

(7) Section 4 of the 1998 Act provides that an appeal against the making of an ASBO lies to the Crown Court.

(8) Section 79(3) of the Senior Courts Act 1981 provides that an appeal to the Crown Court is by way of a re-hearing. The relevant test, therefore, is that set out in S.1 of the Act.

(1) Pursuant to S.1 (4) of the 1998 Act, the court may exercise its discretion and make an ASBO if the two-part test set out in S.1(1) is satisfied. Section 1(1) states:

- a. An application for an order under this section may be made by a relevant authority if it appears to the authority that the following conditions are fulfilled with respect to any person aged 16 or over, namely—that the person has acted, since the commencement date, in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and
- b. that such an order is necessary to protect relevant persons from further antisocial acts by him.

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(9) It is for the Respondent to satisfy the court to the criminal standard that the Appellant has acted in a manner that caused or was likely to cause harassment, alarm, or distress to one or more persons not of the same household as himself. However, the second limb of the test “does not involve a standard of proof: it is an exercise of judgment or evaluation” (*R (McCann) v Manchester Crown Court* [2003] 1 A.C. 787 at

[371]).

(10) In *R v Dean Lioness* [2006] 1 Cr. App. II. (S.) 120, the Court of Appeal provided general guidance as to the creation of prohibitions forming an ASBO. The court held that:

3. prohibitions should be individually tailored to the individual and that each individual prohibition must be necessary [28].

(i) an ASBO can include prohibitions not to undertake minor criminal activity that may be covered under separate legislation [30-1]. However, an ASBO should seek to prevent a person from being able to commit that offence, rather than further penalise him when he does commit it [35]; and

(iii) the terms of the ASBO must be proportionate so as to be commensurate with the risk identified [37].

### **SUBMISSIONS**

**The first limb of the test under S. 1 (1)(a) of the 1998 Act**

(11) The organisation of large-scale raves, whether or not they fall within the parameters of s.63 of the Criminal Justice and Public Order Act 1994 and whether on private property or common land, fall within the definition of anti-social behaviour. The Home Office Guidance: *‘A Guide to antisocial behaviour orders’* specifies noise nuisance, particularly when late at night, as an example of anti-social behaviour.

24.11.1 It is submitted that, a person who helps organise or supplies equipment for a rave, where there is loud music late at night (except where there is a licence to do so and/or the music is played on licensed premises), has *prana jade* done an act in contravention of S.1(1)(a) of the 1998 Act.

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(12) The Respondent relies on the evidence provided in the witness statements provided by various officers as well as supporting intelligence reports, the page references for this