A GUIDE TO PROHIBITIONS IN REPORTED CASES

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The Anti-Social Behaviour, Crime and Policing Act 2014 introduced the Criminal Behaviour Order (CBO) on 20 October 2014. The CBO is a civil order available in the Crown Court, magistrates' courts, or the youth court, and can be applied for on conviction for any criminal offence. Breach of a CBO is a criminal offence, with a maximum sentence of up to five years' imprisonment or a fine, or both for an adult.

The body of case law referred to below, other than *R v Bulmer [2015]* EWHC 2323 (Admin) and *Janes [2016] EWCA 676*, derives from the CBO's predecessor, the Anti-Social Behaviour Order (ASBO). However, all of the legal principles on prohibitions derived from the case authorities on ASBOs apply equally to the CBOs.

In *Bulmer,* the High Court acknowledged the similarities as well as the differences between the ASBO and the CBO and affirmed the body of case law is of relevance when considering whether to make a CBO. This was the subject of two modifications "*to reflect (a) the fact that the requirement of "necessity"… is no longer party of the statutory scheme, and (b) it is now possible to impose positive requirements".* These modifications reflect the key legislative differences between the ASBO and the CBO.

In *R-v-Janes [2016] EWCA Crim 676* the Court of Appeal commented on the wider scope of the CBO; *"While the… ASBO jurisdiction was usually invoked to restrain the unruly behaviour of offenders, there seems to us to be no limitation in the present jurisdiction to behaviour of that character."* The argument "these orders weren't designed for this sort of offending" when the statutory criteria are made, is not a proper basis for refusal.

R v Briggs [2009] EWCA Crim 1477 and *Simsek [2015] EWCA Crim 1268* are new to this edition. The principles derived from those authorities do not sit comfortably with the large body of case law and we have addressed those concerns in the commentary section. *Briggs* was superseded by *R v Barclay and others [2011] EWCA Crim 32* and *R v Dyer [2010] EWCA Crim 2096.* We have deliberately omitted the comments in *Briggs* regarding their disapproval of non-association prohibitions given that the court in *Barclay* and *Dyer* went on to explicitly approve such a prohibition.

Also new to this edition is *Uddin [2015] EWCA Crim 1918*. ASBOs were imposed in connection with incidents arising out of a march by Sunni Muslims as well as a separate incident whereby a group were engaged in Da'wah, proselytising for Islam. Another new case is *Walker [2013] EWCA Crim 940* which is illustrates how a potentially draconian prohibition can be suitably qualified to provide certainty whilst enabling an individual to access hospital when required.

The prohibitions without shading have been approved by the court; those prohibitions shaded in grey mark those that have been disapproved and should not be used. There are some case authorities where adverse comment is made about one part of the prohibition but not all; therefore the relevant part of the prohibition has been shaded. Readers should always refer themselves to the relevant commentary.

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BEGGING			
Approach persons unknown to ask for money or alms in *[specified geographical area]*	**Samuda [2008] EWHC 205 (Admin)**	A useful "begging" case. The court indicated that "… *begging does not necessarily cause or is not necessarily likely to cause harassment, alarm or distress, certain methods of begging may well do so*..". The prohibition was explicitly approved. However, the court commented that there was a need for a detailed assessment of the geographical area.	Sullivan J
CLOTHING			
In any public place, wearing, or having with you anything which covers, or could be used to cover, the face of part of the face. This will include hooded clothing, balaclavas, masks or anything else which could be used to hide identity except that a motor cycle helmet may be worn only when lawfully riding a motor bike	**Boness [2005] EWCA Crim 2395**	Disapproved. *The terms of the prohibition are too wide, resulting in a lack of clarity and consequences which are not commensurate with the risk which the prohibition seeks to address*	Hooper LJ
Wearing any article of clothing with an attached hood in any public place in the London Borough of Greenwich, whether the hood is up or down	**B v Greenwich Magistrates Court [2008] EWHC 2882 (Admin)**	Approved - a very useful "gang" case. The court concluded that prohibiting merely raising the hood would be ineffective. B had worn a hooded top to cause fear, and that the particular term in question was aimed at preventing that fear. The term achieved that aim by disabling B's confidence that he would escape accountability for his actions by prohibiting him from wearing a hooded top. This prohibition can be used for cases where an offender persistently wears a hood to commit offences or acts of anti-social behaviour	Mitting J

CURFEW			
Being in any place other than [insert address] [any address as directed by the Youth Offending team or moving between those addresses *if appropriate*] between the hours of [insert appropriate hours]	**Lonergan v Lewes Crown Court and Brighton and Hove City Council [2005] EWHC 457 (Admin)**	The curfew prohibition was specifically approved. "*I do think that it behoves magistrates' courts to consider carefully the need for and duration of a curfew provision when making an ASBO. Just because the ASBO must run for a minimum of two years it does not follow that each and every prohibition within a particular order must endure for the life of the order*". Before seeking a curfew prohibition it is therefore important to consider the issue of proportionality.	Kay LJ
Remain indoors between 22.00 and 6.00 each night at a probation hostel specified by the National Offender Management Service or such other address as the court shall approve	**Starling [2005] EWCA Crim 2277**	The curfew prohibition was specifically approved.	Bean J
Being anywhere but your home address as listed on this order between 2330 hours and 0700 hours or at an alternative address as agreed in advance with the prolific and priority offender officer or anti-social behaviour co-ordinator at Basingstoke Police Station	**Boness [2005] EWCA Crim 2395**	*Although curfews can properly be included in an ASBO, we doubt, as does the respondent, that such an order was necessary in this case. Although the offences of interfering with a motor vehicle and attempted burglary (for which the appellant was sentenced on 16/5/02) were both committed between 10pm and midnight on the same evening, there is no suggestion that other offences have been committed at night. Moreover, the author of the pre-sentence report states that the*	Hooper LJ

