



cornerstone



barristers

ANTI-SOCIAL BEHAVIOUR

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Programme



- **The 2014 Act in practice: how well is it working?**
- **Getting your remedy: best practice tips**
- **The teeth: possession orders & committals**
- **Case law update**
- **Any other questions**



The 2014 Act in practice

Injunctions: what is working well?



- Largely continued as before in county court –
 - district judges familiar with tests
 - injunctions being granted without major difficulties
- Some attempts to defend injunctions on the basis that breach could lead to eviction, judges not being persuaded by this
- Some examples of mandatory grounds being pursued using a proven breach on an injunction

Injunctions: the challenges



- **Limited use of positive requirements**
 - Potential supervisors reluctant to commit
 - Lack of available support services
- **Limited enforcement taking place**
 - Resources
 - Lack of familiarity with committal process and cost
 - Lack of evidence to meet criminal standard of proof
- **Youth injunctions**
 - YOT unaware of their role and/or obstructive
 - Unclear whether YOT funding covers their role as statutory consultee
 - Youth court still unfamiliar with the powers & tests
- **No standard forms**

Closure orders



Closure orders 😊

- Being widely used
- Interesting uses
- Most common ground for mandatory possession

Closure orders 😞

- Being widely used
- Interesting uses
- Most common ground for mandatory possession

Mandatory grounds



Mandatory grounds 😊

- Being regularly used following **conviction** or a **closure order**

Mandatory grounds 😞

- Fewer examples of use following proven breach of an injunction (but that is in context of limited use of committals)

CPNs



CPNs 😊

- Increasingly used for low level ASB (instead of injunctions)
- Warning letter seems to be a good deterrent
- LAs can use across tenures
- Some interesting uses
- Serious penalties

CPNs 😞

- Clarity re evidence to show ‘detrimental impact’
- Few RPs have been designated to issue CPNs
- Inconsistent guidance, e.g DEFRA, CIEH



