

# Criminal Law News

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'A medley of Court Orders'

# A medley of Court Orders

by Sally Ramage

Today, there are so many court orders in force that it is useful to examine a few :-

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## [1] Anti-social behaviour order

The Crime and Disorder Act 1998, s1, empowers a local council, a county council, Chief Transport Police Officer, a social landlord, a housing action trust, the Environmental Agency or Transport for London, to make a formal complaint to a magistrates' court for an anti-social order to be made regarding any person aged ten years or over. Such complaint may be made if the said person has acted in an anti-social manner which caused harassment, alarm or distress to more than one person not of the same household as himself or to protect certain persons from further anti-social acts by the person in question. In considering the complaint, the court must disregard any acts which are shown to have been reasonable. And the law of evidence relating to civil cases applies. An anti-social behaviour order can also be made on conviction in criminal proceedings, if the court considers that the conditions set out in the Crime and Disorder Act 1998 have been fulfilled and this may be done, whether or not a complaint has been made to the Magistrates Court under s1. The Order must be additional to a sentence for the offence or an order of conditional discharge. Breach of the order without reasonable excuse is an offence - such offence may be prosecuted by the local authority or the Crown Prosecution Service. If an ASBO was granted on a person who is known to commit drug offences, an additional order, an intervention order, may be made simultaneously. Such an intervention order will be valid for not more than six months. In *R v Nicholson*, the defendant was an animal rights campaigner who was made subject to an ASBO which prohibited her from going within 500 metres of five premises identified in the order. Subsequently, she took part in a demonstration within 500 metres of one of those premises. She was prosecuted for breach of the ASBO and pleaded not guilty. She admitted being where she was alleged to be and that she had not carefully checked the terms of the order, in particular the inclusion in it of the said premises. Her basis of plea was that she had a reasonable excuse because she had no recollection of ever having heard before, or at the demonstration, of a reference to those premises. The judge ruled that such an offence was one of "strict liability" and that the qualification "without reasonable excuse" should be narrowly construed to exclude ignorance or forgetfulness and misunderstanding of the clear terms of an order. However, in the Court of Appeal, it was submitted that the words "reasonable excuse" should bear their ordinary meaning and that ignorance or forgetfulness or misunderstanding of the terms of the ASBO could amount to a reasonable excuse. The Appeal court took the approach in *R v Evans* [2005] 1 Cr App R 32 in relation to breach of a restraining order and the appeal was allowed.

The Anti-social Behaviour Act 2003 made provisions for the police to issue a closure notice under s 1 of the Act in respect of a suspected "crack house". The police must then apply to a magistrates' court for a closure order within 48 hours and where the magistrates are satisfied the statutory criteria are met, they may make an order for up to three months. There are still many other issues to be resolved with regard to ASBOs. It was held in *Samuda v Birmingham Justices* [2008] All ER(D) 228 (Jan) that Section 142 of the Magistrates' Courts Act 1980 (power to re-open cases) does not apply to ASBOs, since such orders are civil in nature....

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