		appellant's offending behaviour did not fit a pattern which could be controlled by the use of a curfew order.	
DAMAGE			
Doing anything which may cause damage	**Boness [2005] EWCA Crim 2395**	*The respondent submits that this prohibition, even if justified (which is far from clear), is far too wide. In the words of the respondent: "Is the appellant prohibited from scuffing his shoes?" We agree.*	Hooper LJ
Being in possession of a can of spray paint in a public place		*"To prevent it the police or other authorities need to be able to take action before the anti-social behaviour it is designed to prevent takes place. If, for example, a court is faced by an offender who causes criminal damage by spraying graffiti then the order should be aimed at facilitating action to be taken to prevent graffiti spraying by him and/or his associates before it takes place. An order in clear and simple terms preventing the offender from being in possession of a can of spray paint in a public place gives the police or others responsible for protecting the property an opportunity to take action in advance of the actual spraying and makes it clear to the offender that he has lost the right to carry such a can for the duration of the order."*	

Causing or threatening to cause or attempting to cause, damage to property or premises of another person without reasonable excuse of lawful authority or encouraging others to do so	**Wadmore and Foreman [2006] EWCA 686**	Disapproved on the basis already a criminal offence as there is a sufficient deterrent already in existence. Further, "*such orders do not tackle the problem that ASBOs aim to solve, namely how to prevent anti-social behaviour before it takes place*	Aitkens J
DEMONSTRATIONS			
Must not be together or in company with, in any public place while attending any demonstration, protest, or a rally [with named individuals]	**R v Uddin [2015]EWCA Crim 1918**	Whilst some of the prohibitions listed were disapproved on facts, lack of clarity or the breadth of the prohibitions, Smith J that *"some of the complaints [of the Appellants] might properly have been resolved relatively easily by revisions to the wording, but others present more major difficulties"*. *"Be together with and in the company wit*h" was said to lack clarity as well as causing *"…practical difficulties arise: given the size of some marching demonstrations, sometimes converging from different starting points, it is unrealistic to suppose that a marcher knows all the others"* The court also disapproved the inclusion of rallies in the prohibition *"…it seems to us inherent in the purpose of a demonstration or protest that is directed to influence others who disagree with the views of like-minded people. On its face, the association prohibition would*	Smith J

		cover, for example, such a gathering in a mosque" It remains open that a better worded prohibition dealing with the issues identified in court could address those concerns.	
Must not do the following when performing Da'wah (defined for the purposes of this Order as proselytising in a public place (not a mosque)]: • **Be in the company of more than four other persons [also performing Da'wah]** • **Set up a stall without first having informed the local authority and where necessary, having obtained written permission**		The court disapproved it on the basis of it being *"imprecise and capable of misinterpretation…certainly the performance of Da'wah would cover persuading others to accept the Muslim religion, but, as we would understand the term "proselytising", it would also cover persuading others to a particular view of Islam or persuading others to particular tenets of a religion: for example giving alms…..Such discussion might take place in a mosque, but it might also take place in other settings that would normally be considered public places….an appellant might wish to participate in inter-faith discussions…we find it difficult to see how the offences in the public highway in the course of the [one incident] could justify a prohibition of this depth…"* The court observed that in many parts of England and Wales, there exists no mechanism for local authorities to grant such permission or even accept authorisation.	

• **Be within 200 metres of any other group performing Da'wah** • **Be in a group displaying any banner or flag (save for a single notice measuring no more than 1 m x 2 m containing information as to the identity of the group)** • **Be in a group where any items are being burned (saved for smoking materials and braziers)** • **Be in a group where a flag pole is present**		Disapproved on the basis that it was unnecessary on the facts of the case as there was no evidence that the two relevant groups converge had or ever would unintentionally converge.. Prohibiting the carrying a banner or flag was disapproved on the basis that it was unjustified on the facts of the case. Again, the authors consider that a more clearly worded prohibition might in future succeed. Disapproved on the basis that there was insufficient evidence of things being burned rather than on principle. *"it escapes us how a stationary flag pole might make Da'wah more anti-social….'the legislation is in place is sufficient to enable the police to prosecute…' [anyone carrying a flag-pole]"*	
Must not do the following when attending a demonstration, protest or rally: • **Participate in any such event where:** **i. Notification has not been given to, and permission granted by, the local authority and/or police where required**		Inclusion of the word "rally" was disapproved (see above). *"We do not know the nature of the permission contemplated or what powers local authorities have to give any relevant permission, nor do we know what function local authorities have to receive such information"*	

ii. Any items are being burned (save for smoking materials and braziers) • **Carry a flag pole** • **Approach members of the public**		See above – insufficient evidence to suggest that this had happened rather than on principle. This prohibition *"..seems to be imported from the demonstration prohibition, although the demonstration prohibition is concerned only about a flag-pole that is carried, but the Da'wah prohibition seems to cover stationary poles.* *"We consider this is unjustifiably restrictive: it is an ordinary part of any demonstration to hand the public leaflets, and a major restriction on freedom of expression to prohibit it. And the prohibition would cover such innocent conduct as asking about the nearest underground station to go home".*	
DRINKING			
Consuming alcohol in a public place other than licensed premises	**Starling [2005] EWCA Crim 2277**	Explicitly approved by the court.	Bean J
Being under the influence of alcohol in any public place		The prosecution conceded that the prohibition was too vague to be enforceable	
Being found drunk in a public place in [three named counties]	**McGrath [2005] EWCA Crim 353**	Specifically approved.	Gross J

