

## **ASBO Cannot Increase Sentence**

An anti-social behaviour order (ASBO) cannot be used to increase the sentence for a crime beyond the statutory maximum. The Court of Appeal so found when considering the matter of a 12-month prison sentence imposed on a Mr Morrison for breaching his ASBO by driving while disqualified.

The maximum sentence for driving while disqualified is six months' imprisonment. In the view of Mr Justice Hughes, it is wrong in principle for an ASBO to be used to increase the penalty for an offence beyond the statutory maximum that has been laid down by Parliament. He was critical of the use of ASBOs to act as a second line of defence against criminal behaviour generally when they should be directed against behaviour likely to cause alarm or distress to people. An ASBO including a ban on driving while disqualified could hardly be considered to meet that criterion.

The practical effect of this case is that it would appear that there is little point in obtaining an ASBO in order to prevent behaviour which is already criminal.

In another case, an ASBO which would have had the effect of 'doubling' a punishment was ruled out on appeal. The ASBO in this case included the phrase '... not to own nor borrow any motor vehicle or occupy the driver's seat of a motor vehicle on a road or other public place until further order'. The offender was also banned from driving, with the result that if he were to be in breach of the disqualification order not only would he be liable to be prosecuted for that offence, which carries with it a maximum sentence of six months' imprisonment and a fine of £5,000, but he would also be liable to punishment for the breach of the ASBO.