STATUTORY GUIDANCE: INJUNCTIONS TO PREVENT GANG-RELATED VIOLENCE

Home Office

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Statutory Guidance: Injunctions to Prevent Gang-Related Violence

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1 Introduction

1.1 Background

This statutory guidance on injunctions to prevent gang-related violence draws on the experience and knowledge of the police service, local authorities and a wide range of local partners involved in dealing with violent gangs. It has been developed and approved by partners across the Criminal Justice System, as well as local practitioners. It has been produced after consultation with the Lord Chief Justice and the Master of the Rolls, and has been laid before Parliament by the Home Secretary.

The Policing and Crime Act 2009 ('the 2009 Act') contains provision for injunctions to prevent gang-related violence to be sought against an individual; these were commenced in January 2011. The Crime and Security Act 2010 contains provisions for breach of an injunction to be enforced against 14 to 17 year olds; these will be commenced in January 2012.

1.2 Terminology used in the guidance

Throughout this guidance the term 'gang injunction' is used to refer to an injunction to prevent gang-related violence. The individual who is subject to a gang injunction, or against whom a gang injunction is being sought, will be referred to as the 'respondent'. The police force or local authority applying for a gang injunction will be referred to as the 'applicant'.

1.3 Purpose of the guidance

This statutory guidance is a practical tool intended to help local partners apply for and manage gang injunctions effectively and appropriately in accordance with the 2009 Act. It is for:

- local authorities and police forces who are seeking to apply for an injunction to prevent gang-related violence; and
- local partners who may be consulted by the applicant as part of the process. These may include, but are not limited to, registered social landlords, housing associations, transport agencies and youth offending teams (where the respondent is aged 14 to 17 or has recently turned 18).

Local authorities and police forces are required by the 2009 Act to 'have regard' to this guidance and any subsequent revisions. It is good practice for other local partners to have read this document before contributing to the application process.

2 Gang injunctions: the basics

2.1 What are gang injunctions?

An injunction to prevent gang-related violence is a civil tool that allows the police or a local authority to apply to a county court (or the High Court) for an injunction against an individual to prevent gang-related violence. By imposing a range of prohibitions and requirements on the respondent, a gang injunction aims:[1]

- to prevent the respondent from engaging in, or encouraging or assisting, gang-related violence; and/or
- to protect the respondent from gang-related violence.

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.

Anyone seeking to apply for an injunction must have evidence that the respondent has engaged in, encouraged or assisted gang-related violence, and will need to be able to prove this on the balance of probabilities at court. Applicants will also need to convince the court that the gang injunction is necessary to prevent the respondent from being involved in gang-related violence and/or to protect the respondent from such violence. During the 2009 Act's passage through Parliament, it was made clear that gang injunctions are only intended to be used to prevent violence related to gangs. All applications must focus on gang-related violence rather than, for example, acts of anti-social behaviour, acquisitive crime or drug dealing involving gangs.

2.2 What is gang-related violence?

Section 34(5) of the 2009 Act 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) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group; and

c) is associated with a particular area."

Gang injunctions are intended to be used against members of violent street gangs. However, setting out what is meant by 'gang-related violence' in legislation is a complex task. The nature and form of gang-related violence varies significantly between areas and is not easily captured by a single definition. The wording of the definition used in the 2009 Act is therefore intentionally broad and wide-ranging to ensure gang injunctions can be used effectively in response to the different violent gangs encountered in different local areas.

It is important for applicants to have a sound understanding of the gang problem in their local area. This should be informed by intelligence from the community and local partners. Applicants may find it difficult to satisfy the court that the respondent

[1] Section 34(3) of the 2009 Act.

has been involved in gang-related violence, and therefore to make a successful application, if they cannot demonstrate an understanding of the local gang problem.

2.3 Which groups are not suitable for gang injunctions?

Gang injunctions should only be used to prevent gang-related violence that is committed by groups that fall under the section 34(5) definition. Applicants should not seek injunctions against members of groups which do not fall under that definition.

2.4 Who can apply for a gang injunction?

Section 37 of the 2009 Act makes provision for an application to be made by:

a) the chief officer of police for a police area;

b) the chief constable of the British Transport Police Force; or

c) a local authority.

For this purpose, 'local authority' means:

a) in relation to England, a district council, a county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

b) in relation to Wales, a county council or a county borough council.

Chief officers of police may give their consent for applications to be made by other senior police officers on their behalf.

2.5 How do 'with notice' and 'without notice' applications differ?

An application for a gang injunction may be made 'with notice' (see Section 8.2) or 'without notice' (see Section 8.1) being given to the respondent.

For 'with notice' applications, applicants are required to notify the respondent of the application and to consult appropriate police forces, local authorities, youth offending teams (if the respondent is under 18) and other bodies and individuals. It is good practice to notify the respondent at the same time as submitting an application to the court. The notification and consultation requirement do not apply for 'without notice' applications. More detail on the consultation requirement and when it applies can be found in Section 5.

2.6 What prohibitions and requirements can gang injunctions impose?

A gang injunction can include any reasonable prohibition or requirement. Applicants will need to satisfy the court that these terms are necessary either to prevent the respondent from engaging in, encouraging or assisting gang-related violence, and/or to protect the respondent from gang-related violence. See Section 7 for guidance on injunction prohibitions and requirements.

2.7 How do gang injunctions fit with other measures to tackle gangs?

Gang injunctions are designed to be used in specific circumstances as part of a broader, strategic response to local gang problems. This response should include longer term measures to address the local gang problem.

Those involved in gang-related violence should be prosecuted under criminal law if there is sufficient evidence and this is in the public interest. However, there may be instances where criminal proceedings have not yet been brought and applying for a gang injunction may be an appropriate response. These instances could include where a criminal investigation is still ongoing or the Crown Prosecution Service (CPS) has yet to decide whether to charge an individual. Under these circumstances, gang injunctions may be able to offer the local community immediate relief from the problem of gang-related violence and to help respondents to leave the gang lifestyle. Applicants should ensure that they are in close and regular contact with the CPS where an injunction is being considered alongside potential criminal proceedings.

3 Young people and gangs

3.1 Young people's involvement in gangs

Teenagers can be particularly vulnerable to recruitment into gangs and involvement in gang violence. This vulnerability may be exacerbated by risk factors in an individual's background, including violence in the family, involvement of siblings in gangs, poor educational attainment, or mental health problems.

The teenage years are often the critical point for intervention to prevent the young person becoming further involved in gangs and gang violence. Crisis points in a young person's life such as arrest, school exclusion, or A&E admission can provide vital opportunities to persuade the young person to leave the gang lifestyle. Gang injunctions offer local partners a way to intervene and to engage the young person with positive activities, with the aim of preventing further involvement in gangs and violence.

3.2 Issues to consider when applying for a gang injunction against a respondent between the ages of 14 and 17

Specific issues to consider when dealing with a respondent between the ages of 14 and 17 are highlighted under the relevant sections of this guidance. Applicants should follow the following general principles when considering a gang injunction against a 14 to 17 year old:

- Section 11 of the Children Act 2004, which places a duty on Local Authorities, police and others to make arrangements to ensure that in discharging their functions they have regard to the need to safeguard and promote the welfare of children.
- Gang injunctions will be sought because an applicant believes that the young person is at risk of engaging in or being a victim of, gang-related violence. There are clear child protection processes to follow when significant harm or the risk of significant harm has been identified. Local children's services who have legal responsibilities for safeguarding and child protection may need to be involved in discussions regarding a potential gang injunction for a 14 to 17 year old and to advise what action it would be appropriate to take to ensure the safety of the young person and to protect him or her from significant harm.
- Applicants should have regard to the appropriate guidance in respect of safeguarding processes.[2] Close partnership working and shared intelligence between local authority children's social care and law enforcement and public protection agencies will be vital to achieve the right balance of support and criminal justice whilst safeguarding the child's welfare.

[2] *Working Together to Safeguard Children* (2010) - https://www.education.gov.uk/publications/standard/publicationdetail/page1/DCSF-00305-2010
Safeguarding Children and Young People who may be affected by Gang Activity - https://www.education.gov.uk/publications/standard/publicationDetail/Page1/DCSF-00064-2010

- There are a range of factors that increase the risk of a young person becoming involved in gang violence, and a number of agencies that can identify these risk factors and intervene. Risk assessment tools, information sharing, and agreed referral arrangements are important to ensure that young people get the support they need. A gang injunction should be seen as a tool within a wider partnership approach to dealing with gang violence amongst under 18s.

4 Women, girls and gangs

4.1 Women and girls' involvement in gangs

Most respondents are likely to be male (the majority of gang members are male). However, any injunction application made against a gang-involved woman or girl should take account of the particular needs and experiences of women and girls in the gang context, which are often very different to those of men.

In addition, gang injunctions may affect women and girls who are associated with male respondents. Sisters and partners of male respondents, for example, may be placed at risk if they lose the 'protection' of their partner or brother when he becomes subject to an injunction. Applicants are encouraged to consider these issues as part of their wider risk assessment before making an application. Women and girls can be involved in gangs in a number of ways, all of which impact significantly on their lives, including as:[3]

1. Perpetrators: participating in, or encouraging gang violence alongside male gang members;
2. Victims: partners, sisters and mothers can be targeted by gangs. For example, if a debt is owed to a gang, women and girls who are associated with the debtor may be targeted to pressure the debtor to 'pay up'. Women associated with rival gangs can also be targeted with violence (including sexual assault and rape);
3. Associates: partners, sisters and mothers might be involved with hiding drugs and weapons, acting as 'couriers', washing blood-stained clothing, etc. Even where they have no formal involvement, partners can serve to 'glamorise' gang members, and to put pressure on them to provide the material wealth and lifestyle associated with this type of criminal behaviour.

4.2 Issues to consider when applying for a gang injunction against a female respondent

It is good practice for applicants to ensure that the injunction is tailored to the specific circumstances of the respondent and is understood as part of a broader strategy. Although by no means exhaustive, the list below outlines specific issues that applicants should consider when dealing with a female respondent:

- Applicants are more likely to apply for an injunction against a female respondent for 'encouraging' or 'assisting' gang-related violence, rather than for 'engaging' in such violence directly. Female respondents may not immediately recognise that they are doing anything wrong because they themselves may not be committing acts of gang-related violence. They may also be being coerced by a partner or sibling to engage or assist in such violence. Before these women are faced with an injunction, it is important that efforts are made to educate them about the harm that their involvement in gangs is causing and to raise awareness of the support services available to them in their local area.

[3] Home Office, *Tackling Gangs: A Practical Guide for Local Authorities, CDRPs, and Other Local Partners* (2008).

- A woman or girl involved with a gang may have close personal relationships (whether romantic or through family ties) with other gang members. This will need to be taken into account when applicants propose injunction prohibitions and requirements, to ensure that the injunction can meet its aims without disproportionately infringing upon the rights of the respondent. When there are romantic relationships, or a child/children, between individuals against whom a clause of non-association has been ordered, there is a high likelihood of breach. In such situations, the prohibition will need to be imposed and enforced carefully and sensitively, and it may be that association may be acceptable at particular times, dates or places.
- When applicants propose injunction requirements for a female respondent, they will need to recognise that rehabilitative services are often specifically geared towards men. These services are unlikely to capture many of the issues commonly associated with gang affected women and girls, including those related to sexual violence, relationships and raising children with gang members. Placing a female respondent into this environment may be counterproductive. It may increase the risks that she faces, especially if taking part in group work with males, and can further isolate her from services if she feels misunderstood or unable to engage meaningfully with interventions. Applicants should therefore carefully consider which services in the local area will be most appropriate in helping a female respondent exit the gang lifestyle. If applicants are unable to identify suitable services, they ought to consider commissioning such services to allow for the aims of the injunction to be met.
- The personal safety of a female gang member will also need to be considered before she is prohibited from associating with her friends/partner in a gang, as she may consider herself to be reliant upon them for protection. Applicants should be particularly cautious about publicising the details of individual gang injunctions where women or girls may be involved or vulnerable. Section 13 of this guidance provides further advice in relation to publicising injunctions.

5 Consultation

Gang injunctions should be based upon and supported by multi-agency partnership working.

5.1 Consultation requirement for 'with notice' applications

For 'with notice' applications, the 2009 Act includes a 'consultation requirement'. This requires the applicant to consult any local authority, chief police officer, and other body or individual that that the applicant thinks it is appropriate to consult prior to an application being made. Where the respondent is aged 14 to 17, this must include the Youth Offending Team (YOT) in whose area 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. Otherwise, the applicant should consult the YOT for the area in which it appears that the respondent resides. 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 may decide which YOT it would be appropriate to consult.

It is good practice for applicants to consult with all local authorities and police forces that have responsibility over the areas in which the respondent resides and which are likely to be covered by the terms of the injunction. Gang injunctions are unlikely to be enforceable without the support of these partners. The applicant may be asked by the court to provide proof that they have consulted appropriate police forces, local authorities and YOTs, and should prepare a statement to be signed by these partners.

Applicants should also ensure that they consult the CPS to discuss any potential parallel criminal proceedings, to ensure the impact of one set of proceedings is considered in relation to the other, and to ensure a clear understanding of the rules of disclosure in relation to both proceedings and the consequences of adducing evidence.

Applicants are also required to consult any other body or individual that they think it appropriate to consult. The consultation may include:

- YOTs, where the respondent has recently turned 18 and has had previous involvement with these services;
- probation services;
- Local children's services
- the head teacher / principal of the respondent's school / college;
- voluntary or other support services working with the respondent and/or their family or partner; and
- the respondent's housing provider/ association.

Once an injunction has been granted, the police and local authority will need to work closely with one another and with any other relevant local partners to ensure the injunction can be managed and enforced effectively.

5.2 Consultation requirement and 'without notice' applications

The consultation requirement in the 2009 Act does not apply in the initial stages of a 'without notice' application. However, if the court decides to adjourn the hearing, the applicant will need to meet the consultation requirement before the date of the first full hearing.

