

7. The terms of the order (the prohibitions)

The role of the agencies

Although it is for the court to decide what prohibitions are to be imposed by the order, the applicant agency should propose conditions (including duration) to the court.

A full order should be drawn up using the form in the court rules. The courts find it helpful if applicants can ensure that they are equipped to amend and print off the final version of the order at the end of the hearing. This improves efficiency and helps ensure that the defendant leaves the court with a clear understanding of the prohibitions.

In the county court, the proposed order should accompany the application. The process for the county court is set out in the Practice Direction at Appendix B.

Where the order is made on conviction in criminal proceedings, an agency concerned in the case, such as the police, may propose prohibitions or the court may draw them up of its own volition. It should be noted that the order may not impose positive requirements, only prohibitions.

Careful thought needs to be given to the formulation of the conditions so they cannot be easily circumvented and can be easily understood by the perpetrator.

The prohibitions

The prohibitions:

- should cover the range of anti-social acts committed by the defendant;
- * should be necessary for protecting person(s) within a defined area from the anti-social acts of the defendant (but, as a result of the recent changes, that defined area may be as wide as necessary and could in appropriate cases include the whole of England and Wales);
- ³ should be reasonable and proportionate;
- ⁵ should be realistic and practical;
- » should be clear, concise and easy to understand;
- ⁹ should be specific when referring to matters of time if, for example, prohibiting the offender from being outside or in particular areas at certain times;
- should be specific when referring to exclusion from an area, including street names and clear boundaries such as the side of the street included in the order (a

- map with identifiable street names should also be provided);
- should be in terms that make it easy to determine and prosecute a breach;
- ® should contain a prohibition against inciting/encouraging others to engage in anti-social behaviour;
- ⁸ should protect all people who are in the area covered by the order from the behaviour (as well as protecting specific individuals);
- may cover acts that are anti-social in themselves and those that are precursors to a criminal act, for example a prohibition on entering a shopping centre rather than on shoplifting;
- ⁹ may include a general condition prohibiting behaviour which is likely to cause harassment, alarm and distress, but where this is done there must be further clarification of what type of behaviour is prohibited; and
- ⁹ may include a prohibition from approaching or harassing any witnesses named in the court proceedings.

Examples of ASBO prohibitions can be found on the Crime Reduction website at www.crimereduction.gov.uk

The courts

The absence of a precise definition of antisocial behaviour within the legislation means that orders can be used to tackle a wide range of behaviour. In recent years, courts have imposed orders to prevent behaviour such as joyriding, verbal abuse, vandalism, begging, drinking under age and assault. While the proceedings and the making of the order itself can curb behaviour, the extent to which the order succeeds also depends on the prohibitions imposed, which in turn require effective wording.

It is good practice for the applicant to provide a draft of the prohibitions sought, but the final wording of the order will be a matter for the court. Problems have arisen when prohibitions have been drafted too widely or in such ways that enforcement is made difficult, if not impossible. Guidance and general principles on drafting prohibitions have come from legislation, case law and shared best practice. The following section draws together these principles and provides