



Home Office

**Injunctions to Prevent
Gang-Related Violence and
Gang-Related Drug Dealing**
A Practitioners' Guide

June 2015

Archived

Archived

**Injunctions to Prevent Gang-Related Violence
and Gang-Related Drug Dealing**
A Practitioners' Guide

Archived

OGL

© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.gov.uk/government/publications

Any enquiries regarding this publication should be sent to us at SeriousYouthViolence@homeoffice.gsi.gov.uk.

Contents

The Purpose of this Guide	3
Section A: Gang Injunctions – What, Why and When?	4
1.1 What is a gang injunction? The key points:	4
1.2 Why use a gang injunction?	5
1.3 When to use a gang injunction	6
1.4 Changes to gang injunctions legislation	6
Section B: The statutory elements of a gang injunction and points to prove	8
2.1 Proving condition (1)	8
2.1.1 Using past incidents to prove “violence or the threat of violence”	8
2.1.2 “in the course of” or “otherwise related to, the activities of a group.”	9
2.1.3 Proving a group is a gang	9
2.1.3(a) “Consists of at least three people”	9
2.1.3(b): “has one or more characteristics that enable its members to be identified by others as a group”	9
2.1.3(c): “is associated with a particular area”	11
2.2 Proving Condition (2)	11
Section C: Obtaining Evidence for an Application – Some General Observations	13
3.1 Active case management during the evidence gathering phase	13
3.2 Researching historic incidents in detail	14
3.3 Using hearsay	16
Section D: Gathering Evidence by Researching Police Records	17
4.1 Viewing criminal records through a civil perspective	17
4.2 Police National Computer (PNC) Records	17
4.3 The Crime File	18
4.3.1 The Command and Control Log	18
4.3.2 Witness statements	21
4.3.3 Visual images	21
4.3.4 Forensic reports	21
4.4 Letters and emails of complaint and crime priority surveys	22
4.5 Media reports, including social media	22
4.6 Community information	22
Section E: The Overarching Statement	23
5.1 Elements of the Overarching Statement	24
5.2 How to present a case	24
Section F: The use of intelligence and managing risk in applications	25
6.1 Including intelligence in the application	25
6.2 Converting intelligence into evidence: managing risk	25
6.3 Grading intelligence	26
6.4 Managing risk in applications	27
6.5 Safeguarding the intelligence – the Intelligence Officer’s role	27
6.6 The role of the Senior Police Officer	28
Section G: Drafting the prohibitions and requirements	29
7.1 Effective prohibitions and requirements: some general principles	29

7.2	Human rights considerations	30
7.3	Checklist of questions	30
7.4	Specific prohibitions	31
7.4.1	Non-association	31
7.4.2	Prohibited areas	31
7.4.3	Bicycles and motorcycles	32
7.4.4	Use of vehicles	33
7.4.5	Drugs and equipment	33
7.4.6	Headgear	34
7.4.7	Dangerous dogs and other animals	34
7.4.8	Violence	34
7.4.9	Mobile phones	34
7.4.10	Social media	35
7.4.11	Home addresses	35
7.5	Specific requirements	35
Section H: The Practicalities of Filing an Application		38
8.1	With notice or without notice?	38
8.2	Which court and which judge?	38
8.3	Filing a without notice application	39
Section I: Serving and Enforcing the Injunction		40
9.1	Service of without notice interim injunctions	40
9.2	Serving multiple respondents	40
9.2.1	Service Lead tasks: actions for police	40
9.2.2	Service team: other tasks	42
Section J: Consultation with the Crown Prosecution Service and local partners		43
10.1	When must consultation take place?	43
10.2	Who to consult?	43
10.3	Consultation:	44
Section K: The Court Process		45
11.1	Without notice (ex-parte)	45
11.2	First inter-parte hearing	45
11.3	Other hearings and case management	45
11.4	Public Interest Immunity (PII) hearings	46
11.5	Witness warning	47
11.6	Trial bundles	47
11.7	Defence case statement	48
11.8	Court security	48
11.9	Witness care	49
11.10	Promoting awareness of gang injunctions	49
Section L: Breach Proceedings		51
12.1	Dealing with breach of an injunction	51
Section M: Variation, Discharge and Review of Gang Injunctions		52
13.1	Monitoring and review	52
13.2	Variation and discharge	52
13.3	Appeals	53
Annex A: Legislative Reference Document		54

The Purpose of this Guide

This Practitioners' Guide is informed by the experience of police forces and local authorities that have used injunctions to prevent gang-related violence, commonly known as 'gang injunctions'. It provides information on how to build a case, guidance on drafting and filing applications and advice on how to approach follow-up enforcement. **This guide is intended to be read alongside the Statutory Guidance on gang injunctions.**

Archived

Section A: Gang Injunctions – What, Why and When?

Gang injunctions, introduced by Part IV, section 34, Policing and Crime Act 2009 came into force in January 2011.¹ The use of gang injunctions was extended to 14 to 17 year olds by the Crime and Security Act 2010² which came into force in January 2012.

An Injunction to Prevent Gang-Related Violence, referred to as a 'gang injunction', is a civil tool that allows the police or a local authority to apply for an injunction against an individual to prevent gang-related violence and, from 1 June 2015, gang-related drug dealing. Over the medium and longer term, gang injunctions aim to break down violent gang culture, prevent the violent behaviour of gang members from escalating and engage gang members in positive activities to help them leave the gang. A detailed explanation of the substantive law and related procedures can be found in the Statutory Guidance on Injunctions to Prevent Gang-Related Violence and Gang-Related Drug Dealing, available at: <https://www.gov.uk/government/publications/statutory-guidance-injunctions-to-prevent-gang-related-violence--2>

1.1 What is a gang injunction? The key points:

- A gang injunction is a civil tool to prevent a person from engaging in, encouraging or assisting gang-related violence, and gang-related drug dealing, and to protect them and their community from gang-related violence and gang-related drug dealing.
- Gang injunctions are applied for at the County Court or High Courts. From June 2015, provisions in the Crime and Courts Act 2013³ will move jurisdiction for hearing gang injunctions for 14 to 17 year olds to the Youth Court.
- The burden of proof is civil, which means that the court must be satisfied on the balance of probabilities.
- A gang injunction can last for a maximum of two years.
- The gang injunction order can impose prohibitions (things not to do, for example associating with other gang members) or positive requirements (things to do, for example attending an apprenticeship programme).
- Failure to comply with a gang injunction is not a criminal offence. In the case of adults, it is dealt with by way of civil contempt of court by the applicant authority. It can also be dealt with as contempt of court of its own motion using the court's inherent jurisdiction. In this case, the applicant authority does not need to incur the costs of

¹ Part IV of the Policing & Crime Act 2009 is available at <http://www.legislation.gov.uk/ukpga/2009/26/part/4>.

² The Crime & Security Act 2010 is available at <http://www.legislation.gov.uk/ukpga/2010/17/crossheading/gangrelated-violence>.

³ The Crime & Courts Act 2013 is available at <http://www.legislation.gov.uk/ukpga/2013/22/section/18/enacted>.

another fee for issuing a separate application. If the respondent's behaviour when failing to comply constitutes a criminal offence it should be dealt with as such and the applicant authority should cooperate with the police in providing evidence to support those proceedings. An application for committal should be considered separately.

- The sentence for contempt of court is a fine, a suspended term of imprisonment, or up to two years imprisonment. Depending upon the nature of the breach, a person aged 14 years to 18 years may be sentenced to any of the remedies available under Community Orders, a suspended term of imprisonment, or up to 2 years imprisonment.

1.2 Why use a gang injunction?

Gang injunctions prevent an individual from being involved in gang-related violence and gang-related drug dealing, and/or protect individuals from such activities. They are not intended to replace the criminal law, but to complement it.

Gang injunctions differ from anti-social behaviour powers. *Birmingham City Council v James* [2013] EWCA Civ 552 identified that the ASBO (now replaced under ASB reforms) and gang injunctions were directed towards different social problems, and that the gang injunction was Parliament's specific response to gang-related violence.

Gang injunctions also have the benefit of allowing the gang to be targeted as an entity. For example, an applicant authority has taken proceedings against 14 gang members at the same time from two gangs, successfully managing the process. As explained by one practitioner:

"What I find more helpful about the gang injunction is that it addresses the gang as a holistic entity. It can provide for measures against everyone in a gang; even peripheral associates can be named in non-association orders and they will be picked up on the police radar."

In summary, gang injunctions allow a police force or local authority to target the activities of every gang member at the same time, maximising disruption and deterrence.

Case Study

In 2011, a violent gang regularly used a local park in a large city to sell drugs and conceal their firearms. A series of violent crimes occurring in 2011 were attributed to the gang, including two murders, kidnappings, assaults, and the discharge of firearms. When the gang split into rival factions, the violence escalated to family members. The efforts of the police to mount criminal prosecutions were stymied by the reluctance of witnesses to give evidence. Realising that another approach was needed, the police decided to apply for a gang injunction. After eight weeks of evidence gathering, they developed sufficient proof to persuade a civil court judge to issue 12 gang injunctions. The police then followed up with a proactive enforcement operation that resulted in numerous arrests for breaches of the injunctions; this led to custodial sentences for the most intractable gang members. Gang violence subsided. Families began to engage with the police. Some of the gang members left the city. The gang as an entity disappeared, and community members resumed using their local park.

1.3 When to use a gang injunction

Before deciding whether to use a gang injunction, the applicant authority should map the group's behaviour and characteristics. Practitioners often define three types of gang: peer pressure groups; urban street gangs; and organised crime groups. Classifying gangs by using these definitions can be helpful in understanding the issue, but any classification system is an imperfect description of the complex realities of human behaviour. The mapping exercise is, in effect, the diagnostic phase; the findings will determine the choice of legal tool.

For example, it would be inappropriate to use a gang injunction to address criminal behaviour associated with peer pressure groups. Where the behaviour constitutes a criminal offence, consideration should be given to prosecuting the offender. It would, however, be appropriate to use warning letters or Acceptable Behaviour Contracts as tools to respond to non-criminal gang-related behaviour by peer pressure groups. The criminal behaviour orders (CBOs), community protection notice (CPN) and the civil injunction, which came into force in October 2014 and March 2015, may be suitable tools to respond to the behaviour of groups that do not fall within the statutory definition of a gang. Gang injunctions are appropriate for groups typically, but not exclusively, based on drug distribution, a criminal 'business' which is often (but not always) organised on a territorial basis. A gang injunction can be a useful tool to break up this 'business', which is invariably associated with violence, and to make it more difficult for a gang to reorganise.

Before an application for a gang injunction is made with notice (also referred to as "inter parte") the police force and local authority should consult with each other and with any other relevant agencies (and must consult with the appropriate Youth Offending Team if the respondent is under 18 at the time of the application). This consultative approach is essential in ensuring that the decision to pursue an injunction is the right course of action. It will also assist in building the case, provide a good basis for future consultation and contribute towards the future management of the injunction.

However, if the application is made without notice (also referred to as "ex-parte") the consultation process can be deferred, but must take place between the date of the without notice application, and the first inter-parte hearing involving the applicant and the respondent(s) at court. Other agencies may also be invited to form part of the consultation process (See **Section K**).

The court may impose an interim gang injunction in both notice and without notice proceedings.

1.4 Changes to gang injunctions legislation

Practitioners should be aware of changes made to the legislation in relation to gang injunctions coming into force in June 2015. There are two main changes: firstly, a change to the definition of what comprises a "gang" as defined in section 34(5) of Part IV of the Policing and Crime Act 2009; and, secondly, a change to the scope of the gang-related activities a person must have engaged in, encouraged or assisted (or needs to be protected from) before a gang injunction can be imposed to include illicit drug dealing.

The first of these changes was proposed following a review of the operation of gang injunctions, published in January 2014, which indicated that the current definition of a gang had some limitations for addressing local gang issues. The change to the definition has

been designed to better reflect the true nature of how gangs operate in England and Wales. The review is available at:

<https://www.gov.uk/government/publications/review-of-the-operation-of-injunctions-to-prevent-gang-related-violence>

The second change to expand the range of activity within the scope of the injunction was proposed in recognition of practitioners' need for a tool that can be used to address the full breadth of gang activity, in particular the involvement by street gangs in drug dealing, which often lies behind incidents of violence. Through expanding the scope of gang injunctions in this way, Parliament aims to protect people, in particular children, from being drawn further into more serious activity.

Archived

Section B: The statutory elements of a gang injunction and points to prove

Section 34 Part IV of the Policing and Crime Act 2009, as amended, states that a court can grant a gang injunction if two “conditions” are met. These conditions are:

- (1) the court is satisfied on the balance of probabilities that the respondent has engaged in, or has encouraged or assisted:
 - (a) gang-related violence, or
 - (b) gang-related drug-dealing activity.
- (2) the court thinks it is necessary to grant the injunction for either or both of the following purposes:
 - (a) to prevent the respondent from engaging in, or encouraging or assisting, gang-related violence or gang-related drug-dealing activity;
 - (b) to protect the respondent from gang-related violence or gang-related drug-dealing activity.

At court, the onus will be on the applicant authority to demonstrate that these two conditions are met.

2.1 Proving condition (1)

To prove Condition (1) the applicant authority will need to produce evidence showing that the respondent engaged in, encouraged or assisted gang-related violence and gang-related drug-dealing activity. What exactly is meant by “gang-related violence” and “gang-related drug-dealing activity”?

Section 34(5) defines “gang-related violence” as violence or a threat of violence which occurs in the course of, or is otherwise related to, the activities of a group that:

- a) consists of at least 3 people;
- b) has one or more characteristics that enable its members to be identified by others as a group.

The violence concerned can be against a person or their property.

Section 34(7) defines “drug-dealing activity” as meaning the unlawful production, supply, importation or exportation of a controlled drug. “Production”, “supply” and “controlled drug” here have the meanings given by section 37(1) of the Misuse of Drugs Act 1971.

2.1.1 Using past incidents to prove “violence or the threat of violence”

The decision to apply for a gang injunction usually emerges from a single violent incident or a catalogue of violent incidents that have resulted in someone either being seriously injured or killed.

Section C below deals with how to research existing police records to identify incidents that prove that a respondent was involved in violence or threats of violence.

A surprising amount of information is likely to be already known. The challenge is to draw it out of existing records and turn it into evidence that can be submitted to court as part of the application.

2.1.2 “in the course of” or “otherwise related to, the activities of a group.”

The violence or threat of violence must be associated with the activities of a group. This will require the applicant authority to prove what the group does. This will normally be some form of unlawful activity – drug distribution, money laundering, car theft, identity theft, or multiple forms of criminality, all supported by violence or the threat of violence.

2.1.3 Proving a group is a gang

Please see **Section 1.4** for details of changes to Section 34 of the Policing and Crime Act 2004 in relation to what constitutes a gang.

