

Neutral Citation Number: [2020] EWHC 962 (Admin)
Case No: CO/4233/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

IN THE MATTER OF A CASE STATED BY THE
JUSTICES FOR THE COUNTY OF STAFFORDSHIRE

Priory Court
33 Bull Street
Birmingham B4 6DS
19 march 2020
Before:

THE RT HONOURABLE LORD JUSTICE HICKINBOTTOM
THE HONOURABLE MRS JUSTICE ANDREWS DBE

STAFFORDSHIRE MOORLANDS
DISTRICT COUNCIL Appellant

- and -

CAROLINE SANDERSON Respondent

Digital Transcription by Epiq Europe Ltd,
Lower Ground, 18-22 Furnival Street, London, EC4A 1JS
Tel No: 020 7404 1400
Web: www.epiqglobal.com/en-gb/ Email: civil@epiqglobal.co.uk
(Official Shorthand Writers to the Court)

GORDON WIGNALL (instructed by) for the Appellant
RUPERT JONES (instructed by Stevens Solicitors & Advocates) for the Respondent

HTML VERSION OF JUDGMENT

Mrs Justice Andrews:

This is an appeal by way of case stated against a decision by Staffordshire Magistrates' Court on 22 July 2019 to allow an appeal by the respondent, Mrs Sanderson, against a Community Protection Notice ("CPN") issued by the appellant to her in respect of the behaviour of her son X, a child.

The question that this court has been asked to determine is whether the Justices were right to conclude that on the proper construction of section 43 of the Anti-Social Behaviour, Crime and Policing Act 2014, ("the 2014 Act") there is no power to issue a CPN in the name of an individual (parent) concerning the conduct of a different individual (their child)?

Although the question was posed in the specific context of parent and child, both counsel accepted that the construction of s.43 adopted by the Justices would preclude the service of a CPN on person A in respect of anti-social behaviour by person B in any circumstances in which A might be in a position to, and expected to, exert control over B.

In my judgment, for the reasons set out below, the question should be answered in the affirmative. The Justices construed s.43 correctly, and this appeal should therefore be dismissed.

THE FACTS

The factual background can be stated briefly. There is no dispute that the appellant is an "authorised person" within the meaning of the 2014 Act. The appellant issued a CPN to Mrs Sanderson on 15 March 2019. X was then nearly 15 years old (his birthday is in April). The CPN followed the service of a written community protection warning on Mrs Sanderson on 19 February 2019. The warning, addressed to Mrs Sanderson, stated that an officer of the appellant was satisfied that:

"Your conduct and behaviour at and in the vicinity of Blythe Bridge, Staffordshire is having a detrimental effect on the quality of life of others in the locality caused by your son, X, engaging in the following behaviour."

There then followed a list of anti-social behaviour attributed to X, including getting involved in a fight, assaulting another schoolboy, setting fire to a public bench and refusing to leave a convenience store when instructed to do so by others.

The warning continued: "this warning must be construed as formal notification to address the conduct identified." There then followed a list of actions that Mrs Sanderson was required to take to prevent X from carrying out further acts of anti-social behaviour. I note in passing that the warning was expressed in absolute terms, instead of requiring Mrs Sanderson to take reasonable steps to prevent the specified behaviour.

The CPN referred to the written warning. It said that the warning:

"Specified that the detriment directly related to you failing to control the behaviour of your son, X, in and around Blythe Bridge, Staffordshire. Furthermore, you were given due notice

that your son had engaged in specific incidents which had a detrimental impact on those in the locality."

It then listed those incidents and added a further incident that had allegedly occurred since the warning was issued. It said that in the light of this the appellant was satisfied:

"That your persistent and/or continuing unreasonable conduct in the area of Blythe Bridge, Staffordshire as described above and in the written warning is having a detrimental impact on the quality of life of those living in the locality."

The action that the CPN required Mrs Sanderson to take, for a period continuing until midnight on 12 April 2020, was this time expressed in terms of taking reasonable steps to prevent X from doing various things, including using offensive words or behaviour to any person in any public place or place to which the public has access in the Staffordshire Moorlands area, and "unlawfully assaulting" any person anywhere in the Staffordshire Moorlands.

Mrs Sanderson appealed to the Justices pursuant to s.46 of the 2014 Act on two grounds, namely that the notice was issued to the wrong person, and that it contained unreasonable requirements.