Getting your remedy: best practice

HOW TO SUCK EGGS



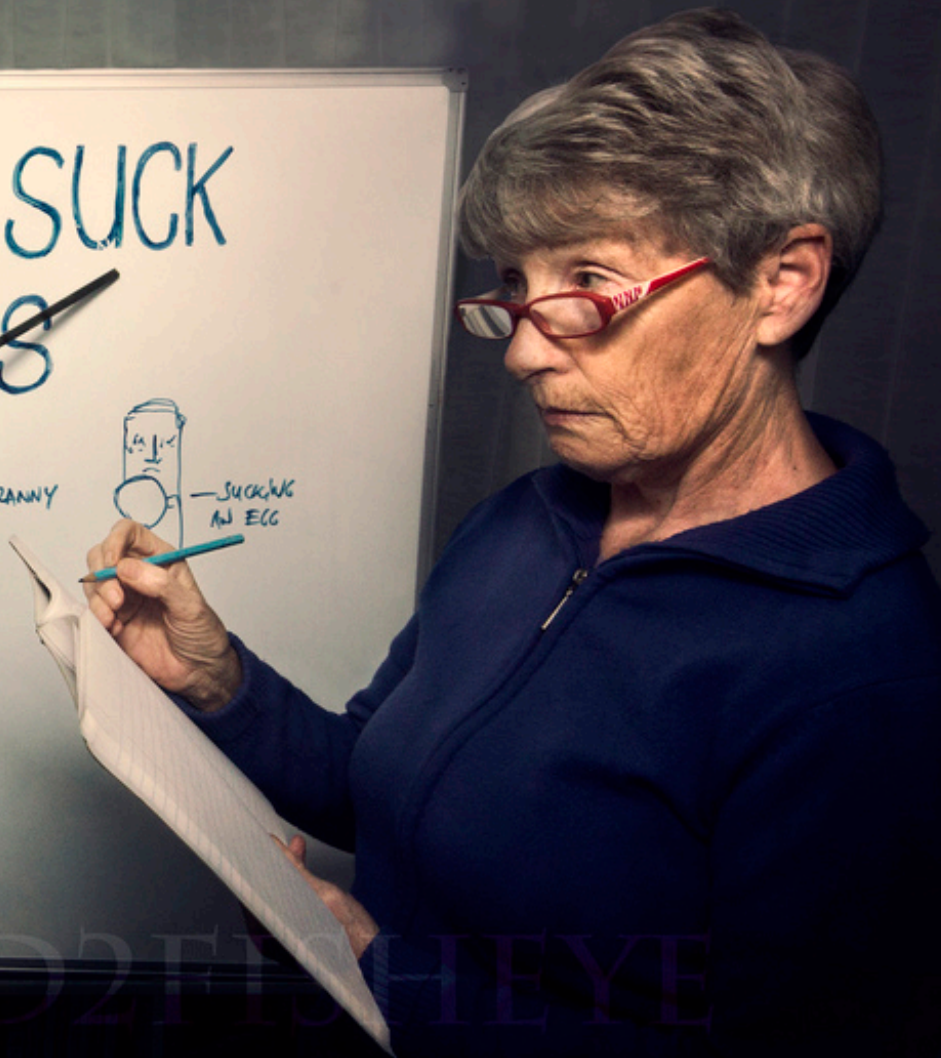
← EGG



← GRANNY



← SUCKING AN EGG



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ASB remedies



Two main remedies for ASB:

- **Injunction**
- **Possession**

Injunctions: what do you need to prove?



Two conditions to be met:

- D has engaged, or threatens to engage in **anti-social behaviour**

and

- The court considers it is just and convenient to grant the injunction for the purpose of preventing D from engaging in **anti-social behaviour**



Where applying for a **power of arrest** also need to prove:

- Use or threatened use of violence against other persons

or

- A significant risk of harm to other persons from D



Where applying for **positive requirements**:

- **Court must receive evidence on suitability and enforceability of the requirement**
- **Before including two or more requirements the court must consider their compatibility with each other**

Possession: what do you need to prove?



Secure Tenants - Discretionary

- **Ground 1 – an obligation of the tenancy has been broken or not performed.**
- **Ground 2 - The tenant or visitor to the property is guilty of conduct causing or likely to cause a nuisance or annoyance to a person residing, visiting or otherwise engaging in a lawful activity in the locality or to the landlord affecting housing management functions. (In summary)**

AND

- **Reasonableness.**

Possession: what do you need to prove?



Secure Tenants – Mandatory Grounds

CONDITION SATISFIED

1. Conviction of a serious offence; or
2. Breach of injunction; or
3. Breach of CBO; or
4. Closure order in respect of property for more than 48 hours; or
5. Conviction for breach various abatement notice re statutory nuisance;

SUBJECT TO any convention rights defence.

Which Court?



- **County Court for adult injunctions & possession claims (High Court can also hear applications but most will be made in the County Court)**
- **Youth Court for those aged 10 and under 18**
- **Youth Court (initially) where there is a combination of youths and adults**

Required Documents: injunctions



- **Form N16A**
- **Draft Order, Form N16(1)**
- **Witness statements**
- **Notice of intention to rely on hearsay evidence (if relevant)**
- **Schedule of incidents (optional)**

Required Documents: possessions



- **Notice of Seeking Possession and Certificate of Service**
- **N5 – Claim Form**
- **Particulars of Claim**
- **Draft order**
- **Witness statements**

What terms should you seek?



Terms of injunction or SPO should be:

- **Tailored to specific behaviour**
- **Proportionate to aims of clause**
- **Supported by evidence – KEY!**
- **Clearly expressed**
- **Use maps/plans to define areas**

What evidence do you need?