Being drunk or consuming alcohol in any public place	**Anthony [2005] EWCA Crim 2055**	3yrs 3 months sentence upheld on Appeal equates to validity accepted	Henriques J
Not to be in a state of drunkenness in any public place in England and Wales.	**Blackwell [2006] EWCA Crim 1671**	This prohibition was specifically approved.	Penry-Davey J
Consuming, being under the influence of or in possession of any intoxicating liquor in a public place		The court indicated that this was too wide and would inevitably lead to difficulties of enforcement - *it places the appellant in peril of imprisonment, for example if he is walking down the street with a sealed bottle of wine as a gift*	
DRIVING			
driving any mechanically propelled vehicle on a public road in the United Kingdom without being the holder of a valid driving licence and certificate of insurance.	**Hall [2004] EWCA Crim 2671**	*There is nothing wrong in principle in making such an order when they are driving offences of such a regularity and type and in such an area that they do constitute anti social behaviour.* This case was followed by *Kirby* (below) which disapproves of the use of this type of prohibition unless there are exceptional circumstances.	Hunt J
Must not (1) drive, attempt or drive or allow himself to be carried in any motor vehicle which has been taken without the consent	**Kirby [2005] EWCA Crim 1228**	*There was, in our judgment, nothing in this case, despite the deplorable record of the appellant for offences of this sort, to justify the use of this power in the*	David Clarke J

of the owner or other lawful authority, and (2) drive or attempt to drive a motor vehicle until after the expiration of his period of disqualification		*present case. Its effect was no more than to transform any such offence into a different offence, namely breach of an anti-social behaviour order, so as to increase the potential penalty. In our judgment that was unwarranted in this case in the absence of exceptional circumstances.*	
not to own nor borrow any motor vehicle or occupy the driver's seat of a motor vehicle on a road or other public place until further order	**Lawson [2005] EWCA Crim 1840**	*for the same reasons as were given in Kirby, the ASBO made in this case was unjustified and disproportionate*	Field J
DRUGS INCLUDING DEALING			
Not to enter [specified area of West London and supported by a map] save on public transport or for the purposes of attending prearranged appointments at the [X] drugs project or other probation appointments	**R v Briggs [2009] EWCA Crim 1477**	Whilst these prohibitions were disapproved, this judgment was effectively reversed by those in *Dyer* and *Barclay.*	Williams J
Being in possession of any form of drug paraphernalia, include foil, homemade pipes and hypodermic needles unless provided with them by a registered worker or drugs rehabilitation centre		*The court said that this was "unnecessary. If she was in the area and if she was in possession of itself would be insufficient to cause distress. It would be the use of the paraphernalia which would cause distress and its use would…amount to a criminal offence and the ASBO would be unnecessary to address that".* Whilst *Barclay* and *Dyer* reverse the judgment in *Briggs* on the	

		point of exclusion, these later cases do not address paraphernalia. The authors submit that this authority may not be very robust. Firstly, there has never a requirement that mere possession of an item causes distress. *In Dyer* and *Barclay* approving the use of a prohibition against possession of a mobile phone (see below) when there was no evidence that distress was caused by possession. Secondly, in *Boness* the court explicitly approved the use of a prohibition preventing the possession of a can of spray paint in a public place on the basis that it gives the police an opportunity of taking possession in advance of the actual spraying. Hooper LJ in *Boness* also said that "*the aim of an ASBO is to prevent anti-social behaviour. To prevent it the police or other authorities need to be able to take action before the anti-social behaviour it is designed to prevent takes place."* The Lordships in the current case do not appear to have been referred to this part of the *Boness* judgment.	
Associating with named individuals and each other in any public place in Greater London	**R v Hashi, Khalif, Idol [2014] EWCA Crim 2119**	*"There is no evidence that any of those identified were previously known or associated with the applicants. The only basis upon which the order was applied for was that those involved were said to have been dealing drugs at about the same time in the same location. This is too tenuous a connection on the facts of this particular case"* In the light of this it would be clearly preferable to use	Treacy LJ

		evidence to show that people named in the prohibition were known to the defendant.	
Possession of herbal substances	**Simsek [2015] EWCA Crim 1268**	*"Patently too wide"*	
Enter a [specified area] of Camden		Approved.	
Being in possession of [unspecified] drug paraphernalia		The judgment followed *Briggs* but also disapproved on the basis of "paraphernalia" as being less specific and imprecise than the similar prohibition in *Briggs*. For the reasons we have already addressed in the commentary section on *Briggs*, we are doubtful that the judgment in this case is robust.	
Possession of self seal bags		*"The scope of such a prohibition exposed the applicant to breach proceedings for being in possession of a wide range of items which are lawful"*	
Not to carry a mobile phone which is not registered to his own name	**R v Dyer [2010] EWCA Crim 2096**	*"Although it has been rather unrealistically submitted to us that there is little evidence of use of a mobile phone by the appellant, it is absurd to suggest that drug dealers do not use mobile phones. There is also plain evidence in this case that the initial contact was made by mobile phone. It is well known that drug dealers do use mobile phones. The problem that occurs is that mobile phones are sometimes*	Thomas LJ