The Justices heard the appeal on 22 July 2019. The parties had previously agreed that there was no requirement for evidence to be called and that the Justices could determine the matter on the basis of oral submissions alone. Having heard those submissions, the Justices allowed the appeal on the basis that the appellant had no power to issue a CPN in the name of Mrs Sanderson in respect of the conduct of her son. They relied on the wording of ss.43(1) and 43(5) of the 2014 Act and supported their reasoning by reference to s.44.

THE LEGISLATION

Anti-social behaviour is defined in s.2 of the 2014 Act as:

- (a) conduct that has caused, or is likely to cause, harassment, alarm or distress to any person,
- (b) conduct capable of causing nuisance or annoyance to a person in relation to that person's occupation of residential premises, or
- (c) conduct capable of causing housing-related nuisance or annoyance to any person.

By s.57 of the Act conduct can include a failure to act.

S.1 of the 2014 Act empowers a court to grant an injunction against a person aged ten or over if two conditions are met, namely:

- (i) The court is satisfied, on the balance of probabilities, that the person has engaged or threatens to engage in anti-social behaviour, and
- (ii) The court considers it just and convenient to grant the injunction for the purpose of preventing that person from engaging in anti-social behaviour.

In the present case it would have been open to the appellant to seek such an injunction against X, but it chose not to do so.

S.22 of the 2014 Act gives the court the power to make criminal behaviour orders in respect of offenders who have been convicted of a criminal offence, including young offenders. If the offender is under the age of 18 the court must find out the views of the local youth offending team before making such an order.

Part 4 of the 2014 Act is headed, "Community Protection." S. 43 contains the power to issue a CPN:

(1) An authorised person may issue a community protection notice to an individual aged 16 or over, or a body, if satisfied on reasonable grounds that:

- (a) the conduct of the individual or body is having a detrimental effect, of a persistent or continuing nature, on the quality of life of those in the locality, and
- (b) the conduct is unreasonable.

(3) A community protection notice is a notice that imposes any of the following requirements on the individual or body issued with it:

- (a) a requirement to stop doing specified things;
- (b) a requirement to do specified things;
- (c) a requirement to take reasonable steps to achieve specified results.

(4) The only requirements that may be imposed are ones that are reasonable to impose in order:

- (a) to prevent the detrimental effect referred to in subsection (1) from continuing or recurring, or
- (b) to reduce that detrimental effect or to reduce the risk of its continuance or recurrence.

(5) A person (A) may issue a community protection notice to an individual or body (B) only if:

- (a) B has been given a written warning that the notice will be issued unless B's conduct ceases to have the detrimental effect referred to in subsection (1), and
- (b) A is satisfied that, despite B having had enough time to deal with the matter, B's conduct is still having that effect.

S.44 of the 2014 Act which is entitled, "Occupiers of Premises etc." provides that:

(1) Conduct on, or affecting, premises ... 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.

(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.

By s.48 of the 2014 Act non-compliance with a CPN is a criminal offence, punishable on summary conviction by a fine not exceeding level 4 on the standard scale in the case of an individual.

In *Stannard v Crown Prosecution Service* [2019] EWHC 84 (Admin) a differently constituted division of this court, of which Hickinbottom LJ was a member, held that the power to issue a CPN includes a power to vary or discharge a CPN in appropriate circumstances. The court also observed, at [54] that CPNs constitute a significant interference with an individual's freedom; they must be clear in their terms and proportionate in their effect.

STATUTORY GUIDANCE AND EXPLANATORY NOTES

The Home Office prepared explanatory notes to assist the reader in understanding the 2014 Act. They do not form part of the Act and have not been endorsed by Parliament. The notes refer to a White Paper entitled, "Putting victims first - more effective responses to anti-social behaviour" which was published in May 2012, and to Parliament's aim of focusing the response to anti-social behaviour on the needs of victims. It states that the reforms proposed were designed to provide better protection for victims and communities, and to ensure that professionals had effective powers that were quick, practical and easy to use, and acted as real deterrents to perpetrators.

Paragraph 160 of the explanatory notes refers specifically to CPNs and states that a CPN is intended to deal with unreasonable, ongoing problems or nuisances which negatively affect the community's quality of life by targeting the person responsible. The notice can direct any individual over the age of 16, business or organisation responsible to stop causing the problem, and it could also require the person responsible to take reasonable steps to ensure that it does not occur again. Thus, at least from the perspective of the explanatory notes, the focus is not only upon the victims of the anti-social behaviour but upon the person responsible for it. It is not upon somebody who may have control over him or her.