A group of people involved in violence is defined as a gang if it:

- (a) Consists of at least three people; and,
- (b) has one or more characteristics that enable its members to be identified by others as a group.

Both of the above criteria will need to be satisfied in order to obtain a gang injunction.

2.1.3(a) “Consists of at least three people”

The applicant authority will want to include as a respondent every person capable of being identified as a core gang member who has engaged in, or has encouraged or assisted, gang-related violence or gang-related drug dealing activity. This maximises the effectiveness of the order and reduces the costs associating with filing individual applications.

If the application includes incidents sparked by inter-gang rivalry, then the gang injunction should target all members of the rival gangs in order to prevent another gang moving in to fill the void and to ensure the maximum impact on gang activity and violence in the local area.

Even if, in a particular incident, one or more gang members have been victims, or the purpose of the order is to protect a person from gang-related violence and gang-related drug dealing activity, the applicant authority will still need to develop evidence to demonstrate that each gang has been engaged in this activity.

2.1.3(b): “has one or more characteristics that enable its members to be identified by others as a group”

“one or more characteristics”

The characteristics of a gang can be identified by asking and answering two simple questions.

What is the gang’s criminal activity?

How do they conduct their activity?

A number of behaviours and attributes that have been used in previous successful applications to identify a gang “characteristic” are highlighted below. This is not an exhaustive list. For example, it does not include other characteristics such as the use of dangerous dogs to intimidate or inflict injury; the use of sexual and other violence against girls and young women; or the use of younger children to hold or sell drugs and weapons. Even though this has now been removed from the definition of what comprises a “gang” set out in the legislation, the applicant authority may also still want to consider whether the gang uses a particular name, colour or emblem to identify themselves, if relevant as these could be part of the ‘characteristics’ shared by the gang.

(i) How a gang operates

Gangs will adopt a particular modus operandi for conducting their activities.

- They may sell drugs from a particular building, a particular park, a particular vacant lot, or from pedal cycles or motor vehicles.
- They may drive around in a vehicle full of gang members, but with the possession of any drugs and money split so as to limit the risk of prosecution. Eg: one member may carry drugs but in a small enough quantity so that the only conviction would be for possession. Another might hold the cash but always to a value under the threshold for Proceeds of Crime Act 2002 (POCA) proceedings.
- They may use multiple mobile phones and SIM cards to frustrate police enquiries.
- They may drive around in convoy to intimidate an estate or a rival gang.
- They may use scrambler bikes to ride around an estate and use them both to encroach onto another gang’s territory and to escape quickly.
- They may have identified vulnerable people, those either with mental health or drug issues, and start using their home addresses to conduct drug dealing having encouraged them to run up drug debts.

(ii) Clothing

Caution should be exercised about using clothing, such as hooded tops, that are often worn by young people as a particular characteristic. Body armour, such as a bullet or stab proof vest, has been used in the past as a much stronger indication of involvement in gang activity.

Following the death of a gang member there have been examples of other gang members starting wearing t-shirts commemorating the death and glorifying them, for example by naming them as a ‘True Soldier’.

(iii) Unusual activity around a home address

When gang members live at a specific property, this will be evidenced by unusual activity – large numbers of people coming and going; criminal or anti-social incidents; frequent police or local authority responses to the address, i.e. the execution of search warrants following an incident. All of these will occur on a regular basis and neighbours will soon draw a conclusion from what they see.

(iv) Reputation

In one successful past application, an officer from the local housing authority provided the lead investigator with a statement that described the interviews the former had conducted with residents of an estate who had recounted their observations of gang activity in their neighbourhood and the conclusions they had drawn.

“identified by others”

The word “others” is not defined in the legislation; accordingly, this term is given its ordinary meaning, taking it to include residents, police officers, council and housing anti-social behaviour officers, other local authority or housing officers, youth offending team officers, probation officers, the media and other gang members.

2.1.3(c): “is associated with a particular area”

Most gangs will have a ‘home turf,’ an area or areas in which it feels safe to operate. This may be a few streets, an estate, an area covered by a postcode or areas in other parts of the country where they are expanding their links due to the drugs market. Gangs will have couriers, dealers and enforcers in their territory and may also operate in surrounding areas, along what is often referred to as ‘county lines’. It is important to explain to the court how the gang is organised and the extent of their operation and violence.

2.2 Proving Condition (2)

The second condition requires the applicant authority to prove that, if the injunction were not granted, the individuals named in the order would continue to engage in, encourage or assist in gang related violence, and/or the respondent would be at risk of becoming a victim of gang-related violence or gang-related drug dealing activity. This can be proved by, among other things:

- The frequency and pattern of arrests and convictions (including whether violence in the area decreases when the person is in prison);
- Statements made to others;
- No comment interviews in past arrests;
- Past breaches of orders;
- Bail offences;
- Reports to the police or to others that the respondent has been a victim of gang violence;
- Victims, family members and others in a position to assist the police refusing to co-operate.

In addition to analysing the offending of the respondent, the applicant authority should also consider any support that has previously been provided. Patterns may also start to emerge to demonstrate that when support is offered and taken up, this can lead to successful outcomes. Success of this nature needs to be sustained.

Evidence may also be available from previous court orders, such as community orders, supervision orders or Intensive Supervision and Surveillance Programmes (ISSPs). By placing this type of evidence into the application, it can show that when not under judicial restraint (eg: bail, licence conditions, other civil order conditions) the respondent is likely to return to their old ways and their gang. However, judicial restraint can be a positive life-changer. The gang member now has a reason or excuse not to conform to the peer pressure that gangs exert on young people – they have an official document that states they can not do certain things otherwise they risk imprisonment. Experience has shown that this might actually be welcomed by gang members and their families, as they now have a legitimate reason to make changes to their lifestyle without them ‘losing face’.

Gang injunctions are not only enforcement tools. Positive requirements should always be considered. The legislation permits recommendations to be made to the court offering the assistance of professionals to make a positive impact on the gang member's life. This can offer them a potential exit route from their current destructive lifestyle.

The use of positive requirements within a gang injunction is considered in more detail at **Section G**.

Archived

Section C: Obtaining Evidence for an Application – Some General Observations

3.1 Active case management during the evidence gathering phase

During the evidence gathering process it is essential that the applicant authority consult relevant partners to ensure that a decision about whether to apply for a gang injunction is well informed and supported by a wide range of evidence.

All parties in civil litigation have a duty to actively manage cases in order to further the overriding objective of enabling a court to deal with cases justly. In gang injunctions, this requires that, from the outset and throughout the evidence gathering phase, investigators and lawyers engage in full and frank consultation. Failure to do this could result in evidence that a court may deem essential to be omitted. When this happens, a court may make an adverse ruling and/or refuse to grant: an adjournment; an order against a particular respondent; a specific prohibition or requirement.

The applicant authority should consult with the CPS or the Police Senior Investigating Officer to discuss any potential parallel criminal proceedings. Points to consider when the CPS or the Senior Investigation Officer (S.I.O) is consulted are:

- Gang injunctions may affect the smooth running of criminal trials.
- Proposed gang injunction prohibitions must not be inconsistent with bail conditions in concurrent criminal proceedings, likewise if gang injunctions are already in place bail conditions should not be inconsistent with the prohibitions.
- Calling witnesses at and/or making disclosure at a gang injunction hearing must not prejudice criminal proceedings (where evidence overlaps).
- Disclosure implications in criminal proceedings in respect of prosecution witnesses who are subject to an injunction to prevent gang-related violence; or where evidence has been called at a gang injunction hearing which overlaps with the evidence in the criminal proceedings.
- Use of evidence obtained for the gang injunction as evidence of the defendant's bad character.

It is for the Investigating Officer and the applicant authority to closely monitor what is happening with each respondent during the course of the gang injunction application to ensure that neither criminal or civil proceedings undermine each other.

The following is an example of how criminal and civil proceedings can take place together.

Scenario One

An inter gang dispute arose resulting in firearm discharges and petrol bombings of properties. The police launched a covert police enquiry which ran alongside evidence gathering for gang injunctions. A joint strike day was agreed the day before an ex-parte application was made at the County Court. On the strike day 7 people were arrested on suspicion of firearm and drugs offences and 12 gang injunctions served, including the 7 who were subsequently charged and remanded in custody. One nominal had the charges dismissed a few weeks later but was still subject to the prohibitions of the gang injunction.

It was decided to split proceedings and the first full gang Injunction trial dealt with the opposing gang members not subject to the criminal charges. They all accepted their injunctions. Proceedings were then adjourned against the other side until the conclusion of the criminal trial some 7 months later. This resulted in convictions and heavy sentences being imposed at the Crown Court. Based on the sentences the applicant withdrew the gang Injunction application against those convicted, and an order was agreed with the one gang member whose criminal charges were dismissed. If there had been a not guilty verdict then it was the intention of the applicant to proceed with the gang Injunctions.

Scenario Two

The members of two rival gangs were subject to Interim Injunctions when a fight erupted, the partner of one gang member making a criminal complaint to the police. Arrests and charges were made. The full gang Injunction application was due to be heard shortly after this incident so an application was made to adjourn the civil proceedings so that the criminal proceedings were not prejudiced. Other gang members objected as it meant they would be subject to their interim injunctions for longer through no fault of theirs. The judge adjourned the civil proceedings for a further 6 months.

At the criminal trial the witness failed to turn up and so the criminal proceedings collapsed. The statement made by the partner of the gang member was included and exhibited by the police officer who took it and the evidence included as part of the evidence of the full gang Injunction application.

The gang injunction applications were successfully concluded against the 14 respondents, who had all been subject to Interim Injunctions for 17 months prior to the full hearing.

Once the evidence gathering stage has been completed the applicant authority should not delay in applying to the court. The evidence in the application should be fresh, and the court should see the urgency and necessity for action. If there is a gap in the evidence between the last incident and first court date the court may ask the applicant authority to return to the evidence gathering stage to update the application with any new incidents, or alternatively they may dismiss the application.

Any new incidents can always be included in additional statements later on in proceedings.

3.2 Researching historic incidents in detail

As mentioned previously, the evidence gathering process is based on researching historic incidents. How far back in time is it legitimate to go when looking at incidents? To answer that question, the applicant authority should consider: How relevant is the incident? What is the purpose of using the incident?

Scenario One

A gang member, who was convicted of a shooting against another gang 5 years ago, is now coming to the end of his custodial sentence. The fact that the conviction is old might indicate that he has cut his ties with gang involvement, is rehabilitated, and there is no need for a gang injunction. But police and probation intelligence may indicate that he intends to resume his involvement with gangs once he is released.

The first condition (the person has engaged in, or has encouraged or assisted, gang-related violence), is satisfied as the conviction from 5 years ago proves his involvement in gang-related violence or the threat of violence, which cannot be contested. If statements from police or a probation officer can be obtained as to his future intentions, the second condition (that the purpose of the gang injunction is (a) to prevent the respondent from engaging in, or encouraging or assisting, gang-related violence; and/or (b) to protect the respondent from gang-related violence) is satisfied.

Further evidence could be obtained from the prison in relation to incidents whilst in custody, and enquires in relation to his contact telephone numbers and visitors could also provide evidence of on-going contact with existing gang members.

Scenario Two

A gang member who is 21 years old has been active in gangs since he was 15, when he was convicted of possession of a knife during a gang fight. At the age of 15 he was on the fringes of the gang, however, due to the changes in the dynamics of the gang he has risen through the hierarchy and is now seen as one of the gang leaders, involved in directing the gang, turning up at the scene of incidents, offering support and giving directions to other gang members, and being vocal when he sees the police challenging them. He has historically been involved in gang related violence, the links have continued for 6 years and he is currently still 'engaging in, encouraging or assisting in gang related violence.' He has been arrested on several occasions in recent years, but no-one has been willing to testify against him and he therefore has no recent convictions.

It is perfectly legitimate to mention the six year old conviction and the outcome (including sentence) to add to the picture of the individual's history of involvement in violence. This goes to the necessity of the gang injunction – his involvement with violence has not stopped even though he has no recent convictions.

In essence, previous incidents can be used, irrespective of how long ago they date back, as long as they are relevant to either condition for a gang injunction and provide evidence that the respondent has been associated with gang violence in the past, provided there is also more recent intelligence/evidence which can be put before the court to satisfy it that it is necessary to issue a gang injunction because of recent/current activities.

However, it is the most recent incidents that the court will be most interested to hear about. The last incident in the chronological history should be as close as possible to the court date, in order to demonstrate that the issues are still current and that urgent action is required.

3.3 Using hearsay

The best evidence in any court proceeding is direct evidence from witnesses prepared to attend court. But victims and others who witness gang activity may be very reluctant to make statements for fear of repercussions. Gang injunctions are civil proceedings, which mean that the rules of evidence permit the use of hearsay, including multiple levels of hearsay (although a judge may view second and third hand hearsay as less reliable and disregard it).

Hearsay evidence for gang injunctions will typically be presented by professional witnesses (e.g.: police officers, Anti-Social Behaviour Enforcement Officers or housing estate officers), who set out in their statements what they have learned from first hand witnesses and documentary sources.

After attending incidents during the course of their normal duties, police officers generally only provide witness statements if they are to be used for the purpose of a criminal prosecution. In such cases their evidence is geared towards the points to prove for that particular offence. It is important to remember that for the purpose of a gang injunction, officers may be able to provide statements about incidents that they have attended, even if they have not resulted in criminal prosecutions (e.g: due to a lack of co-operation on the part of a victim or where there have been no injuries.) Furthermore, police officer statements relating to situations in which the respondent has been the victim of a crime rather than the perpetrator may be just as relevant to an Application.

Scenario

An ASB Enforcement Officer for a Registered Social Landlord interviewed 12 residents residing in their properties on a local housing estate. The residents spoke of the gang activity, what they had witnessed and identified gang members. Some of the incidents described by the residents corresponded with incidents the police had attended, but now the applicant had better evidence of who was there and what had actually happened.

The Enforcement Officer then completed a witness statement based on the residents' evidence identifying each only by a letter A – L. The statement also described the impact on the Landlord's business, people wanting to leave, and the number of houses available for let increasing. The statement was included as part of a successful 14 handed gang injunction application and at no stage did the applicant become aware of the residents identities.

The residents were further interviewed just prior to the final hearing by the Enforcement Officer and this time they described how the gang activity had now disappeared and the area was a better place to live.

No risk assessment could take place on the residents as their details were unknown to the applicant, however one did take place in relation to the Residential Social Landlord and of course the Enforcement Officer. No incidents occurred.

*Remember: there will still be a need to assess the risk of using a first-hand witness's account. (See **Section F** below for a discussion of risk assessment.)*

Section D: Gathering Evidence by Researching Police Records

4.1 Viewing criminal records through a civil perspective

As part of the process the applicant authority will need to evaluate information and evidence gathered for criminal investigations from a civil perspective.