In any event, applicants should try to ensure that consultation takes place before a 'without notice' application if at all possible.

5.3 Managing the consultation process

It is good practice for applicants to use the consultation process to:

- identify whether the respondent's behaviour falls within the 2009 Act's definition of gang-related violence and any agreed local understanding of gang-related violence;
- establish whether a gang injunction is the most appropriate measure to prevent the individual's involvement in gang-related violence;
- identify the most appropriate injunction prohibitions and requirements to prevent the individual's involvement in gang-related violence;
- carry out a risk assessment to identify and mitigate the potential negative impacts of a gang injunction on the safety of the respondent, their family, partner(s), and associates;
- consider the needs of victims and witnesses and make appropriate provision for these; and
- gather evidence in support of a gang injunction.

Applicants will need to satisfy the court that any proposed prohibitions and requirements are effective, proportionate and enforceable. For example, if the applicant is a local authority, the court will want to hear whether the local police force, or potentially the YOT in the case of a 14 to 17 year old, has agreed to enforce compliance, including by informing the applicant of any suspected breach.

5.3.1 Risk assessment

The aim of a gang injunction is to prevent an individual from engaging in, encouraging or assisting gang-related violence; and/or to protect an individual from gang-related violence. Given this, it is essential for applicants to consider whether any of the proposed prohibitions or requirements may compromise the safety of the respondent and their family, partner(s), or associates. For example, if a respondent is subject to a curfew or required to avoid contact with an individual, it is possible that this might present a risk to either the safety of the respondent or the individual in that it might remove them from the 'protection' offered by their gang against violence from rival gang members. This does not automatically mean that such a condition should not be included as the risk of violence to the respondent and the wider community of not doing so may be greater, but that it is good practice for applicants to carry out a full assessment of the risks to the respondent, their family, partner(s) or associates posed by any of the proposed terms of the injunction and put in place measures to

address these. Further information on potential risks to female respondents, family members and associates is included in Section 4.

5.3.2 Duty to assess need for community care services

Local authorities have a duty under the NHS and Community Care Act 1990 to assess any person who may be in need of community care services. If there is any evidence to suggest that the respondent may be suffering from drug, alcohol or mental health problems or an autistic spectrum disorder, then applicants should work with local children's or adults services or other support agencies to ensure that this support is provided. Such support should run in parallel with the collection of evidence for an injunction application. This ensures that the court can balance the needs of the community with the needs of the respondent.

5.3.3 Confidentiality

It is good practice for all partners attending consultation meetings to be made aware that meetings are highly confidential and that the information discussed ought not to be divulged to any other party, including the respondent. Applicants may wish to seek legal advice with regards to data protection and how to respond to requests for minutes to be disclosed.

If applicants plan to invite a representative from a support service that works closely with the respondent and/or their family to the consultation meeting, they might consider inviting them only to the parts of the meeting where matters relevant to their service are discussed. This is particularly important during meetings in which more than one respondent is being discussed.

Care should also be taken not to name or identify any victims or independent/community witnesses during wider consultation meetings. Witness safety is paramount and in many circumstances identities may only be divulged at court. Applicants should not pre-empt any orders the court may make about non-disclosure.

5.3.4 Minutes

Minutes should be taken at all consultation meetings. A copy of the minutes should be distributed to partners as soon as possible, either by secure email or by post addressed for the attention of the attendee. They should be checked before distribution to ensure that they adhere to any local requirements on confidentiality.

6 Evidence gathering

6.1 Obtaining and reviewing evidence – general principles

Presenting evidence to the court is a matter of careful judgment by applicants and their legal advisers. Applicants should always bear in mind the need for careful consideration and judgment in presenting their cases, not least to avoid hearings being unnecessarily adjourned because cases are not ready or evidence is not available.

Applicants should remember that they are obliged to assist the court in actively managing cases in order to further the overriding objective of enabling a court to deal with cases justly (Civil Procedure Rules 1.3).[4]

Applicants will need to gather evidence in support of their application for a gang injunction. This evidence must demonstrate that:

- the respondent has engaged in, encouraged or assisted gang-related violence; and
- the gang injunction is necessary to prevent the respondent from engaging in, encouraging or assisting gang-related violence; and/or
- the gang injunction is necessary to protect the respondent from gang-related violence.

Presenting a multitude of elaborate documents is not necessarily advantageous. Indeed, a large volume of evidence and/or a large number of witnesses may lead to unnecessary delays in the process. Instead, it makes sense for applicants to focus on a few well-documented examples that provide evidence that the respondent has been involved in gang-related violence in the local area.

Where there is proof beyond reasonable doubt that an individual has been involved in gang-related violence, applicants should be liaising with the appropriate authorities to see whether they can assist in providing evidence for prosecution under criminal law.

6.2 Evidence for 'with notice' hearings

In compiling evidence for a 'with notice' application, applicants are advised to provide a general background on the respondent and their history of gang involvement, as well as evidence of specific incidents of gang-related violence. It is good practice to use consultations with appropriate local authorities, police forces, YOTs (for 14 to 17 year olds or those recently turned 18 years of age) and other partners to gather evidence in support of an injunction application.

6.3 Evidence for 'without notice' hearings

'Without notice' applications are likely to be made in response to specific threats of violence, and applicants are therefore unlikely to have adequate time to put together an extensive evidence pack before the hearing. Given that 'without notice' applications may be made in urgent circumstances and to tight timetables, the

[4] The Civil Procedure Rules ('CPR') are available at http://www.justice.gov.uk/civil/procrules_fin/menus/rules.htm.

requirement to consult with appropriate local partners before the initial hearing is waived.

Time constraints will probably mean that the evidence will be brief, but applicants would usually be expected to show the court that they have intelligence relating to a specific threat or expected act of violence. It is likely that the evidence applicants present will be in written form, and this can include written witness statements. Regardless of any time constraints, it is the responsibility of the applicant to ensure that any evidence presented at a 'without notice' hearing is correct and complete.

6.4 Admissible forms of evidence

It is a matter for the court to decide what evidence is relevant or admissible in any particular case. However the court can determine that a wide range of evidence may be used by applicants, for example:

- direct evidence from witnesses (witness statements);
- hearsay evidence from community members and/or police officers;
- documentary evidence;
- statements from professional witnesses (for example council officials or health professionals) or other expert evidence;
- photographic, video or CCTV evidence, screen captures of gang members' internet pages;
- previous relevant arrests or convictions;
- items seized during searches, such as clothing which identifies a respondent with a particular gang, letters to other members, etc.[5]

Although the court will decide in each case what evidence is relevant or admissible, it is advisable that applicants carefully consider what evidence they seek to introduce. Seeking to cast doubt on the respondent's character through using unrelated evidence may not be well received by the court. For example, it is unlikely that evidence showing that the respondent has engaged in criminality that is not gang-related would be admissible. Evidence that the respondent has previously engaged in gang-related violence is much more likely to be ruled relevant and admissible.

First-hand evidence (i.e. evidence from a witness describing what they have seen or encountered) is preferable. The most effective evidence is that which comes directly from those living in communities affected by gang-related violence and who can identify the respondent as being a member of the gang and being involved in gang-related violence.

6.5 Hearsay evidence

In the context of gang-related violence, the potential for intimidation is high and victims and witnesses may be too afraid to provide statements for fear of reprisal. The admissibility of professional witness and hearsay evidence is intended to help overcome this problem.

[5] See Parts 32 and 33 of the Civil Procedure Rules on evidence.

Hearsay evidence is that which is gathered by one person from another. This enables a statement to be made on behalf of a witness who does not wish to give first-hand evidence themselves. This can also allow the identities of those too fearful to give evidence to be protected. Such hearsay evidence could be provided by a police officer, healthcare official or any other professional who has interviewed the witness directly.

Whilst hearsay evidence cannot be excluded (at the request of defence lawyers) on the grounds that it is hearsay, applicants should remember that the weight given to hearsay evidence at court will tend to be less than that given to first-hand evidence (i.e. evidence provided directly by the person who witnessed the incident described). Similarly, more detailed hearsay statements may be given greater weight than those that are less detailed. Therefore, if a witness gives hearsay evidence without detailing the person who provided this information, this is likely to carry less weight than first-hand evidence from that person. Ultimately it remains a matter for the court to decide what weight, if any, to give a particular hearsay statement.

Where applicants intend to rely on hearsay evidence in the county court, they must act in accordance with Part 33 of the Civil Procedure Rules. Hearsay evidence at hearings other than trials does not generally require written notice. Applicants should note that the rules determining the admissibility of hearsay evidence in criminal and civil proceedings are not the same.

When presenting hearsay evidence to the court, applicants will need to ensure that they have undertaken a security risk assessment and implemented any necessary security measures. Section 8.5 provides more details on court security. More information on witness care can be found in Section 8.6.

6.6 Police and Local Authority intelligence

Police and local authority systems may contain intelligence relevant to an injunction application. This intelligence may indicate to the court the level of risk a respondent presents or provide information relating to their involvement in gang-related violence. Police or local authority intelligence may come from a number of sources and will likely be codified to show the reliability of the sources.

It is good practice for applicants to consider the operational implications of using police or local authority intelligence in court and to seek legal advice from force solicitors around how best to use and present this evidence. If the applicant is a local authority, close liaison with police partners will be necessary in order to use information drawn from police intelligence. This information should be appropriately sanitised by the police before it is considered for sharing with partners or used in these proceedings. One way of minimising risk is to provide a statement with appropriately sanitised details of relevant intelligence. Consideration should be given to the quality, reliability, age and relevance of the intelligence and the consequences of that information being shared at court, including its potential to compromise a source or policing operation.

Applications for Public Interest Immunity may be needed to address these risks. See section 8.7.1 for information on Public Interest Immunity applications.

In relevant cases, applicants should consider consulting the CPS, particularly when parallel criminal proceedings are ongoing or being considered. This consultation should take into account that parallel (or later) proceedings could affect what evidence is disclosed and therefore early consideration of these matters should help to reduce the number of unnecessary disclosure and/or Public Interest Immunity applications.

6.7 Standard of proof

Section 34 of the 2009 Act states that the court must be satisfied on the balance of probabilities that the respondent has engaged in, or has encouraged or assisted, gang-related violence. As this is the civil standard of proof, rather than the criminal standard of proof (beyond reasonable doubt), applicants will need to provide evidence that it is more likely than not that the respondent has engaged in, or has encouraged or assisted, gang-related violence.

Applicants should remember that the standard of proof for proving a contempt of court (i.e. that the respondent has breached a condition of the injunction) is ‘beyond reasonable doubt’.

7 Drafting the terms of the proposed injunction

Applicants may apply for any reasonable prohibition or requirement, provided that it does not:[6]

- 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.

In deciding upon which prohibitions and requirements to include, it is good practice for applicants to consider the following:

- Does the evidence show that the prohibitions and requirements are necessary to prevent gang-related violence or protect the respondent from gang-related violence?
- Are they targeted at the needs and behaviour of this particular respondent?
- Are they enforceable?
- Are they clear, concise and easy for the respondent and partners to understand?
- Do they have any implications for the respondent's human rights?[7]
- Will they have the effect of protecting and reassuring the public?

A draft of the proposed gang injunction terms must be included in the N16A application form, which should include all proposed prohibitions and requirements, their duration and any powers of arrest to be attached. Applicants will need to be prepared for the court to examine each prohibition and requirement, and will need to be able to justify how each of these is necessary to prevent the respondent from engaging in, encouraging or assisting gang-related violence or to protect the respondent from such violence.

7.1 Length of prohibitions

As with all other conditions, the duration of each prohibition should be determined according to the unique circumstances of each case. The length of a prohibition should be designed so as to make the injunction as effective as possible in preventing gang-related violence, whilst being mindful of the rights of the respondent and the need of the injunction to be fair and proportionate.

There is no minimum duration for an injunction or any conditions contained therein. However, no prohibition or requirement can be ordered to last for more than two years. Additionally, if any prohibition or requirement in the injunction if to have effect for more than one year (beginning with the date the injunction is granted), the court must order the applicant and the respondent to attend a review hearing within the last 4 weeks of the one year period.

[6] Section 35(5) of the Policing and Crime Act 2009.
[7] Including those protected under the UN Convention on the Rights of the Child.

7.2 Examples of prohibitions

These examples are based on the suggested prohibitions in the 2009 Act. The suggestions in section 35(2) of the 2009 Act are not exhaustive and therefore applicants may apply for any reasonable prohibition.

7.2.1 Non-association

A respondent may have been involved in gang-related violence with certain individuals in the past and be shown to be at risk of future involvement in gang-related violence with them. In these circumstances, applicants may wish to consider prohibiting a respondent from associating in public with named gang members.

However, difficulties with enforcing this prohibition may arise if the respondent is closely related to the other members of his/her gang or is required to be in their presence. These difficulties may arise if, for example, they attend the same educational institution, workplace or place of religious worship, or are in a relationship or have a child together. Where non-association conditions may be compromised due to education or another reasonable circumstance, the application should clearly state on which days and at what times the association condition is in force.

It would be more difficult to justify before a court why a non-association provision should extend to private spaces, and applicants would need to demonstrate why such a condition is both necessary and proportionate. Where such a prohibition is considered appropriate, it may be difficult to monitor and enforce. In such cases, evidence from neighbours, housing authorities, or police officers will be integral in monitoring compliance with the terms of the injunction.

7.2.2 Exclusion zones

An exclusion zone prohibits the respondent from visiting or travelling through a particular area or areas. Applicants should be able to demonstrate that such a prohibition is both proportionate and enforceable (i.e. not excluding a respondent from the entire area in which they live, work or study). Excluding a respondent from the entirety of their gang's territory could push the respondent into the territory of a rival gang, putting them at risk of harm.

It is good practice to include a map as part of the application that clearly shows the proposed exclusion zone. This map should be based on the locations of any gang-related incidents that the respondent has been involved with in the past (and on which the applicant intends to rely in the application for the injunction). These areas will most likely fall within the respondent's 'gang territory'.

