

Criminal Behaviour Orders (CBO) Aide Memoire (April 2018)

Anti-social Behaviour, Crime and Policing Act 2014

Conditions for the Imposition of a CBO (Sections 22(3) and (4))

1. The Court is satisfied, beyond all reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person;
and
2. Making the order will help in preventing the offender from engaging in such behaviour. (This does not impose any burden of proof upon the Prosecution. This second limb is an evaluative exercise and does not require satisfaction to the criminal standard– *DPP v Bulmer* [2016] 1 Cr.App.R.(S))

A CBO can only be made if it is in addition to a sentence or conditional discharge imposed by the Court (Section 22(6))

Prohibitions and Requirements (Sections 22(5) and (9))

Individual prohibitions or requirements can be imposed as part of the order.

Both prohibitions and requirements must, so far as practicable, avoid:

- any interference with the times, if any, at which the offender normally works or attends school or other educational establishment;
- any conflict with the requirements of any other court order or injunction to which the offender may be subject.

Prohibitions

- The terms must be reasonable and proportionate, realistic and practical.
- Should not mirror a criminal offence if the sentence for the offence should be a sufficient deterrent.
- Clear wording is important.

This compendium of case law does not cover every possible scenario but provides [guidance for drafting prohibitions](#).

Requirements

Before including a requirement, the court must receive evidence about its suitability and enforceability from the individual or organisation specified in the order.

A CBO requirement must specify an individual who is responsible for supervising compliance and must receive evidence from that individual as to its enforceability and suitability (Section 24(1)(2))

Interim Orders (Section 26) (see also CrimPR 31.1)

Applications may be made for interim orders after conviction but before sentence. In most cases, however, bail conditions will be a more appropriate way of controlling the offender's behaviour while the case is ongoing. An interim order may last until the final hearing of the application or until further order if the court thinks it "*just to do so*". No written application form is required for an interim order.

Hearings in Absence (s23(4)(5)(6))

If the defendant fails to attend the hearing the court may:

- Further adjourn

- Issue a warrant for the offender’s arrest. However, the offender must have had adequate notice of the time and place of the adjourned proceedings
- Hear the proceedings in absence. However, the offender must have had adequate notice of time and place of adjourned proceedings AND that the defendant has been informed that they can proceed in absence.

Applications Received from the Police and Local Authority (Section 22)

CPS guidance has been issued for use by police and local authorities when preparing CBO applications. The final decision to apply is one for the CPS.

Where the request is made after the decision to charge, the request must be submitted with the initial file in order to allow sufficient time for the CPS to review and serve documents. Requests subjected after trial will almost always be too late. The Notice of intention to apply for a CBO must be made “*as soon as reasonably practicable (without waiting for the verdict)*” (see CrimPR 31.3).

Evidence (Section 23(2))

“*It does not matter whether the evidence would have been admissible in proceedings in which the offender was convicted*”. We can include the facts of previous convictions and other conduct capable of proof.

Hearsay (CrimPR 31.6)

The CBO application form used by officers includes a hearsay notice. This works differently from a criminal hearsay application. The evidence is introduced by the notice. The defence must apply in writing (with reasons) if they want to cross examine a person who made the statement. This must not be more than 7 days after service of the notice of hearing evidence.

Requirements on the Defence to Serve Notice and Their Evidence (CrimPR 31)

The defence must serve their written notice on the court and prosecutor. They must attach the defence evidence. The defence must, for example, provide evidence of any need to enter a proposed exclusion zone. This must be done as soon as reasonably practicable.

Power to Adjourn after Sentence (section 23(3))

A CBO application may be adjourned even after sentence.

Duration of the Order (Section 25)

Adults – minimum order 2 years, maximum is until further order.

Youths – minimum order 1 year, maximum 3 years.

Youths (Section 22(8))

The CPS must have the views of the local YOT before seeking the order.

In cases involving young people, the normal automatic reporting restrictions do not apply to CBO application hearings or prosecutions for a breach of an order, (*R v St Albans Crown Court, ex parte T and Chief Constable of Surrey v J h-G and D H-G* [2002] EWHC 1129 (Admin) All ER (D) 308 (May)).

There is a requirement for an annual review where the offender is a youth. The CPS may be asked to provide advice where, following a review, it is proposed that a CBO is varied or discharged. (Section 28)

Variation or Discharge (Section 27)

The prosecution or the offender may apply to vary or discharge the CBO. If the application is dismissed, the prosecution / offender may make no further application without the consent of the court which made the order, or the agreement of the prosecution / offender.

The power to vary the CBO includes extending the term of the order or including additional prohibitions or requirements.

Breach of a CBO (Section 30)

There is a strong public interest in prosecuting breaches of CBOs. Maximum sentence is 6 months' imprisonment in the Magistrates' Court and 5 years in the Crown Court.

There are no sentencing guidelines for breach offences. Prosecutors may be assisted by the Breach Offences Guideline Consultation, published by the Sentencing Council (October 2016), in their representations to the court.