The applicant authority will need to assess whether the evidence or records contain:

- hearsay evidence that can be used for the gang injunction
- an indication of other sources of evidence and other potential respondents

Remember: Any incident, irrespective of outcome, will generate records that can be re-analysed from a civil perspective, so research should not be confined to cases that have led to convictions.

For example, police officers have stopped and searched a number of gang members and a switchblade and a quantity of illegal drugs have been found nearby. Arrests were made. No one admitted ownership and a forensic examination couldn't link the unlawful weapon and drugs to one of those arrested. From a criminal perspective, the case may not result in charges, but from the civil perspective, the facts of who was seen to be associated with whom, the reason for the stop and search, where the stop occurred, the factual finding of the illegal drugs and weapon and where they were found, can all be used, combined with other evidence, to build up a picture of a gang that sells drugs in a specific territory, that uses violence, and membership of that gang.

The number and circumstances of bail offences or breaches of sentencing orders can also help to prove the necessity for a gang injunction if they provide evidence of a continuing pattern of refusal to cooperate with authority.

Remember: If researching a prosecution file, review the unused material. This may reveal that there were witnesses who refused to assist the police because they were intimidated.

4.2 Police National Computer (PNC) Records

The Police National Computer (PNC) records should be the starting point of the gathering evidence process. Invariably, through evidence or intelligence, research will start with the names of some of the gang members and the applicant authority should arrange for the PNC records to be checked for every recorded incident that could be an indicator of gang activity.

CHECKING PNC RECORDS STEP BY STEP

- Step 1: Review all incidents. Include non-violent offences such as possession of drugs, unauthorised taking of a vehicle, handling stolen goods, even a summons for a motoring offence, which could be for dangerous riding of a scrambler bike, etc. The incidents could be gang-related, and helpful when trying to prove the characteristics of the gang.

- Step 2: For each incident, record its date; the type of incident (drugs, disorder, firearm discharge, etc); where it occurred; the brief circumstances; and the final result.
- Step 3: Identify family members, partners and/or other persons with whom a suspected gang member is living and research their names and addresses through crime reports and Force Intelligence Systems. They may be participants in the gang or have been victimised by the gang member (e.g. a current or former girlfriend may have complained of domestic violence) or a rival gang may be attacking family members (e.g. a firearms discharge at the house where a gang member's parents live, even though they may only visit the premises occasionally).
- Step 4: View the person suspected of gang involvement as a victim and research all records associated with their victimisation. This should lead to names of people in the opposing gang or gangs.
- Step 5: Repeat steps 2–4 for opposing gang members.

Remember: Try to identify people who are new recruits or are on the periphery of a gang. Make a record of their names and dates of birth. Even if you cannot prove their links to gang-related violence, you can include them as non-associates in a gang injunction prohibition.

4.3 The Crime File

Each offence recorded on the PNC will contain details of the Crime Reference Number. This is a unique identifier that leads to the incident's Crime File.

The Crime File usually contains a précis of what occurred, and will link in the names of other people arrested and what happened to them. Examining individual crime files is a good way to begin to flesh out the scope of the membership of the gang. For each new name identified, the steps outlined above should be followed.

Crime Files hold a treasure trove of information contained in various records, commencing with the records of incidents reported to police via 999 or a non-emergency number and other unused material, and extending to witness statements, forensic reports, photographs, CCTV footage, etc. Each of these crime file elements are now discussed briefly, highlighting their relevance to a gang injunction application.

4.3.1 The Command and Control Log⁴

When an incident is reported by telephone to a police call handler (either via 999 or a non-emergency number), a Command and Control Log (the Log) is generated to create an audit trail of actions and responses. The Log provides a contemporaneous record of the initial information, the response and the evidence gathering process as the incident develops. Depending on the complexity of the offence, the Log may cover events for as long as a week following the original incident.

Remember: Read the logs carefully because they often contain vital information that may not appear in any other record. For example, a one line entry could indicate that a person (whom you know, or whose identity you will eventually learn from another source, to be a gang leader) visited a scene and spoke with various people, or that various other gang

⁴ Police forces will have different systems of recording information reported via emergency and non-emergency numbers.

members were present but were not arrested or charged. Information such as this would never emerge through a routine PNC check but will have been asked to be placed on the log by an officer at the scene.

Typically, a person making an emergency call to the police to report a serious incident will try to give reliable information, since something has happened and that person wants help. The call handler will record as much information on the log as he or she can, sometimes even including the fact of background noise or screaming.

Remember: If you want to include the caller's information as hearsay evidence, consider listening to the 999 recording (if it is still available) in order to elicit all relevant information.

The log will include the account obtained by the first officers at the scene. It is in these opening minutes of an incident that the police will often learn the basic facts of what has happened – who hurt whom, and why. Reluctance to cooperate usually surfaces at a later stage, when a witness is asked to give a statement.

Remember: For the purposes of a gang injunction application direct evidence of third party witnesses is not needed. The officers who attended the scene can give statements recounting what they were told about the victim, what happened, and who was present and involved. Their statements can be backed up by, and refer to, other police records.

The following is based on an actual incident used in a gang injunction application and is a précis of the actual command and control log that was produced in court, but with fictitious names and places substituted. It shows how powerful the evidence contained in them can be when a serious assault takes places but no one is prepared to provide statements to support a criminal investigation:

Incident Ref GH-20140526-0811

Date Opened 26 May 2014 21.47

Reporting method Telephone 999 Emergency

Incident Location 26 Embassy Drive, Anytown

Callers name: Refused

21.47 Informant called the police to state you should attend, something's happening, it's not at their house but it's the local gang fighting. Someone may get seriously hurt. 3 youths who arrived on pedal bikes have attacked another lad, may have seen a knife. The lad's relatives live at number 26.

21.48 Patrols deployed (with remarks about the need for officer safety)

21.48 Research undertaken on property – 26 Embassy Drive is the grandparents' home of AA (19 yrs) who is a member of the Embassy Kids gang.

21.53 Patrol at scene, one youth with stab wound conscious and breathing, ambulance required. He is in number 26. Injured person is AA.

21.54 Irate female at property stating her grandson has just been stabbed for no apparent reason. They don't want the police involved just the ambulance. Informed that this area is now a crime scene. Blood outside and inside the house.

21.56 AA stated 4 people approached him on bikes, two he recognised as KC and BINGY. Someone had a knife and stabbed him in the thigh.

21.58 Intel received on 20th May Intel Log 27465586934 – AA member of the Embassy Kids Gang is in dispute with KC and BINGY of the Butler Street Crew over a drug deal that went wrong. AA hasn't paid for the drugs and hit BINGY. KC and BINGY are seeking revenge for the insult. Intel TC is identified as TC (18 yrs) and BINGY as BB

21.59 AA not willing to make a criminal complaint or make any statement or want the police involved. Grandparents back up AA's version of events but will not get involved.

22.00 Ambulance at scene, AA on route to City Hospital, patrol remaining at scene.

The log will then continue to record follow-up police actions until it is closed with a Section 18 wounding crime reference number. Depending on the type of incident, the log could stay open for a number of days and run to a large number of pages. For the purpose of the application, only the relevant sections are needed, which may only appear on the first few pages.

What does the above log disclose? A member of the public, who is too scared to leave their personal details, is making an emergency call about a violent incident involving gang members. They're reporting seeing a knife and people on pedal cycles.

The police attend and confirm a stabbing has taken place. The attending officers (police witnesses) speak to the victim and confirm that he is a known gang member. The gang member states that he was approached by four people from an opposing gang, mentioned two of them by nickname, and that he was stabbed.

His version of events is corroborated by the version of events reported by the initial informant on the command and control log and by the conversation that the police officers had with the victim's grandparents. No witnesses will cooperate with a police enquiry.

Intelligence is discovered quite quickly by the control room staff indicating that the police recently received information to the effect that AA was in dispute with TC and BINGY. This intelligence has now become evidence and must be separately sourced (see Section F – Intelligence, below).

In summary, in relation to this incident the relevant pages of the command and control will be produced in evidence. In addition, a statement will be required from one of the officers who attended the scene, stating what they saw and were told.

The intelligence should be listed in the chronological history of events at the time and date it was first received, but attention should also be drawn to it being mentioned in the log, as it indicates the reason for the assault.

Information gathered in the opening minutes of command and control logs can prove extremely valuable, especially if it is supported by intelligence from other sources. Such logs contain a surprising amount of detail, including names linked to the incident. There is no need to produce the full log, only those pages that are relevant; this will reduce the size of the bundle. If the defence wishes to see the full log, they can be given a copy on request. The log can be redacted using a black marker pen to protect information that should not be disclosed.

4.3.2 Witness statements

When reviewing these, bear in mind that significant information helpful to a gang injunction application may have been omitted from statements when they were originally taken because it was hearsay, or because it referred to a person not arrested.

Consider re-interviewing witnesses to obtain this evidence.

For example, if a police officer stops a vehicle full of gang members and arrests one for possession of drugs, he or she will generally only name that one person for the purpose of the criminal prosecution. The names of the other people in the vehicle will have been recorded elsewhere (for example in stop and search records), as will the fact that they had numerous mobile phones and large amounts of cash in their possession. A further statement covering all of these details will have to be requested, as the statement is now required for a completely different type of proceedings.

4.3.3 Visual images

The impact on the court of visual evidence cannot be overestimated. In serious cases, even where there is no arrest, scenes of crime officers generally take photographs that can be valuable for an application, such as of wounds, drugs and guns, damage to houses and vehicles, etc.

Irrespective of the outcome of a case, the applicant authority should review any photographic and CCTV evidence. These images can be extremely impactful in an application.

Remember: All visual evidence should be properly exhibited and accompanied by a witness statement from a person in a position to describe for the court when the picture/CCTV was taken/recorded, and what it shows. For example, if the image is of graffiti, then the photographs will need to be timed and dated and a description provided of what has been written or drawn and what it means.

4.3.4 Forensic reports

In re-analysing the police forensic reports, it is worth keeping an eye open for mixed DNA that would not be sufficient for a criminal conviction but, for the purposes of a gang injunction application, could demonstrate that a respondent is associating with someone who can be linked to a firearm.

In addition, all recovered and seized firearms will be subject to discharge examination, which is then compared with the NABIS (National Ballistics Intelligence Service) database to ascertain if they can be forensically linked to cartridges left at the scenes of shootings. This can be quite damning when links begin to emerge.

Case Study

There were a number of firearm discharges arising from a dispute between rival gangs. The police had intelligence implicating one individual but there was insufficient evidence for a criminal charge. Months later, the police raided a flat and found the firearm; the target and others were present at the time of the raid. A NABIS check revealed it was the firearm that had been used in the gang dispute. In the gang injunction application, the Investigating Officer used this intelligence, corroborated by the circumstances of the raid, to obtain an Order against the individual concerned.

4.4 Letters and emails of complaint and crime priority surveys

Community residents concerned about a gang problem will often write letters of complaint or send emails to their Housing Association or Local Authority. Likewise, they may respond to police surveys of crime priorities in their areas. Complaints and surveys can be checked for information about the members and characteristics of the gang, and included in the application.

Remember: All such documents will need to be properly exhibited by a person who is competent to describe the document, including date, sender and recipient; contextualise it; describe the information it contains; and state how the information is relevant to the application.

4.5 Media reports, including social media

The media, especially local newspapers, often carry photographs, banner headlines and quotes from local residents speaking on an anonymous basis about issues with gangs and how their lives have been adversely affected. Some of these stories may relate to recent incidents that are relevant to the gang injunction application. Information gleaned from newspapers that recounts the facts of what has happened can be used, although opinion or editorial comment should be avoided.

Remember: Media reports can be invaluable in proving that a community view a group as a gang.

Social Media can also be a rich repository of open source information. However, internet service providers and social media website owners will not undertake routine enquiries on request, so this information will need to be captured by the applicant authority. Always download the pictures or video, and exhibit the captured image with a statement which describes how it was obtained, its content and relevance.

4.6 Community information

Community members will report their concerns about gangs to their elected representatives (usually local Councillors) and other people active in the community. In such circumstances, Councillors can be asked to provide a Community Impact Statement about what is happening, and how the gang activity specifically harms the community. Similarly, the head of a local school can provide an impact statement on the effect of gang violence – the discharge of a firearm, for example. Such a statement might recount the fears voiced by children as they see police with firearms patrolling the area or the concerns of parents who demand to take their children home because the school is no longer regarded as a safe place.

Remember: If witnesses are reluctant to provide a witness statement and this evidence is essential and cannot be obtained from other sources, using an anonymised impact statement should be considered.

Section E: The Overarching Statement

The Overarching Witness Statement (the Statement) is the main document that presents evidence to the court. In essence, it is used to narrate the story of gang activity in the area, proving assertions through witness statements and exhibits. The document should contain all the incidents in relation to each of the gang nominals.

Incidents should be presented in chronological order with a title that includes the date, location and behaviour, eg: 26th May 2014 Embassy Drive, Anytown – Stabbing.

A précis of what occurred should be included, making reference to any documents or statements with a conclusion of what happened. There may have been a successful criminal prosecution, in which case the court date, sentence and the court will be needed. If the sentence was custodial for more than 12 months, add an additional comment explaining why there were no incidents in the community concerning that person during the relevant time.

Likewise if the incident resulted in no complaint due to fear, this information should be included. The court will not be aware of how many incidents will have been concluded with no further action, so it is useful to point them out.

Once the information in relation to one individual is completed, incidents in relation to the second nominal should be included in the same manner, ensuring everything remains in chronological order. As the document captures more and more information about all gang nominals, incidents of retribution taking place may start to become more apparent. These may not have seemed especially relevant at the time as they may have affected another family member, or been an unwitnessed broken window, but as the overall picture begins to take shape the timing could become be very important.

As work on the Statement progresses, the pattern of names and associations, locations, modus operandi, etc. will become clear and the types of prohibitions or requirements appropriate to each respondent will start to leap from the page.

Section 35(6) provides that the injunction (both interim and final) may contain a power of arrest. The applicant authority should consider seeking a power of arrest in order to enforce prohibitions and requirements.

Remember: It is always easier to take out evidence than it is to add it in, and the Overarching Statement will be reviewed by a lawyer and risk assessed, giving you the opportunity to seek the views of others. The evidence should be organised so that the need for the various prohibitions and restrictions, and the power of arrest, become self-evident to the court. A successful application is not necessarily the most voluminous.

5.1 Elements of the Overarching Statement

- An introduction, consisting of a description of the person compiling the statement and a description of the gang – its size; identified members; its area; any emblems or colours; all of the characteristics that enable the investigator, and more importantly others, to identify it as a gang and the types of violence associated with it.
- The incidents used to evidence assertions, including the involvement of the group and the respondents in gang-related violence. All incidents – whether proved by evidence or intelligence – should be recounted in chronological order.
- Each incident should be briefly summarised and the summary supported by witness statements and exhibits.
- After the last incident, a summary of the community evidence demonstrating the impact the violence has had on individuals and communities, supported by witness statements, and exhibits should be included.
- A conclusion containing a description of the prohibitions and requirements believed to be necessary to break up the gang and the need for a power of arrest.

