



## Injunctions to Prevent Gang-related Violence and Drug Dealing Activity against Youths

With effect from 1<sup>st</sup> June 2015 the Policing and Crime Act 2009 (as amended by the Crime and Courts Act 2013), the Serious Crime Act 2015 and the Magistrates' Courts (Injunctions: Gang-related Violence) Rules 2013 gives applicants the power to apply to the Youth Court to obtain an injunction against a particular gang member aged 14 - 17 years old who has engaged in, encouraged or assisted gang-related violence or drug dealing.

### Background

An **Injunction to Prevent Gang-related Violence and Drug Dealing Activity Against Youths (*Gang Injunction*)** is a civil tool that allows the police or a local authority to apply for a court order against an individual to prevent gang-related violence, by imposing a range of prohibitions and requirements.

Section 51 of the Serious Crime 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;

- Consists of at least three people;
- Has one or more characteristics that enable its members to be identified by others as a group; and
- Engages in gang-related violence or is involved in the illegal drug market.

The injunction aims to:

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

Conditions attached to an injunction may include prohibitions or requirements, for example, barring the youth from going to a particular place or area or from associating with and/or contacting a specified person or persons, or requiring him or her to participate in activities specified in the injunction. The court can impose prohibitions or requirements which have effect outside the area of the court in which the application is heard.

In addition to which the rules specifically grant the Youth Court powers to impose a Supervision Order or Detention Order on anyone under 18 who breaches an injunction.

The longer term view is for gang injunctions 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.

### Impact on the Youth Court

Applicants will be required to be clear about any security provisions necessary and will need to work with both the police and local court staff to ensure measures are in place to respond to any safety and security risk.

The responsibility rests with the applicant, rather than the court, to make sure that police attend hearings where necessary to ensure the safety of the public, staff and judiciary.

The court should be satisfied they can meet a number of security measures including:

- **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.

## Application Process

### Who can apply for a Gang Injunction?

Gang Injunctions are available in the Youth Court for 14 to 17 year olds. Applications can be made by a wide range of agencies, including the police and local authorities.

Before issuing an application against a youth, the applicants should make the local Youth Offending Teams (YOT) aware of the case background and what can be included in Gang Injunctions so as to ensure the YOT are fully aware and content that the proposed requirements being sought are appropriate.

### How do you apply?

The application is made to the Youth Court in the area in which the respondent resides or where the gang-related violence occurs, on Form MC200 which is a 'Complaint for a Youth Gang Injunction.' (Annex A)

Court staff should check the completed form with the applicant; ensure systems are in place to produce risk assessments as necessary and review any assessments on a regular basis throughout the court process. The checklist on the form will assist court staff with identifying any health and safety measure or special measures required with identifying appropriate venues, facilities etc. In the event additional information is required the court should contact the applicant as soon as possible.

**NOTE: An application fee is payable for 'commencing proceedings where leave is required' in civil proceedings in accordance with the Magistrates Courts Fee Order 2008 (as amended).**

Whilst Gang Injunctions may be issued at any Youth Court, Practice Direction 65 of the Civil Procedure Rules lists the following court centres identified for hearing cases of this nature which have the appropriate facilities for special measures and national coverage:

<b>Birmingham</b>	<b>Bradford</b>	<b>Brighton</b>	<b>Bristol</b>
<b>Cardiff</b>	<b>Chelmsford</b>	<b>Croydon</b>	<b>Leicester</b>
<b>Liverpool</b>	<b>Luton</b>	<b>Manchester</b>	<b>Newcastle</b>
<b>Norwich</b>	<b>Nottingham</b>	<b>Oxford</b>	<b>Peterborough</b>
<b>Portsmouth</b>	<b>Preston</b>	<b>Sheffield</b>	<b>Southend</b>
<b>West London</b>			

The application to the Youth Court must state:

- I. the name, address and date of birth of the respondent;
- II. the name and address of a parent or guardian of the respondent; and
- III. the terms of the injunction applied for.

The applicant must have evidence that the respondent has either engaged in, encouraged, or assisted gang-related violence, or is about to. 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.

If the injunction application is successful the court order will specify reasonable prohibitions or requirements which the young person must adhere to. In the event the case is adjourned the court has the power to grant an interim injunction which can contain any or all of the various provisions of a full injunction.

#### **‘With Notice Applications’**

In the case of a **‘with notice’ application** before the court, a copy of the application must be served by the applicant on the respondent personally. This will give the youth sufficient time to arrange representation etc.

#### **‘Without Notice Applications’**

If an application **without notice** is made, the application must also state the reasons why it is necessary for the initial application to be made without any notice being given.

#### **Special Measures**

Special measures are available in proceedings for Injunctions in the case of witnesses who are under 18 and vulnerable and intimidated adult witnesses (sections 16 and 17, Youth Justice and Criminal Evidence Act 1999). The court has to satisfy itself that the special measure, or combination of special measures, is likely to maximise the quality of the witness’s evidence **before** granting an application for special measures.

#### **The Role of the Youth Offending Team (YOT)**

Whilst there is no specific provision within the Policing and Crime Act 2009 that obliges YOTs to deliver case management or resettlement services in relation to Gang Injunctions, the Crime and Security Act 2010 does place responsibility on YOTs to provide reports to the court, and administer civil supervision orders.