		"pay as you go" and not registered. It seems to use clear that if the appellant is to be prevented from drug dealing in the future and this evil trade stopped as far as he is concerned, it is necessary that any mobile phone be registered in his name if he is to have one…" The original prohibition was qualified in that mobile phone must be registered with Intelligence Officers at the local police station. However, the point was not argued in court and therefore was struck from the ASBO and the court stressed that this formed "no precedent at all": see Barclay below on this point.	
Not to carry a mobile phone which is not registered in his own name and registered with intelligence officers at a named police station	**R v Barclay and others [2011] EWCA Crim 32**	*Nothing we have heard persuades us that it is unnecessary for these appellants to register their mobile phones in their own names, or that registration in their own names is a disproportionate response, trenching on their freedom of association. In that regard we adopt the reasoning of this court in R v Dyer. During the course of the argument, the prosecution accepted that the additional condition of registering mobile phones with the intelligence officers at Trinity Road police station was otiose, given the other registration requirement.*	Cranston J
Non-association with other named individuals	**R v Dyer [2010] EWCA Crim 2096**	*"It is submitted on the appellant's behalf that he does not know any of these people and that they happen to be people who were arrested as part of the same operation. We consider that the prohibition should be in force. The*	Thomas LJ

		overwhelming likelihood is that drug dealers of this kind are known to each other, although maybe not by the name set out here but otherwise. Providing that sufficient identification is provided to this appellant so he knows who these people are, we consider that condition necessary".	
Non-association with named individuals	**R v Barclay and others [2011] EWCA Crim 32**	*There was no evidence, even when particular appellants knew persons on the list, about whether they had associated with them or the nature of the association. …For reasons given in R v Dyer, we do [not] regard the association prohibition as unnecessary or disproportionate, although providing each of the appellants with photographs and street names of those with whom they must not associate will make that part of the ASBO clearer, more understandable by them and easier to enforce.*	Cranston J
EMERGENCY SERVICES – NUISANCE TELEPHONE CALLS			
Calling NHS Direct or the emergency services for medial advice or aid or encouraging by her actions or her reports anyone else to do so on her behalf, including staff at NHS Direct, save when in genuine need of emergency services requiring immediate assessment, action or treatment	**Delaney –v- Calderdale Magistrates' Court [2009] EWHC 3635 (Admin).**	The prohibitions "*are to stop her vexatious calls, the calls that she makes or did make when she knew perfectly well that she had not taken an overdose, she had not self-harmed, and yet still alerting the emergency services asserting that she had when in fact and in truth she had not, and had thus wasted their time and had put them at some risk of harassment and abuse when they turned up to be met by her anti-social behaviour*"	Kaye J

		The court inserted the words “save when in genuine need of emergency services” instead of the words “when there is no potentially life-threatening situation”	
EXCLUSIONS			
Entering the Forest Heath District Council area save for the purpose of attending court	**Vittles [2004] EWCA Crim 1089**	Specific approval given to the prohibition *“a more sensible limitation could not be imposed*”	Rose LJ
Entering Birmingham City Centre	**Braxton [2004] EWCA Crim 1374**	*It is undeniable that this represents a serious infringement upon the liberty of the applicant, not only because it represents a restriction on his right of free movement, but also because breach constitutes a criminal offence punishable with a term of up to five years' imprisonment, which is greater than the maximum penalty which could be imposed for offences which might otherwise be reflected within the terms of the order. It is, however, a response by Parliament to the increasing concern about the impact on the public of antisocial behaviour in its many constituent forms. It follows that this concern must be reflected in the sentences which the court imposes for breach of the order*	Leveson J
Entering any public car park within the Basingstoke and Deane Borough Council area,	**Boness [2005] EWCA Crim 2395**	*The antecedent information does not state whether any of the vehicle crimes committed by the appellant took place in a public car park. However, it is*	Hooper LJ

except in the course of lawful employment.		*submitted that it could sensibly be argued that a person intent on committing vehicle crime is likely to be attracted to car parks. The prohibition as drafted does not appear to allow the offender to park his own vehicle in a public car park or, for example, to be a passenger in a vehicle driven into a public car park in the course of a shopping trip. Thus, in the absence of evidence showing that the appellant committed vehicle crime in car parks, there would appear to be a question mark over whether the prohibition is proportional*	
Entering into or remaining in any dental or medical establishment in England or Wales without prior notification	**Hutchins** **[2005] EWCA Crim 2238**	*In addition to the custodial sentence, the anti-social behaviour order was necessary as a control on his conduct after release. The report showed that the applicant poses a continued risk to other people and is unco-operative and not motivated to change his behaviour. Accordingly we see no basis for interfering with this aspect of this sentence either. This renewed application is dismissed.*	Treacy J
Entering a defined geographical area where the offence took place indefinitely	**Collins** **[2005] EWCA Crim 2176**	Appropriate but should be limited to 2 years. D was selling property next to Victim. Not necessary long term.	Latham LJ
Not to enter the area bounded by Chatsworth Road, Boythorpe Road, Hunlock Avenue and Walton Road in Chesterfield.	**Henchcliffe** **[2006] EWCA Crim 255**	*The effect of the order in its present form is that he would not be permitted to return to his home on his release from custody. In other words, his home*	Judge LJ

		would have to move outside the area prescribed by the judge, or, if for any family reasons, and there may be some, his family were unable or could not move, then the appellant would not be able to return home. That would be a most troublesome start to his rehabilitation and we think likely to reduce the prospects of success. *We shall amend the second part of the order, in relation to where the appellant may go, by reducing its application to the street in which Mr Spotswood lives, which we believe to be Wolgrove Avenue.*	
Entering any car park which is owned, opened or leased by Network Rail, any train operating company or London Underground Ltd whether on payment or otherwise within the counties of Hertfordshire, Bedfordshire or Buckinghamshire	**McGrath [2005] EWCA Crim 353**	Specifically approved. This prohibition is clearly enforceable as the car parks will be clearly marked and defined. Ideal prohibition for a persistent thief who targets railway car parks.	Gross J
Entering any other car park whether on payment or otherwise within the counties of Hertfordshire, Bedfordshire or Buckinghamshire		The court commented that this prohibition was "unjustifiably draconian …[and] far too wide…". It would prohibit the appellant from entering, even as a passenger, any car park in a supermarket	
Entering the following areas [named streets] and its environs, Northolt UB5	**W v Acton Youth Court [2005] EWHC 954 (Admin)**	Disapproved as the term "environs" was unlikely to be understood	Pitchers J