If the proposed exclusion zone covers areas in which the respondent lives, works, studies or worships (or engages in any other reasonable activity), the applicant will need to allow for a clear travel route to and from these locations. The respondent will also need to provide details of any other locations or appointments they will need to attend during the period of the injunction, and the applicant will need to ensure that acceptable arrangements are made to facilitate this and that this is clearly detailed within the injunction. In the case of 14 to 17 year olds, applicants may wish to consider specifying that the respondent can only enter the exclusion zone in the company of an identified appropriate adult (e.g. a parent or youth worker). Having

realistic and clearly identified routes and agreed arrangements will make exclusion zones significantly easier to enforce.

Where there is a history of the respondent being involved in gang-related violence against 'rival' gangs, it may be appropriate to prevent the respondent from entering the rival gang's 'territory'. However the applicant will need to be able to justify this. An example of when this might be justified is if a critical incident has occurred where the victim was one of the respondent's close associates and it is believed that the respondent will be looking to exact revenge on the rival gang in an imminent attack which, may in turn, make the respondent a victim of a reprisal attack.

7.2.3 'Gang colours' and other identifying features

The 2009 Act includes in its definition of a gang the necessary condition that the group 'uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group'.[8] These identifiers can also be intimidating to others and provoke violent reactions from rival gangs. In these circumstances, applicants may wish to seek to prohibit the respondent from wearing particular colours or types of clothing that identify them as a gang member.

To apply successfully for such a prohibition to be included in an injunction without disproportionately infringing the respondent's civil liberties, the applicant will need to demonstrate that the respondent is a member of a particular gang that is identifiable through a particular colour, item of clothing or other identifier, and that preventing the respondent from wearing this item will help to prevent gang-related violence.

7.2.4 Dangerous dogs and other animals

Gang members may use dogs and other animals to incite fear, intimidate others or to commit acts of violence. In these circumstances, applicants may wish to consider 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.

7.2.5 The use of the internet and other technologies

There may be cases where the respondent is using, or has in the past used, the internet to encourage or assist gang-related violence. This may include posting videos that promote their gang or threaten rival gangs on video-sharing websites, or uploading details of gang 'meet-ups' on social networking websites. In such cases, it may be appropriate for the injunction to impose a prohibition restricting the use of the internet for gang-related purposes such as, for example, the uploading of gang-related videos or social networking. If such a condition is to be included in the injunction, the applicant will need to be able to satisfy the court that the prohibition is proportionate and can be effectively monitored.

7.3 Requirements

Applicants may also apply for any reasonable requirement. The 2009 Act suggests a range of requirements, which may have the effect of requiring the respondent to:

- notify the person who applied for the injunction of the respondent's address and of any change to that address;

[8] Section 34(5) of the Policing and Crime Act 2009.

- be at a particular place between particular times on particular days;
- present himself or herself to a particular person at a place where he or she is required to be between particular times on particular days; and
- participate in particular activities between particular times on particular days.

When proposing requirements to be included in an injunction, applicants should remember that no requirement can require a respondent to be in any particular place for more than 8 hours in any one day. Applicants should not seek to circumvent this, for example by proposing that the respondent must be in place A for 8 hours, place B for 8 hours and place C for 8 hours, thereby regulating every hour in the day.

Importantly, applicants are required by the 2009 Act to ensure that any requirements, as far as practically possible, avoid:

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

7.3.1 Positive requirements

Over the medium to long term, gang injunctions are intended to help respondents leave the gang. Applicants may apply for positive requirements that work towards this aim and are encouraged to think creatively and carefully about those that they propose. Applicants should ensure that they are tailored to the individual circumstances of each case. This means taking into account specific characteristics such as ethnicity, gender or age that could require the involvement of specialist services.

In practice, such requirements could translate into a requirement that the respondent attend mediation with rival gang members; attend anger-management, relationship or other behavioural sessions; adhere to a curfew (where there is evidence that gang-related violence occurs at particular times); attend a 'call-in', job-preparedness coaching or any other coaching sessions; or any other requirements as the court sees fit. The 2009 Act allows for maximum flexibility on this point to enable positive activities to be tailored to each case and address the respondent's individual circumstances, behaviour and needs. The positive requirements should help the applicant and partner agencies work together to ensure that by the time the injunction comes to an end, the respondent is better equipped to exit and stay out of a gang lifestyle, and has a realistic understanding of alternatives to being part of a violent gang.

Pre-application consultations should explore the options for positive requirements, including considering the types of positive activities that are available in the local area, how these might help prevent gang-related violence in the particular case of the respondent and how compliance with such activities could be monitored and enforced.

Applicants will need to be in a position to present clear evidence to the court showing that any positive requirements are available, funded and appropriate for the respondent. In addition applicants will need to be able to who will be responsible for the provision of the activity or monitoring the requirement and how compliance will

be enforced. The best evidence is likely to be documentation from the agency responsible for providing the proposed requirement with an assessment of the respondent's suitability for participation in that requirement.

7.4 Power of arrest

The court can attach the power of arrest to any injunction prohibition or requirement, except the requirement that the respondent participates in a particular activity. The 2009 Act is framed in this way because it was not considered proportionate to have an automatic power of arrest for non-attendance at mentoring sessions or other particular activities. In these circumstances, it was considered more appropriate to rely on the applicant's ability to apply for a warrant of arrest under section 44 of the 2009 Act or the ability to commence breach proceedings (see section 11.4 below) whereby the respondent will be served with the application notice for an order of committal.

In the same way that applicants will need to consider which prohibitions and requirements are most appropriate in each case, they will also need to consider, and recommend to the court, which of these should carry a power of arrest. If applicants think it appropriate for a power of arrest to be attached to any prohibition or requirement, they should support this by way of written evidence demonstrating why the power is necessary and proportionate. Such evidence may indicate that there is a high level of risk that the respondent will breach the conditions of the injunction (e.g. evidence of previous non-compliance with other police or court orders), as well as the level of risk the respondent poses to the community should any of the conditions of the injunction be breached (e.g. a history of violent behaviour towards others).

Applicants should be aware that applying to the court to attach the power of arrest to any condition could lessen their control over breach proceedings. Where no such power is attached, the decision to pursue breach proceedings rests with the applicant. However, where a power of arrest is attached, the arrest of a respondent for breach may be likely to result in breach proceedings.

8 Applying for an injunction

The 2009 Act provides for applications to be made ‘with notice’ or ‘without notice’ to the respondent.

8.1 ‘Without notice’ hearings

The 2009 Act gives applicants the right to apply for injunctions without giving notice to the respondent against whom the injunction is being sought. Applications ‘without notice’ should not be routine, and should not be used in place of adequate preparation for ‘with notice’ hearings. A ‘without notice’ application may be appropriate under the following circumstances:

- if urgent injunctive relief is necessary to prevent gang-related violence;
- if there is a significant risk the respondent may flee if given prior notice of an injunction application; or
- if giving notice of an injunction application would be likely to put witnesses at risk of harm.

A ‘without notice’ application might be appropriate, for example, in a situation of escalating tensions between gangs where there is intelligence to indicate that reprisal acts of violence are imminent. In this instance the applicant might seek an injunction against either the likely victim or perpetrator of anticipated violence, to prevent them from crossing into another gang’s territory.

A ‘without notice’ application for an interim injunction is more likely to be granted if the applicant is able to present evidence that specific acts of violence are likely to occur, rather than relying more generally on a respondent’s history and character suggesting that they are involved in gang-related violence habitually. Although ‘without notice’ hearings are likely to be held where there is need for urgent relief, it is nonetheless incumbent on the applicant to ensure that any evidence presented is correct and complete.

If an application is made ‘without notice’, the court can either dismiss the application or adjourn the hearing. The court does not have the power to grant a full injunction at a ‘without notice’ hearing. If the hearing is adjourned, the court has the power to grant an interim injunction. Therefore, if applicants are applying for a ‘without notice’ injunction and want the court to grant an interim injunction, they should ensure that the application not only presents the case for the application but also explains why an interim injunction is necessary.

Applicants should note that an interim injunction can include any provision a full injunction can include except for the requirement to participate in particular activities. The interim injunction can include the power of arrest. If the applicant wishes to apply for the power of arrest to be attached to any of the terms of the injunction, they will need to make this clear in the draft injunction they hand up to the judge, as well as in the application form.

The court will then adjourn until a full hearing can be held, before which the respondent must be notified.

8.1.1 'Without notice' hearings for respondents aged 14 to 17

Part 21 of the CPR sets out the requirement for a child to have a litigation friend before any proceedings are started against the child, save for issuing and serving a claim form, unless the court orders otherwise. These provisions are paramount when applying for an injunction against a respondent aged 14 to 17. If the court does not grant permission for a 'without notice' application to be made without a litigation friend, then the application will not, in reality, be 'without notice'. This means that for an application against a child to be 'without notice', the applicant must apply to the court for permission to make the application without the child having a litigation friend in place.

Special provision has been made in Practice Direction 65 for these circumstances. Paragraph 1A.1 draws applicants' attention to CPR 21 and suggests that if the court grants permission for the 'without notice' application to be made without a litigation friend, then it should consider a number of directions, namely:

- Directing the applicant to make an application for a litigation friend at the earliest opportunity after the child is served with the injunction;
- Directing the applicant to ensure that the terms of the injunction and the consequences of any breach are explained to the child and appropriate adult at the time the injunction is served;
- Directing the applicant to ensure that an appropriate adult is present when the injunction is served;
- Directing the applicant to file a witness statement confirming compliance with any directions.

Even if the court does not issue such directions, the applicant should always consider the best way to serve a 'without notice' injunction on a child and in particular the value of having a responsible adult present when the terms are explained to the child.

The purpose of a litigation friend is to deal with the everyday handling of the child's case. They are not a substitute for a lawyer. A parent or other close adult relative is frequently the child's litigation friend. Should no-one be both suitable and willing to act as the child's litigation friend, the Official Solicitor can be invited to act as the litigation friend. Other possibilities are Cafcass officers or appropriate social workers. As set out in CPR 21.6, where a respondent aged 14 to 17 does not already have a litigation friend, the responsibility for making an application to the court to appoint a litigation friend may fall to the applicant.

The court may also make an order permitting the child to conduct proceedings without a litigation friend. This would only be a realistic application to make where it was possible to persuade the court that the child had the maturity to understand the proceedings fully without the assistance of a litigation friend.

The process of how someone becomes a litigation friend without a court order is set out in CPR 21.4 and 21.5; the process when there is a court order is set out in CPR 21.6.

Applicants should consider applying to the court for an order, under section 39 of the Children and Young Persons Act 1933, restricting publication by the media of details that identify or lead to the identification of a person under 18 concerned in proceedings. This could be in relation to the respondent and/or any victim or witness aged under 18.

8.2 'With notice' hearings

In 'with notice' cases, applicants are required to notify the respondent of their application, as well as to consult appropriate police forces, local authorities, YOTs and other bodies and individuals. Section 3 contains more detail on the consultation requirement.

If applying for an injunction 'with notice' to the respondent, applicants should be aware that it is possible that the matter will not be resolved at the first hearing date. This could be because the respondent wants to obtain legal representation in order to contest the injunction application or that the hearing needs to be adjourned for witnesses to attend. However, applicants should not assume that the hearing will be adjourned and should be ready to proceed with a full application.

When adjourning the hearing, the court has the power to grant an interim injunction if it is just and convenient to do so.[9] Applicants should be prepared for the hearing to be adjourned and therefore ready to assist the court as to whether it is just and convenient to grant an interim injunction. A 'with notice' interim injunction can include any prohibition or requirement that the court can order under a full injunction and can include a power of arrest.[10]

Applicants should remember the requirements of CPR 21 (set out above) when applying for an injunction against a respondent aged 14 to 17, in particular the requirement for such a respondent to have a litigation friend unless the court orders otherwise. If the applicant is applying for a 'with notice' application in relation to a child, the claim form can be issued and served before the child has a litigation friend. Section 8 of the guidance provides information relating to the service of injunctions on respondents.

Applicants should consider applying to the court for an order, under section 39 of the Children and Young Persons Act 1933, restricting publication by the media of details that identify or lead to the identification of a person under 18 concerned in proceedings. This could be in relation to the respondent and/or any victim or witness aged under 18.

8.3 The process of applying for an injunction

Section VIII of Part 65 of the Civil Procedure Rules and Practice Direction 65 sets out the process for applying for a gang injunction. CPR 21 should also be consulted in the case of an injunction against a respondent aged 14 to 17. Different procedures apply for 'with notice' and 'without notice' applications.

[9] Section 40(2) of the Policing and Crime Act 2009.
[10] Section 40(3) of the Policing and Crime Act 2009.

8.3.1 Documents to be provided to the court

The lead individual in charge of the case should arrange for the application form (Form N16A) to be completed and filed at the court. This should be submitted alongside a draft of the proposed gang injunction and a brief overview of evidence to support the application. Detailed evidence should be reserved for the hearing.

8.3.2 Fee to be paid

Please refer to the Civil Proceedings Fees Order 2008 for details of the application fee. An up-to-date indication of the fee amount can be found in the HMCTS leaflet – *EX50 Civil and Family court fees.*[11]

8.3.3 How to prepare a court file for an application

Applicants are advised to prepare a court file to support their application. A minimum of five bundles may be prepared as follows:

- one for the court;
- one for the applicant's solicitor;
- one for the witness box;
- one for the respondent's solicitor (for 'with notice' applications only); and
- one for the respondent; (for 'with notice' applications only).

The files should be in loose-leaf format (in an A4 ring binder) and should be indexed and the pages numbered. The index and contents should include, as appropriate:

- the application for the injunction including a draft injunction for approval by the court;
- the respondent's details;
- a summary of the incidents being relied upon in the application;
- a map and description of any exclusion area included as part of the injunction;
- an association chart (showing relationships and connections of the respondent's gang and any other relevant individuals);
- documentation of statutory consultation;
- disclosed documents;
- witness statements; and
- any other relevant documentation.

