

Neutral Citation Number: [2019] EWHC 1268 (QB)

Case No: C90BM249

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil Justice Centre
33 Bull Street, Birmingham B4 6DS

Date: 23rd May 2019

Before:

HIS HONOUR JUDGE MCKENNA
(sitting as a Deputy High Court Judge)

Between:

Birmingham City Council

Applicant

- and -

Harun Mansoor Sharif

16th Respondent

Jonathan Manning Counsel (instructed by **Kate Charlton, City Solicitor, Legal & Democratic Services**) for the **Applicant**

R de Mello Counsel (instructed by **McGrath & Co.**) for the **16th Respondent**

Hearing date: 8th May 2019

APPROVED JUDGMENT

HHJ McKenna:**Introduction**

1. On 3rd October 2016, His Honour Judge Worster, sitting as a Deputy Judge of the High Court granted to Birmingham City Council ('The Applicant') an injunction against persons unknown ('the Injunction') pursuant to section 37(1) of the Senior Courts Act 1981, section 1 of the Localism Act 2011, section 222 of the Local Government Act 1972 and section 130 of the Highways Act 1980.
2. The Judge attached a power of arrest to the Injunction pursuant to section 27 of the Police and Justice Act 2006.
3. The Injunction came into force on 24th October 2016 and is due to expire at midnight on the 24th October 2019.
4. The Injunction and power of arrest were designed to tackle the problem of car cruising within the City of Birmingham. It is one of a number of orders made in similar terms which have been granted by various Judges in this Court to various local authorities all of which have been designed to tackle the widespread problem of car cruising in the West Midlands.

The Committal Application

5. The Applicant alleges that on 16th September 2018 Harun Mansoor Sharif, the 16th Respondent, breached the terms of the Injunction by participating in a car cruise within the area covered by the injunction causing danger and/or nuisance to other road users by racing his black Audi A5 motor car registration number RF63HBJ against another vehicle at excessive speed and dangerously. He was arrested and brought before the Court. On the 27th September 2018 the Applicant served a committal notice dated 27th September 2018 and supporting documents on the 16th Respondent.

The Application to discharge

6. By an application notice dated 31st January 2019, the 16th Respondent seeks to have the Injunction discharged on the basis, it is said, that it was plainly wrong to have granted it and/or on the ground that there was an error of principle in the reasoning which led to its grant.
7. The application is supported by a witness statement dated the 3rd May 2019 from the 16th Respondent's solicitor, Mr Robinson. For the sake of completeness, I record that the 16th Respondent has also filed a statement

denying knowingly breaching the terms of the Injunction and he also relies on a further statement from Isaac Braich, a surveyor, which exhibits photographs of signage relating to the Injunction. Neither of those witness statements are relevant to the application to discharge the Injunction.

The Injunction

8. Paragraph 1 of the Injunction provides as follows:

“1. All persons are forbidden from participating in a street-cruise within the Claimant’s local government area (known as the City of Birmingham) the boundaries of which are delineated in blue on a map attached to this Order at Schedule 1.”

9. The terms “street cruise” and “participating in a street-cruise” are defined in Schedule 2 of the order which is in these terms:

“Street-Cruise”

1. *“Street-Cruise” means a congregation of the drivers of 2 or more motor-vehicles (including motor-cycles) on the public highway or at any place to which the public have access within the Claimant’s local government area (Known as the City of Birmingham) as shown delineated in blue on the map at Schedule 1, at which any person, whether or not a driver or rider, performs any of the activities set out at para.2 below, so as, by such conduct, to cause any of the following:*

(i) excessive noise;

(ii) danger to other road users (including pedestrians);

(iii) damage or the risk of damage to private property;

(iv) litter;

(v) any nuisance to another person not participating in the street-cruise.

