



Part 3: Drill Music Injunctions and Ancillary Orders

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Criminal Behavior Orders *‘A Purge on Drill’?*

Danielle Manson, Garden Court Chambers


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A close-up photograph of a person wearing a silver, metallic mask. The person's hands are visible, holding a silver knife. The background is dark and out of focus.

Drill, the brutal rap that fuels gang murder

'Drill' music: a nihilistic genre filled with boasts of death and violence

Knife crime on the rise because of Drill Music?!?!

Drill, the 'demonic' music linked to rise in youth murders

YouTube drill music is to blame for escalating gang violence, judge says

Police targeting drill music videos in controversial crackdown on social media that 'incites violence'

Disturbing new form of British rap called Drill is blamed for surge in gang killings

YouTube Deletes Multiple "Violent" Drill Music Videos at the Request of the Crown Prosecution Service

‘This isn't going to address the issues that lead to the creation of this kind of music, nor should we be creating a precedent in which certain forms of art which include violent images or ideas are banned’.

Jodie Ginsberg, Index on Censorship Chief Executive



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History of Criminal Behaviour Orders (CBOs)

- Came into force on **20th October 2014** following Home Office consultation paper: ‘More Effective Responses to Anti-Social Behaviour’ (February 2011) and Government’s White Paper: ‘Putting Victims First: More Effective Responses to Anti-Social Behaviour’ (May 2012).
- Replaced Anti Social Behaviour Order’s (‘ASBO’s’).
- ASBO v CBO (permissibility of mandatory requirements and necessity removed – the test is now ‘helpfulness’).
- Under the old ASBO regime an individual could only be precluded from doing something.



Legislative Framework

Section 22 of the Anti-social Behaviour, Crime and Policing Act 2014

Criminal behaviour orders

22 Power to make orders

- (1) This section applies where a person ("the offender") is convicted of an offence.
- (2) The court may make a criminal behaviour order against the offender if two conditions are met.
- (3) The first condition is that the court is satisfied, beyond reasonable doubt, that the offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person.
- (4) The second condition is that the court considers that making the order will help in preventing the offender from engaging in such behaviour.



General Principles

- Must be attached to a conviction and on application from the Prosecution - the court cannot make a CBO of its own volition.
- Not available in every case e.g. where a bind over or absolute discharge is imposed.
- Note the importance of application complying with the Criminal Procedure Rules (r31.2 and r31.3).
- The determination of an application for a CBO can take place after sentence, but the application for a CBO must be made (in compliance with the Criminal Procedure Rules) *before* sentence.
- Admissibility of evidence for CBO application can differ from criminal proceedings (e.g. hearsay and bad character).
- No requirement for there to be a nexus between the criminal behaviour which lead to the conviction and the harassment, alarm and distress (although proof will be required to a criminal standard if not part and parcel of the offence).
- Breaching any of the requirements of a CBO is a criminal offence: the maximum sentence on summary conviction is 6 months.
- Examples of standard requirements: non association, exclusion zone, restrictions on use of social media and/or possession of mobile phones.



Case Law I

R v Browne-Morgan [2016] EWCA Crim 1903

Section 22(4) does not require the court to be satisfied beyond reasonable doubt that making the order would help in preventing the offender from engaging in such behaviour.

DPP v Bulmer [2015] EWHC 2323 (Admin)

The case law relating to ASBO's is also applicable to CBO's.



Case Law II

R v Khan [2018] EWCA Crim 1472

Paragraph 13: Emphasised the importance of complying with Criminal Procedure Rules.

Paragraph 14: Reaffirmed the principles of the case of *R v Boness (Dean)* [2006] 1 Cr App R (S) 120 that the *terms of the order must be precise and capable of being understood by the offender*.

Paragraph 18: Placed reliance on Home Office guidance (dated 24th December 2017) which states that the CBO *‘is intended for tackling the most serious and persistent offenders’*.

Paragraph 20:

‘We do not believe that it was the intention of Parliament that criminal behaviour orders should become a mere matter of box-ticking routine. As Beatson LJ said, such orders are not lightly to be imposed; the court should proceed with a proper degree of caution and circumspection; the order must be tailored to the specific circumstances of the person on whom it is to be imposed; and assessments of proportionality are intensely fact-sensitive.’



Case Law III

R v Amir Tofagsazan [2020] EWCA Crim 982

As per section 24(1), ‘a criminal behaviour order that includes a requirement must specify the person who is to be responsible for supervising compliance with the requirement’ and before including any requirement the court has to receive evidence about the suitability and enforceability of said requirement from that individual. This is an important safeguard in ensuring that any requirement imposed is both suitable and enforceable.

