Neutral Citation Number: [2021] EWHC 796 (Admin)

Case No: CO/4979/2019

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

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

Date: 31/03/2021

Before :

THE HONOURABLE MRS JUSTICE STEYN DBE

- -

Between :

AM	**Appellant**
- and -	
THE CHIEF CONSTABLE OF WEST MIDLANDS POLICE	**Respondent**

- -
- -

Joseph Markus (instructed by **McGrath & Co**) for the **Appellant**
Remi Reichhold (instructed by **Joint Legal Services for Staffordshire and West Midlands Police**) for the **Respondent**

Hearing date: 19 March 2021

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Approved Judgment

Mrs Justice Steyn :

Introduction

1. This is an appeal by case stated brought by AM (a minor, now aged 16) against a decision of District Judge Qureshi, sitting in Birmingham Youth Court, on 30 September 2019 that AM breached the terms of a civil injunction made under section 1 of the Anti-Social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"). The respondent to the appeal is the Chief Constable of West Midlands Police ("the Chief Constable").

2. There are two grounds of appeal:

   i) First, AM contends that the Chief Constable failed to comply with the obligation to consult the youth offending team ("the YOT") imposed by paragraph 1(3)(a) of Schedule 2 to the 2014 Act. This gives rise to a question as to the point in time when the statutory consultation duty was triggered, the scope of the duty, and whether the consultation in this case was unlawful by reason of timing and/or sufficiency.

   ii) Secondly, AM contends that the alleged breach was unenforceable due to lack of clarity arising from the combination of the words of the prohibition in the injunction and the attached map.

The injunction

3. On 2 July 2019, a civil injunction was made against AM ("the injunction") by Birmingham Youth Court. The application for the injunction was made by the Chief Constable who is one of the persons permitted to make such an application in accordance with s.5(1) of the 2014 Act. When the injunction was sought and made, AM was 14 years old, therefore the application was made to a youth court (as required by s.1(8) of the 2014 Act).

4. The injunction states:

> "On the complaint of the Chief Constable of West Midlands Police the Court finds that the respondent has acted in an anti-social manner namely a manner which has caused or was likely to cause harassment, alarm or distress to another and it is just and convenient to grant an injunction in order to prevent the Respondent from engaging in anti-social behaviour.
>
> IT IS ORDERED THAT:
>
> [AM] (whether by himself or instructing, encouraging or allowing any other person) SHALL NOT:
>
> 1. Have any contact directly or indirectly, unless at a place of education, when working with, or being supervised by a professional with:
>
> a) [person A]

b) [person B]
c) [person C]
d) [person D]

2. Enter the area of Handsworth outlined in red on the attached map

A POWER OF ARREST IS ATTACHED TO PROHIBITIONS 1 AND 2. THE INJUNCTION SHALL REMAIN IN FORCE UNTIL 23.59 HOURS ON 3RD JUNE 2020."

(Underlining added)

5. As indicated in paragraph 2 of the injunction, a map was attached to the injunction.

6. The injunction was made pursuant to s.1 of the 2014 Act, the material subsections of which provide:

> "(1) A court may grant an injunction under this section against a person aged 10 or over ("the respondent") if two conditions are met.
>
> (2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour.
>
> (3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.
>
> (4) An injunction under this section may for the purpose of preventing the respondent from engaging in anti-social behaviour –
>
> (a) prohibit the respondent from doing anything described in the injunction;
>
> (b) require the respondent to do anything described in the injunction."

7. The findings of Birmingham Youth Court that the first and second conditions were met is reflected in the preamble to the injunction. The term "*anti-social behaviour*" is defined in s.2(1) of the 2014 Act. It is clear from the preamble that, when applying for the injunction, the Chief Constable relied on "*anti-social behaviour*" falling within s.2(1)(a), that is "*conduct that has caused, or is likely to cause, harassment, alarm or distress to any person*".

8. Prior to applying for the injunction, the Chief Constable was required by s.14(1) of the 2014 Act to consult the local YOT about the application. There is no suggestion of any failure in this regard.

