

it may make an order which prohibits the offender from doing anything described in the order.” (Underlining added)

An ASBO is an order prohibiting a person from doing the “thing” described in the order. We deal first with some procedural points. In McCann the House of Lords held that the proceedings on complaint by a relevant authority under s. 1 of CDA 1998 were civil in nature, that hearsay evidence was admissible, that the magistrates’ court had to be satisfied to the criminal standard that the defendant had acted in an anti-social manner, The test for whether the order was necessary required an exercise of judgment or evaluation and did not require proof beyond a reasonable doubt. In W. v Acton Youth Court [2005] EWHC 954 (Sedley L.J. and Pitchers J.) confirmed that proceedings under s. 1C are civil proceedings. In that case Pitchers J. said that:

“The actual and potential consequences for the subject of an ASBO make it particularly important that procedural fairness is scrupulously observed.”

(Shane Tony) [2004] EWCA Grim 287; [2004] 2 Cr. App. R. (S.) 63 (p.343) Henriques J. giving the judgment of the Court (presided over by Lord Woolf C.J.) said (para.[34]):

“In our judgment the following principles clearly emerge:

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**R. v DEAN BONES AND OTHERS**

The terms of the order must be precise and capable of being understood by offender.

The findings of fact giving rise to the making of the order must be recorded.

The order must be explained to the offender.

The exact terms of the order must be pronounced in open court and the written order must accurately reflect the order as pronounced."

Because an ASBO must obviously be precise and capable of being understood by the offender, 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 that he is prohibited from doing?"

The Home Office in a 2002 publication entitled “A Guide to Anti-Social Behaviour Orders and Acceptable Behaviour Contracts” gave examples of the types of anti-social behaviour which the Home Office considered could be tackled by ASBOs. The list (which does not purport to be exhaustive) comprises: harassment of residents or passers-by, verbal abuse, criminal damage, vandalism, noise nuisance, writing graffiti, engaging in threatening behaviour in large groups, racial abuse, smoking or drinking alcohol while under age, substance misuse, joyriding, begging, prostitution, kerb-crawling, throwing missiles, assault and vehicle crime.

Home Office guidance suggests that prohibitions, should amongst other things: be reasonable and proportionate; be realistic and practical.

be in terms which make it easy to determine and prosecute a breach.

In the report of the working group set up under Thomas L.J. there is a section which identifies elements of best practice adopted within the courts when dealing with the terms of an ASBO. Included amongst these elements are:

the prohibition should be capable of being easily understood by the defendant.

the condition should be enforceable in the sense that it should allow a breach

to be readily identified and capable of being proved.

exclusion zones should be clearly delineated with the use of clearly marked maps.

individuals whom the defendant is prohibited from contacting or associating with should be clearly identified.