5.2 How to present a case

Judges, like juries, welcome clear signposting and cogent writing to assist them to understand the case. To that end, the following suggestions may be useful:

- A. Group respondents by the name of their gang and give each respondent a number. Each time that a respondent's name is mentioned, place this number and the initials of his/her gang in brackets beside his/her name. This will assist the court in identifying whether the person is a party to the proceedings and the gang to which they belong.
- B. Present incidents, and related exhibits, in chronological order.
- C. Do not use intelligence unless it adds real value to your application – (see Section F).
- D. Avoid making the mistake of obtaining a statement from every person who attended an incident. Focus on the best placed person(s) to describe the incident.
- E. If the incident has been proved through a court conviction, there should no need to evidence it by a witness statement. The evidence has already been accepted by a criminal court at a higher burden of proof and the basic facts cannot be contested in civil proceedings. Instead, describe the allegation which resulted in a guilty verdict.
- F. For cautions or reprimands, statements need to be submitted as there has been no judicial determination of the facts.
- G. Consider using a visual aid, such as a very simple Anacapa chart, including only those links that are essential.

Anacapa charts were successfully used in an application showing the links between gang members and unregistered vehicles. This allowed the court to see straight away that this was an issue and assisted in obtaining a prohibition against the gang members using unregistered vehicles.

Section F: The use of intelligence and managing risk in applications

6.1 Including intelligence in the application

Although the civil rules of evidence permit using intelligence in an application, this is not something that should be done lightly as it may put sources at risk and courts may be sceptical.

In deciding whether or not to use intelligence, the applicant authority should consider the following questions.

Question 1: Is the intelligence general? For example, a report that a person is part of a gang, deals in drugs, has access to firearms, etc. If it is, do not use it. Absence of detail makes general intelligence unpersuasive to a court, and in any event it will add nothing of substance to the case.

Question 2: If the intelligence is specific, does it fill a gap in the case? If the answer is no, do not use it.

Question 3: If the answer is yes, is it credible on account of being corroborated by independent evidence?

Example: An informant reports that a respondent used a firearm and says that the weapon is at a specific location. A warrant is executed on these premises, the respondent is there with others, and a firearm is found. The respondent is arrested and makes no comment. A forensic examination does not link the weapon to the respondent. However, there is discharge evidence that links the weapon to the address of a person with whom the respondent is in dispute, and this dispute has been documented in the Overarching Statement.

In the scenario of facts, independent evidence corroborates the informant's information, which fills a gap in the case by linking the respondent to a specific violent act. Accordingly, it would be useful to include the informant's intelligence in the statement.

Question 4: If there is specific credible intelligence that fills a gap, can it be converted into evidence? For example, other gang members may give information about the gang, mentioning specific incidents and perhaps explaining that they felt threatened, which is why they wear body armour. The professional witness who receives this information could submit a witness statement stating the time, date, location, who was present and exactly what was said. This is now direct evidence, making it difficult for the defence to dismiss it as unreliable intelligence.

6.2 Converting intelligence into evidence: managing risk

The intelligence must be risk assessed and ensure that the professional witness' statement is drafted in terms that do not disclose the source. If the professional witness is aware of the personal details of the source, she/he can indicate that, if necessary, these details could be disclosed to the judge only.

Example 1: an officer attending an incident speaks to a neighbour who states that he saw Gang Member A stab Gang Member B. The attending officer's statement was phrased as follows: "At 23.00 hours on Thursday 3rd June 2013, whilst conducting enquiries into a stabbing on the High Street, I was approached by a resident who told me that they saw what happened, which was that Gang Member A stabbed the victim with a knife. The victim refused to make any form of statement, as they were scared of reprisals."

In the above example, the officer concealed the identity of the witness by referring only to a 'resident', and did not disclose the vantage point from where the incident was witnessed (in this case, a house window), as this might have enabled gang members to identify the address concerned.

Example 2: A friend of a gang member, in talking to a police officer, inadvertently disclosed that a gang member was dating a girl named Jackie. A month earlier, a police raid of Jackie's flat had disclosed drug cutting equipment.

Before using the above intelligence in a statement, the police officer made sure that the information could have come from more than one source and described the friend as "a known associate".

Example 3: Two opposing gang members had a fight in prison, the leader of one gang being severely beaten by the other and losing credibility. This information was forwarded to the police by prison intelligence. Two days later in the early hours of the morning there was a firearms discharge at the winning gang member's parents' house, the pellets damaging the front door and the porch windows. There was an obvious link between the two incidents based on the balance of probability and this evidence was used in two separate gang injunction applications against these gang members, both of which were successful.

6.3 Grading intelligence

The police and other organisations use the National Intelligence Model (NIM) in order to grade intelligence. The applicant authority should ensure that it is fully conversant with the NIM guidance if it has any intention of using intelligence.

Intelligence is graded using codes which will be referred to when drafting the statement.

Intelligence obtained from a Covert Human Information Source (CHIS) should be written exactly as reflected by the intelligence log that was created when the information was received because there may be a request to produce the actual source document in court. The only changes permitted would either be altering or omitting one or two words to hide a person's identity, or omitting information about other people not relevant to the application.

Remember: Any changes made to intelligence logs should be recorded and explained as the judge may ask detailed questions about the use of intelligence. These will need satisfactory answers to prevent its exclusion.

To facilitate the risk management process, in the first draft of the Statement, any computer system reference numbers and their grading should be included, and the difference between evidence and intelligence should be indicated clearly by highlighting the

intelligence text, preferably in red. This is to assist any other people who may become part of the investigation at a later date.

Example

Constable 1234 X was informed that this incident was as a result of a dispute between two factions in the Anytown area, one being from the Western side of Anytown and the other from the Eastern side. Constable 1234 X was informed that this dispute was getting worse and that there have been a number of large-scale fights around the Blackpole Avenue area which have never been reported to the police. It was said that the dispute is related to the supply of drugs within the central Anytown estate.

Police were informed that the incident resulted from a dispute between Gang Members A,B,C and D and members of the rival gang in the Anytown area. (21.10 hours Grade [..] intel log 73524395).

6.4 Managing risk in applications

All of the documents filed in court will be handed over to the solicitors and barristers representing the respondents, where they have lawyers acting for them, or to the respondents themselves where they are unrepresented. Thus in all gang injunction applications the respondents will see them.

Accordingly, making an application for a gang injunction is likely to entail risks to members of the community, families and associates of gang members, and to gang members themselves.

When evaluating these risks, one should be prudent but not passive. Failure to take any action out of concern for risks can backfire by contributing to the cycle of violence, which creates a different type of risk. Most risk can be properly managed. The key is to identify the risk in advance. Accordingly, the applicant authority will need to develop and scrupulously follow a risk assessment and management process for gang injunctions.

6.5 Safeguarding the intelligence – the Intelligence Officer's role

Evidence from practitioners indicates that an effective process for risk assessing gang injunctions uses two levels of checking, in addition to the lead investigator, placing overall responsibility for safeguarding intelligence on a specialist intelligence officer.

Around a fortnight before an application is made, the lead investigator sends the statement to the designated intelligence officer, who is a specialist with experience of Public Interest Immunity hearings. The Intelligence Officer reviews the statement, looks at the original source documents and their grading and assesses whether the material can be used in its current form. The Intelligence Officer considers any potential risk to the informant if the intelligence is disclosed and recommends any necessary changes.

Important: *the person compiling the Overarching Statement must always follow the Intelligence Officer's recommendation and may never be told the reason for the changes.*

The Intelligence Officer then copies all source documents to include in his/her own file in order to deal with any possible Public Interest Immunity application or other issues that may arise.

Once the statement is returned, the lead investigator makes the requested alterations, the reference numbers and grading are removed and the red text is changed to black so as to align with the rest of the statement.

6.6 The role of the Senior Police Officer

Evidence from practitioners indicates that it is good practice to appoint a Senior Police Officer to review the file and act as a fresh pair of eyes.

After amending the statement in accordance with the Intelligence Officer's recommendations, the lead investigator then initiates a second risk review of all of documentation by a Senior Police Officer who works in the area where the gang injunction will be enforced. The Senior Police Officer:

- assesses whether it is possible to identify any person who should be anonymised from the way the text has been written;
- ensures all personal details on supporting exhibits have been redacted;
- obtains all addresses linked to the respondents, and any other significant addresses, so that markers can be placed in both police and non-police systems on the date the application is filed. It is good practice to introduce markers for gang injunctions as this will assist with the process.⁵

Archived

⁵ Once the police command and control systems have information markers linked to addresses, if a call comes from an address linked to the gang injunction application, the system will automatically raise the incident to an emergency.

Section G: Drafting the prohibitions and requirements

There are generally two objectives in applying for a gang injunction: first, to prevent a person from becoming involved in crime related violence, ensure they do not themselves become a victim and to assist them in breaking the cycle by offering support; second, to break up the negative influence of the gang in the area and on the quality of community life. To achieve these objectives, the applicant authority will need to remove whatever assists gang members in their violence and criminality.

Applicants may apply for any reasonable prohibition or requirement, provided that it does not:

- conflict with the respondent's religious beliefs; or
- interfere with the times, if any, at which the respondent normally works or attends any educational establishment.

7.1 Effective prohibitions and requirements: some general principles

- Prohibitions and requirements are not a 'wish list.' Challenge and legal argument should be expected.
- The need for the particular prohibitions or requirements must be evidenced for each and every respondent.
- Prohibitions and requirements must be tailored to the specific individual.

Case Study

A respondent, who could not afford taxi fares, was on bail for a criminal offence and was required to present himself daily between 1pm and 2pm at a police station located three miles from his house. His pedal cycle prohibition was tailored to permit him riding a pedal cycle between these hours, so long as he was going directly to and from that specific police station. Once the bail restriction was lifted he was again prohibited from riding the pedal cycle.

- A gang injunction will turn around the lives of some gang members; others will seek to flaunt it. Accordingly, the terms of the order must be drafted clearly and concisely to enable a respondent to understand what he/she is prohibited from or required to do, and to avoid a possible defence argument with regard to any future prosecutions for failure to comply.
- Whilst breach of a gang injunction is not of itself a criminal offence, in breach proceedings the criminal rules of evidence apply; the burden of proof is "beyond reasonable doubt."

- Systems must be in place to support efficient and effective enforcement; otherwise, the effort put into obtaining the injunction will be wasted.

In drafting prohibitions and requirements, the applicant authority will need to take into account the fact that every Police Force Area uses different communication technologies and systems.

To illustrate the problems that can arise, consider the issue of maps, which are essential to enforcing area restrictions. When drafting an area restriction term, you should always *both* describe the area, *and* exhibit a map with the boundary clearly identified. The PNC does not host visual images, so a clear, detailed description of the area concerned is essential.

All orders, including gang injunctions, should be entered onto the PNC in order to assist officers on the street checking to see if there has been a breach. This is essential in order to ensure that the gang injunction can be enforced in other parts of the country.

7.2 Human rights considerations

There will be occasions when a term of the order impacts on a respondent's rights under the European Convention on Human Rights (ECHR). The Article most frequently involved is Article 8 – the right to respect for one's private and family life, as well as Article 11 – the right to freedom of association with others. In such situations, the applicant authority will need to ensure that the infringement is necessary justified and proportionate, which generally means tailoring the restriction as narrowly as possible.

Case Study

Two of the respondents named in a gang injunction were brothers living in the same household. A non-association order prohibited them from being together outside the home, both in public and in private spaces such as other people's homes. There was an exception for weddings, funerals and other family gatherings; however, the brothers were required to give the police seven days' notice of their intention to attend any such events so that the police could amend the order to reflect when and where the association was to take place, and its duration.

7.3 Checklist of questions

Prohibitions and requirements should be checked against the following questions.

- Are there any potential parallel criminal proceedings already under way? If so, the applicant authority should liaise with the CPS to ensure that the terms of the proposed gang injunction are not inconsistent with bail conditions in concurrent criminal proceedings. Equally, where criminal proceedings are started after a gang injunction has been imposed, the applicant should make the CPS aware of the detail of the injunction so that any bail conditions imposed in relation to the criminal matter do not put individuals in breach of the injunction.
- Does the statement contain sufficient evidence to prove for each respondent that the requirements in the application are necessary to prevent gang-related violence or protect the respondent from gang-related violence?

- Are the prohibitions/requirements targeted at the needs and behaviour of this particular respondent?
- Will they have the effect of protecting and reassuring the public?
- Are they clear, concise and easy for the respondent, the Court, and law enforcement partners to understand?
- Do they take into account and make best use of the Force's communications technology and systems?
- Are they drafted in terms that make them easily enforceable?
- Is there an audit trail in place to make enforcement effective and efficient?
- Do they have any implications for the respondent's human rights?
- If so, are they necessary justified and proportionate?

7.4 Specific prohibitions

Listed below are a number of prohibitions that have been accepted in various courts.

7.4.1 Non-association

This is one of the two prohibitions that practitioners are encouraged to include in every gang injunction in order to undermine the peer pressure that serves to enforce gang membership. Non-association orders can be enforced in private and public places, including prisons. The wording of the order should bar *any form* of communication.

The non-association prohibition should apply to all co-respondents and other gang members, including those in rival gangs. When naming a non-associate, include this person's date of birth so there can be no confusion on the part of the respondent or among law enforcement personnel responsible for enforcing the order.

Example: Being with, associating with, communicating with or approaching either individually or collectively with [give full name and date of birth of all people you wish to be included as part of the non-association term.]

"Communicating with" includes in-person contact, either directly or through an intermediary, or via the telephone, internet, or any other electronic or IT device.

7.4.2 Prohibited areas

This is the second prohibition that practitioners are encouraged to include in all applications.

Remember: To prevent loopholes being exploited, specify the area precisely and clearly. Avoid using words like locality, vicinity, near to – these can mean different things to different people.

For example, if a person is to be prohibited from part of a specific street/road, identify which part of the street through house numbers or road junctions. If they are to be prohibited from entering a specific area, name the roads (or railway lines, rivers, or other

well-known and readily identifiable local features) that are to act as the boundaries. If these roads are to be included in the prohibited area, then the wording should reflect this and state 'not to enter the area *bounded by and including* North Road, East Drive, South Lane and West Street.' If a much larger geographic area is prohibited, this can be designated through the use of postal districts, eg: *not to enter the postal districts of Newtown 3, 4 and 7.*

When a person resides in a prohibited area the terms should state:

- The precise route, displayed on a map, that he is required to take going to and coming from his residence. If the respondent lives in a high rise estate with interlocking walkways, state a route that will take him to the ground floor directly, and that bars access to upper floors or interlocking walkways.
- That he must go directly to and from his address without stopping in other places or areas. In relation to visits to family members, doctors, dentists, chemists, lawyers etc. living or with offices in a prohibited area, tailor the terms to make them reasonable and proportionate. For example, the area prohibition can be lifted for half an hour both before and after a pre-arranged appointment.