9. A power of arrest was attached to both prohibitions contained in the injunction made against AM. For a power of arrest to be attached, not only did the conditions specified in s.1(2) and (3) have to be met, but further conditions specified in s.4(1) also had to be met. Section 4(1) provides:

> "A court granting an injunction under section 1 may attach a power of arrest to a prohibition or requirement of the injunction if the court thinks that –
>
> (a) the anti-social behaviour in which the respondent has engaged or threatens to engage consists of or includes the use or threatened use of violence against other persons, or
>
> (b) there is a significant risk of harm to other persons from the respondent.
>
> "Requirement" here does not include one that has the effect of requiring the respondent to participate in particular activities."

The proceedings below

10. Less than two weeks after the injunction was imposed, on 13 July 2019, a member of the public called 999 regarding an incident at Hamstead Pavilion Playing Fields ("the Playing Fields"), a place which is located within the area outlined in red on the map attached to the injunction. On 19 July 2019 two police officers reviewed video footage and identified AM as having been at the Playing Fields that day.

11. At about 8pm on 30 July 2019, AM was arrested for an alleged breach of the injunction. AM's arrest was governed by s.9 of the 2014 Act which provides:

> "(1) Where a power of arrest is attached to a provision of an injunction under section 1, a constable may arrest the respondent without warrant if he or she has reasonable cause to suspect that the respondent is in breach of the provision.
>
> (2) A constable who arrests a person under subsection (1) must inform the person who applied for the injunction.
>
> (3) A person arrested under subsection (1) must, within the period of 24 hours beginning with the time of the arrest, be brought before -
>
> (a) a judge of the High Court or a judge of the county court, if the injunction was granted by the High Court;
>
> (b) a judge of the county court, if—
>
> (i) the injunction was granted by the county court, or
>
> (ii) the injunction was granted by a youth court but the respondent is aged 18 or over;

> (c) a justice of the peace, if neither paragraph (a) nor paragraph (b) applies.
>
> …
>
> (6) The justice of the peace before whom a person is brought under subsection (3)(c) must remand the person to appear before the youth court that granted the injunction. (emphasis added)

12. In accordance with s.9(3)(c) and (6), having been detained overnight, AM was brought before a justice of the peace the following morning and remanded to appear before Birmingham Youth Court. The hearing to determine whether AM had breached the injunction was initially set down for 2 September 2019 and, following a further adjournment, took place on 30 September 2019.

13. It was alleged by the Chief Constable that AM breached the second prohibition on 13 July 2019 by his presence at the Playing Fields. At the hearing on 30 September 2019, AM admitted that he had been to the Playing Fields that day, but denied breaching the injunction.

14. In reaching his decision, the District Judge rejected two arguments raised by AM, namely, first, that the Chief Constable had failed to comply with the requirement to consult the YOT imposed by paragraph 1(3)(a) of Schedule 2 to the 2014 Act. Secondly, that the court could not be satisfied to the requisite criminal standard that AM was in breach of the civil injunction because the prohibition lacked clarity.

The questions

15. The questions stated for the opinion of this court are:

> "(1) Was the District Judge correct to find that the mandatory consultation requirement under paragraph 1(3) of Schedule 2 to the Anti-Social Behaviour Crime and Policing Act 2014 had been complied with?
>
> (2) Was the District Judge correct to find, to the requisite standard, that the Appellant had breached the Order?"

Legal framework

16. The power to grant an injunction pursuant to Part 1 of the 2014 Act, and the conditions that must be met, are set out in s.1 of the 2014 Act: see paragraphs 6 and 7 above. As AM was under 18, the application for an injunction had to be made to a youth court.

17. Section 14 of the 2014 Act imposes various obligations to consult and inform others before applying for a s.1 injunction against a Youth or to vary or discharge such an injunction. This provision is not relied on directly, as the issue in this case concerns consultation following an arrest for breach of an injunction. But it is a relevant part of the statutory framework when considering the consultation requirement that is alleged to have been breached in this case. Section 14 provides:

"(1) A person applying for an injunction under section 1 must before doing so—

(a) consult the local youth offending team about the application, if the respondent will be aged under 18 when the application is made;

(b) inform any other body or individual the applicant thinks appropriate of the application.

