

## **OVERVIEW AND UPDATE ON ANTI-SOCIAL BEHAVIOUR ORDERS**

### **General Points**

Introduced by s.1 of the Crime and Disorder Act 1998

Powers to impose ASBOs were strengthened and extended by the Police Reform Act 2002: this introduced orders made on conviction in criminal proceedings (so-called CRASBOs); orders in county court proceedings; and interim orders.

Further and more flexible powers introduced by Anti-Social Behaviour Act 2003 and the Serious Organised Crime and Police Act 2005 widened powers for CRASBOs.

### **Types of Anti-Social Behaviour Orders**

4 types of Anti-Social Behaviour Orders:

#### **1. Stand-alone ASBO**

- Made by Magistrates' Court acting in its civil capacity
- Unrelated to other legal proceedings

#### **2. Interim Order**

- Can be made by Magistrates' Court or County Court
- May be made without notice to Defendant but does not take effect until served on Defendant. MUST be served within 7 days or will cease to have effect

#### **3. County Court Order**

- Can be obtained where there are other proceedings against a defendant

#### **4. Order made on conviction in criminal proceedings (CRASBO)**

- Can be made by Magistrates' Court, Crown court and Youth Court

## **CRASBOs or Post-Convictions ASBOs**

s.1C of the Crime and Disorder Act 1998 (as amended) governs this type of ASBO. Key points include:

- Relevant court can only make such an order if it sentences or conditionally discharges the Defendant for a 'relevant' offence
- 'Relevant' offence means an offence committed after the coming into force of s.64 of the Police Reform Act 2002 – **2<sup>nd</sup> December 2002.**
- Interim order on conviction can be sought where the full hearing is adjourned until a later date. This power was introduced by s.139 of SOCPA 2005 and is often used to protect vulnerable witnesses and/or communities from further anti-social behaviour by Defendant.
- Order comes into effect on day it is made BUT can Court can suspend prohibitions until after Defendant is released from custody.
- No formal application process but usual way to apply for such an order is for CPS to make request to Court
- Court then considers the following 2-stage test:

### **The Test**

1. the offender has acted in an anti-social manner, that is, in a manner that caused or was likely to cause harassment, alarm and distress to one or more persons not of the same household as the offender; and
2. an order is necessary to protect any persons in any place in England and Wales from further anti-social acts.

Note that it is different to the test for stand-alone ASBOs. The first limb is the same but the second limb differs in that it is less restrictive than normal as the 'necessity' test is NOT limited to 'relevant' persons.

## **Adjournments**

- After conviction and before sentence, can adjourn the full CRASBO hearing under s.10(3) of the Magistrates' Courts Act 1980. This is to allow enquiries to be made/evidence gathered. If hearing is adjourned before sentence is passed, then court can impose bail conditions as normal.
- Can now adjourn full CRASBO hearing **after** sentence has been passed under section 139(4) and (9) of SOCPA 2005. Although court cannot 'bail' defendant, it does have powers available to 'compel' Defendant to attend the adjourned CRASBO hearing. Useful power for defence!
- If the Defendant fails to attend the adjourned hearing, the Court has power to further adjourn the matter or may issue a warrant for his arrest. BUT only if it is satisfied that Defendant had adequate notice of time and place of adjourned hearing.

## **Evidence**

- Usual 'anything goes' approach as to evidence that can be adduced to support such an application. Immaterial whether evidence would have been admissible in the criminal proceedings which have led to Defendant's conviction.
- Includes, but not limited to:
  1. direct witness statements
  2. hearsay (multiple and anonymous hearsay included)
  3. letters of complaint
  4. TICs
  5. articles in local press
  6. antecedents
  7. Community Impact Statement - A community impact statement can be written by caseworker (e.g. community support officer) and/or local police and can include any/all of the above.

Further, Court of Appeal has considered the point over whether acts committed before 1<sup>st</sup> April 1999 are admissible and ruled that if Defendant has acted in anti-social manner AFTER commencement date, then judge/magistrates entitled to take into account ALL of the Defendant's conduct in determining whether such an order is necessary. So behaviour both before and after commencement date (*R v McGrath [2005] EWCA Crim 353*) is admissible and relevant.