Entering *[named estate]* marked on the attached map	**M v DPP [2007] EWHC 1032 (Admin)**	Specifically approved.	Gross J
Without limitation of time, you are prohibited from entering Wigan Town Centre between the hours of 10 pm and 7 a.m. each and every day of the week	**Bowker [2007] EWCA Crim 1608**	*In determining whether or not the extent of the terms of the order were necessary, it must be born in mind that the appellant does not live in Wigan. And he is only precluded from going to Wigan between the hours of 9 p.m. and 7 a.m. when the only likely purpose of any such visit would be to go to a night club for evening or night entertainment. We can see nothing accordingly which could justify the conclusion that this aspect of the order was in any way inappropriate. As far as the length of the order is concerned, that has caused us more concern. But in the end bearing in mind the fact that an appropriate application can be made to the court at any time for the order to be modified, we do not consider that it would be right to interfere with an order which the judge clearly considered to be necessary in the context of the problem of violence in Wigan town centre of which he was all too familiar.*	Latham LJ
May not enter or attempt to enter the following roads in Yeadon, Leeds and may not enter or attempt to enter any part of any property which fronts those roads: Henshaw Avenue, Henshaw Crescent or Henshaw Oval	**Leeds City Council –v- Fawcett [2008] EWCA Civ 597**	*ASBOs which deal clearly with matters such as exclusion zones, so as to prevent the defendant from ever getting into the position where he might offend or cause harassment or intimidation to his neighbours, are a preferred form of*	Rix LJ

		prohibition. Conduct prohibitions are much harder for the defendant himself to evaluate and for the neighbours or the local council or the police as may be necessary to enforce.	
Entering the Castle Hill Centre, Castleton, except to go to the youth club.	**F [2009] EWHC 240 (Admin)**	*unclear why paragraph 3 [this prohibition] of the order was made, since it did not appear that the claimant was found to engage in anti-social behaviour in the Castle Hill area*	Simon J
Not to enter the city of York [further defined]	**DPP v Bulmer [2015] EWHC 2323 (Admin)**	Whilst excluding an individual from an area could transplant the behaviour of an individual, "*the vast majority of the respondent's anti-social behaviour and breaches of the order took place in the centre of York. If the fact that she would simply move her anti-social activities to another location is seen as important factor against making the order that was sought, the court would in effect be deciding not to protect those in her primary area of activity".*	Beatson LJ
GROUPS			
Congregating in groups of people in a manner causing or likely to cause any person to fear for their safety or congregating in groups of more than SIX persons in an outdoor public place	**Boness [2005] EWCA Crim 2395**	Given the appellant's previous history the first part of the prohibition can be justified as necessary. *As the respondent points out, the final clause would appear to prohibit the appellant from attending sporting or other outdoor events. Such a prohibition is, in our view, disproportionate. Although, as the respondent points out, the appellant*	Hooper LJ

		would be able to argue that he had a reasonable excuse for attending the event, this is, in our view, an insufficient safeguard	
Congregating in a public place in a group of two or more persons in a manner causing or likely to cause any person to fear for their safety	**N v DPP [2007] EWHC 883 (Admin)**	Validity approved following identical to Boness (ibid.) prohibition. The court commented that this prohibition falls short of affray.	Tomlinson J
Being together in a public place with two or more persons and behaving in a manner likely to cause harassment, alarm or distress	**F [2009] EWHC 240 (Admin)**	Paragraph 2 of the order is expressed in terms which might not readily be understood by a 13-year old	Simon J
HARASSMENT – ANIMAL RIGHTS			
Not knowingly to participate in, organise or control any demonstration, meeting, gathering or website protesting against animal experimentation.	**Avery,Avery Nicholson & Medd- Hall [2009] EWCA Crim 2670**	*We think that for everyday purposes the meaning of these words is clear enough. It is important to note with respect to the aspect of the paragraph that applies to websites, that it was through the use of the SHAC website that the applicants were able to carry out their activities. There can be no objection to a provision which prohibits them from setting up or encouraging others to set up such a website. "Participation", we accept, goes further. Mr Wood submitted that, if we were minded not to quash the order, we should draw a distinction between "participation" and "ordering and controlling". We consider that in the particular circumstances of this case it is*	**Elias LJ**
Not to go within 1 mile of Huntingdon Life Sciences ("HLS") at [two addresses inserted] save for the purposes of coincidental travel when passing the said premises by motorised vehicle or public transport.			

Not to go within 500 metres of any of the premises named in Schedule 1 of this document, save for the purposes of coincidental travel when passing any of the said premises.		*legitimate to prevent participation in websites which — and we stress — are those whose purpose is to protest against animal experimentation. It does not prevent participation in websites which genuinely debate whether or not animal experimentation should be permitted. We recognise that there may be circumstances where the application of the paragraph is unclear. An issue may arise whether or not a particular website falls into the category, although we doubt whether in practice it is likely to do so. However, if it does, it can be dealt with by discussion first with the prosecution and a return to court in the unlikely event that there is any real confusion about such matters.*	
Not to send or attempt to send any article, letter, fax or e-mail to any of the companies named in Schedule 1 or HLS			
Not knowingly or intentionally to contact, directly or indirectly, the owners, shareholders, employees or agents, or members of the families of the owners, shareholders, employees or agents of HLS where the nature of the contact is intended or likely to cause harassment, alarm or distress to any person.			
Not knowingly or intentionally to contact, directly or indirectly, the owners, shareholders, employees or agents, or members of the families of the owners, shareholders, employees or agents of any of the companies named in Schedule 1 or any other company which conducts business in any way with HLS where the			