R v Michael Roger Brain [2020] EWCA Crim 457

Paragraph 41: ‘As a matter of principle, prohibitions should not be imposed in relation to conduct which would constitute a criminal offence on its own merits.’



The start of the ‘drill purge’: 1011

- CBO imposed at Kingston Crown Court in June 2018 on 5 defendants who were all part of 1011, following convictions for conspiracy to commit violent disorder.
- Non association with other members of the group (in addition to a long list of others), unless for the purpose of recording or performing music (in which case authority from the police is required).
- Prohibitions on what can and cannot be said either on social media or as part of any song, video or live performance (unable to make reference to particular individuals, postcodes or areas e.g. the Harrow Road).
- Outright restriction on performing 7 specified songs (lyrics said to incite or encourage violence).
- Ban on attending Notting Hill carnival.
- Notify the police of the release of any new official music videos in which they feature.



1011 v Katie Hopkins

- 1011
- Murder of Teewizz (Abdullahi Tarabi) in 2017
- Members of 1011 were **not** suspects in the case
- Released ‘Play for the Pagans’
- *‘Teewizz got splashed and died, and I don't feel sorry for his mum’*

- Katie Hopkins
- *‘Dementia sufferers should not be blocking beds. What is the point of life when you no longer know you are living it?’* (Twitter 2015)
- She also suggested we should *‘burn all the boats’* in North Africa just hours after 900 migrants drowned on the treacherous journey to Europe on her LBC radio show, again in 2015.



Final Thoughts

- The use of CBOs to curtail the creation and performances of music almost certainly raises a question of infringement of Article 10 of the Human Rights Act 1998.
- We can see the difference in treatment of young black boys vs middle class white women when it comes to shocking and unsavory commentary.
- As per *R v Michael Roger Brain [2020] EWCA Crim 457*, if lyrics are so violent that they can properly be said to incite violence (which should be the only reason for censorship) then individuals should be prosecuted as ‘prohibitions should not be imposed in relation to conduct which would constitute a criminal offence on its own merits’.



Gang Injunctions – Drill Music

Abigail Bache, Garden Court Chambers

22 September 2020



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TOP TIER SET
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Crime and Disorder Act 1998 s.1

- The person has acted in a manner that has caused or was likely to cause harassment, alarm or distress
- The order is necessary to protect relevant persons from further anti-social acts by the recipient
- Stand alone order



Crime and Disorder Act 1998 s.1

R. (on the application of McCann) v Manchester Crown Court [2002] UKHL 39; [2003] 1 A.C. 787.

- Civil – hearsay evidence can be relied upon
- Criminal - First condition must be proved to criminal standard – beyond reasonable doubt
- Civil – the “necessity” of the order had to be proved on balance of probabilities

Birmingham City Council v Shafi [2008] EWCA Civ 1186; [2009] 1 W.L.R. 1961

- a civil injunction could not be made in circumstances where an ASBO was available



s.34 Policing and Crime Act 2009

(1) A court may grant an injunction under this section against a respondent aged 14 or over if the first and second 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—

- (a) gang-related violence, or
- (b) gang-related drug-dealing activity

(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 or gang-related drug-dealing activity;
- (b) to protect the respondent from gang-related violence or gang-related drug-dealing activity.



s.34(5)

(5) For the purposes of this section, something is “gang-related” if it occurs in the course of, or is otherwise related to, the activities of a group that—

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



s.34(5) Cont.



s.34(6)

- (6) In this section “violence” includes a threat of violence
- “Undressing the Words: Prevalence of profanity, Misogyny, Violence and Gender Role References in Popular Music from 2006-2016” - Cynthia Frisby and Elizabeth Behm-Morawitz, January 2019



Jones v Birmingham CC [2018]

Jones v Birmingham City Council [2018] EWCA Civ 1189; [2019] Q.B. 521; [2018] 5 WLUK 422
(CA (Civ Div))

Is the injunction “in respect of a criminal charge”?

- (a) Is it a criminal matter in domestic law?
- (b) Is the underlying offence criminal in nature?
- (c) Is the effect of the proceedings penal in nature?

Summary of court's findings

- Is the injunction criminal in domestic law? - No
- Is the underlying offence criminal in nature – No - no offence necessary to make injunction
- Is the injunction penal in nature? No - it is preventative *Guzzardi v Italy* [1981] 3 E.H.R.R. 333



Thank you

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