- **Best evidence - witness statement from a named witness**
- **Hearsay - admissible in civil proceedings but notice must be given**
- **Two types:**
 - **Second-hand information**
 - **Anonymous hearsay**
- **Be cautious with hearsay, especially on w/o notice apps**



- **Other options:**
 - **witness statement with redactions**
 - **including info in ASB officer's statement**

- **Exhibit all contemporaneous (or at least closer in time to event evidence) e.g,**
 - **diary entries**
 - **officer's notes**
 - **emails**
 - **letters**

Witness statements - checklist



The basics

- Header
- Statement of Truth
- Paragraph numbers
- Chronological order
- Page numbers
- Numbered exhibits with front sheets (see later slide)
- Back sheet

Witness statements - contents



- Identify yourself
- Explain the connection between your organisation and the Defendant
- Who you have consulted/informed, exhibit the evidence
- The problem, explain why the ASB test is met
- Why you have applied without notice?
- Why is there urgency?
- Why are you seeking a power of arrest?
- What other attempts have been made to address the problem?
- Explain why a witness has not been named
- Explain the terms sought and proposed length of order



- **Need a front sheet for each exhibit**
- **Tenancy agreement**
- **Maps/plans/photos**
- **Diary sheets/logs**
- **File notes/computer notes**
- **Letters/ABCs/NOSPs/NTQs**
- **Evidence of consultation**

Service in injunction applications



Of the Application

- Personal service required: CPR 65.43(5)
- Except if going without-notice

Of the Order once made

- Personal service required: CPR 81.5
- Court can dispense with personal service if order contains prohibitions (only) and considers it just to do so (eg where D has been present when order was made) CPR 81.8(1)
- If there is a Power of Arrest, deliver copy to the Police station CPR 65.44(2)(b)

••• The teeth: possession & committals

SPOs: when will a court suspend?



- **City Housing Trust v Massey [2016] EWCA Civ 704**
 - CA guidance given to clarify approach to suspension
 - Focus on future: cogent evidence conduct will cease
 - Evidence need not come solely from tenant himself
 - Court must be careful when framing terms not to expect social LL to do more than reasonable
 - Fact D found to have lied is not complete bar to SPO (although risk to D that court won't believe assurances re future conduct)

SPOs: permission for warrant



- **Cardiff CC v Lee [2016] EWCA Civ 1034**
 - Important case!
 - Now you must apply for and obtain court's permission to enforce a SPO under CPR rule 83.2 (N244 application)
 - Evidence of breach must accompany the application
 - Can be made without notice to tenant
 - Can be dealt with on papers but court can list for hearing
 - Change from previous understanding that SPOs could be enforced without permission by applying for warrant on N325 – this now only for outright POs
 - Decision may have significant resource implications

Committal applications



Remember:

- **Criminal standard of proof**
- **Onus on the Applicant to get it right**
- **Procedure, procedure, procedure!**

First things first...



...get the injunction right!

Formalities: signed, sealed and delivered

- *CPR 65.43 – 65.49 and PD 65*
- *CPR 81.4 - 81.11 and PD 81*

Key requirements:

1. Personal service
2. Penal notice
3. Power of arrest

Formalities prior to committal applications



Dispensation of personal service: CPR 81.8

- *In the case of a judgment or order requiring a person not to do an act, the court may dispense with service ... if it is satisfied that the person has had notice of it-*
 - *By being present when ...given or made*
 - *By being notified of its terms by telephone, email or otherwise*
- *In the case of any ... order the court may –*
 - *Dispense with service under rules 81.5 to 81.7 if the court thinks it just to do so; or*
 - *Make an order in respect of service by an alternative method or at an alternative place*

Formalities prior to committal applications



Penal notices: CPR 81.9(1)

- ...a judgment or order to do or not do an act may not be enforced under rule 81.4 unless there is prominently displayed, on the front of the copy of the judgment or order served in accordance with this Section, a warning to the person required to do or not do the action in question that disobedience to the order would be a contempt of court punishable by imprisonment, a fine or sequestration of assets
- Exception: “an undertaking to do or not do an act which is contained in a judgment or order”

Formalities prior to committal applications



Form of words recommended - PD 81(1)