2. *The activities referred to at para.1, above, are:*

(i) driving or riding at excessive speed, or otherwise dangerously;

(ii) driving or riding in convoy;

(iii) racing against other motor-vehicles;

(iv) performing stunts in or on motor-vehicles;

(v) sounding horns or playing radios;

- (vi) *dropping litter;*
- (vii) *supplying or using illegal drugs;*
- (viii) *urinating in public;*
- (ix) *shouting or swearing at, or abusing, threatening or otherwise intimidating another person;*
- (x) *obstruction of any other road-user.*

“Participating in a Street-Cruise”

3. *A person participates in a street-cruise whether or not he is the driver or rider of, or passenger in or on, a motor-vehicle, if he is present and performs or encourages any other person to perform any activity, to which “paras. 1-2” above apply, and the term “participating in a street-cruise” shall be interpreted accordingly.*

10. Paragraph 5 of the Injunction provides:

“Any person served with a copy of this Order may apply to the Court to vary or discharge it, on 48 hours written notice to the Claimant”

11. Service of the Injunction was effected by placing notices in newspapers, online and in prominent locations throughout the City of Birmingham.

Statutory Background

12. *Localism Act 2011*

Section 1 of the Localism Act 2011 confers a power on the Local Authority to do anything that individuals, with full capacity, generally may do, in anyway whatever and unlimited by the existence of any other power of the authority which to any extent overlaps the general power.

Local Government Act 1972

Section 222 of the Local Government Act 1972 confers power upon a local authority to prosecute, defend or appear in legal proceedings, and to institute civil proceedings in its own name, where the Authority considers it expedient to do so for the promotion or protection of the interests of the inhabitants of its area.

13. Section 111 of the Local Government Act 1972 confers a power upon a Local Authority to do anything which is calculated to facilitate or is conducive to or incidental to the discharge of any of its functions.

The Highways Act 1980

14. By Section 130(1) and (2) of the Highways Act 1980, it is the duty of the highway authority (in this case, the Applicant) to assert and protect the rights of the public to the use and enjoyment of any highway for which they are the highway authority, including any roadside waste which forms part of it. In addition, any council may assert and protect the rights of the public to the use and enjoyment of any highway in their own area for which they are not the highway authority (including any roadside waste which forms part of it).
15. It is also the duty of the Highway Authority to prevent, so far as possible, the stopping up or obstruction of the highways for which they are the highway authority and any other highways if in their opinion the stopping up or obstruction of that highway would be prejudicial to the interests of that area.
16. In the performance of their functions under section 130(1) to (3) a council may institute legal proceedings in their own name, defend any legal proceedings and generally take such steps as they deem expedient (see section 130(5)).

Public Spaces Protection Orders

17. Part 4 of the Anti-Social Behaviour, Crime and Policing Act 2014 (‘the 2014 Act’) introduced new powers for community protection including the Public Spaces Protection Order (‘PSPO’).
18. PSPOs replaced designated public space orders, gaiting orders and dog control orders.
19. The 2014 Act contains the following material provisions:

“59 Power to make orders

(1) A local authority may make a public spaces protection order if satisfied on reasonable grounds that two conditions are met.

(2) The first condition is that—

(a) activities carried on in a public place within the authority's area have had a detrimental effect on the quality of life of those in the locality, or

(b) it is likely that activities will be carried on in a public place within that area and that they will have such an effect.

(3) The second condition is that the effect, or likely effect, of the activities—

- (a) is, or is likely to be, of a persistent or continuing nature,*
 - (b) is, or is likely to be, such as to make the activities unreasonable, and*
 - (c) justifies the restrictions imposed by the notice.*
- (4) A public spaces protection order is an order that identifies the public place referred to in subsection (2) (“the restricted area”) and—*
- (a) prohibits specified things being done in the restricted area,*
 - (b) requires specified things to be done by persons carrying on specified activities in that area, or*
 - (c) does both of those things.*
- (5) The only prohibitions or requirements that may be imposed are ones that are reasonable to impose in order—*
- (a) to prevent the detrimental effect referred to in subsection (2) from continuing, occurring or recurring, or*
 - (b) to reduce that detrimental effect or to reduce the risk of its continuance, occurrence or recurrence.*
- (6) A prohibition or requirement may be framed—*
- (a) so as to apply to all persons, or only to persons in specified categories, or to all persons except those in specified categories;*
 - (b) so as to apply at all times, or only at specified times, or at all times except those specified;*
 - (c) so as to apply in all circumstances, or only in specified circumstances, or in all circumstances except those specified.*
- (7) A public spaces protection order must—*
- (a) identify the activities referred to in subsection (2);*
 - (b) explain the effect of section 63 (where it applies) and section 67;*
 - (c) specify the period for which the order has effect.*
- (8) A public spaces protection order must be published in accordance with regulations made by the Secretary of State.*