Case Study

Police officers observed a respondent subject to an area restriction speaking with people on his designated route. The officers drove past him three times in ten minutes. The police arrested him for breach of his injunction because he was inside the prohibited area and was not going directly to or from his home address. He appeared in court the next day, pleaded guilty, and was sentenced to four weeks imprisonment.

Example of Area Restriction: Not to enter the area bounded by and including Mill Street, Chestnut Green, Lawrence Drive, Broad Street, New Hall Lane, Townend Crescent and Queens Drive as outlined in black on the attached map, with the following exceptions:

- The respondent may travel along the boundary roads in a motorised vehicle but may not stop or alight from the vehicle.
- The respondent may enter the area to attend court or to attend his solicitor's office by appointment. Entry must be a half an hour before the time he is required to attend and he must exit the area within half an hour after the court attendance or meeting with his solicitor.

Not to enter any part of the area known as the Newtown Loopline (disused railway track) and this includes any entrances/exits, pathways and embankments between Bowring Park Road, Newtown 14 and Park Avenue East, Newtown 11.

7.4.3 Bicycles and motorcycles

Bicycles, motorcycles and other types of two wheelers are frequently used as a means of transport to commit acts of violence and to deal drugs. The following prohibition has been applied for and granted by the court

Riding any pedal cycle, motorbike, scrambler bike, trial bike or any other type of two wheeled motorised bike in a public place unless (in the case of motorised bikes) he holds a valid driving licence to do so and the bike is insured.

Being carried on a pedal cycle, or a passenger on any motorbike, scrambler bike, trial bike or any other type of two wheeled motorised bike in a public place unless (in the case of motorised bikes) the bike is insured.

7.4.4 Use of vehicles

Vehicles can also be used to commit violence, deal drugs, or to move about a gang territory to establish presence and intimidate. The following form of words for a vehicle prohibition has formed the basis for successful breach prosecutions:

Being inside a motor vehicle in the company of more than two other males over the age of 16, except

- i) vehicles that are being used for public transport such as a bus or taxi; or*
- ii) when the respondent is acting in the course of education, training or employment, or*
- iii) when those people are immediate family members which means parents, step-parents, grandparents, brothers or sisters (including half-brothers or half-sisters and step-brothers and step-sisters), or children of the respondent. This exception also applies to first cousins, aunts and uncles whose names have been provided in advance to the Chief Constable of Newtown Police or a nominated delegate of the Chief Constable; and to any other member of the defendant's extended family if authorised by the prior written consent of the Chief Constable of Newtown Police or a nominated delegate of the Chief Constable.*

In relation to 'pool vehicles':

Prohibited from driving any motor vehicle, with the exception of a motor vehicle which is registered and insured in his name, save for any vehicle used in the course of his employment.

7.4.5 Drugs and equipment

Conviction for a criminal offence may affect a person's future employment and opportunity to travel overseas. Depending upon the circumstances of a particular case and the extent to which the respondent concerned is engaging positively with the authorities, if there is a choice between a criminal prosecution or prosecution of a breach of the Order, it may be preferable to opt for the latter, as this may be less likely to set back his rehabilitation progress. The applicant authority should seek to discuss any parallel criminal proceedings with the CPS.

The following wording has resulted in successful breach prosecutions in such circumstances:

Not to be in possession of any equipment for use in the manufacture, cultivation or distribution of any class A or B drugs including but not limited to hydroponic equipment, portable heaters, ventilations fans, industrial ducting, scales, tablet presses, telephone lists and plastic snap bags.

Case Study

The police raided a flat. There were two men inside who barricaded themselves in. After gaining entry, the police found a large sum of cash, class A drugs, and drug selling paraphernalia. One of the men was the subject of a gang injunction that included the above prohibition. Following interview, he was bailed on the criminal offences whilst further enquiries took place. In the meantime, he was taken before the County Court for breach of this term of his Injunction. He pleaded guilty and was sentenced to 6 months imprisonment. He has since been charged with criminal offences and faces a further term of imprisonment.

7.4.6 Headgear

The following term has been used successfully to prevent gang members from wearing hoods, balaclavas or other items of clothing purposely intended to hide their identity:

Wearing a balaclava, and/or wearing a scarf or other piece of clothing across the face in order to hide his identity. For the avoidance of doubt, this does not stop the defendant from wearing a hood if the weather is inclement.

7.4.7 Dangerous dogs and other animals

There are many examples of gang members using certain dogs and other animals to incite fear, intimidate others or to commit acts of violence.

Depending on the circumstances of a particular case, the following terms could be appropriate:

- Prohibiting a gang member from being with any type of dog in a public place;
- A requirement that the dog be muzzled and prohibiting his being walked in public except between certain hours;
- Prohibiting the respondent from being in charge of a particular species of animal or from being in a particular place with a particular species of animal.

7.4.8 Violence

The simple and straightforward language below, which would include numerous criminal offences, has also been used as a prohibition in injunctions:

Using or threatening to use violence against any person or property.

7.4.9 Mobile phones

Gang members are heavily reliant on mobile phones to organise violence and sell drugs; to defeat detection and avoid successful prosecution, they will hold multiple phones and change SIM cards frequently. The applicant authority may want to restrict respondents to possessing one phone at a time, with its number being known to the police. The defence may argue that this breaches a respondent's right to privacy. This should be countered with the argument that, except for the actual number, nothing else is being disclosed. Any additional intrusion, if considered necessary and proportionate, would require appropriate RIPA (Regulation of Investigatory Powers Act 2000) authorisation.

Breaches of the following term have been prosecuted successfully.

Owning or having with him more than one mobile telephone or phone SIM card.

Owning or having with him any mobile telephone or phone SIM card, whose phone number has not been disclosed in accordance with the method stated below.

Use only the mobile telephone number (currently 07721 342167) that has been notified to Newtown Police and notify Newtown Police immediately or as soon as reasonably practicable of any change or proposed change to this number.

Any notification pursuant to the requirement above shall be made by speaking personally with an officer of Newtown Police via telephone number 01234 567890 between 7.00 am and 10.00 pm Monday to Friday or speaking personally with a nominated delegate of the Chief Constable. The defendant must in either case also keep a note of the name of the officer to whom the information is given.

In practice, in the above example the police officer staffing the dedicated line maintained a written record with full details of all of the gang injunctions. When a respondent notified a change of mobile telephone number the officer: 1) updated the record; 2) completed a witness statement; and 3) emailed the changes to the Police National Computer (which had already been updated with details of the gang injunction) and to the officer with overall responsibility for the case.

The officer with overall responsibility would: 1) ensure the necessary changes were made to the PNC; 2) update the Force Intelligence System; and 3) forward a copy of the changes to the Force solicitors' department. If a respondent was found in possession of a mobile phone not registered with the police, a check of the record could be made via the dedicated telephone line. If the phone was not registered, the officer staffing the dedicated line would make a statement to that effect and breach proceedings would be initiated.

As a result of the tight drafting of restrictions and the robustness of the audit trail, a conviction was secured for failure to comply with the gang injunction. All breaches of the gang injunctions against this particular group resulted in convictions, together with prison sentences where appropriate.

7.4.10 Social media

Gang members may use the internet and social media accounts to send serious threats, sometimes in the form of images of guns or even clip art. Instead of creating a new prohibition, applicant authorities may decide to apply to vary an existing one to include social media.

7.4.11 Home addresses

It is important to know where gang members reside, both for intelligence purposes and because there may be issues around the safeguarding of young people and children.

Inform Newtown Police of the address of his home or normal place of residence at the time of service of this injunction and update Newtown Police of any proposed change of address by giving 5 clear days advance notice.

If proposing to change his address to one within the prohibited area, to provide Newtown Police with 5 days clear notice to enable the officers to make appropriate enquiries about the practicality of such a move and prepare a map showing the approved routes of access and egress.

7.5 Specific requirements

There are three different types of requirement.

- those that tell a person what they must do, eg: informing the applicant of any change of address.
- those that are linked to a prohibition, eg: where they are prohibited from having more than one mobile telephone and there is a requirement to notify the applicant of any changes and to communicate that information in a particular way.
- those which are the positive requirements that aim to provide support to gang members to assist them in turning their lives around.

The first two types have been discussed above, both requiring the applicant to have good audit trails in place to ensure compliance. The third type of positive requirement and how it could work is the subject of the following paragraphs.

Over the medium to long term, gang injunctions are intended to break down violent gang culture, prevent the violent behaviour of gang members from escalating and engage members in positive activities to help them leave the gang. Applicants can apply for positive requirements that work towards this aim. Applicant authorities should think creatively and carefully about any positive requirements that are proposed, always ensuring they are tailored to the individual circumstances of particular cases.

Whilst gang injunctions have been issued without support requirements being included, it was the wish of Parliament that this option should always be explored. However, the aim is to make a successful application, and so the initial focus in most cases should be on gathering evidence and making an application for an Interim Injunction. No support element will be included in the Injunction until there has been a final determination of the evidence, which in the case of “with notice” applications could be weeks if not months away from the first court appearance.

Remember – initially the court will be most interested in examining the evidence to ascertain if there is sufficient cause to grant either an interim or a full gang injunction. Only after this stage has been completed will the court move to discuss possible support requirements.

Once proceedings are under way, this is the time to plan meetings to discuss support requirements and to explore what could be included in a final injunction.

All Community Safety Partnerships have links to organisations that can offer support and guidance to gang members. This could be in the form of mediation, anger management, relationship or other behavioural sessions, education, apprenticeships, job preparedness training or any other coaching sessions, accommodation and drug and alcohol counselling.

It is important to ensure that any potential support partners are informed how gang injunctions work, including that if the respondent does not abide by the support terms of the requirement then there could be a breach. Although there is no power of arrest attached to these positive requirements, the applicant authority is required to submit a file of evidence to the court to substantiate any breach.

If there is a need to change the support requirements, for example to require them to attend organisation B at different times on other days, it will be necessary to make an application to the court to vary the gang injunction. In most cases it is better to take a flexible approach, stating that the respondent must work/keep in contact with various organisations in a way that allows them the flexibility to organise the support without it being specified in too much detail in the Injunction. In such cases the court can make a decision on whether and how they wish to keep themselves informed of the respondent's co-operation.

All gang injunctions that are issued for more than 12 months are subjected to an annual review. The court must order a review hearing and schedule it to be held within the last four weeks of the one year period (unless the injunction has been varied in this period). This is an opportune time for the court to be informed about the success or failure of any support that has been offered, and could form part of the judge's deliberations as to whether to continue, vary or discharge the injunction.

Where the respondent is aged 14–17 years of age, there is a mandatory review process. This is to ensure that any conditions attached to the injunction are relevant and enforceable once the respondent has reached the age of 18.

The mandatory review provisions apply when the respondent is under the age of 18 when they are made subject to the injunction and any of the conditions of the injunction will continue to have effect for at least 4 weeks after their 18th birthday. In these circumstances a review hearing must take place within this period of time. This review is waived if there has already been a variation made to the conditions in the 4 weeks leading up to the respondent's birthday.

When proposing requirements to be included in a gang injunction, applicant authorities should remember that no requirement can require a respondent to be in a particular place for more than 8 hours in any one day. There should be no attempt to circumvent this by proposing that they should be in place A for 8 hours, followed by going to place B for a further period of time.

The applicant authority will also need to demonstrate who will be responsible for providing the activity and for monitoring and, if necessary, enforcing compliance with the requirement. The most convincing evidence is likely to be documentation from the support agency concerned, together with their assessment of the respondent's suitability for participation.

Remember, as far as is practically possible, requirements attached to a gang injunction should avoid:

- *conflicting with the respondents religious beliefs, and/or*
- *interfering with the times, if any, at which the respondent normally works or attends any educational establishment.*

Archived

Section H: The Practicalities of Filing an Application

8.1 With notice or without notice?

'Without notice' applications may be appropriate in response to specific threats of violence. Applicants will also want to consider whether a 'with notice' application, where there will usually be a delay of several weeks before the first court hearing date, may allow respondents, who will have read the evidence, to use this window to settle old scores before prohibitions come into place. If the evidence demonstrates that this risk exists, the applicant authority should consider making a 'without notice' application so that the prohibitions and requirements will be in force when the gang member learns of the application.

If there is a large gap in the ages of the respondents then it may be appropriate to initially split the proceedings and apply for some injunctions without notice, and for younger respondents, apply with notice. In this situation, the 'with notice' hearing should be listed within seven days of the 'without notice' hearing, and, for the next appearance, list all of the proceedings together.

8.2 Which court and which judge?

The Statutory Guidance designates specific courts where applications may be made. It is recommended that you consider making the application in the local County Court where the judges are more likely to be familiar with the gang problem the applicant authority seeks to address (unless the respondent is under 18, as proceedings will be heard in the Youth Court).

It is prudent to contact the court to notify them that an application for a gang injunction will be made, and there may be linked applications in the future. The court may then wish to consider having a bank of judges identified to deal with these applications, in order to ensure consistency over rulings and sentencing contact should be made by the case lawyer to a Senior Clerk at the court to arrange this.

County Courts do not always have large courtrooms to accommodate multi-handed applications; they may also lack custody suites and sufficient security staff. Therefore, anticipate numbers (dictated by the type of hearing) and whether any of the respondents will need to be produced from prison. It may, for security purposes, be appropriate to arrange for the hearing to be held at a Magistrates' Court, a Crown Court or a police station, (County Court judges can sit anywhere.)

In breach proceedings, if a respondent is in custody, the police officer will most probably need to remain with him throughout the proceedings. If the respondent receives a custodial sentence the officer will need to escort him to the local custody suite for onward transport to prison.

8.3 Filing a without notice application

Section 40 of the Policing and Crime Act 2009 gives the court discretion to grant an “interim injunction if it thinks that it is just and convenient to do so.” A file for a ‘without notice’ application should contain:

- the Overarching Statement;
- a request for a power of arrest for all of the prohibitions and requirements that have an enforcement element; the reasons for a power of arrest should be self-evident in the Overarching Statement,
- one or two key supporting documents or statements, but not the entire file as this is not the final hearing;
- draft injunctions with supporting maps.

The applicant authority should make sure to provide the application bundle directly to the court clerk at least two days before the application so that the judge has time to consider the evidence in advance. The court should notify the applicant authority which judge will hear the gang injunction application, and the file should be handed personally to their clerk.

It is important to remind the court clerk: a) not to show any listing information on the notice board in the foyer or outside the court; and b) not to insert details of the application on the court computer system until after the first hearing.

The applicant should ensure the correct fee is paid.⁶ The fee for an application for an injunction will be the same irrespective of the number of respondents.

If the court grants the application, the applicant authority should ensure that:

- the injunctions and their associated powers of arrest are stamped with the court seal.
- the injunctions state the location, time and date of the next hearing. If this is in another building, the location should read: ‘The County Court, sitting at ...’.

