

Knife Crime Prevention Orders

By **Graham Gilbert**

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I should start this article with a declaration: carrying knives in many areas of this country, and London in particular, is endemic and wrong. I recall speaking to a police officer during a case at Croydon. He was concerned about the rise in the number of weapons on the streets and the regularity with which they were being used. This was in 2016 – before the horrors of 2018 and the endemic levels of violence came to seemingly be in the newspapers every other day.

Against that background, the Home Office's announcement of a proposed amendment to the Offensive Weapons Bill currently making its way through Parliament seems a good thing. The Government is seeking an amendment to introduce "Knife Crime Prevention Orders" ('KCPO'). The government website suggests the orders are a necessary development to fill the gap between Gang Injunctions and Criminal Behaviour Orders.

However, and here hopefully it becomes plain why I felt the need to begin this article as I did, it appears to me that such an order is not necessary in light of the existing criminal law and available injunctions.

Why It is Suggested the Orders are Required and How They Should Work

Put simply, the Government contend that the new orders are required because the Metropolitan Police have asked for them. Home Office Minister Victoria Atkins told the House of Commons on 3 February that: "the police have asked us to introduce knife crime prevention orders to reach young people before they are convicted of an offence...the intention is that the new orders are preventive and support those subject to them in staying away from crime".

She went on to state: "we want to give the police the power, through the Bill, to seek an order from the a court, on a civil standard of proof, so that the state can wrap its arms around children if schools and police officers think they are at risk of carrying knives frequently....the orders mirror similar prevention orders we have, such a sexual harm

prevention orders, by placing negative and positive requirements on children who do not necessarily have a criminal conviction". The restrictions, she informed the House, would include "curfews and geographical restrictions, as well as requirements such as engaging in positive interventions". The requirements could also involve engagement with youth workers. A breach of any of the terms of an order will amount to a criminal offence punishable by up to 2 years in custody.

The orders will be available across the country and will be decided "on a case-by-case basis" by courts determining "whether an order is appropriate" for the respondent in each case. It appears that the police will be able to basis their applications on intelligence reports. Once a respondent is over 18, the orders will be subject to regular reviews.

The Criminal Law

In the case of *R v Boness; R v Bebbington & Others*¹ it was held that a court should be reluctant to impose an order which prohibited a person from committing an act that was already a specified criminal offence. It was noted by Hooper LJ that a prohibitive order should be aimed at preventing specific acts which may give rise to criminal conduct, rather than mimicking the existing law.

Vernon Coaker also suggested something similar when the matter was being debated in the House of Commons, asking "why is it necessary to have knife crime prevention orders when it is already a criminal offence to have a knife in public without good reason?"

Mr Coaker is quite right: carrying knives in public is already a criminal offence under section 139 of the Criminal Justice Act 1988. The maximum sentence following a conviction under this piece of legislation is four years' imprisonment, although the sentencing guidelines mean that rarely will any sentence be that high. However, those guidelines do still provide for a longer maximum sentence than the statutory upper limit of a breach of a KCPO: two-and-a-half years rather than two.

An order prohibiting the carrying of them in public is, therefore, arguably superfluous. What is needed is not a new order but greater police presence to enforce the existing law by way of stop and searches and, if necessary, prosecutions utilising the existing legislation. Several members of the House of Commons noted the need for enforcement of the existing law,

¹ [2006] All ER (D) 153 (Oct)

rather than new initiatives: as Mr Coaker put it, “instead of introducing new laws, why does not the Minister, with others, support the police to enforce the existing laws? Why have we seen a reduction in police numbers, when her own evidence tells her that they make a difference in tackling this issue? Is it not the case that knife crime prevention orders merely paper over the cracks?” Diane Abbot made a similar point, noting that “the problems of knife crime and other types of violent crime are as much about capacity as the law”; whilst Yvette Cooper suggested that preventing young people becoming caught up in knife-related lifestyles “requires investment in people who can work with those young people”.²

The Injunctions Available

The response to the suggestion that there is no need for KCPOs is that these orders are designed to prevent young people carrying knives and becoming subject to the criminal law in the first place. Ms Atkins noted that the orders were about “targeting prevention directly on them in a way that is not available at the moment in the eyes of the police. We are trying to prevent crime at a stage before harm is done”.