S. 56 of the 2014 Act provides that statutory guidance may be issued. Of course, guidance is simply that, and in the same way as explanatory notes it cannot be regarded as a substitute for the language of the statute or used to put a gloss on that language. However, bearing in mind those caveats, it can sometimes be useful to look at the guidance to see if it is consistent with a particular construction. The most recent guidance entitled, "Statutory Guidance for Frontline Professionals" was published in August 2019. Part 2 of the guidance, at page 4, describes the purpose of a CPN as:

"To stop a person aged 16 or over, business or organisation committing anti-social behaviour which spoils the community's quality of life."

The guidance does not state that a parent can be issued with a CPN in respect of the behaviour of a child aged under 16. Indeed, it appears to be drafted on the assumption that

a parent cannot be issued with a CPN in these circumstances. It does, however, state on page 19 that:

"Where the behaviour of the parent or guardian is part of the issue (either because they are a bad influence or are failing to provide suitable supervision) agencies could consider a parenting contract. ... They could also be considered where the child in question is under 10 and where other interventions are not appropriate for the perpetrator themselves."

That is a reference to the power of local authorities under the Anti-Social Behaviour Act 2003, when there is reason to believe that a child under 16 has engaged in anti-social behaviour, to encourage the child's parents to take steps to address that behaviour by means of a parenting contract under s. 25A. If that does not bear fruit, the local authority can seek a parenting order from the court under s.26A of that Act. A parenting order is an order which requires the parent to comply for a period not exceeding 12 months with such requirements as are specified in the order, and may also require the parent to attend (for a period not exceeding three months) such counselling or guidance programme as may be specified in directions given by the responsible officer.

The court also has specific powers under s.8 of the Crime and Disorder Act 1998 to make parenting orders in a prescribed range of circumstances, including where an injunction has been granted under s. 1 of the 2014 Act, or a criminal behaviour order has been made under s.22 of that Act in respect of a child or young person. The power may be exercised if it is desirable to do so in the interests of preventing any repetition of the kind of behaviour which led to the order being made or the injunction granted. The reference in the guidance to a child being aged under 10 is significant, because an injunction cannot be granted in those circumstances under s.1 of the 2014 Act.

Although, of course, enforcement is a matter for the enforcement authority, the general tenor of the guidance is that the local authority should initially consider taking action against the child rather than the parent, and that if for any reason that cannot be done or will not solve the problem, then they should work together with the parent to try and find a solution to it.

The existence of these express statutory means of addressing the problem of anti-social behaviour by children who are too young to be served with a CPN suggests that the court should be slow to adopt a strained interpretation of the language of s.43(1) in order to provide another means of tackling that problem.

The guidance also refers at page 42 to the example of a baby crying in the middle of the night and causing a detrimental effect on immediate neighbours. That is cited as an illustration of circumstances in which it would be unlikely to be reasonable to issue the parents with a CPN if there is not a great deal that they could do to control or affect the baby's behaviour. As Mr Jones pointed out, that is an example of a situation falling squarely within s.44, not s.43(1), as the baby would be on the same premises as its parents. The reference to "control or affect" in the illustration is a direct reflection of the language of s.44(3). That part of the guidance is no support for a wider reading of s.43(1).

Another example given in the guidance is that of a shopkeeper who may be made responsible for the accumulation of litter outside his store. In that case, the Act does not require the shopkeeper to control the behaviour of the persons who were dropping the litter, but rather places a responsibility upon him to clear up the mess that they have left behind or, as Mr Wignall submitted, address the problem by providing a litter bin.

DISCUSSION

The appellant contends that the Justices adopted too narrow a construction of s.43 of the 2014 Act. Mr Wignall submitted that they erred by construing s.43 as requiring the detrimental effect to be closely connected with the conduct of the individual or body instead of appreciating that the detrimental effect could be brought about as a consequence of the breakdown in a relationship between two people which ordinarily involves a measure of control or restraint by one over the other.

I regret that I cannot accept that submission either as a matter of the natural construction of the words used in the statute, or as a matter of Parliament's intention. The interpretation adopted by the Justices does not turn on nice distinctions of causation, as Mr Wignall put it, but rather on the fact that the conduct that is really being complained of as causing a detrimental effect is the conduct of X, and not the "unreasonable and persistent" conduct of Mrs Sanderson in failing to control the conduct of X.

