

Housing Team Legal Bulletin

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ASBO'S "By consent"

In *Talbot (R on the application of) v. (1) Manchester Crown Court (2) Manchester City Council* [2005] EWHC Admin Moses J considered whether an ASBO could be granted by consent. In this case T was accompanied by his mother and was represented by Counsel. They were informed that an order for a period of 5 years was being sought. After taking advice from Counsel T's mother indicated that a 2-year order would be acceptable. The matter went into court and the District Judge considered the papers and granted the order as requested by the parties.

T's mother subsequently decided that the order should not have been imposed and that she made the decision under pressure. An appeal to the Crown Court was brought, as a preliminary point the Council argued that the Crown Court had no jurisdiction to entertain the appeal as it was an appeal against a consent order. This argument was accepted by the Recorder and the appeal was dismissed.

On a claim for judicial review Moses J quashed the decision. He held that an anti social behaviour order cannot be granted unless the court has satisfied itself that the conditions under section 1 of the Crime and Disorder Act 1998 have been satisfied. Accordingly the Recorder had fallen into error in deciding that he had no jurisdiction to hear the appeal on the basis that the order had been granted by consent. This decision is not intended to prevent parties agreeing to the terms of a proposed order but the court must satisfy itself that section 1 has been satisfied before making any such order.

ASBO'S : Validity of Terms

In *W v DPP* [2005] EWHC 1333 (Admin) Brooke LJ and Field J considered the powers of a DJ at a breach hearing; specifically whether the DJ had jurisdiction to re-visit the terms of the ASBO. One of the terms of the ASBO prevented the Defendant from committing any criminal offence in England or Wales.

It was held that the order was plainly too wide as the Defendant was of an age where he may not appreciate what was and what wasn't a criminal offence. The court re-emphasised the need for the Defendant to know clearly what was expected of him. Having held that the terms of the order were too wide the Court had to next consider whether a DJ had jurisdiction to re-consider the terms at a breach hearing. It was accepted that the order was valid unless and until it was varied. It was held that in accordance with *Boddington v British Transport Police* [1999] 2 AC 143 where an order is plainly invalid then the DJ can consider submissions that it is *ultra vires* without the need for a prior application.

Unlawful policy - re homelessness applicants

In *Hammia (R on the application of) v Mayor and Burgesses of the London Borough of Wandsworth* [2005] EWHC 1127 (Admin) a Judicial Review was brought by the partner of a homeless applicant who had determined a joint tenancy. The homelessness application had been made on the basis of allegations of domestic violence. The policy of the LA was to refuse a PT VII duty to such applicants until such time as they determined the joint tenancy. The Court granted a declaration confirming that such a policy was unlawful as this was clearly an additional hurdle to the reasonable to continue to occupy test set out in s.177 HA 1996. The Court refused to declare the NTQ unenforceable as these were private law matters to be considered in the County Court.

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