

- 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 (*R (Lonerghan) 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 take action before the anti-social behaviour takes place rather than waiting for a crime to be committed (*R v Boness* [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.

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](http://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