This subsection does not apply to a without-notice application.

(2) Where the court adjourns a without-notice application, before the date of the first on-notice hearing the applicant must—

(a) consult the local youth offending team about the application, if the respondent will be aged under 18 on that date;

(b) inform any other body or individual the applicant thinks appropriate of the application.

(3) A person applying for variation or discharge of an injunction under section 1 granted on that person's application must before doing so -

(a) consult the local youth offending team about the application for variation or discharge, if the respondent will be aged under 18 when that application is made;

(b) inform any other body or individual the applicant thinks appropriate of that application.

(4) In this section—

"local youth offending team" means—

(a) the youth offending team in whose area it appears to the applicant that the respondent lives, or

(b) if it appears to the applicant that the respondent lives in more than one such area, whichever one or more of the relevant youth offending teams the applicant thinks it appropriate to consult;

"on-notice hearing" means a hearing of which notice has been given to the applicant and the respondent in accordance with rules of court;

"without-notice application" means an application made without notice under section 6."

18. There is a mandatory obligation on a person applying for a s.1 injunction against a minor to consult the YOT about the application before making it. The only exception to the requirement to consult the YOT *before* making an application is if the application is made without notice pursuant to s.6 of the 2014 Act. In such a case, unless the application was dismissed at the without-notice hearing, the applicant is obliged to consult the YOT before the first on-notice hearing instead. Similarly, if the person who applied for a s.1 injunction subsequently wishes to apply to the court to vary or discharge it pursuant to s.8 of the 2014 Act, he or she must consult the YOT about that application *before* making the application.

19. The obligations to "*consult*" in subsections (1)(a), (2)(a) and (3)(a) of s.14 contrast with the lesser obligations to "*inform*" those specified in subsections (1)(b), (2)(b) and (3)(b).

20. The consultation obligation in s.14(1) is reinforced by rule 3(1)(e) of the Magistrates' Courts (Injunctions: Anti-Social Behaviour) Rules 2015 (2015/423) ("the 2015 Rules") which provides that an applicant to a youth court for an injunction under Part 1 of the 2014 Act must "*in the case of an application on notice, include a statement that the requirement for consultation in section 14(1) has been complied with*". To the same effect, rule 6(2)(b) provides that an application to vary or discharge such an injunction must include a statement that the consultation requirement under section 14(3) has been complied with.

21. The guidance issued by the Secretary of State for the Home Department pursuant to s.19 of the 2014 Act - *Anti-social Behaviour, Crime and Policing Act 2014: Anti-social behaviour powers Statutory guidance for frontline professionals* (revised January 2021) - addresses consultation prior to making an application for an injunction in these terms:

> "**Dealing with young people**: Applicants must consult the local youth offending team if the application is against someone under the age of 18 and inform any other body or individual the applicant thinks appropriate, for example, a youth charity that is already working with the young person. Although the consultation requirement does not mean that the youth offending team can veto the application, it is important that applicants fully consider and take into account representations from the youth offending team as part of developing good partnership working in cases involving young people.
>
> The youth offending team will be important in getting the young person to adhere to the conditions in the injunction and that they are understood. The conditions will be overseen by a responsible officer in the youth offending team or children and family service. The youth offending team will also work with applicants as part of a multi-agency approach to ensure that positive requirements in the injunction are tailored to the needs of the young person." (emphasis added)

22. Before applying for a s.1 injunction, consultation with the YOT about the application would no doubt entail seeking views both about whether, in principle, to apply for an injunction, and about the content of the proposed injunction. Where a requirement is imposed, a person responsible for supervising compliance with the requirement, who

may be an individual or an organisation, must be identified in the injunction: see s.3 of the 2014 Act. The *YOT Practitioner's Guide: civil injunctions and the Criminal Behaviour Order* anticipates that in most cases the person responsible for supervising the requirements will be the YOT due to their expertise and access to appropriate intervention packages, so the importance of consulting before an application pursuant to s.1 is made is obvious. Even in a case such as this, where two "*prohibitions*" were imposed and no "*requirements*", the YOT has an important role in seeking to ensure the young person understands and complies with the terms of the injunction.