- *“If you, the within-named [] do not comply with this order you may be held to be in contempt of court and imprisoned or fined, or your assets may be seized”*
- This form of words is not absolute - can be amended to fit the situation, but must be “substantially to the same effect”
- Consider also including the wording on cover letter on injunction to the Respondent

Formalities prior to committal applications



Power of Arrest- CPR 65.44(2) and (3)

- Each relevant provision of the injunction must be set out in a separate paragraph of the injunction
- The claimant must deliver a copy of the provisions to any police station for the area where the conduct occurred
- But – in respect of *ex parte* injunctions, the injunction must not be delivered to a police station before the defendant has been served with the injunction
- Re-deliver the order to the police if any of the provisions are subsequently discharged or varied

Commencing committal applications



Routes to committal applications:

- 1.** Where power of arrest is attached to the Order, the police can arrest R of their own initiative if they have “*reasonable cause to suspect that R is in breach of the provision*” – **s9(1) 2014 Act**
- 2.** If the person who applied for an injunction under s1 thinks that R is in breach of any of its provisions, they can apply for the issue of a warrant for arrest - **s10(1) 2014 Act, CPR 65.46**
- 3.** Make committal application directly to court – **CPR 81.10, CPR Part 23 (N244)**

S9 - Police arrest R for suspected breach



- Applicant likely to have little if any notice that R has been arrested
- Police effecting arrest must inform person who applied for the injunction - **s9(2) 2014 Act**
- But....R must appear at court within 24 hours of arrest. Often means Applicant has little or no notice of the hearing - **s9(3) 2014 Act**
- Committal must be dealt with within 28 days of first appearance in court - **CPR 65.47(3)**

S10 – Application for Warrant



- Applications for a warrant – CPR 65.46 and PD 65, para 2.1
- Must be supported by affidavit evidence *or* by oral evidence (written summary to be served on R at time of arrest)
- S10(3): Granted only if Judge has *“reasonable grounds for believing that the respondent is in breach of a provision of the injunction.”*

CPR 81.10 - Making committal applications



- Must set out full grounds for application, including (separately and numerically) particulars of each alleged act of contempt – **CPR 81.10(3)(a)**
- Must be supported by affidavit evidence - **CPR 81.10(3)(b), PD 81, para. 14.1**
- Application must be served personally on R - **CPR 81.10(4)**
- Claim form must have “*prominent notice*” stating possible consequences of court making committal order and R not attending hearing – **PD81, para. 12(4)**

CPR 81.10 - Making committal applications



Useful to note:

- **Committal applications under the 2014 can now be dealt with by District Judges (under the 1996 Act they had previously been dealt with by Circuit Judges) – CPR 65.6(6)**

Affidavit evidence



- Form of affidavit – **CPR 32.16 and PD 32, paras. 2-16**
- Where witnesses will not be able to attend the hearing, serve hearsay notice per usual but ensure statement in affidavit form
- Fallback if not in affidavit form: witness attends court hearing and swears on her statement before the Judge
- Remember - evidence of conduct pre-dating 23 September 2014 not permitted - **S21(7) 2014 Act**
“In deciding whether to grant an injunction under section 1 a court may take account of conduct occurring up to 6 months before the commencement day”

Presumption in favour of the Defendant



- *“The Convention rights of those involved should particularly be borne in mind”* - PD 81, para. 9
- Relevant standard of proof is *“beyond reasonable doubt”*
- Court will usually refuse to hear grounds not set out in application notice, or evidence not in correct form - CPR 81.28(1)
- Defendant always entitled to give oral evidence & call other witnesses, even when she not has filed written evidence – CPR 81.28(2)
- Court will have regard to need for R to be legally represented, obtain legal aid, prepare defence and arrange for interpreter if necessary – PD 81, para. 15.6

Issues in committals



- Representation for D's: Brown v Haringey LBC [2015] EWCA Civ 483
- Proceeding in absence: Sanchez v Oboz [2015] EWHC 235 (Fam)
- Sentencing