According to the Civil Procedure Rules, the respondent and their solicitor (if they are legally represented) must be served with a copy of the completed application and supporting documents.[12] It is good practice for this bundle to also include guidance on how the respondent can obtain legal advice and representation (see section 8.8 of this guidance), and a warning that it is an offence to pervert the course of justice through intimidating witnesses. When an application is made on notice, the

[11] Available at http://www.hmcourts-service.gov.uk/courtfinder/forms/ex50_e.pdf.
[12] Part 8 of the Civil Procedure Rules.

respondent must be personally served with the application notice and a copy of the witness statement.[13] For other supporting documents, wherever possible, it is advisable that service is made on the respondent in person. If personal service is not possible, the application should be served by post as soon as possible to the last known address.

The bundle should be prepared and served on the respondent or the respondent's solicitor, if s/he is represented, as soon as the application notice is served. The applicant's solicitor should attempt to have the contents of the bundle agreed prior to any pre-trial review. Disclosure should be transparent and complete, unless a Public Interest Immunity application has been made and granted.

8.4 Courts to which an application may be made

Applications for injunctions can be made to a county court or the High Court. Applications submitted to a county court should be made to the court with jurisdiction over the area in which the respondent resides or where the gang-related violence occurs.[14] A county court can impose prohibitions or requirements which have effect beyond the district of the county court in which the application is heard.

8.5 Courts at which an application may be heard: security considerations

Applicants should take security concerns into account throughout the entire injunction process.

The greatest risks to court security are likely to be at full injunction or breach hearings, but applicants should also mitigate any potential risks associated with 'without notice' hearings. For all applications, it is the responsibility of applicants to liaise with courts well in advance of hearings to talk court staff through their risk assessment (and update this where necessary) to help the court come to a decision about the appropriate venue and ensure that the necessary facilities are in place. Courts must be notified if any of the respondents are under 18. The applicant should work with the police and court staff to ensure that measures are in place to respond to any security risk(s). These risks might include:

- the listing of members of rival gangs in the same court building on the same day;
- the safety of witnesses and other community members; and
- the safety of court staff.

The police should be prepared to provide a visible presence at the court should this be deemed necessary.

[13] CPR 65.43(5).
[14] CPR 65.43(2)(b).

Unless the court to which an application has been made orders otherwise, a 'with notice' application for an injunction or any other hearing requiring the respondent's attendance must be heard at one of the following county courts:

(a) Birmingham
(b) Bradford
(c) Bristol
(d) Cardiff
(e) Croydon
(f) Leicester
(g) Liverpool
(h) Manchester
(i) Newcastle
(j) Nottingham
(k) Peterborough
(l) Portsmouth
(m) Preston
(n) Sheffield
(o) West London.[15]

These court centres were identified by HM Courts and Tribunals Service (HMCTS) as offering some of the security facilities and special measures necessary to hear cases involving potentially violent individuals. These include:

- courtroom layout – ensuring that the layout provides adequate security measures to create a safe environment;
- witness facilities – to create separate waiting areas for witnesses so that they do not come into contact with respondents;
- secure cells – ensuring that secure accommodation is available to hold respondents pending any hearing/breach etc;
- special measures – to assist vulnerable/intimidated witnesses e.g. screens preventing the respondent seeing the witness or video-link; and,
- access to a witness support team.

Applicants should be clear about which of the security measures listed above will be necessary as it is unlikely that a case will require all of the measures.

Applicants will need to liaise closely with court staff at the earliest possible opportunity to establish which of the specified courts have the facilities most appropriate to their particular case and recommend these courts in their application. Applicants may also want to consider whether the local county court is appropriately equipped to deal with this particular case and could therefore order that it retains the matter. This might be relevant where applicants do not consider, on the information available, that the respondent will be violent in a court setting or that any witnesses are fearful – this will very much depend on the information applicants have about the particular respondent and any decision rests with the court.

[15] CPR PD 65 para 1.2.

The court to which the application is made has the power to order that a hearing occur at another court not listed above, but will be responsible for ensuring that the alternative venue has adequate security measures in place. The applicant must be prepared to assist the court with what security measures any other proposed court has available to it.

The judge has the power to transfer an injunction hearing to a different location if he/she believes that adequate security arrangements are not in place. This could include moving it to a different court room (e.g. an available Magistrates' or Youth Court Room), transferring one particular hearing to another county court or transferring the entire case to another county court.[16] In the case of 14 to 17 year olds, this might be of particular relevance. Depending on the location of any particular court, a local county court might wish to consider whether there is a nearby combined court centre which would be better equipped to deal with the injunction.

8.6 Witness care

Witnesses who are willing to give evidence in court provide the best form of evidence and, where possible, should be encouraged to come forward. However, witnesses often feel anxious about giving evidence in cases such as these. Their concerns may include the prospect of appearing in court, coming face to face with gang members or being threatened by them.

Applicants should take steps to ensure the protection of witnesses, including protecting their identity where appropriate. This means ensuring that any evidence provided does not inadvertently reveal the identity of the witnesses. Applicants should be aware that the court has the power to order that the identity of any party or witness must not be disclosed if it considers non-disclosure necessary in order to protect the interests of that party or witness.[17] Applicants should also be aware of recent case law which emphasises that any order of anonymity should not just be continued automatically, but that the need for the order in the particular circumstances should be reviewed at the earliest suitable opportunity.[18] In addition, any grant of anonymity in civil proceedings should not be taken to imply that a similar grant of anonymity would be granted in any potential criminal proceedings.

Several options are available to applicants if they are concerned about the security of witnesses. These include applying to the court for special measures, transferring hearings to a more secure court and requesting that the court protect witnesses' identities. More details on these options is provided below. Applicants should consider each of these options and justify to the court which if any should be granted. Applicants would need to convince the court that the measure(s) are necessary and proportionate to their security concerns.

[16] CPR 30.3(2)(f)(iii).
[17] CPR 39.2.
[18] Secretary of State for the Home Department v AP. (No. 2) [2010] UKSC 26; Grey v UVW [2010] EWHC 2367.

The court may give permission for a witness to give evidence with the assistance of special measures, as the applicant suggests or the court sees as appropriate.[19] Special measures may include:

- screens to shield the witnesses whilst entering the courtroom and standing in the witness box;
- a live link to enable the witness to give evidence during the hearing from outside the court through a televised link to the courtroom;
- evidence given in private by excluding from the court members of the public and the press; and
- voice distortion measures.

If applicants consider that the witness is central to the evidence for the application, but that any special measures considered necessary are not available at that particular court, the onus is on applicants to investigate where such measures may be available. If measures are available at another court, applicants can invite the court to transfer the hearing to that court.[20]

If applicants consider that the available special measures will not be sufficient, they should consider asking the court to order that witness identities should not be disclosed.

Applicants would need to justify to the court why this is necessary, justified and proportionate. Applicants should also consider at the earliest possible stage whether a witness may need or benefit from an interpreter at court if English is not their first language.

Other means of supporting key witnesses include: engagement in face-to-face meetings (this could apply also to those witnesses who do not wish to give a statement or attend court); ensuring they are made aware of what to expect, including practical information about the court layout and how proceedings will run, seeing where they and the respondent will be seated, and practical demonstrations of the appropriate special measures; and transport to and from the court or being met by a police or council officer when they arrive.

It should be remembered that applicants are responsible for presenting their case to the court and this includes being responsible for the witnesses they rely on.

8.7 Disclosure

Before evidence is disclosed, the applicant should consult the police and other partners to ensure that all reasonable steps have been taken to support witnesses and minimise any potential for witness intimidation. Evidence should not be disclosed without the express permission of the witness. However, evidence that is not disclosed cannot be relied upon. Where appropriate, the applicant should seek to maintain witness anonymity and ensure that witnesses are not identified by default

[19] CPR 32.3. For guidance on special measures, see Crown Prosecution Service website, http://www.cps.gov.uk/legal/s_to_u/special_measures/.
[20] CPR 30.3. 30.

(for example, through details of location, ethnicity, age or other personal characteristics).

Applicants should be aware that current provisions in the Civil Procedure Rules allow for public access to court documents in a number of cases.

8.7.1 Public Interest Immunity applications

All evidence which is to be relied upon during an application must be disclosed to the other side. The only exception to this is in cases where a Public Interest Immunity ('PII') application has been made and granted. A PII application must be made in accordance with Rule 31.19 of the Civil Procedure Rules, which enables an application to be made, 'without notice', for an order permitting the applicant to withhold disclosure of a document on the ground that disclosure would damage the public interest. PII applications must present a considered case as to why disclosure of the particular document would damage the public interest. Where possible, injunction applicants should consider whether a PII application is appropriate well in advance of court hearings.

8.8 Legal aid for respondents

Legally aided representation for respondents is available as part of the civil legal aid scheme, subject to means and merits tests. A solicitor, or a member of a law centre or Citizens Advice Bureau, will be able to advise respondents whether they are eligible for legal aid funding. Applicants can also check their financial eligibility for legal aid by using the online eligibility calculator, which is available at www.communitylegaladvice.org.uk. If a solicitor is willing to act for the respondent, they will be able to apply for funding on their behalf. The civil legal aid scheme is administered by the Legal Services Commission.

Information about which solicitors undertake legally aided work can be found in the Community Legal Service Directory, which is available in most reference libraries and Citizens Advice Bureaux, or by calling 0845 345 4 345, or visiting www.communitylegaladvice.org.uk. Respondents may also find it helpful to consult local information directories or the Yellow Pages. Another source of information about solicitors is the Solicitors' Regional Directory. The Law Society also provides a database of solicitors, which can be accessed by visiting www.lawsociety.org.uk/choosingandusing/findasolicitor.law or by calling 0207 242 1222.

9 Serving the injunction

9.1 Serving the injunction on the respondent

Once an injunction has been granted, it must be served personally on the respondent.[21]

If applicants obtain the injunction at a hearing where the respondent is present, they should consider asking the court to order that the respondent remain on the court premises until he or she is served with the injunction. This should reduce the time spent trying to locate the respondent later on and means that it is less likely that service will become a live issue at a later hearing.

It is essential that the respondent understands the nature and precise details of the terms of the injunction and that the terms are explained in ordinary language. In particular, it is good practice at the initial meeting to provide the respondent with a series of pre planned appointments, detailing times and locations. The respondent should be notified in writing of any amendments to appointment, location or times. It is also good practice to provide a map which clearly shows any exclusion zones. It may be appropriate for the police (either as the applicant or on behalf of a local authority applicant) to drive the respondent around the restricted area, physically pointing out the areas named in their injunction. If the applicant is the local authority, this step should be taken in collaboration with the police, ensuring that adequate security measures are in place.

When serving an injunction on a respondent aged 14 to 17, the applicant must comply with any directions given to them under PD65.1A relating to service in the presence of a responsible adult.

Where a respondent has not been personally served with the injunction at the court, applicants will be responsible for arranging personal service as soon as possible thereafter.

In ‘without notice’ hearings, proof of service of an injunction is important since any proceedings for breach may fail if service is challenged by the respondent and cannot be proved by the applicant.

Consultation partners should be informed when an injunction has been served on the respondent.

9.2 Inputting information into the Police National Computer (PNC)

The recording of injunctions on the PNC will assist police forces in enforcing breaches effectively. After an injunction has been issued by a court, the relevant police force (either as the injunction applicant or on behalf of a local authority applicant) should input the injunction on the Wanted/Missing page of the PNC as a 'Gang Related Violence Injunction'. If the applicant is a local authority, they should ensure that the relevant police force is notified with this information as soon as possible after the injunction is issued. It is vital that information is correctly entered and kept up-to-date, particularly when a power of arrest is attached to some but not all of the conditions of the injunction.

[21] Unless the court orders otherwise.

Applicants should be aware that a respondent's record of being subject to a gang injunction may be disclosed under certain circumstances. An enhanced criminal record certificate issued by the CRB could disclose this information if the local police force considered it relevant to a job to which the respondent is applying and appropriate for the employer to know. This is also the case for respondents aged 14 to 17.

10 Variation, discharge and review of injunctions

The 2009 Act contains provisions for the variation, discharge and review of injunctions. [22] The court has the power to vary or discharge an injunction at a review hearing, or upon application by either the respondent or the applicant. The applicant should keep the injunction under active review, and update the case file accordingly, so as to allow applications for variation or discharge to be made effectively. The injunction applicant should notify the people and organisations they consulted as part of the application process. If the court orders a variation or discharge of an injunction, the applicant should immediately inform their police and local authority partners and deliver a copy of this order to them. If an application to vary or discharge an injunction is dismissed, no further application to vary or discharge it may be made by any person without the consent of the court.

10.1 Variation of an injunction

Applicants may consider applying to vary an injunction in response to changes in the respondent's behaviour and activities, including changes in their associations and the places in which they are suspected of engaging in gang-related activity. The powers of the court to vary an injunction include:[23]

- to include an additional prohibition or requirement in the injunction;
- to extend the period for which a prohibition or requirement has effect; and
- to attach a power of arrest or extend the period for which a power of arrest attached to the injunction has effect.

When applying to vary an injunction by placing an additional prohibition or requirement on the respondent, applicants must show that the variation is necessary, either to prevent the respondent from engaging in, or being a victim of, gang-related violence. This must be shown on the balance of probabilities. Applicants may apply for a variation of the injunction without giving notice to the respondent, but must state in the application why it was necessary not to give notice.[24]

10.2 Discharge of an injunction

An application may also be made by the applicant or respondent to discharge an injunction. Applicants should consider applying to discharge an injunction when they believe the aims of the injunction have been met. This will be when the injunction is deemed no longer necessary to prevent the respondent from engaging in, encouraging or assisting gang-related violence, or to protect the respondent from such violence. The court will need to see evidence that this is the case. Progress the respondent has made in improving their behaviour, refraining from criminal activity and exiting the gang lifestyle should be gathered. Applicants can apply to discharge the injunction without giving notice to the respondent but should state in the application why notice has not been given.[25]

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[22] As amended by section 37 of the Crime and Security Act 2010.
[23] Section 42(3) of the Policing and Crime Act 2009.
[24] CPR 65.45.
[25] CPR 65.45.

