

CRIMINAL BEHAVIOUR ORDERS:

Another weapon in the armoury

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Introduction

The purpose of this talk is to:

- 1) *Provide an overview of CBOs;*
- 2) *Summarise the legal and procedural requirements;*
- 3) *Provide suggestions of when they are appropriate;*
- 4) *Provide practical tips.*

1) What are CBOs?

- An order available on conviction for any criminal offence by any criminal court upon application by the prosecution;
- Intended to be used to tackle serious and persistent anti-social defendants following conviction;
- Can prohibit a convicted defendant from doing anything described in the order OR require the defendant to do anything described in the order OR both;
- Minimum two years in length but may be indefinite in length;
- May be widely publicised.

Threshold

Proportionate and reasonable:



- Generally avoid interference with school, education or employment;
- Tailored towards the behaviour of the specific defendant.

2) The legal and procedural requirements

Section 22 of the Anti-social Behaviour, Crime and Policing Act 2014:

- *Conviction;*
- *Sentenced to more than an absolute discharge;*
- *Court satisfied, beyond reasonable doubt, that the defendant has engaged in behaviour that caused, or was likely to cause, harassment, alarm or distress to one or more people;*
- *The court considers that making the order will help in preventing the defendant from engaging in such behaviour.*

Criminal Procedure Rules

CrimPR Part 31 key aspects:

Notice must be served as soon as practicable, without waiting for the verdict (r. 31.3 (2))

Notice must:

- summarise relevant facts
- identify evidence relied on (including any evidence in addition to the bundle in the criminal proceedings)
- attach any written statement not already served; and
- state the order sought (r. 31.3 (1))

Hearsay evidence is admissible, but hearsay notice is required (r. 31.6)

Appeals and variations

- A CBO may be varied or discharged by the court which made it (s. 27 (1) ACPA14).
- A party who makes application which is refused may not make a further application without the agreement of the court or the other party (ss 27 (2) and (3) ACPA14).
- The applicant must apply in writing as soon as practicable after grounds arise stating what material circumstances have changed and why the order should be varied or discharged (CrimPR r. 31.5 (2)).
- The court may hear evidence on an application to vary or discharge.
- Appeals from the Magistrates' Court are to the Crown Court and from the Crown Court to the Court of Appeal for defendants.
- Prosecution has no right of appeal but can case state or JR a Magistrates' refusal

Breaching a CBO

Breach of a CBO without reasonable excuse is an offence (s. 30 (1) ACPA14).

Maximum sentence:

- On summary conviction: 6 months' custody/a fine/both;
- On indictment: 5 years' custody/a fine/both (s. 30 (2) ACPA14).

Conditional discharge not available (s. 30 (3) ACPA14).

In proceedings for breach, a copy of the order is admissible as evidence of its existence and contents (s. 30 (4) ACPA14).

3) When is it appropriate to apply?

- Evidence of defendant causing harassment, alarm or distress (including evidence from previous convictions or allegations/complaints);
- Practical steps available that would likely assist in preventing such behaviour;
- It is in the public interest to seek an order;
- Ought to be considered separately to the substantive prosecution and decision to seek an order recorded;
- Consider liaising with the police/CPS? [Annex B CPS Legal Guidance on CBOs]

Examples

- Persistent misleading or aggressive selling/advertising door to door
- False health claims
- Offenders causing harassment to legitimate business
- Vulnerable consumers [*R v Janes (2016) EWCA Crim 676 – single elderly consumer, defendant banned from “touting for business for three years”*]
- Offences with safety implications
- Potential harm to victims is great even if behaviour does not cross threshold on first blush [Home Office Guidance: Dec 2017]

4) Some practical tips

- Civil order in criminal setting
- Interim orders are available post conviction but prior to full determination of the application, if just to do
- Failure to comply with the procedure and judicial discretion/support
- Ensure you can prove notice of the application and hearing, as well as indicating it can proceed in the defendant's absence
- Presentation of the applications and evidence:
 - *Focus on purpose of the order with clarity*
 - *Be ready at sentencing hearing*
 - *Application prior to sentence even if order follows*
- Publicise widely to inform but must be necessary and proportionate (*can include photographs*).



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Questions?

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