acted in an anti-social manner, that is to say in a manner which caused or was likely to cause harassment, alarm, or distress to one or more persons not of the same household as himself.' (Lord Steyn, paragraph 37)
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Simon Cordell's Skeleton Argument (2) Pdf
Antisocial behaviour orders; the basics
This means that the criminal standard of proof applies to acts of anti-social behaviour alleged against the defendant.
However, Lord Steyn went on to explain:
'The inquiry under section 1(1)(b), namely that such an order is necessary to protect persons from further anti-social acts by him, does not involve a standard of proof: it is an exercise of judgement or evaluation.'
It should be noted that it is the effect or likely effect of the behaviour on other people that determines whether the behaviour is antisocial. The agency applying for the order does not have to prove an intention on the part of the defendant to cause harassment, alarm or distress. Under section 1(5) of the 1998 Act, the Court will, however, disregard any behaviour shown to be reasonable in the circumstances.
The most common behaviour tackled by ASBOs is general loutish and unruly conduct such as verbal abuse, harassment, assault, graffiti and excessive noise. ASBOs have also been used to combat racial harassment, drunk and disorderly behaviour, throwing fireworks, vehicle vandalism and prostitution. Many other problems, for instance the misuse of air guns, could also lend themselves to this approach.
The wide range of anti-social behaviour that can be tackled by ASBOs and the ability to tailor the terms of the order to each specific case illustrates their flexibility. There have been cases where the chief executive of a company has been issued with an ASBO for anti-social behaviour committed by the company. This is because ASBOs must be issued against individuals and not against organisations. ASBOs may also be used, for example in the misuse of mini motors, where warnings and other measures have failed.
Against whom can an order be made?
An order can be made against anyone aged 10 years or over who has acted in an anti-social manner, or is likely so to act, and where an order is needed to protect people and the wider community from further anti-social acts. A list of interventions available for children under 10 is at Appendix A. the orders are tenure-neutral and can be used against perpetrators living in any type of housing (not just social housing). Because the order is specific to the person, if someone moves to a new house, it still remains in force, ASBOs can be used to combat anti-social behaviour in a wide range of situations and settings.
They are highly relevant to misconduct in public spaces such as parks, shopping centres and transport hubs, but they are by no means confined to such areas.
Where groups of people are engaged in anti-social behaviour, a case needs to be made against each individual against whom an order is sought. However, the cases can be heard together by the court. Agencies have found that targeting ringleaders with orders is an effective deterrent to other members of the group.
When investigating complaints about antisocial behaviour, it is vital that agencies satisfy themselves that complaints are well founded. In particular, they should consider the possibility that complaints may have been motivated by discrimination, perhaps on racist grounds, or to further a pre-existing grudge. However, failing to act against instances of anti-social behaviour can lead to an escalation of the problem by increasing fear of crime or leading those subjected to the anti-social behaviour to retaliate. Nipping unacceptable behaviour in the bud is therefore the best option.