### **Procedural Rules**

- Like all ASBOs, they are civil in nature. This has effect on evidential rules governing the applications.
- Although no specific procedural rules exist for serving of evidence, MUST give Defendant 21 days' notice of hearsay evidence to be relied upon (*Magistrates' Court (Hearsay Evidence In Civil Proceedings) Rules 1999*).
- Civil Procedure Rules do not apply and Criminal Procedure Rules are silent on evidence in ASBO hearings.
- The Magistrates' Court (Hearsay Evidence In Civil Proceedings) Rules 1999 should also apply to post-conviction ASBO hearings in the Crown Court and Youth Court (*Luke Paul Wadmore and Liam Philip Foreman v R [2006] EWCA Crim 686*).
- If applicant wishes to rely on document such as a Schedule of Complaints from housing estate or Schedule of Criminal Incidents derived from crime reports, then s.9 of Civil Evidence Act 1995 applies. Thus, if party wishes to rely on them, it should have a certificate that they are part of the records of a public authority AND this is to be signed by officer of public authority (*Luke Paul Wadmore and Liam Philip Foreman v R [2006] EWCA Crim 686*).
- Facts to be relied upon should be particularised well in advance by applicant. Thus, if Defendants accepts these facts, by agreed written Basis of Plea, this can be communicated in advance of hearing and will save time and potential delay. If CPS have not been clear on the facts they propose to rely upon, defence should write to them in advance of hearing for clarification.

- Although no formal rules, Court of Appeal is clear that procedural fairness is to be scrupulously observed because of the actual and potential consequences (*R (W) v Acton Youth Court [2005] EWHC954*).

### **Variation and Discharge**

- Applications to vary or discharge such an order are usually made where there has been a material change of circumstances.
- Application to vary or discharge order may be made to the court that originally made the order or for post-conviction ASBOs, may apply to any magistrates' court within the same petty sessions area of the original court.
- Application can be made by either the Defendant or the original applicant. S.140 (4) of SOCPA 2005 has inserted new section which allows a "relevant authority" as set out in CPS to apply to vary or discharge CRASBO.
- The defendant and/or applicant can also apply to vary or discharge an interim order.
- Order made on conviction cannot be discharged within 2 years of its service UNLESS the Defendant and the DPP consents (s.1CA (7)(a) of CDA 1998). Different to stand-alone ASBOs where they can be discharged within 2 years of service if both parties consent.
- However, can vary, add or remove prohibitions within initial 2 year period.

### **Terms and conditions**

- Has effect for period specified in order, but in any event this is not less than 2 years. Can also have effect 'until further order'.
- 5 key aspects to drafting prohibitions:
  1. Preventative not punitive;
  2. In negative terms;
  3. Enforceable;
  4. To be expressed in clear language;
  5. Proportionate

- Order should contain terms which are prohibitions directed to the anti-social behaviour. Purpose is to prevent behaviour re-occurring and so should not aim to punish Defendant.
- Prohibitions must be negative i.e. a mandatory order to do something specific is NOT permissible. Thus, in order for prohibition to be lawful, it must be set out in negative terms.
- Prohibition must be enforceable – thus, term should not be drafted too widely.
- Prohibition must be set out in clear and precise language so that it can be understood by all. Good question for court or advocates to ask is: “Are the terms of this order clear so that the Defendant will know exactly what he is not allowed to do?”
- Prohibition should be proportionate – clearly must be compatible with Defendant’s ECHR rights, particularly around Article 8 (right to private and family life). Court should first consider whether prohibition is necessary, and if it decides that it is, it must then ask itself if it is proportionate.
  - Can the conduct complained of be prevented in any other way?
  - Are the terms of the CRASBO commensurate with the risk?
  - Do the prohibitions go no further than is necessary to prevent further anti-social behaviour?

## **Breach**

- Breach of any sort of ASBO *without a reasonable excuse* is a criminal offence. No distinction between different types when it comes to sanctions for breach.
- Breach of an ASBO is an either-say offence and so can be tried summarily or on indictment.
  - If tried summarily, maximum penalty is 6 months’ imprisonment or fine or both;
  - If tried on indictment, maximum penalty is 5 years’ imprisonment or a fine or both.
- Nature and seriousness of breach will determine where it is to be tried. Even if magistrates accept jurisdiction to try the breach, they can then commit the Defendant to the Crown Court for sentence if new information is revealed.

- Breaches for those aged under 18 are to be tried in the Youth Court – maximum penalty is a 2 year detention and training order BUT this is only the case for those aged under 15 if they are ‘persistent offenders’ and is not available to those aged under 12.
- Both CPS and local authority may bring proceedings for breach of an ASBO.
- Defence of reasonable excuse is available. Burden rests on Defendant and standard is the balance of probabilities. Whether defence is made out is a question of fact but it may be possible to argue that misapprehension as to scope and meaning of the order is capable of being a reasonable excuse (*R v Dorothy Evans [2005] 1 Cr App R 549*).
- Court is not allowed to impose a conditional discharge for breach of an ASBO.

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