10.3 Review of an injunction

Applicants should be aware of the review provisions contained in the 2009 Act. A review hearing is held for the purpose of considering whether an injunction should be varied or discharged. Review hearings may be scheduled for the following reasons:

- courts have the power to schedule a review hearing(s) of their own motion, in which case the applicant and respondent are ordered to attend one or more hearings on specified dates.[26]
- if any prohibition or requirement of an injunction has effect for longer than one year, the court must order a review hearing and schedule it to be held within the last four weeks of the one year period.[27]

Applicants should be prepared to present their position as to whether an injunction should be varied or discharged, drawing upon the information they have compiled in the case file. If the applicant opposes the discharge of an injunction, they will need to convince the court that the injunction remains necessary to prevent gang-related violence; if the applicant opposes variation, they will need to convince the court that the injunction remains necessary in its present form.

10.4 Mandatory review of injunctions for respondents aged 14 to 17

Applicants should be aware that, where a respondent is aged 14 to 17, there is a mandatory review process if any condition of the injunction lasts past the respondent's 18th birthday, set out in section 36 of the 2009 Act. The purpose of this provision is to ensure that any conditions attached to the injunction remain relevant and enforceable once the respondent has reached the age of 18. It may be necessary at this stage to vary the conditions attached to the injunction in order to reflect the range of disposals available in respect of an adult respondent. The applicant should ensure that the YOT is consulted as part of this review.

The review must take place within the four weeks leading up to the respondent's 18th birthday. 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 18th birthday.

[26] Section 36(3) of the 2009 Act.
[27] Section 36(4) of the 2009 Act.

11 Breach and enforcement of an injunction

Breach of an injunction of this type is dealt with by a civil contempt of court and is not a criminal offence. However, if the respondent's behaviour does constitute a criminal offence, it should be dealt with as such and applicants should work with the CPS and police (if a local authority) to pursue criminal proceedings.

For an injunction to be effectively enforced, the police, local authorities and other appropriate partners, particularly YOTs in the case of 14 to 17 year olds, need to be aware of an injunction's provisions and share information relevant to the case. This ensures that where breach of an injunction does occur, applicants are in a position to identify this breach and deal with it appropriately.

11.1 Consultation between partners to monitor compliance

Applicants will need to continue consultation with appropriate partners after an injunction has been granted to ensure it is managed and enforced effectively.

It is advisable for applicants to circulate details of granted injunctions to these partners at the earliest opportunity. This will need to be done by secure means. The information should include, but is not limited to: the details of the injunction, including its prohibitions, requirements and powers of arrest; personal information about the respondent (so as to make them identifiable), and any other details relevant to the application.

Partners should also be given proof that the injunction has been served on the respondent. Formal and informal means should also be established for sharing information relating to any variation, appeal, review and discharge of injunctions. This means ensuring that all involved partners are kept informed of any changes to an injunction. Responsibility for ensuring the accurate, secure and timely sharing of information lies with the applicant. See Section 5 of this guidance for further details on consultation.

11.2 Compiling evidence of breach

Once an injunction has been obtained, and where it becomes apparent that it is not being complied with, applicants should begin compiling evidence of breach in preparation for any breach hearing. Information to be presented and made available to the court during a hearing could include:

- written statements regarding the breach of the injunction;
- any other evidence regarding the breach of the injunction;
- a clear summary of any previous breaches of the injunction, what they were and how they were dealt with;
- any relevant authorities for sentence; and
- a revised draft injunction should the applicant be seeking to vary the provisions.

11.3 Bringing about breach hearings

Application for a breach hearing is not mandatory upon breach of an injunction. The decision to pursue a breach hearing ordinarily rests with the original applicant. However, if the power of arrest is attached to an injunction condition, breach proceedings may ensue if the police arrest a respondent for breach of that condition as the court has power to hear contempt matters of its own motion. The case file should record the reasoned decision-making of the applicant from becoming aware of the breach until the final decision as to whether to bring proceedings for breach.

In deciding whether to pursue breach proceedings, the applicant may want to consider:

- the seriousness of the breach;
- whether there have been any previous breaches;
- the progress the respondent is making towards the positive requirements contained in the injunction; and
- the impact of a breach hearing and sentence on the aim of the injunction to prevent gang-related violence.

11.4 Power of arrest

The court can attach the power of arrest to any prohibition or requirement of an injunction, except for a requirement that the respondent participates in particular activities. If an applicant believes that the respondent has breached a requirement to participate in a particular activity they may apply to the court for a warrant of arrest.

Where power of arrest has been attached, a police officer may arrest without warrant a respondent who is reasonably suspected to be in breach of that prohibition or requirement. Upon the arrest of a respondent, the applicant (if different from the arresting officer) must be informed and the respondent brought before the relevant judge within 24 hours. [28] If the matter is not resolved, a respondent aged 18 or over can be remanded in custody or on bail; a respondent aged 14 to 17 can only be remanded on bail.

11.5 Warrant of arrest

If applicants believe that the respondent has breached a term of the injunction to which a power of arrest has not been attached they may apply to the court, using an N244 form and paying the appropriate fee for a warrant of arrest.[29] Applicants should also file an affidavit explaining why a warrant of arrest is necessary and/or give oral evidence in support of the application at the hearing.[30] Where oral evidence is given, the applicant must provide a written record of this evidence to the respondent upon their arrest.[31]

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[28] Section 43(7) of the 2009 Act defines “relevant judge” as a High Court where the injunction was granted by the High Court and a judge or district judge of the county court where the injunction was granted by the county court.
[29] Section 44 of the 2009 Act.
[30] CPR Rule 65.46(2).
[31] CPR Rule 65.46(3).

11.6 Application for committal proceedings, forms and fees

Application notice N244 must be filed to apply for an order of committal for breach of an injunction. Please refer to the Civil Proceedings Fees Order for the fee payable.[32] An up-to-date indication of the amount of the court fee payable can be found in the HMCTS leaflet – *EX50 Civil and Family court fees.*[33]

The requirements relating to personal service of the court order alleged to be breached are in County Court Rules Order 29 and the accompanying Practice Direction (which covers both CCR Order 29 and Rules of the Supreme Court Order 52), as are details of the rules applying to applications for committal in county court proceedings.[34]

An application for committal in the High Court must be made in accordance with Rules of the Supreme Court Order 52 and the accompanying Practice Direction 33.[35] This involves making an application for permission to make an application for an order of committal (when the application is made to a Divisional Court only); filing an affidavit alongside the application notice, setting out the name and description of the applicant; the name, description and address of the respondent; and the grounds on which the application for committal is sought.

Case law confirms that the respondent is entitled to legal representation at such a hearing (should the respondent want to be legally represented) and the court may view any application to adjourn the hearing to obtain legal representation sympathetically. Evidence of breach should be disclosed in full to the respondent and their representative as soon as possible before the hearing, and there must be at least 14 clear days between the service of committal papers and the hearing.

Applicants should be aware that the court may, at any hearing, dismiss the application, adjourn the matter to another date and/or issue case management directions in relation to the hearing.

11.7 Standard of proof

For a breach hearing, the standard of proof is beyond reasonable doubt.[36] The applicant must therefore prove to the criminal standard of proof that the respondent has breached a term of their injunction. If the respondent denies they have breached a term of the injunction, the matter may be adjourned for witnesses to be called to give evidence. The applicant should be prepared to present clear and compelling evidence of the breach.

11.8 Remand

The court has the power to remand a respondent who is 18 or over in custody or on bail if, after that respondent has been arrested for suspected breach of an injunction (with or without warrant), the matter has not been resolved when the respondent is brought before the judge.[37] No such power is available in respect of a respondent

[32] Schedule 1 Fee 2.6 and 2.7 Civil Proceedings Fees Order 2008.
[33] Available at http://www.hmcourts-service.gov.uk/courtfinder/forms/ex50_e.pdf.
[34] Please see Annex C.
[35] Please see Annex C.
[36] Paragraph 1.4 of Practice Direction to RSC Order 52.
[37] Sections 43(5) and 44(4) of, and Schedule 5 to, the 2009 Act.

who is aged 14 to 17; the remand must be on bail. The maximum time for remand in custody is eight days, unless the applicant and respondent both consent to a longer period. The applicant should be prepared to assist the court in coming to its decision and may be invited to make submissions as to whether a remand should be in custody or on bail.

The court may also remand a respondent in custody or on bail if the court considers that a medical examination and report is required. If the respondent is remanded in custody for this purpose, the adjournment may not exceed three weeks at a time; if the person is remanded on bail, the adjournment may not exceed four weeks. The court has the power to make an order under section 35 of the Mental Health Act 1983 if it suspects the respondent is suffering from a mental disorder. Applicants should be prepared to assist the court if it has any concerns about the medical wellbeing of the respondent.

11.9 Breach sanction for respondents aged 18 and over

Breach of an injunction by a respondent aged 18 and over is dealt with by a civil contempt of court, which is punishable by up to two years in prison and/or an unlimited fine.[38] Since the sentence is civil and not criminal, the respondent will not receive a criminal record for breach even if committed to prison. This is advantageous for two reasons: relatives and close friends of the respondent are more likely to give evidence against the respondent if they know the penalty for breach will not lead to a criminal record, and it allows for a more rehabilitative approach by avoiding the negative future impacts associated with a criminal record. However, see section 9.2 about potential future disclosure.

11.10 Breach sanction for respondents aged 14 to 17

Breach of an injunction by a respondent aged 14 to 17 can be dealt with in different ways. The court retains its inherent contempt of court sentencing powers (i.e. no further action to be taken or a fine given) but in addition the court is given two specific powers in Schedule 5A to the 2009 Act: the power to make a supervision order and the power to make a detention order.

It may be that courts will wish to consider a graduated approach which, depending on the level of risk attached to the case, sees a greater initial emphasis on positive requirements. More stringent requirements, including electronic tagging and, eventually, detention, may become appropriate where the respondent fails to comply with the initial conditions or where the seriousness of the behaviour warrants a more stringent response.

Before an applicant can make an application to the court relating to the breach of an injunction, that applicant must have evidence of the breach of the injunction and must consult with the YOT consulted when the initial application was made (as well as any other person who was previously consulted at that initial stage).

When making any application for breach sanction, applicants should remain aware that the considerations discussed above in relation to litigation friends (paragraph 8.1.1) will be relevant. Given the potential severity of the disposals available to the

[38] Section 14(4A) of the Contempt of Court Act 1981 (as amended by the County Courts (Penalties for Contempt) Act 1983).

court, it is fundamental that the best interests of the respondent be given full consideration.

Before making any order under Schedule 5A the court must obtain and consider a report prepared by the YOT.

11.10.1 Supervision Orders

A supervision order may last for up to six months and contain one or more of three elements:

- supervision requirement;
- activity requirement;
- curfew requirement.

Before the court may make a supervision order, it must consider a report made by the YOT for this purpose and obtain and consider information about the respondent's family circumstances and the likely effect of such an order on those circumstances.

Where a court imposes two or more requirements as part of a supervision order, it will be required to ensure that they are compatible. In any case, the court must consider whether any of the requirements interfere with the respondent's religious beliefs, normal hours of work or education.

A supervision requirement will require the defaulter to attend appointments with a responsible officer of the YOT at a particular time and place, as specified.

An activity requirement may be made requiring the defaulter to participate in a particular activity or residential activity for a specified number of days within the period of up to six months for which the order is made. The total number of days on which an activity requirement is ordered must not be fewer than 12 or more than 24. A residential activity requirement may last for a period of not more than seven days.[39] The court will need to be satisfied that facilities for the activity are present in the relevant YOT's local area.

A curfew requirement places an obligation on the defaulter to remain in a particular place for particular specified periods. Any curfew requirement must be for a daily period of not less than two hours and not more than eight hours on any given day. However, the order may specify different requirements of time or place for different days. Before specifying the place in which the curfew must be observed, the court must obtain and consider a report on the place proposed to be specified including information on the view of those persons likely to be affected by the enforced presence of the respondent.

A supervision order which contains a curfew requirement may also contain an electronic monitoring requirement to enforce compliance with the terms of the curfew. Where such a requirement is included, the court must specify who is responsible for the monitoring the requirement. Where a supervision order contains only a curfew requirement with an electronic monitoring requirement, this will be the company which operates the electronic monitoring regime, which may be either

[39] Section 46A of, and Schedule 5A to, the 2009 Act (as amended by the 2010 Act).

Serco Group plc or G4S Care and Justice Services (UK) Ltd.[40] Where a supervision order contains a curfew requirement in combination with any other requirement, this will be the responsible officer of the relevant YOT.

In any case, the responsible officer must notify the terms of the curfew requirement to the respondent, the person responsible for the monitoring (if this is not himself) and any other person without whose co-operation it would not be possible to ensure that the monitoring takes place. This might include, for example, the parent or guardian of the respondent. Where such a person has been identified, an electronic monitoring requirement may not be included in the supervision order without that person's consent.

When a court makes or amends a supervision order, it must provide copies to the respondent and to the specified YOT. In the case that the supervision order contains an activity requirement relating to a particular place or activity or a residential activity, the court must also provide copies to the person responsible for that particular place, activity or residential facility. Similarly, in the case of an order which contains an electronic monitoring requirement, the person must provide a copy of the order to the person responsible for the monitoring and to any person (as set out above) without whose consent it would not be possible to ensure that the monitoring took place.

Where a respondent has not complied with a supervision order, the responsible officer must inform the injunction applicant. The responsible officer may then refer this back to the court for prosecution of the breach. Where the court is satisfied beyond reasonable doubt that the respondent has failed to comply with the conditions of the order, it may revoke that order and either make a new supervision order (possibly with more stringent conditions) or make a detention order.

