How to tackle anti-social behaviour

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About me

‘Knowledgeable, approachable, solid and dependable’ Legal 500

“She is thorough, pragmatic and someone who thinks outside the box” Chambers & Partners 2019

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What are Public Spaces Protection Orders and why do you need to know about them?

- Anti-Social Behaviour, Crime and Policing Act 2014, ss. 59-75
- Control of public space
- Maximum duration of 3 years (s.60)
- Evidence base*
- Consultation*
- Proportionality*
- Breach can result in a FPN upto £100 or prosecution with a fine up to £1000

* Differs from old orders

Old orders have transitioned to be treated as PSPOs - but the transitioned orders expire in October 2020
Not a LA? Why they are relevant for you

• They attach to **public spaces** – and will be relevant the areas where your properties/service users are located

• If you know what the powers are, you can ask your LA to use them

• You may be consulted about whether a PSPO should be made/varied/extended

• Role for local ASB/multi-agency/safeguarding panels – partnership working
What were the old orders?

- Gating orders
  - Relevant to areas which are currently gated off to prevent (for example) access, congregating, fly tipping, rough sleeping

- Drinking in Public Spaces Orders (‘DPPOs’)
  - Very common in town centres

- Dog control orders (‘DCOs’)
  - Requirements to keep a dog under control, out of children’s play areas, on a lead, to pick up and dispose of faeces, maximum number of dogs walked by a single person

PSPOs are not limited to these types of behaviour
Behaviour addressed by PSPOs
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Section 6: ‘it is unlawful for a public authority to act in a way which is incompatible with a Convention right’

- Article 8 – respect for private and family life
- Article 10 – freedom of expression
- Article 11 – freedom of assembly

‘qualified’ rights. Interference is permitted if this is in accordance with the law and necessary in the interests of national security, public safety, prevention of disorder or crime protection of health or morals, for the protection of the rights and freedoms of others.

Need to have “particular regard” to Arts 10 and 11 for PSPOs
Two conditions:

• Activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality (or are likely to have that effect), AND

• The effect, or likely effect of the activities;
  • Is, or is likely to be persistent or continuing
  • Such as to make the activities unreasonable, AND
  • Justifies the restrictions imposed
The restrictions – s.59(5)

• Only those that are **reasonable to impose** in order to:
  • Prevent the detrimental effect from continuing, occurring or recurring
  • Reduce the detrimental effect or reduce the risk of continuance, occurrence or recurrence

**Human rights**

• In deciding whether to make, vary or discharge a PSPO, the LA **must** have regard to Article 10 (freedom of expression) and Article 11 (freedom of assembly) set out in the European Convention on Human Rights
Summers v Richmond Upon Thames LBC

Dog control, leads, clearing up after dogs, maximum number of dogs walked by one person

[2018] EWHC 782 (Admin), High Court, May J

Key facts:

• Two articles: one to provide for dogs to be kept under proper control, use of leads in certain defined areas, use of a lead if directed to use one, disposal of faeces, ban on dogs on certain areas
• ‘Proper control’ article referred to out of date charity
• Maximum number of dogs to be walked by one person restricted to 4 (with up to 18 licences allowing up to 6 dogs to be walked)
• Neighbouring boroughs had introduced maximum 4 dog rules, lots of open spaces, royal parks, professional dog walkers coming into area
“Locality”

“those in the locality” must be construed as meaning some, but not necessarily all, of those within the locality, whether as residents, visitors or workers [24]

“Persistent”

was an ordinary English word “commonly understood to mean ‘continuing or recurring, prolonged’ [27], we argued it meant ‘more than once’ and relied on Ramblers Association v Coventry CC [2008] EWHC 796 (Admin), accepted by Judge
Dulgheriu & Orthova v Ealing LBC

Abortion clinics, safe zones, designated area for protests
[2019] EWCA Civ 1490, 21 Aug 2019, Court of Appeal

“Detrimental effect”

- LAs have “wide discretion” to identify the relevant behaviours, based on local knowledge [§47]

“Those in the locality”

- A ‘loose’ expression - left open & undefined [§41]
- For local authorities to identify relevant persons [§47]
- Can include occasional visitors e.g. tourists, shopping centers, hospitals and abortion clinics [§43]
- AS LONG AS the detrimental effect on them “is, or is likely to be, of a persistent or continuing nature”
- Depends on all the evidence and circumstances
Behaviour addressed by PSPOs

• Dog control – e.g. Richmond Upon Thames (*Summers*)

• Public urination and ASB involving pedicabs (e.g. cycling on pavements and playing music) – Camden LBC

• Legal highs and ‘laughing gas’ – Lambeth LBC

• ‘Street gambling’ on the Southbank and Westminster Bridge – Westminster CC & Lambeth LBC

• Congregation, drop off and pick up of migrant workers seeking casual labour – Brent LBC, or congregation in communal areas of blocks of flats

• Restriction on protests and vigils in “buffer zone” outside Marie Stopes abortion clinic in Ealing (*Dulgheriu*… and possibly elsewhere)
Community Protection Notices
What has been replaced?

- Litter abatement notices, s.92 EPA 1990
- Littering clearing notices, s.92A EPA 1990
- Street little clearing notices, s.93 EPA 1990
- Defacement removal notices, s.48 ASBA 2003
A notice which imposes requirements upon the body or individual to whom it is issued

Process

- CP-W followed by
- CPN
- Powers to take remedial action or seek a remedial order from the Court
- Court can order forfeiture of items used to in the commission of an offence (namely failing to comply with the CPN)
CP-Ws and CPNs can only be issued by ‘authorised persons’ s.53(1):

- A constable
- The relevant local authority
- A person designated by the relevant local authority – see ASB (Authorised Persons) Order 2015 SI 749/2015
  - ‘housing providers’ within the meaning of s.20 ASBCPA 2014
- Check local requirements on authorisation of indiv. officers

**Includes:**
HT, HAT, non-profit RP, any organisation/body granting secure tenancies

**Not included:**
ALMOs, TMOs and RMOs – do not grant tenancies in their own right but in the name of the LA
If satisfied that conduct is having a **detrimental effect**, of a persistent or continuing nature, on the quality of life of those in the locality

- Must be in writing
- Issuing officer must be satisfied that the person had had sufficient time to deal with the matter (before the CP-W is issued)
CPNs

• Power to issue under s.43
• Before issuing, inform any body or individual thought appropriate s.43(6)

A CPN MUST:

• Identify the conduct having the requisite detrimental effect
• Explain the effect of sections 46-51
• May specify period within which, or time by which, the requirements identified in the notice are to be complied with

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Stannard (Keiron) v CPS – the facts

[2019] EWHC 84 (Admin) §54

- D charged with failing to comply with a CPN. Various clauses including not to enter Reading town centre and “not to be in a group of more than three individuals including yourself”
- D did not appeal. At trial D argued that the CPN was invalid because its terms (particular the indefinite duration and the non-assoc clause) were unreasonable and disproportionate
- CPS argued that it did not have to establish the validity of the CPN, only whether the breach occurred, D should have appealed. D found guilty and appealed to the High Court
- Hickinbottom J and Whipple J (High Court) heard the appeal, 3 questions:
  - Q1: Did I have to satisfy myself as to the reas/legality of the CPN
  - Q2: Does a CPN issued by the Police have the same status as a Court order?
  - Q3: Does the CPS have a duty to call the original evidence to satisfy the Court that CPN should have been issued?
Q1. No: when dealing with the alleged breach, the District Judge did not have to satisfy herself as to the reasonableness and/or legality of the CPN.

Q2. Yes: a CPN issued by the police is like an order of the Court in this sense, it is valid until varied or discharged by an authorised person on review (subject to the courts' oversight by way of judicial review), or on appeal.

Q3. No: when a defendant is alleged to have breached the terms of a CPN, the prosecution is not under a duty to call the original evidence of which complaint was made to satisfy the Court that the CPN was lawfully issued.

BUT as High Court itself observed, unlike CBOs and old ASBOS, there is no statutory right to request a variation/discharge.
Vary/discharge?

HC:
“it is clear that a CPN must be capable of variation or discharge, outside of the appal framework, not least to rake account of changed circumstances beyond the 21-day period…We find no difficulty according a wide meaning to s.43(1) to enable authorised persons not only to issue CPNs, but also to do other acts consequent on issue, including variation or discharge.”

You must have a process to allow a person to apply to vary or discharge the CPN and include information about this in the CPN itself – not part of the 2014 Act reqs
Stannard (Keiron) v CPS – what you need to know (2)

CPNs must

- Be expressed in clear in their terms
- Be proportionate in their effect
- Limited in time,
- Have a geographical limitation, and
- Include prohibitions/reqs that are no more than necessary to address the behaviour
Criminal Behaviour Orders (‘CBOs’)

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R v Khan (Kamran) – the facts

[2018] EWCA Crim 1742

• K pleaded guilty to dangerous driving and drugs offences. Sentenced to 16 mths imprisonment suspended for two years and a community sentence

• CBO, 3 years, preventing K from associating with AB (his co-Defendant) in a public place or a place to which the public had access including a mechanically propelled vehicle.

• K appealed, two grounds:
  • CBOs should be imposed in order to prevent an offender from engaging in HAD, not satisfied here
  • Should have been limited to Greater Manchester and not apply to the whole of England and Wales
R v Khan (Kamran) – what you need to know (CoA)

- A CBO has the characteristics of an injunction
- Terms must be precise and capable of being understood by the offender
- The finding of facts giving rise to the making of the order must be recorded
- The order must be explained to the offender
- The exact terms of the order must be pronounced in open court and accurately reflected in the written order
- Prohibitions should be reasonable, proportionate, realistic and practical and tailored to the individual on whose it is imposed “assessments of proportionality are intensely fact-sensitive”
- Include a geographical limitation
- Should be easy to determine if there has been a breach: exclusion zones should be clearly delineated, individuals from whom a D is prevented from associating should be clearly identified
- Consider the need for the CBO to be translated

- All relevant to injunctions as well as CBOs
Equality Act 2010 and the PSED
Equality Act 2010

• Protected characteristics
  Age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex, sexual orientation, pregnancy and maternity

The duties
• Direct discrimination – section 13
• Indirect discrimination – section 19
• Disability discrimination – sections 15 and 35
• Reasonable adjustments – sections 20-21, Schedule 4
• Public sector equality duty – sections 149-150
Section 6

(1) A person (P) has a disability if—
(a) P has a physical or mental impairment, and
(b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.

Schedule 1
- long-term = 12 months (incl. “likely recurrence”)
- effect of medical treatment ignored
- cancer, HIV, MS are a ‘disability’

Equality Act 2010 (Disability) Regulations 2010, SI 2010/2128
- addiction is not a ‘disability’
149 Public sector equality duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to—

(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).
Public Sector Equality Duty

• “The duty is about getting public authorities to think about whether there is any evidence of individuals suffering disadvantage, and then to think about whether there is anything that they can or should do to tackle that . . .”
  Public Bill Committee 30.06.09

• No duty to achieve a particular result but only to have regard to the identified factors: *R (Karia) v Leicester CC* [2014] EWHC 3105 (Admin)

• Having ‘due regard’ means a level of regard which is appropriate in all the circumstances: *R (Baker) v SOSCLG* [2008] EWCA Civ 141
Recent cases
Public Sector Equality Duty

Recent cases:

1. *Davies v Hertfordshire CC* [2018] EWCA Civ 379
3. *Forward v Aldwyck* [2019] EWHC 1334 (CoA)

**Headline:** often pleaded in possession claims, especially when other (stronger) defences are not available, but rarely has highly material impact on merits of claim
Forward v Aldwyck – the facts

- D was ‘cuckooed’: drug use and dealing at property. Police obtained closure order but possession sought on discretionary grounds (12 and 14).

- LL had failed to properly comply with PSED: no assessment before issuing proceedings, and an assessment carried out before trial was inadequate. Conceded this at trial.

- J not satisfied that D had an MH disability or that there was a link between health conditions and ASB (note: Class A drugs). Made order for possession.

- Appeal to HC dismissed.
Forward v Aldwyck – High Court

- PSED requires a “rigorous assessment” of the impact of the decision to commence and continue possession proceedings. “Must be done with an open mind and not as a defensive ‘sweep-up’. This consideration must itself be set in the context of promoting the statutory objectives [of s. 149].”

- But - breach of PSED prior to trial did not mean possession order would be unlawful:
  - No evidence to suggest different outcome if proper assessment had been carried out
  - PSED exercise can only take place against context of particular case & strength of evidence on disability
[2019] EWCA Civ 1334, 29 Jul 2019

Dismissed Mr Forward’s appeal

• LL was not entitled to withdraw its concession that the PSED had been breached.

• There was no general rule that a decision made without consideration of the PSED should be quashed

• If, on the facts of the case, it was highly likely that the decision would not have been substantially different if the breach of duty had not occurred, there would be no need to set it aside
Further reading….

- The Anti-Social Behaviour, Crime and Policing Act 2014

- Statutory Guidance for Frontline Professionals, August 2019, section 2.5

- LGA guidance on PSPOs for councils, February 2018

- Cornerstone on Anti-social Behaviour, 2nd Ed., May 2019, Chapter 7

- Discount code: BPLCB20