

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. The order will be breached not just by the offender driving but by his giving encouragement by being a passenger or a spectator.

The court also seemed to leave open the door for the continued use of a prohibition to prevent conduct that also amounts to an existing offence which carries only a monetary penalty, for example loitering for the purpose of prostitution. The court should not impose such a prohibition merely to increase the sentence for the offence but must go through all the steps to make sure that an order is necessary.

Further details can be found on the Together website at www.together.gov.uk

Length of prohibitions

In *R (Lonerghan) v Lewes Crown Court* [2005] EWHC 457 (Admin), Maurice Kay LJ referred to the duration of prohibitions, saying:

A curfew for two years in the life of a teenager is a very considerable restriction of freedom. It may be necessary, but in many cases I consider it likely that either the period of curfew could properly be set at less than the full life of the order or that, in the light of behavioural progress, an application to vary the curfew under section 1(8) might well succeed.'

Consequently, just because an order must run for a minimum of two years, it does not follow that each and every prohibition within the order must endure for the life of the order. This approach was endorsed by the Court of Appeal in *R v Boness* [2005] EWCA 2395 which considered that it might be necessary to amend or remove a prohibition after a period of time, for example if the defendant started work.

ASBOs on juveniles should be reviewed yearly, and further details are given on page 45.

Targeting specific behaviour

As noted above, prohibitions must target the defendant's specific anti-social behaviour. But assuming the prohibitions are negative, specific and enforceable, the appropriateness of the prohibitions

imposed can be judged only on the facts of each case. Therefore, a number of common scenarios are included below for consideration. These are based on orders made by the courts, although facts and prohibitions have been altered to highlight specific issues. While these types of behaviour have been made the subject of orders, this should not imply that such behaviour will automatically be held to be subject to orders in the future.

Further examples of prohibitions can be found on the Crime Reduction website at www.crimereduction.gov.uk

The following are examples of prohibitions that were drawn up but were found to be too wide or poorly drafted:

Ⓢ Not to be a passenger in or on any vehicle, while any other person is [sic] committing a criminal offence in England or Wales.
(A breach could be occasioned by travelling in a bus, the driver of which, unknown to the subject of the order, was driving without a licence (*R (W) v Acton Magistrates' Court* [2005] EWHC 954 (Admin)).

⁹ Not to associate with any person or persons while such a person or persons is engaged in attempting or conspiring to commit any criminal offence in England or Wales. (A similar result to the above, in that he could be associating with someone who, unknown to him, was conspiring to commit an offence.)

Ⓢ Entering any other car park, whether on payment or otherwise, within the counties of [...]. (This was considered to be too draconian as it would prevent the defendant from entering, even as a passenger, any car park in a supermarket *CR v McGrath* [2005] EWCA Grim 353.)

³ Trespassing on any land belonging to any person, whether legal or natural, within those counties. (As above, in that any wrong turn onto someone else's property would risk custody.)

* Having in his possession in any public place any window hammer, screwdriver, torch or any tool or implement that could be used for the purpose of breaking into motor vehicles. (Unacceptably wide, as the meaning of 'any tool or implement' is impossible to ascertain.)

⁹ Entering any land or building on the land that forms a part of educational premises, except as an enrolled pupil with the agreement of the head of the establishment or in the course of lawful employment.

(It was held that the term 'educational premises' lacked clarity, for example it could have included teaching hospitals or premises where night classes were held. Also, there was a danger that the defendant might unwittingly breach the order if he