The government website suggests that Criminal Behaviour Orders (‘CBO’) and Gang Injunctions are insufficient as both can only be made as a *result* or *because* of conduct by an individual, rather than *prior* to that conduct. Gang Injunctions are available if a court is satisfied on the balance of probabilities that the respondent has engaged in or has encouraged or assisted gang-related violence or gang-related drug-dealing activity (s.34(2) Policing and Crime Act 2009). Similarly, Criminal Behaviour Orders may be made if a court is satisfied, beyond reasonable doubt, that an offender has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person (s.22(3) Anti-Social Behaviour, Crime and Policing Act 2014). They may also only be made following a conviction (s.22(1)).

In that fashion, it could be argued, both orders are useless for the purposes of preventing rather than punishing knife crime. But that fails to consider all the options presented by the 2014 Act. Anti-Social Behaviour Injunctions (the latest incarnation of the infamous Anti-Social Behaviour Order or ASBO) can be made if two conditions are satisfied (s.1 2014 Act):

- 1) If a court considers that, on the balance of probabilities, a person has engaged or threatens to engage in anti-social behaviour; and

² When questioned as to the cost of new orders and whether additional funding would be available, no specific response was forthcoming from Ms Aitkin. On the point of funding, she suggested that additional money had been made available to Police Commissioners and it was up to them how to spend it.

- 2) If the court considers it just and convenient to grant the injunction for the purpose of preventing such behaviour.

For the purposes of such applications “anti-social behaviour” is defined by section 2(1)(a) of the 2014 Act as conduct that has caused, or is likely to cause harassment, alarm or distress to any person. It seems clear that the carrying of a knife would satisfy the description of anti-social behaviour. It is equally plain that the orders can be made *prior* to any such conduct be committed.

The Government contend that the attachment of conditions to a KCPO will assist in reducing a subject’s chances of becoming involved in knife-bearing activities. But an ASBI can do the same thing. By section 1(4) of the 2014 Act an ASBI may prohibit the subject from doing certain acts and require them to do others. This would appear to encapsulate geographical and social media restrictions, if desired. Arguably, it could even extend to permitting the regular check of online activity by the police or other authority, if deemed necessary, and regular engagement with social workers.

In case there are any concerns about a punishment for breach of an ASBI would be less stringent than that for breaching the proposed KCPO, do not worry. Breach of an ASBI is punishable as contempt of court, an offence which carries up to two years’ imprisonment as a sanction (s.14 Contempt of Court Act 1981) – precisely the same as the envisaged punishment for breaching a KCPO.

Edward Davey asked Ms Aitkin in the House “what is different about the proposed new ASBO?”. The short answer, and one that was not given, would appear to be “nothing” when it is compared to the already available option of an ASBI.

Conclusion

Therefore, whilst applying for an ASBI which prohibited the carrying of a knife would be likely to be a fruitless enterprise in light of the case of *Boness* mentioned above, one which suggested that an individual was likely to engage in anti-social behaviour by way of carrying a knife as a result of certain influences may find success in seeking to remove a person from those negative factors. For example, if a person was regularly engaging in violent conversations on social media, or regularly being seen with those known to be involved in gang and knife culture, an order could be applied for which sought to limit their time with such negative influences or increased their time around more positive ones. If they breached

the order, a sentence of up to two years would be available to the sentencing court. This would then lessen the possibility of carrying a knife in the first place. If they then did so they would then be subject to the existing criminal law and a potential additional custodial sentence.

As a result, I am forced to conclude that the proposed KCPO's are not a necessary development of the law and are seeking to close a lacuna that does not, on closer inspection, exist. As Ms Aitkin told the House of Commons, the proposed new KCPOs do very closely mirror existing prevention orders – so closely, in fact, that the new option is not required. Whilst it is doubtless right that the Home Office listen to police service about what is going on in their respective areas, to suggest that an order should be introduced because the police do not believe an option currently exists is, in this instance, incorrect.

7 February 2019



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