Also, under the provisions of the Crime and Disorder Act 1998 (CDA), it is the local authority’s responsibility to regulate how YOTs operate and what functions they are to carry out (s 40(1)(b) of the CDA), but the YOT is obliged to comply with the functions assigned to them by the local authority and to co-ordinate the provision of youth justice services for all those in the local authority’s area who need them (s 39(7) CDA).

YOT court workers should work with the applicant to assess risk and vulnerability for specific court appearances and undertake an advisory role to support the court, and monitor and record the outcome of proceedings

**Note: in the event a young person breaches the injunction, the YOT will be expected to provide a pre-sentence report to the court, and will be responsible for the administration of any disposals of a supervisory nature.**

YOTs will have a significant role to play in the consultation process, the administration of any breach related court orders and may also be involved in the delivery of any identified requirements.

## **Breach of Injunctions**

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 to make a **Supervision Order** and the power to make a **Detention Order**.

## **Supervision Orders**

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

- **A Supervision requirement** – will involve the respondent having to attend appointments with the Youth Offending Team (YOT). If 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.
- **An Activity requirement** - may be made requiring the defaulter to participate in a particular 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. 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.

## **Electronic Monitoring**

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

When a court makes or amends a supervision order, it must provide copies to the respondent and to the specified YOT. If the supervision order contains an activity requirement relating to a specific place or activity the court must also provide copies to the person responsible for that particular place, activity or residential facility.

## **Detention Orders**

In serious cases or where, for example, other breach sanctions have been exhausted, the court may make a detention order against the respondent which may last no longer than three months and may involve the respondent being detained in:

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

The applicant or respondent may make an application to court for the detention order to be revoked. If an application has been made and dismissed, no further application for revocation may be made by either party without the prior consent of the court.

## **Variation, discharge and review of injunctions**

The 2009 Act contains provisions for the variation, discharge and review of injunctions. 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.

Applicants may apply for a variation or discharge of the injunction without giving notice to the respondent, but must state in the application why it was necessary not to give notice.

If the court orders a variation or discharge of an injunction, the applicant should immediately inform appropriate police and local authority partners and deliver a copy of this order to them.

The powers of the court to vary an injunction include:

- 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.

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.

### **Appealing an Injunction**

A youth found to be in breach by the Youth Court may appeal to the Crown Court under section 46B of the Policing and Crime Act 2009.

### **Legal Aid**

Access to legal aid for Gang Injunctions will be subject to a civil means and merit test to assess whether legal aid is available. Applications for legal aid should be made to the Legal Aid Agency (LAA).

However, Breach of a Gang Injunction is a criminal offence, therefore legal aid is available. Applications should be made to the relevant HMCTS office or the LAA Criminal Applications Team.

### **Reporting Restrictions**

The decision to publicise an Injunction will be taken by the police or applicant unless the court has made a section 39 order (Children and Young Persons Act 1933) prohibiting publication. When deciding whether to publicise an Injunction, public authorities (including the courts) must consider whether it is necessary and proportionate to interfere with the young person's right to privacy, and the likely impact on the young person's behaviour.

This will need to be balanced against the need to provide re-assurance to the victims and the wider community as well as providing them with information so that they can report any breaches. Each case should be decided carefully on its own facts.

### **Mandatory Review Hearing of Injunctions for Respondents aged 14 to 17**

There is a mandatory review process if any condition of the injunction lasts past the respondent's 18<sup>th</sup> 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 is required to ensure the YOT is consulted as part of this review.

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

### **Transfer of Proceedings**

When a respondent reaches their 18<sup>th</sup> birthday, it will be assumed that proceedings relating to an application for a gang injunction will remain in the Youth Court, unless the court directs otherwise.

The court can order the applicant and respondent to attend a hearing to consider transfer of proceedings at any time following the date of the respondent's 18<sup>th</sup> birthday.

Upon receiving such notification, applicants should provide a written statement clearly setting out the reasons why proceedings should either remain in the Youth Court or be transferred to the County Court (or High Court.)

### **Transfer Steps**

Where proceedings which were commenced in a Youth Court have been transferred to the County Court (or High Court) after the respondent attained the age of 18, anything completed in the youth court in or in relation to those proceedings will have effect, for the purposes of continuing the proceedings in the County Court (or High Court).

Proceedings transferred to the County Court will be sent to the County Court hearing centre which serves the address where the respondent resides. The Youth Court must ensure additional transfer files/documents are sent to the appropriate County Court where proceedings have been transferred. Notification of transfer should be sent the applicant, respondent, YOTS etc.

If there is an urgent application, it is the responsibility of the applicant to provide the court with all background information relevant to that injunction.

### **Reference Material:**

Legislation including statutory instruments may be found via :

<http://www.legislation.gov.uk/>

2015 No. 421 (L. 4) The Magistrates' Courts (Injunctions: Gang-related Violence) Rules 2015

[http://www.legislation.gov.uk/uksi/2015/421/pdfs/uksi\\_20150421\\_en.pdf](http://www.legislation.gov.uk/uksi/2015/421/pdfs/uksi_20150421_en.pdf)

Policing and Crime Act 2009

<http://www.legislation.gov.uk/ukpga/2009/26/contents>