23. The conditions that must be met for a power of arrest to be attached to a prohibition or requirement are specified in s.4 of the 2014 Act: see paragraph 9 above. Where a power of arrest is attached to a provision of a s.1 injunction, the person who is subject to the injunction may be arrested by a constable, without a warrant, if the constable has reasonable cause to suspect that he is in breach of the provision: see s.9 (quoted in paragraph 11 above).

24. Section 10 governs arrest where no power of arrest was attached to the provision which is alleged to have been breached. Section 10 provides:

> "(1) If the person who applied for an injunction under section 1 thinks that the respondent is in breach of any of its provisions, the person may apply for the issue of a warrant for the respondent's arrest.
>
> (2) The application must be made to –
>
> (a) a judge of the High Court, if the injunction was granted by the High Court;
>
> (b) a judge of the county court, if –
>
> (i) the injunction was granted by the county court, or
>
> (ii) the injunction was granted by a youth court but the respondent is aged 18 or over;
>
> (c) a justice of the peace, if neither paragraph (a) nor paragraph (b) applies.
>
> (3) A judge or justice may issue a warrant under this section only if the judge or justice has reasonable grounds for believing that the respondent is in breach of a provision of the injunction.
>
> …
>
> (6) A warrant issued by a justice of the peace must require the respondent be brought before –
>
> (a) the youth court that granted the injunction, if the person is aged under 18;
>
> …

> (7) A constable who arrests a person under a warrant issued under this section must inform the person who applied for the injunction.
>
> (8) If the respondent is brought before a court by virtue of a warrant under this section but the matter is not disposed of straight away, the court may remand the respondent."

25. Sections 9(2) and 10(7) impose an obligation on the constable who arrests a person, whether pursuant to a power of arrest attached to a provision of the injunction or to a warrant granted pursuant to s.10(3), to "*inform*" another (namely, the person who applied for the injunction) of the arrest. The obligation is not required to be fulfilled *before* the arrest. And notably there is no obligation in sections 9 or 10 to "*consult*" any person prior to, or about, the decision to arrest for alleged breach of a prohibition or requirement of the injunction.

26. Sections 11 and 12 give effect, respectively, to Schedules 1 and 2 to the 2014 Act. In accordance with paragraph 2(1) of Schedule 1 (subject only to the narrow exception in paragraph 6 which is not relevant in this case), a person aged under 18 who is remanded under ss.9 or 10 may not be remanded in custody.

27. The provision which is central to the issue raised by question 1 is paragraph 1 of Schedule 2 to the 2014 which provides (so far as relevant):

> "(1) A youth court, if satisfied beyond reasonable doubt that a person aged under 18 is in breach of a provision of an injunction under section 1 to which he or she is subject, may make in respect of the person –
>
> (a) a supervision order (see Part 2 of this Schedule), or
>
> (b) a detention order (see Part 3 of this Schedule).
>
> (2) An order under sub-paragraph (1) may be made only on the application of the person who applied for the injunction.
>
> (3) A person making an application for an order under sub-paragraph (1) must before doing so –
>
> (a) consult any youth offending team specified under section 3(1) or, if a youth offending team is not specified under that subsection, the local youth offending team within the meaning of section 14;
>
> (b) inform any other body or individual the applicant thinks appropriate.
>
> (4) In considering whether and how to exercise its powers under this paragraph, the court must consider any representations made by the youth offending team referred to in sub-paragraph (3)(a)." (emphasis added)

28. Rule 10 of the 2015 Rules provides:

> "An application under paragraph 1(2) of Schedule 2 must –
>
> (a) be supported by evidence of the breach of any provisions of the injunction which is alleged; and
>
> (b) include a statement that the consultation required by paragraph 1(3) of Schedule 2 has been undertaken."
>
> (Emphasis added)

The requirement in rule 10(b) mirrors that in rules 3(1)(e) and 6(2)(b), referred to in paragraph 20 above.