60 Duration of orders

- (1) A public spaces protection order may not have effect for a period of more than 3 years, unless extended under this section.*

(2) Before the time when a public spaces protection order is due to expire, the local authority that made the order may extend the period for which it has effect if satisfied on reasonable grounds that doing so is necessary to prevent—

(a) occurrence or recurrence after that time of the activities identified in the order, or

(b) an increase in the frequency or seriousness of those activities after that time.

(3) An extension under this section—

(a) may not be for a period of more than 3 years;

(b) must be published in accordance with regulations made by the Secretary of State.

(4) A public spaces protection order may be extended under this section more than once.

61 Variation and discharge of orders

(1) Where a public spaces protection order is in force, the local authority that made the order may vary it—

(a) by increasing or reducing the restricted area;

(b) by altering or removing a prohibition or requirement included in the order, or adding a new one.

(2) A local authority may make a variation under subsection (1)(a) that results in the order applying to an area to which it did not previously apply only if the conditions in section 59(2) and (3) are met as regards activities in that area.

(3) A local authority may make a variation under subsection (1)(b) that makes a prohibition or requirement more extensive, or adds a new one, only if the prohibitions and requirements imposed by the order as varied are ones that section 59(5) allows to be imposed.

(4) A public spaces protection order may be discharged by the local authority that made it.

(5) Where an order is varied, the order as varied must be published in accordance with regulations made by the Secretary of State.

(6) Where an order is discharged, a notice identifying the order and stating the date when it ceases to have effect must be published in accordance with regulations made by the Secretary of State.

Prohibition on consuming alcohol

62 Premises etc to which alcohol prohibition does not apply

(1) A prohibition in a public spaces protection order on consuming alcohol does not apply to—

- (a) premises (other than council-operated licensed premises) authorised by a premises licence to be used for the supply of alcohol;*
- (b) premises authorised by a club premises certificate to be used by the club for the supply of alcohol;*
- (c) a place within the curtilage of premises within paragraph (a) or (b);*
- (d) premises which by virtue of Part 5 of the Licensing Act 2003 may at the relevant time be used for the supply of alcohol or which, by virtue of that Part, could have been so used within the 30 minutes before that time;*
- (e) a place where facilities or activities relating to the sale or consumption of alcohol are at the relevant time permitted by virtue of a permission granted under section 115E of the Highways Act 1980 (highway-related uses).*

(2) A prohibition in a public spaces protection order on consuming alcohol does not apply to council-operated licensed premises—

- (a) when the premises are being used for the supply of alcohol, or*
- (b) within 30 minutes after the end of a period during which the premises have been used for the supply of alcohol.*

(3) In this section—

- “club premises certificate” has the meaning given by section 60 of the Licensing Act 2003;*
- “premises licence” has the meaning given by section 11 of that Act;*
- “supply of alcohol” has the meaning given by section 14 of that Act.*

(4) For the purposes of this section, premises are “council-operated licensed premises” if they are authorised by a premises licence to be used for the supply of alcohol and—

- (a) the licence is held by a local authority in whose area the premises (or part of the premises) are situated, or*
- (b) the licence is held by another person but the premises are occupied by a local authority or are managed by or on behalf of a local authority.*

63 Consumption of alcohol in breach of prohibition in order

(1) This section applies where a constable or an authorised person reasonably believes that a person (P)—

- (a) is or has been consuming alcohol in breach of a prohibition in a public spaces protection order, or*
- (b) intends to consume alcohol in circumstances in which doing so would be a breach of such a prohibition.*

In this section “authorised person” means a person authorised for the purposes of this section by the local authority that made the public spaces protection order (or authorised by virtue of section 69(1)).

(2) The constable or authorised person may require P—

- (a) not to consume, in breach of the order, alcohol or anything which the constable or authorised person reasonably believes to be alcohol;*
- (b) to surrender anything in P's possession which is, or which the constable or authorised person reasonably believes to be, alcohol or a container for alcohol.*

(3) A constable or an authorised person who imposes a requirement under subsection (2) must tell P that failing without reasonable excuse to comply with the requirement is an offence.

