

# Anti-social Behaviour Orders

Breach procedure and sentencing guidelines

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# Webinar Outline

- Outline of Sources (and traps)
- New CPR Part 81
- Case law on Part 81 since implementation
- New sentencing Guidelines Lovett v Wigan

# Procedure – Sources and Traps

- ASBCPA 2014 Sections 1-13
- ASBCA 2014 Schedule 1 (remands)
- CPR Part 65.42- 65.49 and PD (Applications for Civil Injunction)
- CPR Part 81 (Breach proceedings)

## 2014 Act – points to note

- Any requirement in the order must specify the person or body who is to supervise compliance and the court must have evidence both as to suitability and enforceability (section 3(1)).
- Exclusion orders can only be granted in respect of someone's home if D is over 18 and there is BOTH history of use of threat of violence AND significant risk of harm to other persons.
- Police have 24 hours from point of arrest to bring D to court (ASBCPA s.9). Must release if not brought before the court in time.

## Remands ASBCPA 2014 - Schedule 1

- Remand = in custody or on bail.
- Can only be on remand for 8 clear days at a time ( unless s/he is remanded on bail and C and D consent to a longer period)
- Bail can be subject to conditions e.g. not to interfere with witnesses.
- Power to remand to hospital for report if mental disorder suspected. MTA v C'mmr Met Police and the Lord Chancellor (2023)
- 28 day rule CPR 65.47(3)

## **CPR 65.43**

- Application for injunction must be served personally 2 **clear** days before the hearing; CPR 65.43.5 and CPR 2.8. Less than 5 days = business days only.
- No express power to dispense with personal service of the application for injunction.
- If D can't be served. Without notice application or substituted service?
- The application can be made without notice but the witness statement **MUST** state the reasons why notice has not been given.

# CPR Part 81- Proceedings for Contempt

- In force since 1 October 2020
- Form N600 and not N244, although it is a CPR Part 23 application.
- Application must be personally served on D (although court has express power to dispense: CPR 81.5)
- Evidence by affidavit or affirmation unless court otherwise orders

## CPR Part 81

- No express requirement to personally serve the underlying order but see *MBR Acres v Maher* [2022] EWHC 1123- C must prove personal service of the injunction.
- Personal service of the order can be dispensed with retrospectively *Business Mortgage Finance 4 PLC v Hussain* [2022] EWCA Civ 1264 (this was expressly provided for in the old rules)
- Have to show D has actual knowledge of the terms of the order AND has not been prejudiced by lack of personal service



# **Lovett v Wigan Borough Council; Smith v Network Homes Ltd; Hopkins v Optivo [2022] EWCA Civ 1631**

- Welcome guidance on sentencing for breaches of ASBI
- Previous reliance on 2018 Sentencing Guidelines for Criminal Behaviour Order by Sentencing Council
- Civil Justice Council report dated July 2020: Anti-Social Behaviour and Civil Courts

## **Civil Justice Council report dated July 2020: Anti-Social Behaviour and Civil Courts**

- Concerns raised regarding serious inconsistency of penalties imposed
- No separate guidance
- Civil courts have different powers to Magistrates Court
- Wide disparity in sentences imposed; failure to bear adequate relationship with conduct if pursued in criminal court
- Annex 1: Guidance on penalties for contempt

## **Lovett v Wigan Borough Council; Smith v Network Homes Ltd; Hopkins v Optivo [2022] EWCA Civ 1631**

- Three related civil appeals
- All for breaches of orders made pursuant to s.1 Anti-Social Behaviour, Crime and Police Act (“ASBCP”) 2014
- Single agreed judgment by Lord Justice Birss
- General guidance on sentencing including consideration of CJC report
- Application

# General principles and procedural rules

- Consideration of statutory framework and powers
- No special rules under ASBCP 2014; CPR 81 applies
- Paragraph 27 emphasised importance of legal representation enshrined in CPR 81.4(2)(i) and (j)
- Publishing judgment pursuant to CPR 81.8(8)