Sentences for breach



- Sentence for breach of ASB injunction should follow sentencing guidelines for ASBO breach: (Amicus Horizon v James Thorley [2012] EWCA Civ 817)
- Sentencing Guidelines Council: Breach of an Anti-social Behaviour Order Definitive Guidance

Sentences for breach of injunction



- *Gill v Birmingham CC* [2016] EWCA Civ 608
 - Confirms approach to sentencing when concurrent criminal proceedings alongside committal proceedings
 - First court to impose sentence may not take account of any sentence in other proceedings
 - Second court must take into account sentence in first proceedings to ensure D not punished twice for same
 - In this case the sentence imposed was held to be ‘manifestly excessive’ & Judge at first instance had not taken into account some relevant matters – sentence reduced from 14 months

Sentences for breach of injunction



- All orders made in the civil courts for committal for contempt of court are published at:
<https://www.judiciary.gov.uk/subject/contempt-of-court/>
- Significant custodial sentences are being given for serious breaches and/or for those repeatedly breaching.



Case law update

Reigate & Banstead Borough Council v Walsh



- [2017] EWHC 2221 (QB)
- Concerned email traffic sent by the Defendant to the Claimant.
- Voluminous and excessive nuisance emails.
 - *“Mr Smarty, your boss, will end up with bullets being fired at him. Then we apologise, you take a little shove under the bus.”*
- Taken to amount to physical threats. Recipients felt distressed.
- At time of application for final injunction and since the granting of an interim injunction, however, emails had ceased.

R&B v Walsh



- Question for court was whether in the circumstances injunctive relief was necessary.
- Held that it was because the probability and “overwhelming likelihood” was that the behaviour had ceased only because of the injunction and the sanctions that flow from a breach.
- Therefore appropriate and proportionate to continue the injunction and powers of arrest but for a time limited period of twelve months.

Birmingham v Padroe [2016] EWHC 3119 (QB)



- Respondent alleged to have engaged in “particularly unpleasant” anti-social behaviour by targeting elderly and vulnerable persons and charging them excessive sums for building works which were unnecessary/shoddy.
- Concerned the correct interpretation of section 21(7) of the ASBCPA 2014



- **“Anti-social behaviour will by its very nature generally involve a course of conduct. It is often the cumulative effect of anti-social behaviour over a period of time, rather than the individual acts, which causes serious harm. In many cases, there will be at least some interval of time between the earliest conduct complained of, and an application to the court for an injunction.”**



- **Section 21(7) served a purpose as a transitional provision. To treat it as a section which requires the court to ignore any behaviour prior to 23rd September 2014 would lead to absurd results.**
- **Past behaviour may be probative of more recent behaviour: for example, as similar fact evidence which is probative of the identity of the perpetrator of the recent conduct, or as evidence which serves to rebut a defence of accident or innocent error.**



- **i) Where an application for an injunction under Part 1 of the 2014 Act is based**
 - on an allegation of actual anti-social behaviour, as opposed to an allegation of
 - threatened anti-social behaviour, the applicant authority must satisfy the court
 - of the first condition under section 1(2) by proving on the balance of
 - probabilities that the respondent has engaged in anti-social behaviour which
 - occurred after 23rd September 2014. If such behaviour is not proved, the court
 - has no jurisdiction to grant an injunction.



- **ii) Evidence of the respondent's conduct prior to 23rd September 2014 cannot in**
 - **itself satisfy the first condition. But (assuming there is no other bar to its**
 - **admissibility) such evidence may be taken into account by the court at the first**
 - **stage, where it is relevant (whether as similar fact evidence, or to rebut a**
 - **defence, or in any other way) to the issue of whether the respondent engaged**
 - **in anti-social behaviour after 23rd September 2014.**



- **iii) Evidence of the respondent's conduct prior to 23rd September 2014 (again**
 - **assuming there is no other bar to its admissibility) may also be taken into**
 - **account by the court at the second stage, when considering whether it is just**
 - **and convenient to grant an injunction.**

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Any questions?

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