QUESTION 1: CONSULTATION

Q.1: The case stated

29. The case stated records:

> "8. On 31st July 2019, AM was arrested and appeared in custody at this court. I have seen an email from the solicitor for the Chief Constable, Ms Hancocks, dated 26th September 2019 in which she states that:
>
> > "on 31st July 2019 I consulted with YOT and explained the nature of the alleged breach. At this stage I was not aware if [AM] would deny or accept the breach and YOT confirmed that if the breach was admitted they would require an adjournment in order for a report to be prepared. The breach was denied and the matter was adjourned." (see attached below)
>
> 9. Ms Hancocks added that on 25th September she had "consulted again with YOT and asked specifically about a detention/supervision order…" The response from YOT was that if the breach was proven, they would ask for a two week adjournment for a report to be produced.

30. A copy of Ms Hancocks' email of 26 September 2019 is attached to the case stated.

31. The District Judge rejected AM's contention that there had been inadequate consultation noting that the extent of consultation on 31 July and 25 September had to be considered in the context of an alleged breach that was committed very shortly after the civil injunction was made. (Paragraph 10 of the case stated states that the alleged breach occurred on 30 July 2019, just 23 days after the civil injunction was made. It was common ground before me, and is clear from paragraph 1 of the case stated, that the alleged breach was on 13 July 2019, 11 days after the injunction was made.)

32. The District Judge found there "*had been a fuller consultation with the YOT team and all other relevant parties before the application for the injunction made on the 2nd of*

July 2019"; "*the new process of consultation would be additional to the previous one which took place on the 14th March 2019*".

33. The District Judge continued in the case stated at paragraph 10, stating that AM's argument:

> "failed to address the question of how long such a consultation should have taken [place] considering that the youth was being held in the court cells except to say that it should be a meaningful consultation and that there was a period between the 17th July 2019 (when AM had been identified on CCTV footage) and his arrest on the 31st July 2019 (when he was brought before the court). I find support for my view in the fact that the YOT team at court on 31st July did not find it necessary to intervene and ask for a long meeting."

34. Paragraph 11 of the case stated records the District Judge's finding of fact that the Chief Constable consulted with the YOT on 31 July. At paragraph 13, the District Judge records that he offered AM's representative the opportunity to adjourn to allow Ms Hancocks to give evidence. As this was declined, the District Judge "*proceeded with the hearing on the basis that Ms Hancocks' statement in her email of 26th September 2019 showed that she had consulted with YOT on 31st July when AM was first at court and she made contact with YOT again on 25th September*". He ruled that this was a valid consultation for the purposes of the 2014 Act.

35. At paragraph 14 of the case stated the District Judge stated:

> "If Mr Robinson's interpretation of the law is correct, it would require the police and YOT to have a lengthy consultation during the course of the day whilst AM, then aged 14 years old, languished in custody in the court cells. In my view, this length of consultation is not what Parliament had in mind when it enacted the 2014 Act. It has to be a meaningful consultation and YOT are well placed to be able to do this very quickly and at short notice, particularly when they are fully aware of the respondent's background. The original injunction application would no doubt have been subject to a lengthy consultation and the process for a breach was bound to be a shorter discussion."

Q.1: The parties' submissions

36. On behalf of AM, Mr Markus submitted that the obligation to consult with the YOT in respect of under-18s applies at all stages of the process of seeking and enforcing an injunction:

    i) First, there is an obligation pursuant to s.14 to consult before applying for an injunction. The seriousness of the consultation requirement imposed by s.14(1) can be seen from the fact that, even in the most urgent cases where a without-notice application can be justified, the consultation requirement – while modified – remains: see section 14(2). Mr Markus also relied on the emphasis, in the statutory guidance to which I have referred, on consulting the YOT.

ii) Secondly, Mr Markus contended that the effect of paragraph 1(3) of Schedule 2 is that before an application is made "*for the court to deal with an alleged breach*", the applicant must consult the relevant YOT. This obligation, he submitted, applies at the outset of the breach stage.

iii) Thirdly, Mr Markus contended that paragraph 1(4) of Schedule 2 addresses the requirement on the court to take into account any representations made by the YOT at the end of the breach stage, when the court is considering the penalty to impose for a proven breach.