nature of the contact is intended or likely to cause harassment, alarm or distress to any person			
NON-ASSOCIATION AND NON-CONTACT			
Being in the company of Jason Arnold, Richard Ashman, Corrine Barlow, Mark Bicknell, Joseph (Joe) Burford, Sean Condon, Alan Dawkins, Simon Lee, Daniel (Danny) Malcolm, Michael March or Nathan Threshie	**Boness [2005] EWCA Crim 2395**	*The respondent, however, has doubts whether a prohibition that prevents the appellant from associating with any of the named individuals for five years after his release, even in a private residence where one or more resides, is disproportionate [sic]to the risk of anti-social behaviour it is designed to prevent. We share those doubts.*	Hooper LJ
Associate with Chantelle Allen in any public place;	**Hills** **[2006] EWHC 2633 (Admin)**	*Paragraph 4 prohibited Joseph from associating with Chantelle in any public place. The question is whether that was a lawful prohibition, in view of the fact that Chantelle was not prohibited from associating with Joseph in any public place. In my opinion, it was… No doubt such a prohibition is appropriate when the person who is the subject of the order behaves in a particularly anti-social manner when in the company of that individual. That would be so despite the named individual not being subject to an anti-social behaviour order themselves with a reciprocal term of non-association. What if an anti-social behaviour order could not lawfully be made against that individual, because, for example, they are under the age of*	

		ten, or because they have not themselves acted in an anti-social manner, or because an anti-social behaviour order in their case is not needed to curb their anti-social behaviour? Miss Gardiner argued that there was a real risk of unfairness if Joseph was subject to this prohibition without Chantelle being subject to an anti-social behaviour order with a reciprocal term of non-association….. if Chantelle came up to him in the street and insisted on walking with him …Joseph would not be in breach of the order … because he would have had a reasonable excuse for being in her company.	
Being with *[specified co-accused at trial or another appellant in a closely defined area]*	**Wadmore and Foreman [2006] EWCA 686**	Specifically approved.	Aitkens J
Engaging in any conduct that will cause alarm, harassment or distress to *[appellant's parents]*	**Rush [2005] EWCA Crim 1316**	Prohibitions specifically approved. This case pre-dates the introduction of s12 Domestic Violence Crime and Victims Act 2004 which would have enabled the court to impose a Restraining Order in the same terms. The repeat victims in this case were his parents and not the wider community. It would now be appropriate to seek a Restraining Order	Clarke J
Encouraging others to engage in conduct that will cause alarm, harassment or distress to *[appellant's parents]*			

Contacting directly or indirectly *[appellant's parents]*		rather than an ASBO.	
Approach, threaten, intimidate or communicate directly or indirectly with *[named persons]*	**Michael T [2006] EWHC 728 (Admin)**	Not specifically commented on other than the prohibitions "…*were clearly tailored to fit the respondent's individual case…"*	Richards LJ
Associate in any way in a public place or a place to which the public has access with *[list of names]*or any of them in the area marked in red on MAP B			
Congregate in a group number greater than three in the area marked red on MAP B			
Not to contact [victim of convicted offence] either directly or indirectly	**Henchcliffe [2006] EWCA Crim 255**	*There are grounds, in our judgment, for discerning a significant risk that, on his release from custody, he may welcome an opportunity or perhaps, putting it equally realistically, not seek to avoid an opportunity to join with others, if not prepared to do so himself, to plaguing this unfortunate man, and even if not*	Judge LJ

		behaving with criminal violence towards him, to pressure him in a way which would cause alarm and distress.	
Associating with any female under the age of 16	**R v Melvin Harris [2006] EWCA Crim 1864**	Breach of ASBO case where the defendant had a history of sexual behaviour towards school girls. He was sentenced for four years for the breach of the ASBO and 18 months imprisonment on new offences to run concurrently. Sentence reduced to 3 years and 4 months purely on the basis that the original sentencing court failed to give proper credit for the guilty plea. The court did not specifically address the prohibition but this must raise questions of enforceability; for example, the Sexual Offences Act 2003, makes reference to the age of child victims it may be an appropriate prohibition. However If the defendant argues that he will not be aware of the age of the females he is associating with, he could always raise a "reasonable excuse" defence in response to breach proceedings.	Kay LJ
No contact with the complainant, who was his wife, or going within 200 metres of the house where she lives	**Gowan [2007] EWCA Crim 1360**	*section 1C(2) was plainly directed at protecting members of the general public from an offender's conduct and was not intended and could not be used to protect a wife with whom an offender had been and would in the future be*	Swift J

		cohabiting	
Using abusive, insulting, threatening or intimidating language or behaviour towards *[named individual]* within the sight or hearing of a person not of the same household as *[the appellant]*	**<u>Rabess [2007] EWCH 208 (Admin)</u>**	Both prohibitions were specifically approved. The appellant in this case was involved in a volatile and violent relationship which caused distress to neighbours and members of the public. The other party had also been made subject to an ASBO. Prohibition was specifically considered and found to fall short of sections 4 and 5 Public Order Act behaviour and approval was given. Mrs Justice Dobbs commented "..*they do not fully mirror the law and indeed have added value*". The court added "*within the sight or hearing of a person not of the same household*.." should be added to the prohibition on the basis that otherwise this "…could lead to an unfair situation".	Dobbs J
Using or threatening violence against *[named individual]* within the sight or hearing of a person not of the same household as *[the appellant]*			
THIEVES AND TRESPASS			
Having any item with you in public which could be used in the commission of a burglary, or theft of or from vehicles except that you may carry one door key for your house and one motor vehicle or bicycle lock key. A motor vehicle key can only be carried if you are able to inform a checking officer of the registration number of the vehicle and that it can be	**Boness [2005] EWCA Crim 2395**	*drafted too widely and lacks clarity … there are many items that might be used in the commission of a burglary, such as a credit card, a mobile phone or a pair of gloves. Was the appellant being prohibited from carrying such items? If so, the order is neither clear nor proportionate.*	Hooper LJ