It is the responsibility of the responsible officer to ensure that any necessary arrangements are made to enable the respondent's compliance with the order and to promote the defaulter's compliance. The respondent is responsible for keeping in touch with the responsible officer and for notifying any change of address.

Either the applicant or the respondent may make an application to the court to amend the time period of the injunction, or the geographical area to which it relates. Similarly, either party may make an application to the court for the order to be wholly or partially revoked. The court may grant such an application when, for example, the conduct of the respondent has been such as to suggest that this would be appropriate. However, once any application has been made and dismissed, no further application for revocation may be made by either party without the prior consent of the court.

11.10.2 Detention Orders

In particularly serious cases or where, for example, other breach sanctions have been exhausted, the court may make a detention order against the respondent. Before making an application for a detention order, the injunction applicant must consult with the relevant YOT and the court must consider a report prepared by the

[40] As set out in the Youth Rehabilitation Order (Electronic Monitoring Requirement) Order 2009 made under paragraph 26(5) of Schedule 1 to the Criminal Justice and Immigration Act 2008, referred to in paragraph 6(5) of Schedule 5A of the 2009 Act (as amended).

YOT for that purpose. A detention order may last for not more than three months (beginning on the day when the order is made. Under a detention order, the respondent may be detained in:

- a secure training centre;
- a young offender institution; or
- secure accommodation.[41]

The decision about where a young person is placed should be made by the YJB central placements team.

Either the respondent or the respondent may make an application to the court for the detention order to be revoked. The court may grant such an application when, for example, the conduct of the defaulter has been such as to suggest that this would be appropriate. However, once any application has been made and dismissed, no further application for revocation may be made by either party without the prior consent of the court.

12 Appealing an injunction

Appeals may be lodged by both the applicant and respondent following the granting, refusal, variation or discharge of an injunction. Appeals of decisions made by a county court or the High Court are governed by Part 52 of the Civil Procedure Rules. Applicants and respondents should ensure they have read and understood the provisions of Part 52 and Practice Direction 52 before seeking to file an appeal.

Appeals against orders made by district judges in the county court should normally be made to a circuit judge; appeals against orders made by circuit judges should normally be made to a High Court Judge.

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. Applicants must also file a skeleton argument detailing the grounds for their appeal within 14 days after filing the appeal notice (except in an appeal against a decision to refuse to grant an injunction under section 41 of the 2009 Act).

12.1 Appealing an injunction made 'with notice'

In relation to 'with notice' injunctions, applicants must give notice of their appeal to the respondent as soon as possible and, in any event, no later than 7 days after the appeal is filed.

12.2 Appealing an injunction made 'without notice'

In relation to 'without notice' injunctions, the applicant is not required to give notice to the respondent when appealing a court decision to refuse to grant an interim injunction (when the court has already adjourned proceedings).[42]

However, the applicant is required to give notice to the respondent when appealing a court decision to dismiss an injunction application 'without notice' (when the court has already decided against adjourning proceedings).

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[41] As defined by section 23(12) of the Children and Young Persons Act 1969.
[42] CPR 52.4(4).

13 Promoting awareness of gang injunctions

13.1 Communicating the use or intended use of gang injunctions

Applicants may wish to communicate that they are using, or are intending to use, gang injunctions in the local area. Communicating this information may increase community confidence in the local response to gang problems, reassure the community that gang-related violence can be reported safely, and act as a deterrent against joining gangs or perpetrating violence as part of a gang. General information about gang injunctions may be communicated through consultation partners, the local press and media, or any other appropriate medium.

13.2 Publicising details of particular gang injunctions

Publicising the details of a respondent could put them at risk of harm from rival gangs and may breach their human rights. 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. However, applicants may decide that the benefits of publicising a particular injunction are significant and that publicity is appropriate. The following considerations are important to this decision:

- Safety – would public disclosure of the respondent's name and other personal details generate risks to their personal safety (or that of family, partner(s) or associates) by, for example, identifying them with a particular gang and so risking reprisal attacks from rival gangs?
- Human rights – would public disclosure of a respondent's details breach their human rights, including any data protection issues? The aims of the injunction and rights of the community should always be balanced against the rights of the respondent.
- Enforcement – would public disclosure of a respondent's details reduce the likelihood of breach and improve enforcement?
- Deterrence – would publicity about particular injunctions act as a significant deterrent to other potential perpetrators? Would the respondent be less likely to breach the injunction and encouraged to leave the gang as a result of the community's awareness about the injunction?
- Public reassurance – where sections of a community have been particularly affected by the behaviour of the respondent, they may be reassured that the police and local authorities are taking action against this violence.
- Age – where the respondent is aged 14 to 17, applicants should take into account whether there are any considerations relating to their age which make publicising the injunction inappropriate. Applicants should also check whether an order is in place under section 39 of the Children and Young Persons Act 1933, restricting publication by the media of details that identify or lead to the identification of a person under 18 concerned in proceedings.

14 Monitoring and review

14.1 The importance of case file management

The case file is used to record all available and relevant information pertaining to a particular injunction. This should include:

- the injunction, including all the prohibitions, requirements, duration and powers of arrest;
- personal information about the respondent, including their name, age, address, a recent photograph and summary of past conduct;
- a list of all involved partners, including individuals and their contact details;
- any publicity strategy developed by the applicant;
- breach information, including all reported evidence of breach and the reasoned decision(s) of the applicant as to whether to pursue breach hearing(s);
- information on the variation, discharge, appeal and review of the injunction; and
- any other information deemed relevant to the injunction.

Effective case file management is essential if accurate and current information about the respondent and associated injunction is to be maintained. Accurate information will support effective and efficient enforcement, information sharing and court proceedings. It will ensure against wrongful arrests and misinformation through publicity activities. The local authority, police and other partners should circulate new information for the applicant to add to the case file. It is the responsibility of the applicant to manage and update the case file.

14.2 Need for consistent and effective data collection for the purpose of a Parliamentary review

Section 50 of the Policing and Crime Act 2009 requires the Secretary of State to review the implementation of gang injunctions and table before Parliament a report on the outcome of this review within three years of their commencement. The requirement to submit this review was built into the 2009 Act for two reasons: firstly, to ensure that gang injunctions are being used as they were intended and secondly, to gauge their effectiveness in tackling gang-related violence.

To ensure the Secretary of State is able to lay such a report before Parliament, police forces and local authorities are encouraged to monitor their use of gang injunctions and to share this information with the Home Office. Monitoring information provided by applicants will be used to inform this review.

Applicants are encouraged to submit monitoring information according to the instructions on the Home Office website: http://www.homeoffice.gov.uk/gang-related-violence

14.3 Equality Impact Assessment

There is a legal obligation to undertake an equalities impact assessment (EIA) in relation to race, disability and gender when public bodies are developing new or existing policies. In accordance with best practice, it is suggested that the following areas should be considered:

- race;
- disability;
- gender;
- gender identity;
- religion and belief;
- sexual orientation; and
- age.

In accordance with legal requirements, an EIA was published alongside the 2009 Act.

This statutory guidance has undergone checks from an equalities perspective to ensure the 2009 Act has not been interpreted in such a way as to discriminate against any group.

Annex A

Part 4 and Schedules 5 and 5A to the Policing and Crime Act 2009 (as amended by the Crime and Security Act 2010):

PART 4

INJUNCTIONS: GANG-RELATED VIOLENCE

Power to grant injunctions

34 Injunctions to prevent gang-related violence

(1) A court may grant an injunction against a respondent aged 14 or over under this section if 2 conditions are met.

(2) The first condition is that the court is satisfied on the balance of probabilities that the respondent has engaged in, or has encouraged or assisted, gang-related violence.

(3) The second condition is that 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;

(b) to protect the respondent from gang-related violence.

(4) An injunction under this section may (for either or both of those purposes)—

(a) prohibit the respondent from doing anything described in the injunction;

(b) require the respondent to do anything described in the injunction.

(5) In this section "gang-related violence" means 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) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group, and

(c) is associated with a particular area.

Contents of injunctions

35 Contents of injunctions

(1) This section applies in relation to an injunction under section 34.

(2) The prohibitions included in the injunction may, in particular, have the effect of prohibiting the respondent from—

(a) being in a particular place;

(b) being with particular persons in a particular place;

(c) being in charge of a particular species of animal in a particular place;

(d) wearing particular descriptions of articles of clothing in a particular place;

(e) using the internet to facilitate or encourage violence.

(3) The requirements included in the injunction may, in particular, have the effect of requiring the respondent to—

(a) notify the person who applied for the injunction of the respondent's address and of any change to that address;

(b) be at a particular place between particular times on particular days;

(c) present himself or herself to a particular person at a place where he or she is required to be between particular times on particular days;

(d) participate in particular activities between particular times on particular days.

(4) A requirement of the kind mentioned in subsection (3)(b) may not be such as to require the respondent to be at a particular place for more than 8 hours in any day.

(5) The prohibitions and requirements included in the injunction must, so far as practicable, be such as to avoid—

(a) any conflict with the respondent's religious beliefs, and

(b) any interference with the times, if any, at which the respondent normally works or attends any educational establishment.

(6) Nothing in subsection (2) or (3) affects the generality of section 34(4).

(7) In subsection (2) “place” includes an area.

36 Contents of injunctions: supplemental

(1) This section applies in relation to an injunction under section 34.

(2) The injunction may not include a prohibition or requirement that has effect after the end of the period of 2 years beginning with the day on which the injunction is granted (“the injunction date”).

(3) The court may order the applicant and the respondent to attend one or more review hearings on a specified date or dates.

(4) If any prohibition or requirement in the injunction is to have effect after the end of the period of 1 year beginning with the injunction date, the court must order the applicant and the respondent to attend a review hearing on a specified date within the last 4 weeks of the 1 year period (whether or not the court orders them to attend any other review hearings).

(4A) Where—

(a) the respondent is under the age of 18 on the injunction date, and

(b) any prohibition or requirement in the injunction is to have effect after the respondent reaches that age and for at least the period of four weeks beginning with the respondent's 18th birthday,

the court must order the applicant and the respondent to attend a review hearing on a specified date within that period.

(5) A review hearing is a hearing held for the purpose of considering whether the injunction should be varied or discharged.

(6) The court may attach a power of arrest in relation to—

(a) any prohibition in the injunction, or

(b) any requirement in the injunction, other than one which has the effect of requiring the respondent to participate in particular activities.

(7) If the court attaches a power of arrest, it may specify that the power is to have effect for a shorter period than the prohibition or requirement to which it relates.

Applications

37 Applications for injunctions under section 34

(1) An application for an injunction under section 34 may be made by—

(a) the chief officer of police for a police area,

(b) the chief constable of the British Transport Police Force, or

(c) a local authority.

(2) In this Part "local authority" means—

(a) in relation to England, a district council, a county council, a London borough council, the Common Council of the City of London or the Council of the Isles of Scilly;

(b) in relation to Wales, a county council or a county borough council.

38 Consultation by applicants for injunctions

(1) Before applying for an injunction under section 37, the applicant must comply with the consultation requirement.

(2) The consultation requirement is that the applicant must consult—

(a) any local authority, and any chief police officer, that the applicant thinks it appropriate to consult, and

(aa) where the respondent is under the age of 18 (and will be under that age when the application is made), the youth offending team established under section 39 of the Crime and Disorder Act 1998 in whose area it appears to the applicant that the respondent resides, and

(b) any other body or individual that the applicant thinks it appropriate to consult.

(3) If it appears to the applicant that the respondent resides in the area of two or more youth offending teams, the obligation in subsection (2)(aa) is to consult such of those teams as the applicant thinks appropriate.

39 Applications without notice

(1) An application under section 37 may be made without the respondent being given notice.

(2) In this Part, such an application is referred to as an application without notice.

(3) Section 38(1) does not apply in relation to an application without notice.

(4) If an application without notice is made the court must either—

(a) dismiss the application, or

(b) adjourn the proceedings.

(5) If the court acts under subsection (4)(b), the applicant must comply with the consultation requirement before the date of the first full hearing.

(6) In this section "full hearing" means a hearing of which notice has been given to the applicant and respondent in accordance with rules of court.

Interim injunctions

40 Interim injunctions: adjournment of on notice hearing

(1) This section applies if—

(a) the court adjourns the hearing of an application for an injunction under section 34, and

(b) the respondent was notified of the hearing in accordance with rules of court.

(2) The court may grant an interim injunction if it thinks that it is just and convenient to do so.

(3) An interim injunction under this section may include any provision which the court has power to include in an injunction granted under section 34 (including a power of arrest).

41 Interim injunctions: adjournment of without notice hearing

(1) This section applies if—

(a) an application without notice is made by virtue of section 39, and

(b) the proceedings are adjourned (otherwise than at a full hearing within the meaning of that section).

(2) The court may grant an interim injunction if it thinks that it is necessary to do so.

(3) An interim injunction under this section may not have the effect of requiring the respondent to participate in particular activities.

(4) Except as provided by subsection (3), an interim injunction under this section may include any provision which the court has power to include in an injunction granted under section 34 (including a power of arrest).

Variation and discharge

42 Variation or discharge of injunctions

(1) The court may vary or discharge an injunction under this Part if—

(a) a review hearing is held, or

(b) an application to vary or discharge the injunction is made.

(2) An application to vary or discharge the injunction may be made by—

(a) the person who applied for the injunction;

(b) the respondent.

(3) The power to vary an injunction includes power to—

(a) include an additional prohibition or requirement in the injunction;

(b) extend the period for which a prohibition or requirement in the injunction has effect (subject to section 36(2));

(c) attach a power of arrest or extend the period for which a power of arrest attached to the injunction has effect.

(4) Section 36(4) does not apply where an injunction is varied to include a prohibition or requirement which is to have effect as mentioned in that provision but the variation is made within (or at any time after) the period of 4 weeks mentioned in it.

