may include a prohibition from approaching or harassing any witnesses named in the court proceedings.
Examples of AS BO 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,
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The terms of the order (the prohibitions)
drinking underage 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.
ft 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 genera! principles on drafting prohibitions have come from legislation, case law and shared best practice. The following section draws together these principles and provides suggestions and comments for consideration.
There is now a requirement for the court to set out its findings of fact in relation to antisocial behaviour on the face of the order, following the cases of Wadmore and Foreman.
Effective prohibitions
If the conditions for making an order are met, the court may make an order which prohibits the defendant from doing anything described in the order (section 1(4) Crime and Disorder Act 1998 (CDA)). The facts leading to the order should be recorded and the court should provide its reasons for making the order ***(C v Sunderland Youth Court*** [2003 J EWHC 2385).
The effect of the order should be explained to the defendant and the exact terms pronounced in open court. Most courts now have a practice of serving the defendant with a copy of the court order before he or she leaves court and may also require his or her acknowledgement. The order should set out in full the anti-social behaviour in relation to which the order was made (7? ***v Shane Tony P***
EWCA Grim 287).
Once the court has decided that the order is necessary to protect persons from further anti-social acts by the defendant, the court must then consider what prohibitions arc appropriate to include. Each order and therefore prohibition will need to be targeted to the individual and the type of anti-social behaviour it is to prevent.
The prohibitions that may be imposed are those necessary to protect persons from further anti-social behaviour by the defendant (section 1 (6) CDA) and must not impose positive obligations. Therefore, each prohibition must be:
negative in nature.
precise and target the specific behaviour that has been committed by the defendant.
proportionate to the legitimate aim pursued and commensurate with the risk to be guarded against, which is particularly important where an order may interfere with an ECHR right (7? v lioness [2005] EWCA 2395); and expressed in simple terms and easily understood.
Identification of some of the best practice used within the courts suggests that the following issues should be borne in mint! when formulating prohibitions: