

Housing Team Legal Bulletin

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Case Law Update

1. Terms of ASBO too vague

CROWN PROSECUTION SERVICE v. T [2006] EWHC 728 (Admin), Times, April 13, 2006 [judgment](#)

This case concerned the way in which the court should enforce an ASBO where the terms are vague/too wide and the validity of the terms of an ASBO generally.

The validity of the ASBO could not be raised as a defence in breach of proceedings and accordingly the judge had not been entitled to strike down para 1. The normal rule in relation to an order of the court was that it must be treated as valid and obeyed unless and until it was set aside. Even where the order should not have been made in the first place a person might be liable for any breach of it committed before it was set aside. A person subject to an ASBO had a full opportunity to challenge that order on appeal or on an application to vary it. Further, the contention that para 1 of the ASBO was unduly wide and uncertain was unlikely to go to the validity of the order. The court plainly had jurisdiction under the Crime and Disorder Act 1998 to make the ASBO and, if it had been in error in including para 1, that would not take the order outside the court's jurisdiction and the order would therefore remain valid. W v Director of Public Prosecutions (2005) EWCA Civ 1333, Times, June 20, 2005 disapproved and Boddington v British Transport Police (1998) 2 WLR 639 distinguished. (2) There was no doubt that the provision contained in para 1 of the ASBO would have been struck out on appeal or on an application to vary the order and, accordingly, the judge was correct in his decision on that provision, R v Boness (Dean) (2005) EWCA Crim 2395, Times, October 24, 2005 applied. The instant case provided a good example of the need to carefully match the prohibitions in an ASBO to the type of behaviour that it was necessary to prohibit for the purposes specified in the 1998 Act. The wide provision "not to act in an anti-social manner" without further definition or limitation should never again be included in an ASBO. Courts should follow and adopt the Guidance on ASBOs 5, May 2005. (3) Whilst the appeal would be allowed on the basis the judge was wrong to act as he had, in the exercise of discretion the judge's decision would not be quashed or the matter remitted.

2. Standard of proof in closure order cases

CHIEF CONSTABLE OF MERSEYSIDE v HARRISON (2006) (7/4/06) (unreptd.)

R (on the application of ERRINGTON) v METROPOLITAN POLICE AUTHORITY (2006) (12/4/06) (unreptd.)

In **Harrison** the Divisional Court held that the standard of proof applicable to the making of a closure order under the Anti-social Behaviour Act 2003 s.2(3)(a) and s.2(3)(b) was the civil standard of proof, namely the balance of probabilities.

In **Errington** the court was primarily concerned with whether the jurisdiction of the magistrates' court to hear applications for the making of a closure order was dependent upon the initiating closure

notice being valid. The court held it was not. Whether the closure notice issued was defective fell to be determined by the magistrates' court and it could consider any relevant material and decide what weight to put on it. However, Mr Justice Collins also stated (obiter) that although the proceedings relating to closure orders were civil in nature their effects, if made, were such that the magistrates' court should apply a high standard of proof and that standard was likely to be akin to the criminal standard.

There is a clear conflict between these two cases which is likely to be the subject of further proceedings in the near future.

3. Consultation requirements for ASBO in county court

MANCHESTER CITY COUNCIL v. M (20/3/06) CA (unreptd.)

This was one of the many cases heard in the County Court under the pilot scheme operating at certain courts between 1 October 2004 and 31 March 2006 in which an application to join a child into principal proceedings for an ASBO was permitted. This case confirms that when an application for an interim anti social behaviour order comes before the court section 1E of the Crime and Disorder Act 1998 the judge not only had the jurisdiction to decide whether the consultation requirement had been satisfied but was obliged to do so if asked.

4. Quantum in disrepair claim

Christopher Allen v Mrs J Thomas (1) and Worldtop Enterprises Limited (2) (Leeds County Court, 28 March 2006, before DDJ Goldberg)

The Claimant moved into the subject premises on 29 January 2001, the First Defendant sold the property in September 2002 to the Second Defendants. The property was in significant disrepair which consisted of defects to the external structure leading to water penetration inside. The window casements were in disrepair and could not (in the majority) be opened. There was internal penetrating dampness in the lounge, and in two of the three bedrooms. In the kitchen there was secondary condensation dampness caused in part by the penetrating dampness. The heating was defective in the living room. The Claimant who resided at the property with his son had to share a bedroom. In assessing damages against the First Defendant for a period of 84 weeks, DDJ Goldberg found that the disrepair was significant but not at the highest end of the spectrum. He found that the property was bordering on the uninhabitable. He awarded damages of £2500 p.a. which equated to £4038.00 for the 84 weeks.

Legal training seminars

Members of Garden Court North Chambers housing team will present three seminars this spring / summer:

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| 4 th May 2006 | Disrepair and defending possession proceedings |
| 18 th May 2006 | Overview and update on Anti Social Behaviour Orders and Anti Social Behaviour Injunctions |
| 27 th June 2006 | Homelessness and allocations: including a practical approach to reviews and appeals |

For more details please contact chambers or visit our [website](#).