

49 In *Lonergan* the Divisional Court held that it was lawful for a prohibition in the nature of a curfew to be included in an ASBO made under s.1 CDA 1998 if its imposition was necessary to provide protection for others.

50 With these general observations in mind, we turn to the appeals against the ASBOs.

The Dean Boness ASBO

51 In favour of making an ASBO was the fact that the appellant had consistently engaged in anti-social behaviour over a period of approximately three years. He was a persistent prolific offender and had admitted to drug misuse in the community. There were three main aspects to his anti-social behaviour: threatening behaviour (two incidents), vehicle crime (three incidents) and other offences of dishonesty such as burglary and theft (three incidents and other incidents of handling stolen goods). On the other hand he was being sentenced to a custodial sentence of three years' detention in a young offender institution and was thus subject to a period on licence and subject to recall or return to custody.

52 The respondent accepts, on the authorities and in particular having regard to *P* (para.[25] above) that it is far from clear that it was *necessary* to make an ASBO in respect of the appellant. We agree.

53 We turn to the various orders. The first order prohibited the appellant from:

Entering any public car park within the Basingstoke and Deane Borough Council area, except in the course of lawful employment.

54 The respondent submits:

“The antecedent information does not state whether any of the vehicle crimes committed by the appellant took place in a public car park. However, it is submitted that it could sensibly be argued that a person intent on committing vehicle crime is likely to be attracted to car parks. The prohibition as drafted does not appear to allow the offender to park his own vehicle in a public car park or, for example, to be a passenger in a vehicle driven into a public car park in the course of a shopping trip. Thus, in the absence of evidence showing that the appellant committed vehicle crime in car parks, there would appear to be a question mark over whether the prohibition is proportional, particularly as prohibition (3) seems to be drafted with a view to allowing the appellant to ride a motorcycle. If the court contemplated the lawful use of a motorbike as an activity which the appellant could pursue, then this prohibition would significantly limit the places he might be able to park it. It is of note that in *McGrath* the Court of Appeal held a similar prohibition to be too wide, although it covered a much larger geographical area.”

55 We agree. Even if the order was necessary to prevent anti-social behaviour by the appellant, it was not proportionate.