(4A) Section 36(4A) does not apply where an injunction is varied to include a prohibition or requirement which is to have effect as mentioned in that provision but the variation is made within (or at any time after) the period of four weeks ending with the respondent's 18th birthday.

(5) Before applying for the variation or discharge of an injunction, a person mentioned in subsection (2)(a) must notify the persons consulted under section 38(1) or 39(5).

(6) If an application to vary or discharge an injunction under this Part is dismissed, no further application to vary or discharge it may be made by any person without the consent of the court.

Arrest and remand

43 Arrest without warrant

(1) This section applies if a power of arrest is attached to a provision of an injunction under this Part.

(2) A constable may arrest without warrant a person whom the constable has reasonable cause to suspect to be in breach of the provision.

(3) If a constable arrests a person under subsection (2), the constable must inform the person who applied for the injunction.

(4) A person arrested under subsection (2) must be brought before a relevant judge within the period of 24 hours beginning with the time of the arrest.

(5) If the matter is not disposed of when the person is brought before the judge, the judge may remand the person.

(6) In calculating when the period of 24 hours mentioned in subsection (4) ends, Christmas Day, Good Friday and any Sunday are to be disregarded.

(7) In this Part "relevant judge", in relation to an injunction, means—

(a) where the injunction was granted by the High Court, a judge of that court;

(b) where the injunction was granted by a county court, a judge or district judge of that or any other county court.

44 Issue of warrant of arrest

(1) This section applies in relation to an injunction under this Part.

(2) If the person who applied for the injunction considers that the respondent is in breach of any of its provisions, the person may apply to a relevant judge for the issue of a warrant for the arrest of the respondent.

(3) A relevant judge may not issue a warrant on an application under subsection (2) unless the judge has reasonable grounds for believing that the respondent is in breach of any provision of the injunction.

(4) If a person is brought before a court by virtue of a warrant under subsection (3), but the matter is not disposed of, the court may remand the person.

45 Remand for medical examination and report

(1) This section applies in relation to a person who is brought before the relevant judge or the court under section 43 or 44.

(2) If the relevant judge or the court has reason to consider that a medical report will be required, the judge or the court may remand the person under section 43(5) or (as the case may be) 44(4) for the purpose of enabling a medical examination to take place and a report to be made.

(3) If the person is remanded in custody for that purpose, the adjournment may not be for more than 3 weeks at a time.

(4) If the person is remanded on bail for that purpose, the adjournment may not be for more than 4 weeks at a time.

(5) If the relevant judge or the court has reason to suspect that the person is suffering from a mental disorder within the meaning of the Mental Health Act 1983, the judge or the court has the same power to make an order under section 35 of that Act (remand for report on accused's medical condition) as the Crown Court has under that section in the case of an accused person (within the meaning of that section).

46 Further provision about remands

Schedule 5 (which makes further provision about the remand of a person under sections 43(5) and 44(4)) has effect.

46A Breach of injunction: supplementary powers in respect of under-18s.

Schedule 5A (which makes provision about the powers of the court in relation to breach of an injunction by a respondent aged under 18) has effect.

Miscellaneous

47 Guidance

(1) The Secretary of State must issue guidance relating to injunctions under this Part.

(2) The Secretary of State may revise any guidance issued under subsection (1).

(3) Before issuing or revising any guidance under this section the Secretary of State must consult the Lord Chief Justice of England and Wales and such other persons as the Secretary of State thinks appropriate.

(4) The Secretary of State must lay any guidance issued or revised under this section before Parliament.

(5) The Secretary of State must publish any guidance issued or revised under this section.

(6) Each of the following must have regard to any guidance published under subsection (5)—

(a) a chief officer of police for a police area;

(b) the chief constable of the British Transport Police Force;

(c) a local authority.

48 Supplemental

(1) Rules of court may provide that any power conferred on a county court to grant, vary or discharge an injunction under this Part may be exercised by a judge or district judge of that court.

(2) 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.

(3) Subsection (2) applies to a decision to refuse to grant an interim injunction under section 41.

49 Interpretation

(1) In this Part—

“application without notice” has the meaning given by section 39(2);

“consultation requirement” has the meaning given by section 38(2);

“court” means the High Court or a county court;

“local authority” has the meaning given by section 37(2);

“relevant judge” has the meaning given by section 43(7);

“respondent” means the person in respect of whom an application for an injunction is made or (as the context requires) the person against whom such an injunction is granted;

“review hearing” has the meaning given by section 36(5);

“specify”, in relation to an injunction, means specify in the injunction;

“violence” includes violence against property.

(2) Any reference in this Part to an injunction under this Part includes a reference to an interim injunction.

50 Review of operation of this Part

(1) The Secretary of State must—

(a) review the operation of this Part, and

(b) prepare and publish a report on the outcome of the review.

(2) The report must be published before the end of the period of 3 years beginning with the day on which this Part comes into force.

(3) The Secretary of State must lay the report before Parliament.

SCHEDULE 5

INJUNCTIONS: POWERS TO REMAND

Section 46

Introductory

1

(1) The provisions of this Schedule apply where the court has power to remand a person under section 43(5) or 44(4).

(2) In this Schedule, “the court” means the High Court or a county court and includes—

(a) in relation to the High Court, a judge of that court, and

(b) in relation to a county court, a judge or district judge of that court.

Remand in custody or on bail

2

(1) The court may—

(a) [in the case of a person aged 18 or over] remand the person in custody, that is, commit the person to custody to be brought before the court at the end of the period of remand or at such earlier time as the court may require, or

(b) remand the person on bail.

(2) The court may remand the person on bail—

(a) by taking from the person a recognizance, with or without sureties, conditioned as provided in paragraph 3, or

(b) by fixing the amount of the recognizances with a view to their being taken subsequently and, in the meantime, committing the person to custody as mentioned in sub-paragraph (1)(a).

(3) Where a person is brought before the court after remand, the court may further remand the person.

3

(1) Where a person is remanded on bail, the court may direct that the person's recognizance be conditioned for the person's appearance—

(a) before that court at the end of the period of remand, or

(b) at every time and place to which during the course of the proceedings the hearing may from time to time be adjourned.

(2) Where a recognizance is conditioned for a person's appearance as mentioned in sub-paragraph (1)(b), the fixing of any time for the person next to appear is to be treated as a remand.

(3) Nothing in this paragraph affects the power of the court at any subsequent hearing to remand the person afresh.

4

(1) The court may not remand a person for a period exceeding 8 clear days unless—

(a) the person is remanded on bail, and

(b) both that person and the person who applied for the injunction consent to a longer period.

(2) Where the court has power to remand a person in custody it may, if the remand is for a period not exceeding 3 clear days, commit the person to the custody of a constable.

Further remand

5

(1) If the court is satisfied that a person who has been remanded is unable by reason of illness or accident to appear or be brought before the court at the expiration of the period of remand, the court may, in the absence of the person, further remand the person.

(2) The power mentioned in sub-paragraph (1) may, in the case of a person who was remanded on bail, be exercised by enlarging the person's recognizance and those of any sureties for the person to a later time.

(3) Where a person remanded on bail is bound to appear before the court at any time and the court has no power to remand the person under sub-paragraph (1), the court may (in the person's absence) enlarge the person's recognizance and those of any sureties for the person to a later time.

(4) The enlargement of the person's recognizance is to be treated as a further remand.

(5) Paragraph 4(1) (limit of remand) does not apply to the exercise of the powers conferred by this paragraph.

Postponement of taking recognizance

6

Where under paragraph 2(2)(b) the court fixes the amount in which the principal and the sureties, if any, are to be bound, the recognizance may afterwards be taken by such person as may be prescribed by rules of court, with the same consequences as if it had been entered into before the court.

Requirements imposed on remand on bail

7

The court may when remanding a person on bail under this Schedule require the person to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that the person does not interfere with witnesses or otherwise obstruct the course of justice.

SCHEDULE 5A BREACH OF INJUNCTION: POWERS OF COURT IN RESPECT OF UNDER-18S

Section 46A

Part 1 Introductory

Power to make supervision order or detention order

1

(1) Where—

(a) an injunction under Part 4 is granted against a person under the age of 18, and

(b) on an application made by the injunction applicant, the court is satisfied beyond reasonable doubt that the person is in breach of any provision of the injunction,

the court may make one of the orders specified in sub-paragraph (2) in respect of the person.

(2) Those orders are—

(a) a supervision order (see Part 2 of this Schedule);

(b) a detention order (see Part 3 of this Schedule).

(3) The powers conferred by this paragraph are in addition to any other power of the court in relation to the breach of the injunction.

(4) Before making an application under paragraph 1(1)(b) the injunction applicant must consult—

(a) the youth offending team consulted under section 38(1) or 39(5) in relation to the injunction, and

(b) any other person previously so consulted.

(5) In considering whether and how to exercise its powers under this paragraph, the court must consider a report made to assist the court in that respect by the youth offending team referred to in sub-paragraph (4)(a).

(6) An order under sub-paragraph (1) may not be made in respect of a person aged 18 or over.

(7) The court may not make a detention order under sub-paragraph (1) unless it is satisfied, in view of the severity or extent of the breach, that no other power available to the court is appropriate.

(8) Where the court makes a detention order under sub-paragraph (1) it must state in open court why it is satisfied as specified in sub-paragraph (7).

(9) In this Schedule—

"defaulter", in relation to an order under this Schedule, means the person in respect of whom the order is made;

“injunction applicant”, in relation to an injunction under Part 4 or an order under this Schedule made in respect of such an injunction, means the person who applied for the injunction;

“appropriate court”, in relation to an order under this Schedule, means—

(a) where the order is made by the High Court, the High Court;

(b) where the order is made by a county court, a county court.

Part 2 Supervision Orders

Supervision orders

2

(1) A supervision order is an order imposing on the defaulter one or more of the following requirements—

(a) a supervision requirement;

(b) an activity requirement;

(c) a curfew requirement.

(2) Before making a supervision order the court must obtain and consider information about the defaulter's family circumstances and the likely effect of such an order on those circumstances.

(3) Before making a supervision order imposing two or more requirements, the court must consider their mutual compatibility.

(4) The court must ensure, as far as practicable, that any requirement imposed by a supervision order is such as to avoid—

(a) any conflict with the defaulter's religious beliefs,

(b) any interference with the times, if any, at which the defaulter normally works or attends school or any other educational establishment, and

(c) any conflict with the requirements of any other court order or injunction to which the defaulter may be subject.

(5) A supervision order must for the purposes of this Schedule specify a maximum period for the operation of any requirement contained in the order.

(6) The period specified under sub-paragraph (5) may not exceed six months beginning with the day after that on which the supervision order is made.

(7) A supervision order must for the purposes of this Schedule specify a youth offending team established under section 39 of the Crime and Disorder Act 1998.

(8) The youth offending team specified under sub-paragraph (7) is to be—

(a) the youth offending team in whose area it appears to the court that the respondent will reside during the period specified under sub-paragraph (5), or

(b) where it appears to the court that the respondent will reside in the area of two or more such teams, such one of those teams as the court may determine.

Supervision requirements

3

(1) In this Schedule, "supervision requirement", in relation to a supervision order, means a requirement that the defaulter attend appointments with—

(a) the responsible officer, or

(b) another person determined by the responsible officer,

at such times and places as may be instructed by the responsible officer.

(2) The appointments must be within the period for the time being specified in the order under paragraph 2(5).

Activity requirements

4

(1) In this Schedule, "activity requirement", in relation to a supervision order, means a requirement that the defaulter do any or all of the following within the period for the time being specified in the order under paragraph 2(5)—

(a) participate, on such number of days as may be specified in the order, in activities at a place, or places, so specified;

(b) participate in an activity or activities specified in the order on such number of days as may be so specified;

(c) participate in one or more residential exercises for a continuous period or periods comprising such number or numbers of days as may be specified in the order;

(d) in accordance with sub-paragraphs (6) to (9), engage in activities in accordance with instructions of the responsible officer on such number of days as may be specified in the order.

(2) The number of days specified in a supervision order in relation to an activity requirement must not, in aggregate, be less than 12 or more than 24.

(3) A requirement referred to in sub-paragraph (1)(a) or (b) operates to require the defaulter, in accordance with instructions given by the responsible officer, on the number of days specified in the order in relation to the requirement—

(a) in the case of a requirement referred to in sub-paragraph (1)(a), to present himself or herself at a place specified in the order to a person of a description so specified, or

(b) in the case of a requirement referred to in sub-paragraph (1)(b), to participate in an activity specified in the order,

and, on each such day, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).

(4) Where the order includes a requirement referred to in sub-paragraph (1)(c) to participate in a residential exercise, it must specify, in relation to the residential exercise—

(a) a place, or

(b) an activity.

(5) A requirement under sub-paragraph (1)(c) to participate in a residential exercise operates to require the defaulter, in accordance with instructions given by the responsible officer—

(a) if a place is specified under sub-paragraph (4)(a)—

(i) to present himself or herself at the beginning of the period specified in the order in relation to the exercise, at the place so specified to a person of a description specified in the instructions, and

(ii) to reside there for that period;

(b) if an activity is specified under sub-paragraph (4)(b), to participate, for the period specified in the order in relation to the exercise, in the activity so specified,

and, during that period, to comply with instructions given by, or under the authority of, the person in charge of the place or the activity (as the case may be).

(6) Subject to sub-paragraph (8), instructions under sub-paragraph (1)(d) relating to any day must require the defaulter to do either of the following—

(a) present himself or herself to a person of a description specified in the instructions at a place so specified;

(b) participate in an activity specified in the instructions.

(7) Any such instructions operate to require the defaulter, on that day or while participating in that activity, to comply with instructions given by, or under the authority of, the person in charge of the place or, as the case may be, the activity.

(8) If the supervision order so provides, instructions under sub-paragraph (1)(d) may require the defaulter to participate in a residential exercise for a period comprising not more than seven days, and, for that purpose—

(a) to present himself or herself at the beginning of that period to a person of a description specified in the instructions at a place so specified and to reside there for that period, or

(b) to participate for that period in an activity specified in the instructions.