(4) A requirement imposed by an authorised person under subsection (2) is not valid if the person—

- (a) is asked by P to show evidence of his or her authorisation, and*
- (b) fails to do so.*

(5) A constable or an authorised person may dispose of anything surrendered under subsection (2)(b) in whatever way he or she thinks appropriate.

(6) A person who fails without reasonable excuse to comply with a requirement imposed on him or her under subsection (2) commits an offence and is liable on summary conviction to a fine not exceeding level 2 on the standard scale.

Restrictions on public rights of way***64 Orders restricting public right of way over highway***

(1) A local authority may not make a public spaces protection order that restricts the public right of way over a highway without considering—

- (a) the likely effect of making the order on the occupiers of premises adjoining or adjacent to the highway;*
- (b) the likely effect of making the order on other persons in the locality;*
- (c) in a case where the highway constitutes a through route, the availability of a reasonably convenient alternative route.*

(2) Before making such an order a local authority must—

- (a) notify potentially affected persons of the proposed order,*
- (b) inform those persons how they can see a copy of the proposed order,*
- (c) notify those persons of the period within which they may make representations about the proposed order, and*
- (d) consider any representations made.*

In this subsection “potentially affected persons” means occupiers of premises adjacent to or adjoining the highway, and any other persons in the locality who are likely to be affected by the proposed order.

(3) Before a local authority makes a public spaces protection order restricting the public right of way over a highway that is also within the area of another local authority, it must consult that other authority if it thinks it appropriate to do so.

(4) A public spaces protection order may not restrict the public right of way over a highway for the occupiers of premises adjoining or adjacent to the highway.

(5) A public spaces protection order may not restrict the public right of way over a highway that is the only or principal means of access to a dwelling.

(6) In relation to a highway that is the only or principal means of access to premises used for business or recreational purposes, a public spaces protection order may not restrict the public right of way over the highway during periods when the premises are normally used for those purposes.

(7) A public spaces protection order that restricts the public right of way over a highway may authorise the installation, operation and maintenance of a barrier or barriers for enforcing the restriction.

(8) A local authority may install, operate and maintain barriers authorised under subsection (7).

(9) A highway over which the public right of way is restricted by a public spaces protection order does not cease to be regarded as a highway by reason of the restriction (or by reason of any barrier authorised under subsection (7)).

(10) In this section—

- *“dwelling” means a building or part of a building occupied, or intended to be occupied, as a separate dwelling;*
 - *“highway” has the meaning given by section 328 of the Highways Act 1980.*
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65 Categories of highway over which public right of way may not be restricted

(1) A public spaces protection order may not restrict the public right of way over a highway that is—

- (a) a special road;*
- (b) a trunk road;*
- (c) a classified or principal road;*
- (d) a strategic road;*
- (e) a highway in England of a description prescribed by regulations made by the Secretary of State;*
- (f) a highway in Wales of a description prescribed by regulations made by the Welsh Ministers.*

(2) In this section—

- *“classified road”, “special road” and “trunk road” have the meaning given by section 329(1) of the Highways Act 1980;*
- *“highway” has the meaning given by section 328 of that Act;*

- *“principal road” has the meaning given by section 12 of that Act (and see section 13 of that Act);*
- *“strategic road” has the meaning given by section 60(4) of the Traffic Management Act 2004.*

66 Challenging the validity of orders

(1) An interested person may apply to the High Court to question the validity of—

- (a) a public spaces protection order, or*
- (b) a variation of a public spaces protection order.*

“Interested person” means an individual who lives in the restricted area or who regularly works in or visits that area.

(2) The grounds on which an application under this section may be made are—

- (a) that the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied);*
- (b) that a requirement under this Chapter was not complied with in relation to the order or variation.*

(3) An application under this section must be made within the period of 6 weeks beginning with the date on which the order or variation is made.

(4) On an application under this section the High Court may by order suspend the operation of the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied), until the final determination of the proceedings.

(5) If on an application under this section the High Court is satisfied that—

- (a) the local authority did not have power to make the order or variation, or to include particular prohibitions or requirements imposed by the order (or by the order as varied), or*
- (b) the interests of the applicant have been substantially prejudiced by a failure to comply with a requirement under this Chapter,*

the Court may quash the order or variation, or any of the prohibitions or requirements imposed by the order (or by the order as varied).

(6) A public spaces protection order, or any of the prohibitions or requirements imposed by the order (or by the order as varied), may be suspended under subsection (4) or quashed under subsection (5)—

(a) generally, or

(b) so far as necessary for the protection of the interests of the applicant.

(7) An interested person may not challenge the validity of a public spaces protection order, or of a variation of a public spaces protection order, in any legal proceedings (either before or after it is made) except—

(a) under this section, or

(b) under subsection (3) of section 67 (where the interested person is charged with an offence under that section).

(1) It is an offence for a person without reasonable excuse—

(a) to do anything that the person is prohibited from doing by a public spaces protection order, or

(b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

(4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 63).

67 Offence of failing to comply with order

(1) It is an offence for a person without reasonable excuse—

(a) to do anything that the person is prohibited from doing by a public spaces protection order, or

(b) to fail to comply with a requirement to which the person is subject under a public spaces protection order.

(2) A person guilty of an offence under this section is liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(3) A person does not commit an offence under this section by failing to comply with a prohibition or requirement that the local authority did not have power to include in the public spaces protection order.

(4) Consuming alcohol in breach of a public spaces protection order is not an offence under this section (but see section 63).

68 Fixed penalty notices

(1) A constable or an authorised person may issue a fixed penalty notice to anyone he or she has reason to believe has committed an offence under section 63 or 67 in relation to a public spaces protection order.

(2) A fixed penalty notice is a notice offering the person to whom it is issued the opportunity of discharging any liability to conviction for the offence by payment of a fixed penalty to a local authority specified in the notice.

(3) The local authority specified under subsection (2) must be the one that made the public spaces protection order.

(4) Where a person is issued with a notice under this section in respect of an offence—

(a) no proceedings may be taken for the offence before the end of the period of 14 days following the date of the notice;

(b) the person may not be convicted of the offence if the person pays the fixed penalty before the end of that period.

(5) A fixed penalty notice must—

(a) give reasonably detailed particulars of the circumstances alleged to constitute the offence;

(b) state the period during which (because of subsection (4)(a)) proceedings will not be taken for the offence;

(c) specify the amount of the fixed penalty;

(d) state the name and address of the person to whom the fixed penalty may be paid;

(e) specify permissible methods of payment.

(6) An amount specified under subsection (5)(c) must not be more than £100.

(7) A fixed penalty notice may specify two amounts under subsection (5)(c) and specify that, if the lower of those amounts is paid within a specified period (of less than 14 days), that is the amount of the fixed penalty.

(8) Whatever other method may be specified under subsection (5)(e), payment of a fixed penalty may be made by pre-paying and posting to the person whose name is stated under subsection (5)(d), at the stated address, a letter containing the amount of the penalty (in cash or otherwise).

(9) Where a letter is sent as mentioned in subsection (8), payment is regarded as having been made at the time at which that letter would be delivered in the ordinary course of post.

(10) In any proceedings, a certificate that—

(a) purports to be signed by or on behalf of the chief finance officer of the local authority concerned, and

(b) states that payment of a fixed penalty was, or was not, received by the dated specified in the certificate, is evidence of the facts stated.

(11) In this section—

“authorised person” means a person authorised for the purposes of this section by the local authority that made the order (or authorised by virtue of section 69(2));

“chief finance officer”, in relation to a local authority, means the person with responsibility for the authority's financial affairs”

20. Before a PSPO may be made, there are various consultation requirements that have to be complied with pursuant to section 72 and there are also restrictions on the orders that may be made in respect of highways as appears in sections 64 and 65.
21. As can be seen, breach of a PSPO, without reasonable excuse, is a criminal offence, punishable by a fixed penalty notice (of up to £100 or a fine on summary conviction, not exceeding level 3 currently up to £1000) – (see section 67 of the ‘2016 Act’).

