

A court should ask itself before making an order are the terms of this order clear so that the offender will know precisely what it is, he or she is prohibited from doing?' (*R v Lioness* [2005] EWCA 2395).

Less common phrases such as 'curtilage', 'paraphernalia' or 'environs' should be avoided as they may cause confusion.

Can it be enforced? Those who will enforce the order must be able to identify and prove a breach.

Are any excluded areas clearly delineated? Most courts require a map to be included and it may be necessary to delineate which side of the road forms the boundary. If a line is drawn down the middle of a road, there may be arguments as to which side of the road the defendant was standing.

Does the prohibition clearly identify those whom the defendant must not contact or associate with?

Where the defendant is a foreign national, some courts consider it good practice for the order to be translated into the native tongue.

Testing the prohibition by considering ways in which it could be breached may highlight its limitations (*7? v McGrath* EWCA Crim 353).

There is no requirement that the acts prohibited by an order should by themselves give rise to harassment, alarm, or distress (*7? v McGrath* [2005] EWCA Crim 353).

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* Curfews are substantially prohibitive and, while also a sentence of the court, there is nothing legally objectionable to a curfew as a prohibition if the necessary protection of the public justifies its inclusion (*7? (Loneragan) v Lewes Crown Court* [2005] EWHC 457 (Admin)).

A prohibition can prohibit behaviour that is in any event unlawful, although previously the courts have encouraged inclusion of comparatively minor offences only (*R v Shane Tony P* [2004] EWCA Crim 287). However, recently the Court of Appeal has indicated that prohibiting behaviour that is in any event a crime does not necessarily address the aim of an order, which is to prevent anti-social behaviour. Prohibitions should enable agencies to act before the anti-social behaviour takes place rather than waiting for a crime to be committed (*R v Bones* [2005] EWCA 2395). Therefore, bail conditions provide a useful analogy when considering what prohibitions to impose.

The Court of Appeal provided some hypothetical examples by way of guidance.

If faced with a defendant who causes criminal damage by spraying graffiti, then the order should be aimed at facilitating action to be taken to prevent graffiti spraying by him before it takes place. For example, the prohibition could prevent the offender from being in possession of a can of spray paint in a public place, giving an opportunity to take action in advance of the actual spraying. This makes it clear to the defendant that he has lost the right to carry such a can for the duration of the order.

If a court wished to make an order prohibiting a group of youngsters from racing cars or motor bikes on an estate or driving at excessive speed (anti-social behaviour for those living on the estate), then the order should not (normally) prohibit driving while disqualified. It should prohibit, for example, the offender while on the estate from taking part in, or encouraging, racing, or driving at excessive speed. It might also prevent the group from congregating with named others in a particular area of the estate. Such an order gives those responsible for enforcing the order on the estate the opportunity to take action to prevent the anti-social conduct before it takes place. Neighbours can alert the police, who will not have to wait for the commission of a particular criminal offence.