ascertained that the vehicle is insured for you to drive it.			
Entering upon any private land adjoining any dwelling premises or commercial premises outside of opening hours of that premises without the express permission of a person in charge of that premises. This includes front gardens, driveways and paths. Except in the course of lawful employment		*… in McGrath the Court of Appeal held that a term which prohibited the appellant from "trespassing on any land belonging to any person whether legal or natural within those counties" was too wide and harsh. If the appellant took a wrong turn on a walk and entered someone's property, he would be at risk of a five year prison sentence. In our view this prohibition, albeit less open to criticism than the one in McGrath is also too wide and harsh. Although certain pieces of land might easily be identified as being caught by the prohibition (such as a front garden, driveway or path) it might be harder to recognise, say, in more rural areas. The absence of any geographical restriction reinforces our view… there is no practical way that compliance with the order could be enforced, at least outside the appellant's immediate home area*	

Touching or entering any unattended vehicle without the express permission of the owner	**Boness [2005] EWCA Crim 2395**	*The appellant has previous convictions for aggravated vehicle taking and interfering with a motor vehicle, and has been reprimanded for theft of a motorcycle. It is submitted that the prohibition is sufficiently clear and precise, and is commensurate with the risk it seeks to meet. We agree generally but we would have preferred a geographical limit so as to make it feasible to enforce the order. Local officers, aware of the prohibition, would then have a useful weapon to prevent the appellant committing vehicle crime. They would not have to wait until he had committed a particular crime relating to vehicles*	Hooper LJ
Remaining on any shop, commercial or hospital premises if asked to leave by staff. Entering any premises from which barred.		*The appellant has convictions for offences of dishonesty, including an attempted burglary of shop premises and he has been reprimanded for shoplifting. Thus, there appears to be a foundation for such a prohibition. It is submitted that this term is capable of being understood by the appellant and is proportionate given that it hinges upon being refused permission to enter/remain on particular premises by those who have control of them.* *We agree, although we wonder whether the appellant would understand the staccato sentence: "Entering any premises from which*	

		barred." While the judgment does not put forward an alternative suggestion, the prohibition could be phrased *'Entering any premises from which you have already been banned or excluded'* would provide greater clarity.	
Entering any car park which is owned, opened or leased by Network Rail, any train operating company or London Underground Ltd whether on payment or otherwise within the counties of Hertfordshire,Bedfordshire or Buckinghamshire	**McGrath [2005] EWCA Crim 353**	See above under "Exclusions"	Gross J
Entering any other car park whether on payment or otherwise within the counties of Hertfordshire, Bedfordshire or Buckinghamshire	**McGrath [2005] EWCA Crim 353**	Disapproved on the basis it was "*unjustifiably draconian..[and]..far too wide..". It would prohibit the appellant from entering, even as a passenger, any car park in a supermarket.*	Gross J
Trespassing in any land belonging to any person whether legal or natural within those counties		Disapproved on the basis if he took a "…*wrong turn on a walk and entered someone's property, he would be at risk from a five year prison sentence*	
Being in possession in any public place any window hammer, screwdriver, torch or any tool or implement which could be used for the purpose of breaking into motor vehicles		Disapproved on the basis the meaning of the words "any tool or implement" is impossible to ascertain. Further, the court also commented that the prohibition is sufficiently qualified "which could be used for the purpose of breaking into motor vehicles" overlaps	

		with going equipped.	
Entering, or remaining upon a train without a valid ticket for travel at that time on that train at the following mainline stations: London Paddington, London Euston, London St Pancras, London King's Cross, Marylebone, Blackfriars, Liverpool Street, Cannon Street, London Waterloo, London Bridge, Charing Cross, Victoria and Fenchurch Street station for a period of three years from the date of his release from custody.	**Regina v Hinton[2006] EWCA Crim 1115; 2006 WL 1981737**	The appellant targeted mainline stations, looking for passengers who placed their jackets in the overhead rack. He would then place his jacket next to the passenger's jacket, rummage around and steal the passenger's wallet. He would then leave the train shortly before it departed. He used any cash cards that he could find to obtain money or goods. The initial prohibition prevented him from entering, remaining upon or alighting a train at the named mainline stations. *"We recognise… that an order in those terms would affect the ability of the appellant to travel (at least by train) to different parts of the country, and in particular to return to Liverpool from whence he came."* The initial term was unquestionably stronger than the one that was approved.	Leveson J
touching or entering any unattended vehicle within the area bounded by the M25 without express permission of the owner	**Barnard [2006] EWCA Crim 2041**	Defence Counsel objected on grounds of both necessity and clarity but ASBO only specifically quashed by court on point of necessity.	Smith LJ
having any rock or stone or any similar object for breaking glass in his possession		*See Boness and McGrath which suggests that "any similar object" is too vague*	