⁶ The fee for an application in the civil court can be checked at <http://hmctsformfinder.justice.gov.uk/courtfinder/forms/ex050-eng.pdf>.

Section I: Serving and Enforcing the Injunction

Ensuring service is carried out correctly underpins the effective operation of the gang injunction. Whilst a gang injunction can be served by officers of all relevant authorities, in practice a police officer is most likely to be best placed to effect service.

The service of multi-handed injunctions involves a number of people and tasks. It is, therefore, best practice to appoint one person (the “Service Lead”) to be in charge of coordinating all aspects of service. In practice, this will normally be a senior/supervisory police officer, ideally with previous experience of dealing with gang injunctions. Paragraph 9.2.1 below contains a list of tasks associated with this role.

9.1 Service of without notice interim injunctions

The first interim injunction has to be served personally on the gang member. If not served within the designated time period, the injunction and power of arrest lapse.

The applicant authority should always ask the court for the power of arrest and the injunction to expire seven days after the date of the next court hearing. This is to ensure that an injunction is in place should any difficulties be experienced with service following a hearing. Remember that, unlike a criminal case, gang members are not required to attend court in these proceedings.

Injunctions drafted in preparation for the hearing will need to have new court dates and times inserted (the next court venue may also have changed), and there may be amendments to some of the prohibitions and requirements following legal argument. It is highly unlikely that gang members, if present at the court, will wait for the new documents to be drafted and sealed, and some respondents may see this as an opportunity to seek to avoid the injunction, especially if they are aware that the injunction lapses if they avoid service.

The courts understand this and tend to give the applicant authority some leeway in effecting service without losing the security of the previous injunction.

9.2 Serving multiple respondents

Once one respondent is served with the gang injunction, word will quickly circulate. In the past, some gang members have deliberately avoided service for over 4 months to forestall the prohibitions taking effect. Therefore, if there are a significant number of respondents and a risk of evasion, the applicant authority will want to form a team responsible to the Service Lead to ensure that all respondents are served with the gang injunctions at the same time.

9.2.1 Service Lead tasks: Actions for police

- Gang injunctions may be new to many police officers and Custody Sergeants. Briefings and instructions will be necessary.

- **Immediately after service**, the applicant authority should forward a copy of the injunction to the police force's PNC Bureau. (NB: If details of the injunction are input onto the PNC before service and result in an arrest, the respondent could sue for false imprisonment and damages on the grounds that the Injunction was not live.)
- Confirm with the PNC Bureau that the details (including detailed description of prohibited areas) of the injunction are accurate on the PNC.
- Ensure that only necessary information is inserted on the PNC, being mindful of the limitations on space in PNC entries.
- As the respondent must appear in court within 24 hours in the event of an arrest for a breach, a flagging system should be used within the PNC so that the Custody Sergeant is alerted to inform the applicant authority's legal team immediately a person comes into custody. It will be for the legal team to then contact the court.
- Ensure that identical information (including links to copies of the gang injunctions and statements of service) is input into other police computer systems. In the event of an arrest for breach, this will enable essential prosecution information to be printed off in the custody suite, and also facilitates service in other parts of the country.

Case Study

A gang member who had evaded service for some time was arrested in another Police Force area on a Saturday evening. The PNC was flagged with a locate and trace marker by his local Police Force indicating that he was to be served a gang injunction. The arresting officer contacted the gang member's local Police Force's Intelligence Bureau, who printed off a copy of the injunction and its power of arrest. Instructions regarding service were also provided. These were then faxed to the arresting officer in the other Police Force area who served the injunction, completed a statement of service, and faxed a copy back to the local Police Force, who then sent this on to the PNC to have it fully updated.

- Put in place a single point of contact and a dedicated telephone line system for the reporting of addresses and mobile phones, including a process for updating any changes.
- Ensure that information on addresses and mobile phones obtained during service are communicated to the single point of contact.
- Populate police computers with addresses linked to the application.
- Ensure that police patrols are fully briefed and any patrol plans are activated.
- Inform partner agencies that the application has been successful and service has begun.
- Most importantly, inform the people who have provided evidence, especially those from the community, of the outcome of the application.
- Raise a local risk assessment, bearing in mind any particularly vulnerable witnesses.

9.2.2 Service team: other tasks

- Read the prohibitions and requirements to each respondent, taking special care with the prohibited areas and the boundaries and whether the respondent is, or is not, allowed on the boundary road.
- Confirm that the respondent understands the prohibitions and requirements and ask if he/she has any questions.
- Make a note of any questions and responses.
- Obtain the respondent's address and mobile phone number if applying for phone and address prohibitions. Some respondents may object to this. Accordingly, the injunction should allow five working days for this information to be provided and should also state that if the information is not provided within this time, the respondent will be presumed not to own a mobile phone, and, thereafter, will be arrested for breach if found in possession of one.
- Inform the gang member that the injunction is now live, that they can be arrested for any breach, and may be imprisoned if convicted of the breach.
- Serve a copy of the Overarching Statement to inform the respondent of the allegations and a summary of the evidence against them.
- Ask the respondent to sign the notebook of the officer serving the gang injunction, and, if there is a refusal, note this.
- Note the presence of anyone else (e.g. the respondent's parents).
- Give the respondent some minutes to remove themselves from any situation that, at the time of service, violates the prohibitions, e.g. being in association with a prohibited person or being at a prohibited address, etc.
- Provide the time, date and location of the next court hearing.
- Advise the respondent to seek legal advice as soon as possible.
- As soon as possible after service is completed, prepare a witness statement containing the information set out above. The witness statement is the foundation for any breach proceedings as it will prove that the gang member was made fully aware of the injunction, its prohibitions and requirements.
- Immediately email or fax a copy of the statement to the legal team that applied for the injunction and send them the original by internal or secure external post.

Section J: Consultation with the Crown Prosecution Service and local partners

Consultation **must** take place with any local authority, any chief police officer and any other relevant partners that the applicant thinks it appropriate to consult. Chief Officers should ensure that authority to consult has been legally delegated. Likewise, each local authority should have a process in place to comply with the statutory requirement for consultation. Failure to consult could result in a successful defence challenge to the application.

It is good practice also to consult the CPS to discuss any potential parallel criminal proceedings to consider:

- the impact of gang injunctions on the smooth running of trials
- a co-ordinated approach to ensure an injunction is appropriate
- disclosure implications in criminal trials, and;
- the use of evidence obtained in the injunction as evidence of the defendant's bad character.

10.1 When must consultation take place?

The consultation requirement is not mandatory before the first hearing of a "without notice" application. However, every effort should be made to consult unless the injunction is linked to an on-going police operation or there are other law enforcement sensitivities. In any event, the statute requires consultation before the date of the first full hearing.

For "with notice" applications, consultation must take place before the application is filed.

10.2 Who to consult?

The 2009 Act requires the applicant to consult: a) any local authority, chief police officer; and b) other body or individual that the applicant thinks it appropriate to consult prior to an application being made.

Where the respondent is aged 14 to 17, the consultation must also take place with the Youth Offending Team (YOT) for the area where the respondent resides. If the respondent is already under YOT supervision in another area, then the local YOT might wish to refer the matter to the YOT with responsibility for the existing supervision. If it appears that the respondent resides in more than one YOT area (for example if the respondent splits their time between different family members) then the applicant authority may decide which YOT it would be most appropriate to consult.

Other organisations that may be involved in the consultation process are:

- Probation service
- Local Children's Services
- Mental Health Services

- Voluntary or other support services working with the respondent and/or their family or partner
- The respondent's housing provider/association.

10.3 Consultation:

- The Police, local authority and Youth Offending Service have to be consulted. Remember that although the consultation does not require agreement, the process of consultation is likely to strengthen the application and shows that the process underpinning their application has been both necessary and fair.
- Keep the process simple and manage it well to avoid creating delays to the application. Remember that the decision to obtain a gang injunction has probably been made at a very senior level within the Community Safety Partnership (CSP), and it is likely that the investigating officer has liaised with numerous organisations while putting together the application.
- If the gang injunction to be applied for runs alongside a covert police operation, the applicant authority may wish to consider whether CSP multi-agency gang meetings are appropriate as the primary means of consultation. These meetings can however be used after a first interim injunction is in place to discuss the support element.
- Consultation with other agencies in addition to the mentioned above is likely to strengthen the application and to enable effective positive requirements to be put in place more easily.

Archived

Section K: The Court Process

11.1 Without notice (ex-parte)

If the initial application is made without notice then the only people present at the closed court will be the applicant authority, the judge and a court official. The judge will have had the opportunity to read the Overarching Statement that summarises the evidence and may have specific questions, but the only determination that the judge must make in this hearing is to consider if granting the injunctions is 'just and convenient.'

There may be further questions about the prohibitions and requirements to ascertain if they are just and appropriate, and the judge may request changes.

11.2 First inter-parte hearing

At the first inter-parte hearing, there may be legal argument about a number of issues including challenges to the injunction itself and the prohibitions and requirements.

Respondents do not need to appear personally and may choose to be represented by a lawyer. If neither appear at the hearing, the applicant authority will be required to prove that the respondents are aware of the proceedings. If proceedings were started without notice, this can be achieved by producing the statement of service in relation to the ex-parte interim injunction.

If this is the very first court appearance, then a statement is needed from the person who has served notice of the proceedings on them.

If the respondent has not been traced by the date of this first hearing, the applicant authority may ask the court to reissue the interim injunction or notice of proceedings and attempt to serve by the next court date.

Remember: Gang members may deliberately take steps to avoid service so all attempts should be recorded, as statements may be required later to demonstrate the efforts that have been made.

The Court will also put into place a strict timetable for serving the evidence, and any responses from the defence prior to the second hearing. The full file of evidence has to be served on the defence solicitors if the gang members are legally represented, and if not legally represented, then on the gang member themselves.

11.3 Other hearings and case management

The defence will then have time to review the evidence, after which they have to provide a response to the court and to the applicant authority as to whether they wish to challenge the application, list any issues and any defence.

It is highly likely at this point that the defence will challenge the application on the basis that the respondent is not involved in a gang as described under Section 34(5) of the Policing and Crime Act 2009. This provides an opportunity for the applicant authority to

re-examine their evidence, and also to consider if they wish to serve further evidence to counter the defence arguments.

A timetable will then be set that includes the scheduling of the final hearing, and how long it is likely to last.

There may be a number of court appearances spread over many months before a final hearing. Once a final hearing date is set, the applicant authority should request for the injunctions and power of arrest to expire at 16:00hrs (or timed to coincide with the end of court business) on the final day. This will avoid the need to keep re-issuing interim injunctions.

Following this first inter-parte hearing, up until any final determination, there will be contact between the lawyers on a 'without prejudice' basis with a view to reaching agreement over the length, terms and conditions of any final injunction.

Any agreement should take into account the evidence against the respondent, their role in the gang, their behaviour since the injunction was first served, any breaches, and continuing links to gang activity. A genuine attempt to abide by the terms of the interim injunction and to leave the gang may be recognised by reducing the length of the full injunction from its permitted maximum length of 2 years.

There may be a request from the defence enquiring whether an 'Undertaking' would be acceptable. An Undertaking is an option whereby the respondent and the applicant agree that a gang injunction is no longer necessary, and the respondent agrees to a set of rules which they will abide by for a set period of time. Each case must be considered on its merits, but this option should generally only be considered for people on the periphery of the gang activity, who have not breached their interim gang injunction and in respect of whom there is no current intelligence to demonstrate continuing links to gangs.

The same prohibitions can be included in an Undertaking as in a final injunction. Undertakings are formally agreed at court and the details recorded on the PNC. The sentencing options for a breach of an Undertaking are the same as for breach of an adult gang injunction. They are both viewed as contempt of court, so may result in 2 years imprisonment. The significant difference is that there is no power of arrest. Where there is a breach of an Undertaking, a file is submitted to the court with a request for a summons to begin proceedings. The court has the final say on any undertaking agreement made between the applicant authority and the respondents. This approach has been used successfully in the past to conclude proceedings on gang members who have subsequently abided by the terms of the undertaking and are no longer connected to gang activity.

11.4 Public Interest Immunity (PII) hearings

Public Interest Immunity (PII) hearings take place 'in camera' if there is intelligence of such a sensitive nature that there is a need for the Judge to hear it in private in order for an early ruling to be made on admissibility. The only persons present are the judge, the court clerk, the applicant authority's legal team and officers who can provide detailed knowledge about the intelligence within the application. No notice will be given to anyone about what is occurring in the PII hearing.

The information from the CHIS is included verbatim in the Overarching Statement and the Intelligence Officer will bring the original documents to the PII hearing, so they can be shown to the judge if required.

As discussed at paragraph 6.5 above, a nominated Intelligence Officer will be fully aware of the application, and will have vetted all of the evidence. This officer will provide the court and the judge with any specialist knowledge required for the PII hearing and will have access to a file with copies of source documents etc. The officer will also provide sworn evidence about the details of the intelligence, and will have an awareness of any changes that have been made to prevent disclosure of a source's identity. They may also comment on the source's consistency in providing intelligence and the grading of specific pieces of intelligence.

The judge may ask questions, but at no stage will the identity of the source be revealed (It would be unlikely that the investigating officer or legal team will know the true identity of a registered source). The judge will then decide in relation to each piece of intelligence whether it can be relied upon during the final hearing.

11.5 Witness warning

Technically the applicant authority can call just one witness at the final hearing, the Lead Officer who has produced the Overarching Statement. The Lead Officer can be led through all of the evidence using the other witness statements and exhibits as source documents.

However, in practice the case is likely to be strengthened by the appearance of a certain number of witnesses in person and so the applicant authority should consider which witnesses they would wish to give live evidence. The applicant authority then serves on the respondent a list of all of the witnesses they wish to call, and a separate list of those whose statements they intend to read into the record. The respondent then has 21 days in which to reply, stating any objections they may have and whether they wish to cross examine a particular witness or witnesses.

Any trial date is geared to the list of witnesses that the applicant authority will definitely call, in line with the respondents' requirements. However, as there is a degree of uncertainty involved, the applicant authority will need to keep all witnesses informed of the timetable of proceedings until the final list of live witnesses has been agreed, ensuring that they are available for any scheduled final hearing, if required.

11.6 Trial bundles

The trial bundle, which is prepared by the applicant authority, should contain the following documents, as appropriate. Applicants should ensure they include any new evidence of offending or breach of the injunction:

- Claim or complaint form with respondents' names and addresses.
- Initial Application Form with schedule of prohibitions and requirements against each respondent, including a map and description of any exclusion area included as part of the injunction.