S.43(1) provides that where a CPN is served on an individual the unreasonable conduct of that individual must have a persistent and continuing detrimental effect on those in the locality. That is easy enough to understand. It seems clear that Parliament intended that a CPN (and any prior warning) should be served on the person who is engaging in the anti-social behaviour, with a view to getting that person to desist, ultimately on pain of a criminal sanction.

Mr Jones submitted that there may be scenarios in which another person might be encouraging or assisting the anti-social behaviour, but that in such circumstances the unreasonable conduct that would be the target of the CPN served on that other person would be the encouraging and assisting (of a nature akin to secondary liability in the criminal context). That is different from the position where a local authority seeks to make someone other than the perpetrator responsible for behaviour because of a failure to control that other person.

S.44 reinforces the natural interpretation of s.43 as applying only where the conduct complained of is conduct of the individual served with a CPN. Where s. 44 applies, then the acts of the person whose conduct is causing the detriment complained of may be attributed to someone else (such as the owner or occupier of the premises on which the anti-social behaviour occurs) but only if the latter is reasonably able to control or affect the behaviour of which complaint is made, for example the accumulation of litter. That might well encompass the parents of a child who is persistently playing loud music or who invites school friends over for a party which gets out of hand.

The Justices considered that s.44 supported their construction. I agree. As Mr Jones put it, 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. If s.43(1) were to be interpreted in the manner suggested by Mr Wignall then s. 44 is surplus to requirements in the case of a parent and child.

The purpose of the 2014 Act is to stop anti-social behaviour. However, there is nothing anywhere to suggest that its purpose is to enforce control over anti-social behaviour committed by another irrespective of whether the person with responsibility is a parent or someone else such as a schoolmaster, a scout leader or even the local authority itself (e.g. if the child committing the anti-social acts is a "looked after" Child under s.20 of the Children Act 1989). Parliament has chosen not to attribute the anti-social behaviour of one person to another even if that other person may have some power to control them unless the behaviour in question falls within the scope of s.44 and can be treated as if it were the behaviour of the other person for that reason.

In the present case it is X's behaviour outside school and the parental home that is having a detrimental effect of a persistent nature on the quality of life in the neighbourhood. That is the behaviour that is the real target of the Notice, not his mother's failure to take steps to stop him from behaving in that way.

Parliament has decided that CPNs and associated warnings may only be served on individuals aged 16 or over. It has made specific and express provision for the courts, rather than local authorities, to issue orders against parents of children and young persons who are proved to have engaged in anti-social behaviour. It has included in those powers various checks and balances to ensure that such orders as are made are proportionate and do not interfere unduly with family life. If s.43 of the 2014 Act empowered a local authority to issue a CPN against a parent in respect of their failure to control the anti-social behaviour of a child under 16, many of those other statutory provisions would be otiose.

Mr Wignall submitted that the extent to which a local authority is entitled to impose controls over personal relationships is entirely a policy matter for Parliament. I agree; but if Parliament had intended to enable a local authority to serve a CPN on a parent to require them to control the anti-social behaviour of a child, and to face criminal penalties if they failed to do so, it could and would have made that clear, instead of using language which on its face only enables the local authority to serve a CPN on someone aged 16 or over in respect of their own anti-social behaviour.

For those reasons, I would dismiss this appeal.

Lord Justice Hickinbottom:

As my Lady, Andrews J, has indicated, the question posed by the magistrates' court for the opinion of this court is:

"Were we right to conclude that in these circumstances on a proper construction of s.43 of the 2014 Act there is no power to issue a CPN in the name of an individual (parent) concerning the conduct of a different individual (their child)?"

In that question by, "conduct" the magistrates meant the direct anti-social behaviour of the second individual (for example, the child). This question postulates that the first individual (for example, the parent) has some degree of control over that second individual. For the reasons given by Andrews J we answer that question: "Yes, you were right in that conclusion."

As a jurisdictional matter, a CPN cannot be issued to a person such as a parent who may have a degree of control over a second person whose conduct falls within s.43 by reason of that degree of control alone. As my Lady has indicated, that conclusion does not, of course, mean that an individual might not be served with such a notice if, for example, he or she encourages or otherwise supports the relevant anti-social behaviour. That encouragement or support may in itself be anti-social behaviour and fall within conduct covered by s.43. On the basis of our conclusion in relation to the posed question, this appeal is dismissed.