Discussion and Conclusion

22. The thrust of the argument put forward on behalf of the 16th Respondent is that the Judge was plainly wrong to have granted the Injunction and/or there was an error in principle in the Judge's reasoning. In doing so he relies on the decision of the Court of Appeal in *Birmingham City Council – v – Shafi and another* [2009] 1 WLR 1961. In that case the Court of Appeal concluded that where a Local Authority sought an Injunction on terms that were identical or almost identical to the terms that could have been sought on an application for an Anti-Social Behaviour Order ('ASBO') which latter order was Parliament's preferred remedy for the type of conduct complained of and incorporated safeguards for defendants not available under the Civil Injunction regime, then while the Court retained jurisdiction to grant an Injunction, it would not, as a matter of discretion grant an Injunction save in exceptional circumstances.

23. As the Court put it at paragraph 45:

"We recognise that there is a general principle that, where a claimant in a civil action has two available rights or remedies, he is in general entitled to choose which to rely upon. However, the principle to which we have referred is an exception to that general principle and applies in the kind of case contemplated by Hoffmann J, of which this seems to us to be an example. We recognise that it may be said that in Chief Constable of Leicestershire v M Hoffmann J was considering what he regarded as an unprincipled extension of the common law in a field in which Parliament had already legislated and that in this case the jurisdiction to grant an injunction in aid of the criminal law (and indeed to restrain a public nuisance) is already established. However, it seems to us that the thought which underlies Hoffmann J's principle applies here. Parliament has recently legislated to restrain anti-social behaviour in a particular way and subject to particular safeguards. In our view the court should have that fact well in mind in deciding how to exercise its discretion whether or not to grant an injunction in a particular case."

24. As in the case of *Shafi*, the argument runs, Parliament has provided a remedy and a specific procedure in the form of the PSPO to combat the very type of behaviour complained about and, therefore, the Courts should give effect to Parliament's intention and only in very rare circumstances would it be appropriate for the Court to grant Injunctive relief.

25. Exhibited to Mr Robinson's witness statement are examples of PSPOs made by Gateshead MBC, one of which at least was designed to address issues similar to those sought to be addressed by the Injunction.

26. In further support of his argument, it was submitted on behalf of the 16th Respondent that the sanctions under the Contempt of Court Act 1981, namely an unlimited fine and/or imprisonment for up to two years, are far more onerous than the sanctions provided for in respect of breaches of PSPOs pursuant to the 2014 Act, a result that Parliament could not have intended, and equally, it was said, that Parliament in the PSPO regime expressly provided that a person would not be guilty of an offence if there was a reasonable excuse, a safeguard lacking in respect of committal proceedings.
27. To my mind, the 16th Respondent's reliance on the decision in *Shafi* is entirely misplaced. PSPOs are not a specific statutory remedy designed or introduced by Parliament to tackle the specific problem of car cruising. They replace, as I have already indicated, public space orders, restricting problem drinking, gating orders and dog control orders and give local authorities a general power to tackle activities that may cause a detrimental effect to quality of life of those living in their localities. The fact that Gateshead MBC may have made use of that power to deal with similar issues to those in respect of which the Injunction was sought is neither here or there.
28. Moreover, as Counsel for the Applicant submitted in respect of the argument based on the case of *Shafi*, here the choice is not between two different types of Court orders but between a remedy which requires a judicial decision and is, therefore, made by an independent and impartial tribunal on the one hand and on the other, the PSPO which the local authority makes for itself.
29. In those circumstances it does not seem to me that an intention should be imputed to Parliament that a public authority should be obliged to make PSPOs which are orders made without recourse to the Courts and still less that the Courts should in the exercise of their discretion decline to deal with an application on the basis that the local authority should have made an order itself without coming to Court. That would be a very surprising result – even more so when it is remembered that in the *Shafi* case the 'ASBO' regime provided specific safeguards which were lacking in the alternative approach and which made it more difficult for a local authority to obtain an 'ASBO'.
30. Moreover, *Shafi* has not been followed in other cases. It was expressly distinguished and indeed held to be irrelevant by the Court of Appeal in *Swindon Borough Council – v – Redpath [2009] EWCA Civ 943* where the Court held that there was no reason why a local authority should not use the 'ASBI' regime instead of the 'ASBO' regime and in respect of which a civil standard of proof would be applied. Likewise, in *Birmingham City Council – v – James [2013] EWCA Civ 552*, the Court of Appeal held there was no doctrine requiring one statutory remedy to be used in preference to another.