- Applicant's skeleton argument outlining the legislation and the individual evidence against each respondent, cross referenced to the page numbers where the source documents appear in the trial bundle.
- Applicant's schedule of facts to be served on the respondents, with space for a defence response and the judge's finding or comment. This approach has been used in the past to manage applications involving a large number of individuals more effectively.
- Applicant's witness and exhibit list providing a full description of each document, the date it was made and page number it appears in the trial bundle.
- Statements and exhibits in the order they appear in the index, beginning with the Overarching Statement, all paginated.
- Copies of existing interim gang injunctions together with statements of service. The statements are required to prove to the court that the respondent is aware of the proceedings in the event that they are absent.
- Copies of draft full gang injunctions.
- Any documents relating to the statutory consultation.
- Any relevant PNC Records if available.
- Any other relevant documents.

11.7 Defence case statement

Following the receipt of the trial bundle the defence should produce a defence case statement, within timescales defined by the judge, that makes clear to the applicant authority and the court any contested issues. If the defence does not provide such a statement, it is open to the judge to exclude any evidence being called on behalf of the respondent's during the final hearing.

11.8 Court security

During proceedings, good court security is paramount in reducing the potential for disorder in the courtroom and the precincts of the building.

Factors to be taken into account when considering the choice of venue include: the layout of the building; the number of respondents; any supporters who may attend; whether there will be any members present from rival gangs; and, the potential for witnesses, court officials or members of the public visiting the court to be intimidated. The applicant authority should liaise with the court well in advance of hearings, and always be ready to answer questions from the judge in relation to security. Applicants should be prepared to make their own recommendations if they have good reasons to believe that a different venue or particular security measure may be appropriate or necessary.

The police should also conduct a risk assessment in relation to the proceedings, and prepare to provide sufficient resources to deal speedily with any potential disruption.

Actual or threatened disorder should not be tolerated and should be dealt with even if it means an arrest which leads to the person concerned being taken into custody and thus missing the hearing. The safety of the court, its officials and other members of the public should be the overriding concern.

11.9 Witness care

People who are prepared to give evidence in these court proceedings should be able to do so with a clear expectation that they can attend without fear of any threats or intimidation. This is equally true of the professional witnesses.

The person in charge of witness care should either be the Investigating Officer, or another specially delegated officer. Their role is to:

- Know full names and contact details for all witnesses and continue to liaise with the senior police officer in the area with regard to the risk assessment and to ensure that the family and all other linked addresses are still being monitored.
- Keep witnesses regularly updated in relation to the proceedings.
- If they are required to provide direct evidence, keep in contact with the witnesses with regard to inconvenient dates to ensure their availability.
- Request the Witness Service in the court building to make arrangements for the witnesses to be in a different part of the building from the respondents, in order to minimise the opportunity for contact.
- Consider how each witness is travelling to the court building and whether they require a means of safe travel or an escort from their home.
- Ascertain if special measures are required and, if so, ensure that an early application is made to the court. Measures including screens, voice distortion and televised links should be considered.
- Escort each witness into the court to avoid them being intimidated by a respondent or one of their supporters. Any such threat or disturbance should be dealt with robustly by the police officers present.

11.10 Promoting awareness of gang injunctions

Reporters present during proceedings relating to adults are entitled to publish anything they have heard in open court. If no reporters have attended (which is unlikely if the gang problem is well known locally and the proceedings are public knowledge) then the applicant authority may want to publicise the story by means of media release. Applicants should take into account any court orders relating to disclosure and are encouraged to be mindful of the risks associated with publicity, to consider the value and appropriateness of publicity on a case by case basis, and to obtain legal advice about these and other data protection concerns before publicising these details.

The fact that the application has been successful may send out a warning to other gangs. It also allows the community to be informed of the action taken to tackle gang problems and may help to gain their support for the policing of the injunction. Any media release should identify each of the gang members together with their prohibitions and requirements.

The applicant authority may also want consider publicising the injunction in local housing association newsletters, community meetings and by contacting local community representatives.

It can be anticipated that the people who most need to know the court outcome will be those who have suffered from the gang activity, have provided information or evidence for

the application, and may even have given evidence in court. It is important, therefore, that the Investigating Officer makes every effort to provide early feedback to the community, including personally thanking those who have given evidence and have taken a stand in making their community safer.

Applicants should be aware that discretionary reporting instructions under Section 39 of the Children and Young Persons Act 1933 apply to proceedings concerning gang injunctions for youths.

Archived

Section L: Breach Proceedings

12.1 Dealing with breach of an injunction

There are three ways in which a breach may be discovered: a report from a member of the public, police observation of a respondent's activities, or in custody when a respondent has been arrested for another matter and a PNC check reveals a breach of one or more terms of the injunction.

Remember: once a person has been arrested they are required to be produced before a County Court judge within 24 hours, irrespective of the day of the week, excepting Christmas Day, Good Friday and any Sunday. This is very different from Magistrates Court practice.

If arrested on the street, the custody calculation runs from the time of arrest rather than the time of arrival at the custody suite. If the breach is discovered after the respondent's arrest on another matter, it may be prudent to allow the criminal investigation to be thoroughly investigated before making the breach arrest so that any court appearance at the County Court does not interfere with the criminal investigation. The respondent can be arrested once the criminal enquiries have been completed, which allows the applicant authority a full 24 hours in which to bring them before the County Court judge. The applicant authority should always be mindful that parallel criminal proceedings, which may be complex and require time, may be underway and should consult with the CPS before taking further action.

Account may also have to be taken of whether the respondent is likely to be kept in custody for a remand hearing following the investigation of the criminal matter. If so, there are now two courts in which the respondent is due to appear. The 24 hour period from arrest to court appearance must be considered very carefully when this scenario arises, as once it expires the respondent must be released from the breach arrest.

If the incident involves a minor criminal offence, it may be appropriate to discontinue the criminal offence and to focus on prosecuting the breach instead. The breach file will consist of a copy of the injunction and the statement of service, and the statement from the arresting officers outlining the circumstances of the breach(es).

Case Study

A man subject to a gang injunction was arrested for a breach for associating with someone named in the injunction. In the custody suite a small amount of cannabis was found in his possession. He was arrested for unlawful possession of the drug and it was also ascertained that there was a further breach of the gang injunction for being in possession of a Class C drug. He was interviewed as it was a criminal matter and admitted the possession. He was charged with possession of a controlled drug and kept in custody to appear at the Magistrates Court, followed by an appearance at the County Court. A police officer familiar with the specifics of the gang injunction and fully aware of the legislation attended the Magistrates Court, spoke with the CPS, explained the background circumstances and pointed out that it may be in the public interest to discontinue the drugs matter, and for all matters to be dealt with in the County Court. The prosecutor agreed, the detainee was taken to the County Court, immediately pleaded guilty to the two breaches of his injunction and was sentenced to 6 weeks' imprisonment.

Section M: Variation, Discharge and Review of Gang Injunctions

13.1 Monitoring and review

Throughout the duration of a gang injunction, the applicant authority should monitor that it is achieving its objectives and that the respondent is receiving the required support. Section 36(4) of the Police and Crime Act 2009 requires gang injunctions to be reviewed after 12 months, and a fixed time, date and location should have been included in the final injunction for this purpose.

It is the responsibility of the Court to fix the date of the review. However, the applicant authority should be aware that if the review does not take place within the appropriate timescale there may be an application for abuse of process by the respondent. Applications of this nature have previously been successful and have led to gang injunctions being discharged.

The Judge will require the following documents in advance of the review:

- A copy of the injunction;
- A copy of the Overarching Statement describing and explaining the evidence;
- A statement from the investigating officer detailing any further offending including breaches, sentences, etc. This statement can also provide the officer's opinion on whether the respondent is still involved in gang activity and the officer's recommendations on the impact and continued necessity of the gang injunction; and
- The respondent's PNC record if available.

If a person has entered into an Undertaking as an alternative to a gang injunction, there is no legal requirement for this to be reviewed.

There are also mandatory review provisions in relation to respondents reaching their 18th birthday when they are still subject to a gang injunction. Any of the conditions of the injunction will continue to have effect for at least 4 weeks after the respondent's 18th birthday. A review must take place four weeks before a respondent's 18th birthday and the YOS included as part of the process. This review is waived if there has already been a variation made to the conditions in the 4 weeks leading up to the respondent's birthday. It may be necessary at this stage to vary the conditions attached to the injunction.

13.2 Variation and discharge

At any time during the gang injunction's duration, the respondent may apply to the court to vary a prohibition or requirement, or to have it lifted completely. The response will depend on the applicant authority's assessment of the extent to which the injunction has achieved its objectives with respect to that particular respondent.

13.3 Appeals

Section 48 states that Rules of court may provide that an appeal from a decision of the High Court or county court to which this subsection applies may be made without notice being given to the respondent. This applies to the following decision:

- (a) to a decision under section 39(4)(a) that an application without notice be dismissed, and
- (b) to a decision to refuse to grant an interim injunction under section 41.

Appeals against orders made by a district judge in the County Court should normally be made to a circuit judge in the County Court; appeals against orders made by circuit judges should normally be made to a High Court judge. Appeals from the Youth Court lie to the Crown Court. Applications for permission to appeal must normally be filed within 21 days of the court decision, or within any shorter period specified by the court.

Archived

Annex A: Legislative Reference Document

Introduction

This Legislative Reference Document lists the measures available which local partners can use to deal with individuals or groups of people or problems places; and to protect communities, prevent violence, and support young people. In order to be at their most effective, it is essential that practitioners use the right intervention, or combination of interventions, at the right time. For example whilst new powers under the Anti-social Behaviour, Crime and Policing Act 2014 give front line professionals more effective powers to protect victims and communities from anti-social behaviour, gang injunctions are tailored to assist the police and local authorities to tackle the distinct issue of gang membership and the consequences of gang culture including the prevention of acts of gang-related violence or gang-related drug dealing activity.

This Legislative Reference Document lists the civil powers currently available to local partners to deal with individuals or groups and to protect communities, prevent violence and exploitation of children, and support young people to stay clear of violence and covers:

- Civil Injunction
- Gang injunctions
- Dispersal Power
- Community Protection Notice
- Public Spaces Protection Order
- Sexual Harm Prevention Orders
- Sexual Risk Orders
- Domestic Violence Protection Order
- Child Abduction Warning Notice

By choosing the right tools for the right situations – and making effective use of them – practitioners will find that they can disrupt harmful behaviours whilst avoiding premature criminalisation of individuals.

To obtain a better understanding of the diagnostic process for determining an appropriate choice of tools, users should also read the relevant guide that covers the specific tool.

Which tool to use?

There is no legal obligation on an applicant to choose the provision which is the “closest fit”.⁷ It is a matter for applicants to decide what provision is the most appropriate or convenient in a particular case. However, in deciding which tool to use, it is best practice to conduct a diagnosis of the behaviours that the applicant is seeking to address, and then apply the power that is most appropriate.

The essential features of the civil orders available to practitioners to tackle an array of behaviours are summarised in the table below:

Archived

⁷ *Birmingham City Council v. James* [2014] 1 WLR 23

CIVIL ORDERS

Issued by the Court to deal with INDIVIDUALS

	Tool	Lead Agency	Purpose of Tool	The test	Standard of proof	Maximum duration	Penalties on breach
Part 1, Anti-Social Behaviour, Crime and Policing Act 2014	Civil Injunction (for Anti-Social Behaviour) <i>Issued by County Court/ High Court / youth court</i>	Applied for by council, police and others but not housing providers (non-housing related) Applied for by the police, councils and housing providers (housing related)	To stop a person committing ASB. Includes prohibitions and positive requirements Can be granted against a person aged 10 years or over and includes powers to require a person to take 'positive action' to reform.	1. Respondent has engaged or threatens to engage in anti-social behaviour. 2. Behaviour is likely to cause harassment, alarm or distress (non-housing); or 3. Conduct is capable of causing nuisance or annoyance (housing); and that in both cases it is just and convenient to grant the injunction to prevent ASB.	Civil standard – balance of probabilities Court considers that an injunction is just and convenient	Adults – no maximum term Under 18s – 12 months	Breach is not a criminal offence but in the case of adults it is treated as contempt of court Over 18s: Unlimited fine or up to 2 years in prison Under 18s: <ul style="list-style-type: none"> • supervision order, or • detention order, as a last resort, of up to 3 months for 14–17 year olds The burden of proof for a breach is the criminal standard

Archived

Issued by the Court to deal with GANG-RELATED VIOLENCE/GANG-RELATED DRUG DEALING ACTIVITY

	Tool	Lead Agency	Purpose of Tool	The test	Standard of proof	Maximum duration	Penalties on breach
Section 34 – Policing and Crime Act 2009 (as amended by the Serious Crime Act 2015)	Gang Injunction <i>Issued by County Court/ High Court / youth court</i>	Police British Transport Police; and Local Authority	To break down violent and drug related gang culture Prevent violent and drug dealing behaviour from escalating Engage gang members in positive activities to help them leave the gang Can only be made against persons of 14 years and over	1. The respondent has engaged in, or has encouraged or assisted a) gang related violence, or b) gang related drug dealing activity 2. the court thinks it is necessary to grant the injunction for either or both of the following purposes to: (a) prevent the respondent from engaging in, or encouraging or assisting, gang-related violence; (b) protect the respondent from gang-related violence. KEY: violence or threat of violence which occurs in the course of, or otherwise related to the activities of a group that: (a) consists of at least 3 people; and (b) has one or more characteristics that enable its members to be identified by others as a group	Civil standard – balance of probabilities	2 years	Breach is not a criminal offence – dealt with as a civil contempt of court in the case of adults. Over 18s: Unlimited fine or up to 2 years in prison Under 18s: <ul style="list-style-type: none"> supervision order, detention order, as a last resort, of up to 3 months for 14–17 year olds The burden of proof for breach is the criminal standard.

89 Used by the police to move **PROBLEM GROUPS** or **INDIVIDUALS**

	Tool	Lead Agency	Purpose of Tool	The test	Standard of proof	Maximum duration	Penalties on breach
Part 3 – Anti-Social Behaviour, Crime and Policing Act 2014	Dispersal Power <i>Authorised at least at Inspector level or above before use</i>	Police officers in uniform; and Community Support Officers (if designated the power by their Chief)	To provide immediate respite to a community from anti-social behaviour, crime or disorder. The direction can be given to anyone over the age of 10.	1. Behaviour has contributed or likely to cause those in the locality harassment, alarm or distress (or result in crime or disorder); and 2. Direction necessary to remove or reduce the likelihood of ASB or crime/disorder.	N/A (Officer needs to have reasonable grounds to suspect the behaviour at (1) and must consider a direction under (2) is necessary.	Up to 48 hours	Breach is a criminal offence Failure to move on – up to £2,500 fine and/or up to 3 months in prison Failure to hand over items – up to £500 fine

Issued by councils, the police and social landlords to deal with **PROBLEM PLACES**

	Tool	Lead Agency	Purpose of Tool	The test	Standard of proof	Maximum duration	Penalty on breach
Part 4, Ch 1–3 – Anti-Social Behaviour, Crime and Policing Act 2014	Community Protection Notice <i>Issued after a written warning</i>	Issued by council or police officer or housing provider (where designated by local authority) The direction can be given to a body or a person aged 16 or over.	To stop a person, business or organisation committing ASB which spoils the community's quality of life Requirement to stop doing things; do specified things; or take reasonable steps to achieve specified results	1. A detrimental effect , of a persistent or continuing nature, on the quality of life of those in the locality ; and 2. The conduct is unreasonable .	N/A	Issuer must specify periods within which to comply with requirements	Breach is a criminal offence A fixed penalty notice of up to £100 A fine of up to £2,500, or £20,000 for businesses.

