ABC meeting, children and parents should be advised concerning proper representation of parental and/or their own choice if they want this, and children and parents should have allegations set out in writing in adequate detail prior to the ABC meeting, the period being at least 24 hours before the meeting.
8. Children should be given opportunity for respite and reflection before signing any agreement, and all behaviours must refer to specific matters which the child has agreed responsibility, not generic "catch-alls".
9. The Equality and Human Rights Commission should examine the use of ABCs by councils and police with regard to the ECHR, A6.1 and other relevant Articles including A14 (non-discrimination).

10. The Children's Commissioners in the four nations of the UK should examine the practice of issuing ABCs, working to ensure proper consultation of those under 18 being a key matter, this being by Council and Force areas, and also consistent with ECHR and UNCRC obligations.
11. The Government should give consideration as to whether ABCs require legislative grounding so as to be ECHR/HRA/UNCRC compliant.
12. Children's and Civil Rights organisations should become more aware of and involved in monitoring the use and practice of ABCs.
13. More understanding is needed concerning the effectiveness of intervention strategies and practices, and the neglect of neighbourhood playwork in this regard examined.
14. A Bill of Rights should ensure children are protected specifically from administrative abuses by public authorities, their welfare and rights being a primary consideration.

October 2011

Revised and updated December 2011

The authors

Jan Cosgrove is *National Secretary* of **Fair Play for Children**. He has served in this regard since the early 1990s and pioneered Fair Play's involvement in e.g. criminal records checks, child protection practice etc. Involved in the voluntary sector for over 40 years, mainly with young people/children issues, he has served as in key leadership roles. In 1983, he founded a local play project serving as its chair and as a volunteer throughout. He edits *PlayAction Online*, has written numerous Fair Play publications - reports, facts sheets, guides. Now retired, he serves Fair Play in an honorary capacity.

Matthew Cosgrove has been involved in playwork, paid and unpaid, for 20 years. He was employed by Fair Play as its Administrator until recently and maintains a voluntary role as regards *PlayAction OnLine*, and occasional projects such as the current one. He has a 2/1 degree in Media Studies and has undertaken work in other third sector settings also, including as a playworker.

Fair Play for Children

Founded 1972 by **Archbishop Trevor Huddleston** after a London East End drowning incident in which 2 boys died for lack of proper playspace. The current website at www.fairplayforchildren.org provides not only a full description of that history, its achievements, but also access to a large number of free guides etc and an online PDF library. Its daily **PlayAction Online News Service** provides around 15 stories a day about children, their play and other rights from around the world, a unique resource.

Appendix One

The Police FoI Request/Survey, Online:

<http://tinyurl.com/PoliceABCFoI>

Appendix Two

Forces sent the FoI request:

Avon and Somerset	Bedfordshire	Cheshire
City of London	Cleveland	Cumbria
Derbyshire	Devon and Cornwall	Durham
Dorset	Gloucestershire	Hertfordshire
Essex	Greater Manchester	Lancashire
Hampshire	Lincolnshire	Metropolitan
Humberside	Northamptonshire	North Yorkshire
Kent	South Yorkshire	Suffolk
Leicestershire	Sussex	Warwickshire
Merseyside	West Mercia	Wiltshire
Norfolk		
Northumbria		
Nottinghamshire		
Staffordshire		
Surrey		
Thames Valley		
West Midlands		
West Yorkshire		

Appendix 3

Home Office response to Fair Play Freedom of Information request.

Annexe B (statistics provided by Police Forces)

<http://tinyurl.com/FP-HOPoliceStats>

The columns totalling returns and % have been inserted by Fair Play to enable summary of usage.

Fair Play for Children, 32 Longford Road, Bognor Regis PO21 1AG

www.fairplayforchildren.org

Telephone: 0843 289 2638 Email: administration@fairplayforchildren.net