31. As Jackson LJ put it at paragraphs 26 to 29 in his judgment:

“26. In Shafi the Birmingham City Council applied to the county court for injunctions under s. 222 of the Local Government Act 1972 to restrain alleged gang members from entering the city centre. The county court dismissed that application and the Court of Appeal upheld that decision. The Court of Appeal held that, although the county court had jurisdiction to grant the order sought, it was right not to do so; the proper course was for the council to seek an ASBO in the magistrates' court. A significant feature of Shafi was that IRGVs were not then available: see paragraphs 4 and 5 above in the judgment of Moore-Bick LJ. Section 222 of the 1972 Act did not give councils any substantive powers. It was simply a procedural section which gave them powers (formerly vested only in the Attorney General) to apply for injunctions: see the judgment of Sir Anthony Clarke MR and Rix LJ at [24]. The council was seeking to make novel use of a general power. Since a tailor-made remedy had been provided by Parliament, namely an application for an ASBO, it was inappropriate to proceed under s. 222.

27. In the county court Mr de Mello submitted that the judge should dismiss the council's application for an IRGV because the law provided for a lesser and more appropriate remedy, namely an ASBO. The judge rejected that argument, both as a matter of principle and because an IRGV was the "closest fit" in the circumstances of this case. By his third ground of appeal Mr de Mello seeks to revive that same argument in this court.

28. In my view, although Mr de Mello presents his case attractively, the third ground of appeal is misconceived. The courts referred to in paragraph 22 above now have at their disposal three different pre-emptive orders for dealing with violent or anti-social behaviour. Defence counsel can, of course, invite the first instance court to impose a less draconian order than that which is sought by the applicant. The judge will then exercise his or her discretion to make whatever order seems most appropriate in the circumstances, provided that the statutory conditions are satisfied. The judge may direct that an application may be made either to a different court or for a different remedy from that which is claimed. On such an application, the judge may exercise his powers under s. 1B of the 1998 Act (which enables an ASBO to be made in the course of ongoing county court proceedings). There is, however, no "closest fit" principle which cuts down the court's statutory powers to make pre-emptive orders. Such a principle cannot be derived from either Samaroo or Shafi.

29. In the present case the conditions set out in s. 34 of the 2009 Act are satisfied. Therefore, the court has the power to make an IRGV. It is not a legitimate ground upon which to attack the judge's exercise of discretion that an ASBO (or in different circumstances an ASBI) is the "closest fit". If the

statutory conditions are satisfied, the Court of Appeal will only set aside an IRGV in an exceptional case where the judge has erred in the exercise of his or her discretion. The judge in the county court is well familiar with local conditions. He or she knows what gangs (if any) are operating and where. Absent any error of principle, the judge's exercise of discretion should be respected. “

32. In short, it is clear from the decisions in Redpath and James that there has never been a doctrine requiring an authority to apply for the remedy representing the closest fit to the mischief aimed at and, in any event, the alternative remedy contended for on the 16th Respondent's behalf, namely the PSPO, is not identical or even remotely similar.
33. There is no general principle that only in exceptional circumstances should a Court grant an Injunction where an alternative, specific statutory remedy is available or the Court should not do so where breach can carry more severe sanctions than breach of a PSPO nor is there any basis for the argument that local authorities cannot seek a remedy with more serious consequences in the event of a breach or that the Court cannot grant such a remedy if it considers it justified and proportionate so to do. In this case, the Court had ample evidence of the previous attempts made by the West Midlands Police to address car cruising and to the effect that those attempts have proved inadequate and therefore to conclude that the granting of the injunction was appropriate.

Disposal

34. It follows in my judgment that the application should be dismissed and the committal application should be listed for hearing.
35. I trust that the parties will be able to agree an order that reflects the substance of this order including costs.
36. Finally, I would like to acknowledge the assistance provided by both counsel in this case.