	Tool	Lead Agency	Purpose of Tool	The test	Standard of proof	Maximum duration	Penalty on breach
Part 4, Ch 2-3 – Anti-Social Behaviour, Crime and Policing Act 2014	Public Spaces Protection Order	Restrictions set by the council Councils must consult with police and whatever community representatives they think appropriate (including those affected) Can be enforced by the police	To deal with a particular nuisance or ASB in a particular public place that is detrimental to the local community's quality of life. Can be challenged by any interested person in the High Court within 6 weeks of the order being made.	1. Activities carried on in a public place have had or are likely to have a detrimental effect on the quality of life of those in the locality; and 2. The effect of these activities is, or is likely to be, of a persistent or continuing nature, unreasonable, and justifies the restrictions imposed.	N/A	3 years but can last for shorter periods. (can be extended for a further 3 years before expiration)	Breach is a criminal offence A maximum penalty of a £1,000 fine or a fixed penalty notice of up to £100.
Part 4, Ch 3 – Anti-Social Behaviour, Crime and Policing Act 2014	Closure Notice <i>(can be cancelled, but if it remains in force an application for a Closure Order must be made to the Magistrates' Court within 48 hours).</i>	Issued by the police or the local authority The police or local authority must consult any person or agency they consider appropriate, as well as informing the owner, landlord, licensee and anyone who appears to be residing in the premises	To allow the police or local council to close premises which have caused or are likely to cause nuisance or disorder (Immediate)	The person issuing the notice must be satisfied that: <ul style="list-style-type: none">the use of particular premises has resulted in or is likely to result in nuisance to the public or nearby disorder associated with the use of those premises; andthe Closure Notice is necessary to prevent the nuisance or disorder from continuing, recurring, or occurring.	N/A	Up to 48 hrs out of court – cannot stop owner or residents accessing the property	Breach is a criminal offence Notice: Up to 3 months in prison

09 Issued by the Court to deal with SEXUAL OFFENCES

	Tool	Lead Agency	Purpose of Tool	The test	Standard of proof	Maximum duration	Penalty on breach
Sexual Offences Act 2003 (as amended by Part 9 of the ASB, Crime and Policing Act 2014)	Sexual Harm Prevention Orders <i>(replaces sexual offences prevention orders and foreign travel orders)</i>	Made by a court on conviction for certain sexual or violent offences, or by a magistrates' court (or Youth Court where the defendant is under 18) on application by the police or NCA.	To reduce the risk of future sexual harm. Can be applied for in respect of anyone convicted of or cautioned for a sexual or violent offence listed in Schedule 3 or 5 of the Sexual Offences Act 2003, including where offences are committed overseas.	The court must be satisfied that the order is necessary for the purpose of: a) protecting the public or any particular members of the public from sexual harm from the defendant, or b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the UK	Civil standard	Has effect for a fixed period, specified in the order, of at least 5 years, or until further order. The Order may specify different periods for different prohibitions. A prohibition on travelling to any country outside the UK (as opposed to prohibitions in relation to particular places) includes a requirement to surrender all passports.	Breach is a criminal offence. Maximum sentence on summary conviction is up to six months' imprisonment or to a fine or both; Up to Five years' imprisonment on indictment (in the Crown Court). Breach also triggers notification requirements.
Sexual Offences Act 2003 (as amended by Part 9 of the ASB, Crime and Policing Act 2014)	Sexual Risk Orders <i>(replaced the risk of sexual harm order)</i>	The police or NCA can be applied for in respect of any individual who poses a risk of sexual harm in the UK or abroad, even if they have never been convicted.	To protect children and adults from sexual harm. An application for a Sexual Risk Order can be made where a person has done an act of a sexual nature as a result of which there is reasonable cause to <i>believe</i> that it is necessary for such an order to be made, even if they have never been convicted.	The court must be satisfied that the order is necessary for a) protecting the public, or any particular members of the public, from sexual harm from the defendant; or b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the defendant outside the United Kingdom.	Civil standard	Minimum of 2 years. Has no maximum duration, except on any foreign travel restrictions which, if applicable, last for a maximum of five years (but may be renewed). A prohibition on travelling to any country outside the UK (as opposed to prohibitions in relation to particular places) includes a requirement to surrender all passports.	Breach is a criminal offence. Maximum sentence on summary conviction is up to six months' imprisonment or to a fine or both. Maximum of five years' imprisonment on indictment (in the Crown Court). Breach also triggers notification requirements.

Issued by Police to deal with DOMESTIC VIOLENCE

	Tool	Lead Agency	Purpose of Tool	The test	Standard of proof	Maximum duration	Penalty on breach
Sections 24–33 – Crime and Security Act 2010	<p>Domestic Violence Protection Notice (DVPN) <i>(initial notice of immediate emergency protection)</i></p> <p>Domestic Violence Protection Order (DVPO)</p>	<p>DVPNs are issued by the police</p> <p>Can be served on any individual aged over 18</p> <p>DVPOs are made by the court following a application to a magistrates' court by the police within 48 hours of the DVPN being issued. The police must make this application.</p>	To provide victims with immediate protection following an incident of domestic violence.	<p>Before making a DVPN, the authorising officer must have reasonable grounds for believing that—</p> <p>(a) the defendant has been violent towards, or has threatened violence towards, an associated person, and</p> <p>(b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence</p> <p>Similarly, a court must be satisfied of (a) and (b) before it can make a DVPO.</p>	<p>For a DVPN, the police must have reasonable grounds for their belief in (a) and (b) in the previous column.</p> <p>For a DVPO, a civil standard of proof applies.</p>	<p>For DVPN 48 hours (excluding Sundays and Bank Holidays)</p> <p>For DVPO – 28 days</p>	<p>Perpetrator can be arrested and held in custody</p> <p>Breach of a DVPO is NOT a criminal offence. Dealt with as a civil contempt. Arrest and remand in custody possible.</p>

Issued by the Police or Local Authority to deal with INAPPROPRIATE RELATIONSHIP WITH A CHILD OR YOUNG PERSON

	Tool	Lead Agency	Purpose of Tool	The test	Standard of proof	Maximum duration	Penalty on breach
Child Abduction Act 1984 and Children and Young Persons Act 1989	<p>Child Abduction Warning Notice <i>(formerly known as Harbourers' Warnings)</i></p>	<p>Police / Local Authority -</p> <p><i>(authorised by a child's parent and issued by the police (or the local authority in the case of a looked after child aged 16–18)</i></p>	A deterrent for individuals suspected of inappropriate relationship with a child or young person.	A parent/guardian has formally expressed significant concern over the young person's association with the individual.	N/A		Not a criminal offence. The suspect may be arrested and prosecuted for an offence under s.2 Child Abduction Act 1984 or s.49 Children and Young Persons Act 1989 or for any other criminal offence committed in relation to that child.

The tools in more detail

Civil injunctions under the Anti-social Behaviour, Crime and Policing Act 2014

The injunction is designed to provide fast and effective protection for victims and communities and to set a clear standard of behaviour for perpetrators, stopping the person's behaviour from escalating.

Introduced under part 1 of the Anti-Social Behaviour Crime and Policing Act 2014, a civil injunction can be applied for to deal with anti social individuals aged 10 or over. For those aged under 18 this must be done the youth court and for those 18 or over in the county court or High Court.

Those who can apply for Civil Injunctions are

- A local authority
- A housing provider
- Chief officer of police for a local area
- Chief Constable of British Transport Police
- Transport for London
- The Environment Agency and Natural Resources Wales
- NHS Protect and NHS Protect (Wales)

Full details on the application process in relation to both age of the individuals involved and whether the anti social behaviour was in a housing or non-housing context can be found at Section 2.2 of the statutory guidance produced by the Home Office in July 2014.

Statutory guidance for frontline professionals on anti social behaviour powers can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

Dispersal Power

This power is designed to provide flexibility to the police for use in a range of situations to disperse anti-social individuals to provide immediate short-term respite to local communities.

This power can be used by uniformed police officers if authorised by an officer of at least the rank of Inspector and by Police Community Support Officers if designated by the relevant chief constable). It can be used to direct any person who is or appears to be to be over the age of 10 to leave an area for up to 48 hours where they are committing or likely to commit anti social behaviour, crime or disorder.

Full details of this power are contained in Section 2.3 of the statutory guidance.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

Community Protection Notice

Designed to stop anyone aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life.

The introduction of this power allows for a wider range of behaviour to be dealt with than previously, against a wider range of perpetrators and can include requirements to ensure that problems are rectified and that steps are taken to prevent re-occurrence of anti social behaviour.

These notices can now be issued by police officers and police community support officers in addition to local authorities. Additionally where appropriate local authorities can designate social landlords in their area to issue Community Protection Notices.

Details of the Community Protection Notice are included at section 2.5 of the ASB statutory guidance. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

Public Spaces Protection Order

The introduction of this order is designed to allow local authorities to deal with a particular nuisance or problem in a particular area that is detrimental to the community's quality of life, by imposing conditions on the use of that area which apply to everyone.

Details of this power are contained in section 2.6 of the ASB statutory guidance. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

Closure Power

The closure power was introduced under section 76 of the Anti-social Behaviour, Crime and Policing Act 2014, and replaces the previous closure orders provided for under the Anti-Social Behaviour Act 2003.

Introduced to rationalise bureaucracy and allow frontline professionals to respond to the needs of victims quickly, the section 76 closure power focuses on the harm caused to local communities by a range of anti-social behaviour and provides a more flexible and efficient tool for agencies dealing with it.

The closure power replaces and rationalises the: Anti Social Behaviour Premises Closure Order; Crack House Closure Order; Noisy Premises Closure Order and the Section 161 Closure Order.

This power allows the police or local council to close premises where anti social behaviour is being committed or is likely to be committed and makes it easier to issue a notice to temporarily close any premises for up to 48 hours if there is, or is likely to be, a nuisance to members of the public or disorder near those premises and it is necessary to prevent the nuisance or disorder from continuing, recurring or occurring. The police or local authority would have to apply to the magistrates' court for a closure order if they wish to extend this beyond the 48 hours for a period of up to six months.

Guidance for frontline professionals on closure powers and the process to be followed when applying for such can be found in section 2.7 of the Statutory Guidance. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/352562/ASB_Guidance_v8_July2014_final__2_.pdf

Gang Injunctions

Section 34 of the Policing and Crime Act 2009 introduced gang injunctions for adults. Section 34 of the Crime and Security Act 2010 extended gang injunctions to 14–17 yr olds.

Gang injunctions are specifically aimed at breaking down violent gang culture and preventing young people from becoming entrenched in criminality. They are decided on the balance of probabilities, have a maximum duration of 2 years, and can be applied for by the police or local authorities in respect of those aged 14 or over.

The injunctions are not designed to penalise individuals but to break up the gang culture by the enforcement of positive requirements which should be decided to suit the circumstances of individual cases.

Possible examples of such requirements could include attendance at anger management, relationship or other behavioural sessions, attend a “call-in” or attend mediation with rival gang members.

Gang injunctions can be obtained in the county or the youth court in respect of those 14–17 and applications must be served on the individual personally unless otherwise directed by a court.

Sexual Harm Prevention Orders

Sexual Harm Prevention Orders can be applied to anyone convicted or cautioned for a sexual or violent offence, including where offences are committed overseas. They have replaced sexual offences prevention orders and foreign travel orders.

The Orders prohibit the defendant from doing anything described in the order, and can include a prohibition on foreign travel (replacing Foreign Travel Orders which were introduced by the Sexual Offences Act 2003). A prohibition contained in a Sexual Harm Prevention Order has effect for a fixed period, specified in the order, of at least 5 years, or until further order.

The Order may specify different periods for different prohibitions.

Full details of this power are contained in chapter two, section one of the Guidance on Part 2 of the Sexual Offences Act 2003.

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409872/2015-03-06_FINAL_Guidance_Part_2_SOA_2003.pdf

Sexual Risk Orders

Sexual Risk Orders can be applied to any individual who poses a risk of sexual harm in the UK or abroad, even if they have never been convicted. They have replaced the risk of sexual harm order.

The Orders prohibit the defendant from doing anything described in the order, and can include a prohibition on foreign travel (replacing Foreign Travel Orders which were introduced by the Sexual Offences Act 2003).

A prohibition contained in a Sexual Risk Order has effect for a fixed period, specified in the order, of not less than 2 years, or until further order. The Order may specify different periods for different prohibitions.

Full details of this power are contained in chapter two, section three of the Guidance on Part 2 of the Sexual Offences Act 2003

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/409872/2015-03-06_FINAL_Guidance_Part_2_SOA_2003.pdf

Domestic Violence Protection Notice and Order

A Domestic Violence Protection Notice (DVPN) is an initial notice issued by the police to provide emergency protection to an individual believed to be the victim of domestic violence. Aimed at perpetrators who present an on-going risk of violence to the victim, it contains prohibitions that effectively bar the suspected perpetrator from returning to the victim's home (which may also be the suspect's home) or otherwise contacting the alleged victim.

The police must submit an application to the magistrates' court for a Domestic Violence Prevention Order (DVPO) within 48 hours of the DVPN being issued (excluding weekends and bank holidays). A DVPO can be imposed with whatever conditions the court feel necessary to protect the injured party from violence or threat of violence. A DVPO will be in force for 14–28 days.

With DVPOs, a perpetrator can be banned with immediate effect from returning to a residence and from having contact with the victim for up to 28 days, allowing the victim time to consider their options and get the support they need.

Full details of this power are contained in Sections 24–33 of the Crime and Security Act 2015 <http://www.legislation.gov.uk/ukpga/2010/17/crossheading/domestic-violence>

Child Abduction Warning Notice

Child Abduction Warning Notice (formerly known as Harbourers Warning Notices) are used by the police to disrupt the criminal or undesirable activities of adults who are associating with a young child or young people against the wishes of the young persons' parent(s) or local authority carer.

A CAWN states that the suspect has no permission to associate with the child and if they continue to do so they may be arrested for an abduction offence.

A CAWN is not statutory, and failure to comply with the conditions set out in one is not an offence.

Full details of this power are contained in section 2 of the Child Abduction Act 1984 and section 49 of the Children Act 1989

<http://www.legislation.gov.uk/ukpga/1984/37>;

<http://www.legislation.gov.uk/ukpga/1989/41/section/49>

Archived

Archived

Archived