(9) Instructions such as are mentioned in sub-paragraph (8)—

(a) may not be given except with the consent of a parent or guardian of the defaulter, and

(b) operate to require the defaulter, during the period specified under that sub-paragraph, to comply with instructions given by, or under the authority of, the person in charge of the place or activity specified under paragraph (a) or (b) of that sub-paragraph.

(10) Instructions given by, or under the authority of, a person in charge of a place under sub-paragraph (3), (5), (7) or (9)(b) may require the defaulter to engage in activities otherwise than at that place.

(11) Where a supervision order contains an activity requirement, the appropriate court may on the application of the injunction applicant or the defaulter amend the order by substituting for any number of days, place, activity, period or description of persons specified in the order a new number of days, place, activity, period or description (subject, in the case of a number of days, to sub-paragraph (2)).

(12) A court may only include an activity requirement in a supervision order or vary such a requirement under sub-paragraph (11) if—

(a) it has consulted the youth offending team which is to be, or is, specified in the order,

(b) it is satisfied that it is feasible to secure compliance with the requirement or requirement as varied,

(c) it is satisfied that provision for the defaulter to participate in the activities proposed can be made under the arrangements for persons to participate in such activities which exist in the area of the youth offending team which is to be or is specified in the order, and

(d) in a case where the requirement or requirement as varied would involve the co-operation of a person other than the defaulter and the responsible officer, that person consents to its inclusion or variation.

(13) For the purposes of sub-paragraph (9) "guardian" has the same meaning as in the Children and Young Persons Act 1933 (subject to sub-paragraph (14)).

(14) If a local authority has parental responsibility for a defaulter who is in its care or provided with accommodation by it in the exercise of any social services functions, the reference to "guardian" in sub-paragraph (9) is to be read as a reference to that authority.

(15) In sub-paragraph (14)—

(a) "parental responsibility" has the same meaning as it has in the Children Act 1989 by virtue of section 3 of that Act;

(b) "social services functions" has the same meaning as it has in the Local Authority Social Services Act 1970 by virtue of section 1A of that Act.

Curfew requirements

5

(1) In this Schedule, "curfew requirement", in relation to a supervision order, means a requirement that the defaulter remain, for periods specified in the order, at a place so specified.

(2) A supervision order imposing a curfew requirement may specify different places or different periods for different days.

(3) The periods specified under sub-paragraph (1)—

(a) must be within the period for the time being specified in the order under paragraph 2(5);

(b) may not amount to less than two or more than eight hours in any day.

(4) Before specifying a place under sub-paragraph (1) in a supervision order, the court making the order must obtain and consider information about the place proposed to be specified in the order (including information as to the attitude of persons likely to be affected by the enforced presence there of the defaulter).

(5) Where a supervision order contains a curfew requirement, the appropriate court may, on the application of the injunction applicant or the defaulter amend the order by—

(a) substituting new periods for the periods specified in the order under this paragraph (subject to sub-paragraph (3)); or

(b) substituting a new place for the place specified in the order under this paragraph (subject to sub-paragraph (4)).

Electronic monitoring requirements

6

(1) A supervision order containing a curfew requirement may also contain a requirement (an “electronic monitoring requirement”) for securing the electronic monitoring of compliance with the curfew requirement during a period—

(a) specified in the order, or

(b) determined by the responsible officer in accordance with the order.

(2) In a case referred to in sub-paragraph (1)(b), the responsible officer must, before the beginning of the period when the electronic monitoring requirement is to take effect, notify—

(a) the defaulter,

(b) the person responsible for the monitoring, and

(c) any person falling within sub-paragraph (3)(b),

of the time when that period is to begin.

(3) Where—

(a) it is proposed to include an electronic monitoring requirement in a supervision order, but

(b) there is a person (other than the defaulter) without whose co-operation it will not be practicable to secure that the monitoring takes place,

the requirement may not be included in the order without that person's consent.

(4) A supervision order imposing an electronic monitoring requirement must include provision for making a person responsible for the monitoring.

(5) The person who is made responsible for the monitoring must be of a description specified in an order under paragraph 26(5) of Schedule 1 to the Criminal Justice and Immigration Act 2008.

(6) An electronic monitoring requirement may not be included in a supervision order unless the court making the order—

(a) has been notified by the youth offending team for the time being specified in the order that arrangements for electronic monitoring are available in the area where the place which the court proposes to specify in the order for the purposes of the curfew requirement is situated, and

(b) is satisfied that the necessary provision can be made under the arrangements currently available.

(7) Where a supervision order contains an electronic monitoring requirement, the appropriate court may, on the application of the injunction applicant or the defaulter, amend the order by substituting a new period for the period specified in the order under this paragraph.

(8) Sub-paragraph (3) applies in relation to the variation of an electronic monitoring requirement under sub-paragraph (7) as it applies in relation to the inclusion of such a requirement.

"Responsible officer"

7

(1) For the purposes of this Part of this Schedule, the "responsible officer", in relation to a supervision order, means—

(a) in a case where the order imposes a curfew requirement and an electronic monitoring requirement, but does not impose an activity or supervision requirement, the person who under paragraph 6(4) is responsible for the electronic monitoring;

(b) in any other case, the member of the youth offending team for the time being specified in the order who, as respects the defaulter, is for the time being responsible for discharging the functions conferred by this Schedule on the responsible officer.

(2) Where a supervision order has been made, it is the duty of the responsible officer—

(a) to make any arrangements that are necessary in connection with the requirements contained in the order, and

(b) to promote the defaulter's compliance with those requirements.

(3) In giving instructions in pursuance of a supervision order, the responsible officer must ensure, so far as practicable, that any instruction is such as to avoid the matters referred to in paragraph 2(4).

(4) A defaulter in respect of whom a supervision order is made must—

(a) keep in touch with the responsible officer in accordance with such instructions as the responsible officer may from time to time give to the defaulter, and

(b) notify the responsible officer of any change of address.

(5) The obligations imposed by sub-paragraph (4) have effect as a requirement of the supervision order.

Amendment of operative period

8

(1) The appropriate court may, on the application of the injunction applicant or the defaulter, amend a supervision order by substituting a new period for that for the time being specified in the order under paragraph 2(5) (subject to paragraph 2(6)).
(2) The court may, on amending a supervision order pursuant to sub-paragraph (1), make such other amendments to the order in relation to any requirement imposed by the order as the court considers appropriate.

Amendment on change of area of residence

9

(1) This paragraph applies where, on an application made by the injunction applicant or the defaulter in relation to a supervision order, the appropriate court is satisfied that the defaulter proposes to reside, or is residing, in the area of a youth offending team other than the team for the time being specified in the order.

(2) If the application is made by the defaulter, the court to which it is made may amend the order by substituting for the youth offending team specified in the order the youth offending team for the area referred to in sub-paragraph (1) (or, if there is more than one such team for that area, such of those teams as the court may determine).

(3) If the application is made by the injunction applicant, the court to which it is made must, subject as follows, so amend the order.

(4) Where a court amends the supervision order pursuant to sub-paragraph (2) or (3) but the order contains a requirement which, in the opinion of the court, cannot reasonably be complied with if the defaulter resides in the area referred to in sub-paragraph (1), the court must also amend the order by—

(a) removing that requirement, or

(b) substituting for that requirement a new requirement which can reasonably be complied with if the defaulter resides in that area.

(5) Sub-paragraph (3) does not require a court to amend the supervision order if in its opinion sub-paragraph (4) would produce an inappropriate result.

(6) The injunction applicant must consult the youth offending team for the time being specified in the order before making an application under sub-paragraph (1).

Revocation of supervision order

10

(1) Where a supervision order is made, the injunction applicant or the defaulter may apply to the appropriate court—

(a) to revoke the order, or

(b) to amend the order by removing any requirement from it.

(2) If it appears to the court to which an application under sub-paragraph (1)(a) or (b) is made to be in the interests of justice to do so, having regard to circumstances which have arisen since the supervision order was made, the court may grant the application and revoke or amend the order accordingly.

(3) The circumstances referred to in sub-paragraph (2) include the conduct of the defaulter.

(4) If an application made under sub-paragraph (1) in relation to a supervision order is dismissed, no further such application may be made in relation to the order by any person without the consent of the appropriate court.

(5) The injunction applicant must consult the youth offending team for the time being specified in the order before making an application under sub-paragraph (1).

Compliance with supervision order

11

If the responsible officer considers that the defaulter has complied with all the requirements of the supervision order, the responsible officer must inform the injunction applicant.

Non-compliance with supervision order

12

(1) If the responsible officer considers that the defaulter has failed to comply with any requirement of the supervision order, the responsible officer must inform the injunction applicant.

(2) On being informed as specified in sub-paragraph (1) the injunction applicant may apply to the appropriate court.

(3) Before making an application under sub-paragraph (2) the injunction applicant must consult—

(a) the youth offending team for the time being specified in the order, and

(b) any person consulted by virtue of section 38(2)(a) or (b).

(4) If on an application under sub-paragraph (2) the court to which it is made is satisfied beyond reasonable doubt that the defaulter has without reasonable excuse failed to comply with any requirement of the supervision order, the court may—

(a) revoke the supervision order and make a new one; or

(b) revoke the order and make a detention order (see Part 3 of this Schedule).

(5) The powers in sub-paragraph (4) may not be exercised at any time after the defaulter reaches the age of 18.

(6) The powers conferred by sub-paragraph (4) are in addition to any other power of the court in relation to the breach of the supervision order.

(7) The court to which an application under sub-paragraph (2) is made must consider representations made by the youth offending team for the time being specified in the order before exercising its powers under this paragraph.

Copies of supervision order etc

13

(1) The court by which a supervision order is made must forthwith provide a copy of the order to—

(a) the defaulter, and

(b) the youth offending team for the time being specified in the order.

(2) Where a supervision order is made, the injunction applicant must forthwith provide a copy of so much of the order as is relevant—

(a) in a case where the order includes an activity requirement specifying a place under paragraph 4(1)(a), to the person in charge of that place;

(b) in a case where the order includes an activity requirement specifying an activity under paragraph 4(1)(b), to the person in charge of that activity;

(c) in a case where the order includes an activity requirement specifying a residential exercise under paragraph 4(1)(c), to the person in charge of the place or activity specified under paragraph 4(4) in relation to that residential exercise;

(d) in a case where the order contains an electronic monitoring requirement, to—

(i) any person who by virtue of paragraph 6(4) will be responsible for the electronic monitoring, and

(ii) any person without whose consent that requirement could not have been included in the order.

(3) The court by which a supervision order is revoked or amended must forthwith provide a copy of the revoking order, or of the order as amended, to—

(a) the defaulter, and

(b) the youth offending team for the time being specified in the order.

(4) Where—

(a) a copy of a supervision order (or part of a supervision order) has been given to a person under sub-paragraph (2) by virtue of any requirement contained in the order, and

(b) the order is revoked, or amended in respect of that requirement,

the injunction applicant must forthwith give a copy of the revoking order, or of so much of the order as amended as is relevant, to that person.

Part 3 Detention Orders

Detention orders

14

(1) A detention order is an order that the defaulter be detained for a period specified in the order in such youth detention accommodation as the Secretary of State may determine.

(2) The period specified under sub-paragraph (1) may not exceed the period of three months beginning with the day after that on which the order is made.

(3) In sub-paragraph (1) "youth detention accommodation" means—

(a) a secure training centre;

(b) a young offender institution;

(c) secure accommodation, as defined by section 23(12) of the Children and Young Persons Act 1969.

(4) The function of the Secretary of State under sub-paragraph (1) is exercisable concurrently with the Youth Justice Board.

(5) A person detained under a detention order is in legal custody.

Revocation of detention order

15

(1) Where a detention order is made, the injunction applicant or the defaulter may apply to the appropriate court to revoke it.

(2) If it appears to the court to which an application under sub-paragraph (1) is made to be in the interests of justice to do so, having regard to circumstances which have arisen since the detention order was made, the court may grant the application and revoke the order accordingly.

(3) The circumstances referred to in sub-paragraph (2) include the conduct of the defaulter.

(4) If an application made under sub-paragraph (1) in relation to a detention order is dismissed, no further such application may be made in relation to the order by any person without the consent of the appropriate court.

(5) Before making an application under sub-paragraph (1) the injunction applicant must consult—

(a) in the case of a detention order made under paragraph 1(1), the youth offending team referred to in paragraph 1(4)(a); or

(b) in the case of a detention order made under paragraph 12(4)(b), the youth offending team referred to in paragraph 12(3)(a).

Annex B

Key Civil Procedure Rules and Practice Directions

Civil Procedure Rule 65 (proceedings relating to anti-social behaviour and harassment) and Practice Direction 65

Practice Direction 2B (allocation of cases to levels of judiciary)

Civil Procedure Rule 21 (Children and Protected Parties)

Civil Procedure Rule 30 (transfer)

Civil Procedure Rule 52 (appeals) and Practice Direction 52

These can be found on the Ministry of Justice website here:

http://www.justice.gov.uk/civil/procrules_fin/menus/sched_ccr.htm

Annex C

Rules of the Supreme Court Order 52 and supplementary Practice Directions; County Court Rules Order 29

Rules of the Supreme Court Order 52 and supplementary Practice Directions can be found on the Ministry of Justice website here:

http://www.justice.gov.uk/civil/procrules_fin/menus/sched_rsc.htm

County Court Rules Order 29 can be found on the Ministry of Justice website here:

http://www.justice.gov.uk/civil/procrules_fin/contents/schedule2/ccrorder29.htm

Annex D

Links to Form N16A: Applying for an injunction and Form N244: Application for notice (for breach, variation and discharge of an injunction)

These forms can be found on the Ministry of Justice website here:

http://www.hmcourts-service.gov.uk/HMCSCourtFinder/FormFinder.do

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