There are provisions for applications to vary or discharge an order (see s. 1C(6) and s.140 of the Serious Organised Crime and Police Act 2005 which inserts s.ICA of the CDA 1998).

We turn to the requirement that an order can only be made if it is necessary to protect persons in any place in England and Wales from further anti-social acts by the offender. Following a finding that the offender has acted in an anti-social manner (whether or not the act constitutes a criminal offence), the test for making an order prohibiting the offender from doing something is one of necessity. Each separate order prohibiting a person from doing a specified thing must be necessary to protect persons from further anti-social acts by him. Any order should therefore be tailor-made for the individual offender, not designed on a word processor for use in every case. The court must ask itself when considering any specific order prohibiting the offender from doing something, "Is this order necessary to protect persons in any place in England and Wales from further anti-social acts by him?"

The purpose of an ASBO is not to punish an offender (see *Lonergan*, para. [10]). This principle follows from the requirement that the order must be necessary to protect persons from further anti-social acts by him. The use of an ASBO to punish an offender is thus unlawful. We were told during the course of argument that the imposition of an ASBO is sometimes sought by the defendant's advocate at the sentencing stage, hoping that the court might make an ASBO order as an alternative to prison or other sanction. A court must not allow itself to be diverted in this way—indeed it may be better to decide the appropriate sentence and then move on to consider whether an ASBO should be made or not after sentence has been passed, albeit at the same hearing.

It follows from the requirement that the order must be necessary to protect persons from further anti-social acts by him, that the court should not impose an order which prohibits an offender from committing a specified criminal offence if the sentence which could be passed following conviction for the offence should be a sufficient deterrent. If following conviction for the offence the offender would be liable to imprisonment then an ASBO would add nothing other than to increase the sentence if the sentence for the offence is less than five years' imprisonment. But if the offender is not going to be deterred from committing the offence by a sentence of imprisonment for that offence, the ASBO is not likely (it may be thought) further to deter and is therefore not necessary. In P, Henriques J. said (para. [30]):

> "Next, it is submitted that [two of] the prohibitions ... are redundant as they prohibit conduct which is already subject to a general prohibition by the Public Order Act 1986 and the Prevention of Crime Act 1953 respectively. In that regard we are by no means persuaded that the inclusion of such matters is to be actively discouraged. So far as more minor offences are concerned, we take the view that there is no harm in reminding offenders that certain matters do constitute criminal conduct, although we would only encourage the inclusion of comparatively minor criminal offences in the terms of such orders."

31 We would only make one comment on this passage. The test for making an order is not whether the offender needs reminding that certain matters do constitute criminal conduct, but whether it is necessary.

32 It has been held, rightly in our view, that an ASBO should not be used merely to increase the sentence of imprisonment which an offender is liable to receive. In *Kirby* [2005]