CPN and ASB – Staffordshire Moorlands DC v Caroline Sanderson

Important Update on Third Party Liability

A further precedent case decided in 2020 has now significantly restricted the use of CPN in relation to third parties. Following the ruling in Staffordshire Moorlands DC v Caroline Sanderson, CPN's may not be issued against any third party concerning ASB committed by another, notwithstanding the apparent effect of section 57 of the 2014 Act, other than in cases where the ASB is connected to land under the recipient's control.

It was probably not helpful that the Notice in question had been drafted so broadly as to make the recipient in broad terms responsible for preventing any ASB by "X" anywhere in the District.

Two specific provisions of the Anti-social Behaviour Crime and Policing Act 2014 were key to this case:

Section 44:

Occupiers of premises etc

(1) Conduct on, or affecting, premises (other than premises within subsection (2)) that a particular person—
(a) owns,
(b) leases,
(c) occupies,
(d) controls,
(e) operates, or
(f) maintains,

is treated for the purposes of section 43 as conduct of that person.

(2) Conduct on, or affecting, premises occupied for the purposes of a government department is treated for the purposes of section 43 as conduct of the Minister in charge of that department.

(3) This section does not treat an individual's conduct as that of another person if that person cannot reasonably be expected to control or affect it.

And section 57:

Interpretation of Chapter 1

In this Chapter—

- "conduct" includes a failure to act.

This is an unfortunate result for practitioners, as it has quite wide-ranging implications and it remains to be seen how the Courts will construe the types of connection to premises that would qualify to enable the issue of a CPN.

It does not help our understanding of the true nature of section 44 insofar as Mrs Justice Andrews appears to contradict herself within the key text of the judgment, as follows:

"the clear inference from the existence of s.44 is that Parliament intended that an individual's liability for the anti-social behaviour of someone else is to be limited to circumstances where that individual can reasonably be expected to control or effect the conduct complained of **and it takes place on premises that the individual owns, leases, occupies, controls or maintains**. Indeed, the connection between the individual and the premises is the reason why that person is expected to be responsible **for activities carried out on or relating to those premises, such as littering the street outside them**."

Here, the judgment appears to restrict liability to acts taking place on premises and yet also acknowledges that the subject may be liable for activities not carried out on premises, "such as littering the street outside them".

The judgment is in part based on the premise that a broader interpretation would render section 44 otiose (redundant). This is a very odd statement insofar as section 44 goes much further than section 57 in that it provides for a displaceable presumption of liability upon the third party. Section 44 clearly provides that conduct carried out by any other person shall be "treated for the purposes of section 43 **as conduct of that person** (the owner, occupier, etc.)."

The Court's interpretation in this judgment would in fact appear to have exactly the opposite effect to that suggested: by restricting liability to activities carried out on (connected to?) premises, this would then instead operate to render section 57 otiose, as section 44 already provides for the third party (e.g. owner) to stand in the same shoes as the person actively carrying out the acts concerned. It is not a failure to act that renders the owner liable by way of section 44, but the simple fact that the conduct is being carried out on or in relation to the owner's premises. This creates a presumption of liability, with a defence that the owner could not reasonably be expected to control the conduct. A further provision in section 57 interpreting conduct generally as being inclusive of a failure to act adds nothing to the operation of section 44.

Indeed, one may consider the true purpose of section 44 to be to take away the potential for argument e.g. that a landlord should have no responsibility for nuisance caused by its occupiers, as is in fact the case under common law. Thus, this section creates a duty of care that would not otherwise apply in common law. This construction aligns fully with the existence of sections 57 and 46 within this same Chapter. The current judgment, however, does not. This judgment fails to address the fact that both section 57 and the section 46 appeal ground, that the subject cannot reasonably be expected to control the conduct, apply generally, rather than solely to section 44.

The Court was not addressed upon, nor did it consider, the fact that a significant consequence of its interpretation is that it now renders Section 57 itself redundant, as this judgment rules out liability in terms of failure to act, other than through the operation of section 44. Section 44 has absolutely no need of section 57 in order to operate, *as the subject takes on the liability of the direct perpetrator* and it is that conduct that is treated as the conduct of the subject in relation to section 44.

A resounding problem with the interpretation made in this case also lies in the express wording of section 57, insofar as it is expressed to apply to the entirety of the Chapter, not solely to section 44 (to which it has no relevance, in any event) i.e. it is expressly stated to apply to sections 43 to 58. This would require the Court to apply the section 57 definition of conduct directly in consideration of the word "conduct" within section 43 of the Act. Accordingly, section 43 must be read to include **failure to act** within its definition of "conduct", regardless of the later more stringent deeming provision contained in section 44 (which, as we stated above, is necessary to override the common law position in relation to landlords).

There are further problems with Mrs Justice Andrews' statement: "the clear inference from the existence of s.44 is that Parliament intended that an individual's liability for the anti-social behaviour of someone else is to be limited to circumstances where that individual can reasonably be expected to control or effect the conduct complained of **and it takes place on premises that the individual owns, leases, occupies, controls or maintains."**

If that is indeed the case, then the CPN cannot operate as a substitutionary provision for section 93 of the Environmental Protection Act 1990, which it was stated to replace and repeal at the time of commencement of the 2014 Act.

Section 93 EPA specifically operated to render businesses liable for conduct taking place off their premises in the nature of littering. Accordingly, we must be careful in our interpretation of this current judgment. It seems that the reference to limitation to acts carried out on premises must give way to what at first sight appears to be the rather throwaway example given thereafter: "or relating to those premises, such as littering the street outside."

As noted above, this leaves a significant issue as to the degree of connection to premises that would now be required before a CPW / CPN may be issued. The Court appeared to be considering this as a parental responsibility issue rather than a true construction issue, but this will impact on a far wider scale. Nuisance business operations beyond the direct premises, irresponsible hunts and many more scenarios will now be affected.

It may be that the overall sense of the judgment is correct in terms of this particular Notice (we have our own concerns over the range and wording of the CPN in question, but this could easily have been dealt with in terms of control and reasonableness within the appeal provisions), even if the technical reasoning appears to be flawed. However, if the Court was concerned about the reach of the Notice, it should have dealt with this in terms of consideration of whether there was sufficient nexus of control between the subject and the

conduct concerned (as there is no deeming provision in section 43) and reasonableness, as both section 43 and section 46 (appeals) would have allowed.

However, whilst we have serious misgivings about the reasoning applied, as noted above, it is nevertheless a binding judgment and therefore all agencies involved in the use of CPN will need to review their procedures and await further clarification as time progresses.