# Sentencing principles: Purpose

- Para 32: principles relating to sentencing ordinary criminal cases and those applicable to sentencing contempt
- Circumstances surround contempt are much more various
- Three objectives in **order**
- Para 39:
  - (i) Ensuring future compliance with the order;
  - (ii) Punishment; and
  - (iii) Rehabilitation
- CJC report is wrong; punishment if not first objective

# Sentencing principles: Powers

- Para 40: five sentencing options open to the court:
  - (i) An immediate order for committal to prison
  - (ii) A suspended order for committal to prison, with conditions.
  - (iii) Adjourning the consideration of a penalty.
  - (iv) A fine.
  - (v) No order.
- Maximum term of 2 years' imprisonment (s.14 Contempt of Court Act 1981)
- No power to make community order
- Para 41: Suspension or adjournment may give rise (if appropriate) to amend injunction and opportunity to impose variety of conditions
- Positive conditions pursuant to s.1(4)(b) ASBCP 2014

# Sentencing principles: Guidance

## ■ Para 43:

“The concept of a custody threshold, as used in criminal sentencing, has application here, bearing in mind that the civil context has its own objectives and range of penalties. **Custody should be reserved for the most serious breaches, and for less serious cases where other methods of securing compliance with the order have failed.** It is good practice to consider a penalty for each breach found proved, and the terms of imprisonment may be concurrent or consecutive to each other. Nevertheless consideration must also be given to the totality of the penalties imposed. Simply adding up what may well be appropriate penalties for each individual breach is likely to lead to an excessive total. **A custodial sentence should never be imposed if an alternative course is sufficient and appropriate.** If the court decides to impose a term of imprisonment, that term should always be the shortest term which will achieve the purpose for which it is being imposed.”

# Sentencing principles: Guidance

- Para 45: adjournment to consider sentencing
- Court should give indication of likely sentence and consequences of failing to comply with order or further ASB
- Recital to the order



# Sentencing principles: Culpability and Harm

- Consideration of CJC Report: Annex 1
- Para 53: appropriate as general guidance but subject to specific facts
- Allow court to approach sentencing in systematic manner
- Grid system with three levels of culpability and harm
  
- Para 49: some examples of relevant factors (not exhaustive)
- Particular vulnerability of victims; persistent breaches
- Genuine remorse; ill-health; early admission of contempt
- Starting points and category range

Harm	Culpability		
	A	B	C
<b>Category 1</b>	Starting point:	Starting point:	Starting point:
	6 months	3 months	1 month
	Category range:	Category range:	Category range:
	8 weeks to 18 months	adjourned consideration to 6 months	adjourned consideration to 3 months
<b>Category 2</b>	Starting point:	Starting point:	Starting point:
	3 months	1 month	adjourned
	Category range:	Category range:	consideration
	adjourned consideration to 6 months	adjourned consideration to 3 months	Category range: adjourned consideration to 1 month
<b>Category 3</b>	Starting point:	Starting point:	Starting point:
	1 month	adjourned	adjourned
	Category range:	consideration	consideration
	adjourned consideration to 3 months	Category range: adjourned consideration to 1 month	Category range: No order/fine to two weeks
		month	

## Optivo v Hopkins

- 12 week suspended sentence
- Admission of single breach of ASBI; partner had engaged in conduct; wrong category of “B2” from SC guidelines
- Second issue related to adjournment
- Burden of proof not on the Defendant to prove no further breaches
- Should have a lesser sentence (if original sentence was correct)
- No order

# Network Homes v Smith

- Failure to provide transcript CPR 81.8(8)
- Serious procedural irregularity but not sufficient to overturn sentence
- Possession as an alternative to custodial sentence
- Determination regarding legal aid
- Wrong starting point; use of criminal CBO Sentencing Guidelines
- Reduced from 12 weeks suspended for 12 months; 4 weeks suspended for 12 months

■ Para 56:

“It cannot be over emphasised that the task of sentencing a defendant for breach of orders in contempt of court is a multifactorial exercise of judgment based on the particular facts and circumstances of the case before the judge. Any sentence must be just and proportionate”