Not to enter any hospital save for medical emergency or pre-arranged medical appointment save to visit [named] family members or friends but when so doing not to enter any canteen where there are or use any vending machines within the hospital premises	**Walker [2013] EWCA Crim 940**	*"..we would exclude the words 'or friends' and we would require the applicant to provide a list of persons qualifying for the description 'family members'".*	Laws LJ
Approaching of entering, directly or indirectly, any address in the United Kingdom, whether on his own or on other's behalf, for the purpose of offering his own or others' services for garden or building maintenance or any other business or work whatsoever (this prohibition includes dropping leaflets or flyers advertising by his own or others' services through letterboxes) **Instructing others to do any of the acts specified above, whether on his own behalf or on behalf of any firm of which he is the owner, or company of which he is a shareholder, director, officer, or company secretary**	**Janes [2016] EWCA 676**	The defendant in this case targeted an elderly man by telling him that he needed work doing and charged him substantial amounts of money. The legislation *"…envisages that the order should not interfere with the "times" at which the offender normally works, which might imply that such orders should not prevent an offender from working 'so far as practicable'. However where the conduct established derives from the very performance of work or in the course of it, there seems to be no* a priori *reason not to make an order in an appropriate case….There seems to us….nothing, in this order which would prevent the appellant seeking work upon his release [from custody], provided he does not engage in conduct covered by the order, namely touting. Indeed, it would 'help' to prevent such behaviour such as was the characteristic of this offence if he were to be under the control of a supervising employer."*	McCombe LJ
WEAPONS AND KNIVES			

Carrying any object which is made as or adopted for use as a weapon or missile	**Wadmore and Foreman [2006] EWCA 686**	Disapproved on the basis already a criminal offence as there is a sufficient deterrent already in existence, Further, "such orders do not tackle the problem that ASBOs aim to solve, namely how to prevent anti-social behaviour before it takes place".	Aitkens J
Having possession of any article in public or carried in any vehicle, that could be used as a weapon. This will include glass bottles, drinking glasses and tools	**Boness [2005] EWCA Crim 2395**	*the necessity for such a prohibition is not supported by the material put forward in support of the application. There is very little in the appellant's antecedent history which indicates a disposition to use a weapon. Furthermore, it is submitted that the wording of the prohibition is obviously too wide, resulting in lack of clarity and consequences which are not commensurate with the risk. Many otherwise innocent items have the capacity to be used as weapons, including anything hard or with an edge or point. This prohibition has draconian consequences. The appellant would be prohibited from doing a huge range of things including having a drink in a public bar.*	Hooper LJ
Possession of any bladed article in a public place	**Starling [2005] EWCA Crim 2277**	Disapproved on the basis it is already a criminal offence but see Hills below.	Bean J
Carry any knife or bladed article in any public place	**Hills [2006] EWHC 2633 (Admin)**	*The Crown Court could, I suppose, have modified the prohibition in paragraph 2*	Keith J

		by limiting it to a knife whose blade was longer than 3 inches. But that could have encouraged Joseph only to carry a knife whose blade was less than 3 inches, and that would have been anti-social behaviour which the Crown Court would have wanted to prohibit as well. Moreover, it would not be right to say that the prohibition in paragraph 2 meant that Joseph did not have the protection which section 139 would otherwise have given him, namely the statutory defence in section 139(4), i.e. that it would be a defence for a person charged with an offence under section 139 to prove that he had good reason or lawful authority for having the article with him in a public place. Joseph could only be convicted of breach of the anti-social behaviour order if he had no reasonable excuse for doing what he was prohibited from doing. In the circumstances, it was lawful for the Crown Court to confirm the decision of the magistrates' court that the prohibition in paragraph 2 should remain in place.	

AND FINALLY, "THE GENERAL PROHIBITION"			
Acting or inciting others to act in an anti-social manner, that is to say, a manner that causes or is likely to cause harassment, alarm or distress to one or more persons not of the same household.	Boness [2005] EWCA Crim 2395	*The respondent submits that this was a proper order to make and is in accordance with the Home Office guidance. We would prefer some geographical limit, in the absence of good reasons for having no such limit.* We would suggest that the wording "not of the same household" should not be replicated when seeking this prohibition as this mirrored the wording from the ASBO legislation which is no longer in force – though see commentary on later case of ***Heron*** below	Hooper LJ
Not to act in an anti-social manner in the City of Manchester	**CPS - v- T** [2006] EWHC 728 (Admin)	*It did not even include the explanatory words contained in the statutory definition, namely the words "that is to say in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household of himself". It lacked the essential element of clarity as to what the respondent was and was not permitted to do. He, a boy aged 13 to 15 years during the currency of the order, could not be taken to know the ambit of the words "act in an anti-social manner". He would probably not know the geographical ambit of the City of Manchester. We have no doubt that the provision in question in the present case, not to act in an anti-social manner, would have been struck out on appeal or on an application to vary the order…*	Richards LJ

not to behave in any way causing or likely to cause harassment, alarm or distress to any person	**Heron –v- Plymouth City Council [2009] EWHC 3562 (Admin)**	*it is still too broad and of no real efficacy…. The Guide for the Judiciary… repeats strictures…requiring restrictions in relation to threatening and abusive behaviour to identify the targets and referring, in addition, to a geographical limitation so as to prevent access to an area where identified individuals might be targeted.* **BUT** Lord Justice Moses does not say that the "geographical limitation so as to prevent access to an area where identified individuals might be targeted" need be part of the same properly "restricted" prohibition on behaviour causing harassment, alarm or distress. Many ASB offenders will threaten, abuse or otherwise harass members of the public in general within their habitual area of activity; it would therefore be impossible to specify a class of victim without duplicating the operative area. In Heron the offender was already excluded from the city centre shopping area by another prohibition **AND** Heron is a judgement of the Administrative Court, which is outranked by the Court of Appeal, in which a virtually identical prohibition was approved (albeit not ringingly) in Boness above. The authors would recommend that this sort of prohibition is used only very sparingly, if at all – its general ambit is at odds with the preference in much of the case law for specificity.	**Moses LJ**