

# **ANTI-SOCIAL BEHAVIOUR ORDERS**

**WHEN TO APPLY**

**PRACTICAL DRAFTING HINTS**

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# Legal framework

A Court may make an ASBO in respect of a person aged 10 or over if:

- the person has acted in an **anti-social manner**, that is to say, in a manner that **caused or was likely to cause harassment, alarm or distress** to one or more persons not of the same household as himself (Part i); and
- such an order is **necessary** to protect relevant persons from further anti-social acts by him (Part ii).

Both parts of the test must be satisfied

# Part (i) Has acted in an anti-social manner

- No minimum number of incidents, a single incident may be sufficiently serious to warrant an application being made
- In the Magistrates' Court, incidents relied upon for Part (i) must occur in the six months prior to the complaint being laid, other incidents usually only relevant for Part (ii)
- Existence of asb must be proven to the criminal standard: McCann

# Meaning of 'likely' to cause HAD

- The leading case is Chief Constable of Lancashire v Potter [2003] EWHC 2272 (Admin)
- 'Likely' means more probable than not and must be proved to the criminal standard: Potter.
- R (on the Application of Gosport Borough Council) v Fareham Magistrates' Court [2006] EWHC 3047 (Admin)

# Part (ii) Necessity

Relevant considerations:

- the nature of the conduct
- its frequency and duration
- its impact
- the steps taken by the applicant and others to prevent it the behaviour
- the likelihood of repetition if an order is not made
- whether the defendant has breached any interim order
- the defendant's age, personal characteristics, potential for change and relevant previous convictions

# Prohibitions

- Must not be used simply to increase the penalty available through the criminal law.
- Must target specific behaviour complained of
- Clear, precise, capable of being understood.
- Exclusion zones should be clearly identified on a map.
- Proportionate and commensurate with the risk being guarded against.
- Ought to have a geographical limit in the absence of good reasons for no limit.

# Prohibitions which mirror the criminal law

R (on the application of Christopher Rabess) v The Commissioner of Police for the Metropolis [2007] EWHC 208

At paragraph 35 Dobbs J said:

*'although the terms mirror the criminal law to a certain extent... they do not fully mirror the law and indeed have added value. Given what they seek to achieve, the overlap is not such that the criminal law would be an adequate substitute. It is clear additionally from the making of the interim ASBO that the order has an efficacy which the criminal law has not yet been able to achieve.'*

# Prohibitions - Issues

- *Act in an anti-social manner in the city of Manchester.*
- *Too wide on grounds of lack of definition or limitation of the behaviour and also breadth of geographical areas CPS v Michael T [2006] EWHC 728 (Admin)*



# Prohibitions - Issues

- *‘Not to be a passenger in or on any vehicle, whilst any other person is committing a criminal offence in England or Wales’*
- A breach could be occasioned by travelling in a bus the driver of which, unknown to him, was driving without a licence: R (W) v Acton Magistrates’ Court [2005] EWHC 954 (Admin)

# Prohibitions - Issues

- *'Having in his possession in any public place any window hammer, screwdriver, torch or any tool or implement which could be used for the purpose of breaking into motor vehicles.'*
- Unacceptably wide as the meaning of 'any tool or implement' is impossible to ascertain.
- Further examples at pages 12-13 of notes

# Prohibitions - Approved

- *'Behaving in a manner which causes or is likely to cause harassment, alarm or distress to any person not of the same household as himself and from inciting or encouraging others to behave in such a manner.'*
- Judges in Boness approved this clause but preferred a geographical limitation in the absence of good reasons for having no such limit.

# Prohibitions - Approved

- Exclusion zone coming into force after an eviction
- 'Once the warrant for possession has been executed, from entering the area inside the boundary marked in pink on the attached map. This area includes the whole of [ ] Road, [ ] Road, (etc). The section of [ ] Road which is included within the area may only be entered by using public transport and without getting off such transport within that section'.

# Prohibitions - Approved

- Alcohol/drinking in public
- Begging
- 'Being in possession of any opened vessel containing alcoholic liquor in any public place in the London Borough of [ ]'
- 'Begging or seeking charitable donations from any person within the London Borough of [ ]'
- 'Sitting on the floor outside [insert name(s) and address(es) of premises] in the London Borough of [ ]'

# Prohibitions - Approved

- Graffiti and criminal damage
- 'Carrying the following articles, in any public place, namely any form of unset paint in any form of container, any form of permanent marker pen, any form of shoe dye or permanent ink, any form of grinding stone, glass cutting equipment, glass etching solution or paste anywhere in ....'
- Further examples at pages 13-15 of notes