37. In his skeleton argument, AM submitted that paragraphs 1(3) and 1(4) of Schedule 2 contain separate consultation requirements relating to different stages of the process. The statutory purpose of consultation under para 1(3) is not concerned with penalty, he submitted: that is the function of paragraph 1(4). During oral argument, Mr Markus acknowledged that paragraph 1(4) is not a consultation obligation. Rather, it identifies a mandatory consideration that the court must take into account. Nevertheless, he submitted that the purpose of consultation with the YOT pursuant to para 1(3) is to obtain their assistance and views in deciding whether to initiate breach proceedings at all.

38. Mr Markus recognised that, as in this case, a minor may initially be brought to court as a result of having been arrested, rather than pursuant to a formal application under paragraph 1 of Schedule 2. Prior to the hearing his argument appeared to be that the Chief Constable was required to consult the YOT before arresting AM. However, during oral argument, Mr Markus accepted that the statute does not require consultation before the young person is arrested; what is required is consultation before an application for a supervision or detention order is made.

39. Mr Markus submitted the consultation with the YOT was deficient both with respect to timing and content. As regards the timing of the consultation with the YOT, he contended that the application for a supervision or detention order was made when Ms Hancocks, on behalf of the Chief Constable, sent an email to the court at 09.58 on 31 July 2019 attaching papers relating to AM. The YOT should have been consulted before the application was made whereas it appears from emails between the YOT and Ms Hancocks at 10.53 and 11.56 on 31 July 2019 that the YOT were only sent the papers at 11.56. This submission relied on emails and documents that were attached to the Chief Constable's skeleton argument. Mr Markus acknowledged that these emails do not form part of the case stated, but he submitted that the case stated was deficient in failing to specify when, on 31 July 2019, an application was made and when the consultation took place.

40. Mr Markus submitted that his construction would not result in a minor remaining in detention, as the District Judge feared. The Chief Constable could have brought AM before the court, as required by s.9, and sought an adjournment for a week to allow for consultation with the YOT, rather than immediately setting the matter down for a contested breach hearing. The papers could have been provided to the court for information without an application being made at that stage.

41. Mr Markus submitted that the consultation was inadequate because the Chief Constable did not seek the YOT's views as to whether proceedings for breach should be initiated or continued. Their views were only sought on the penalty for breach.

42. On behalf of the Chief Constable, Mr Reichhold submitted that in relation to youths, the 2014 Act requires consultation with the YOT in three circumstances, namely:

    i) before applying for a civil injunction against a youth (pursuant to s.14(1) and (2));

    ii) before applying for variation or discharge of a civil injunction made against a youth (pursuant to s.14(3)); and

    iii) before making an application for a supervision order or a detention order in relation to a youth (pursuant to paragraph 1(3)(a) of Schedule 2).

43. Mr Reichhold submitted that AM's contention that paragraph 1(3) requires consultation prior to an application "*for the court to deal with an alleged breach*" is wrong. Paragraph 1(3)(a) of Schedule 2 to the 2014 Act expressly limits the consultation requirement to before "*making an order under sub-paragraph (1)*". The two orders referred to in sub-paragraph (1) are supervision orders and detention orders. It follows that the cut-off point for consultation is when an application is made for one of those two penalties.

44. Mr Reichhold submitted that both paragraphs 1(3) and 1(4) concern penalty but the provisions have different functions. Paragraph 1(4) of Schedule 2 is an obligation on the court to take into account the views of the YOT at the time of sentence. While paragraph 1(3) imposes a consultation requirement on the Chief Constable.

45. The Chief Constable, while making clear the importance he attaches to consulting the YOT, took issue with the alleged purpose of the consultation requirement in paragraph 1(3). He contended that the wording of paragraph 1(3)(a), read with paragraph 1(1), shows that the Chief Constable is required to consult the YOT about any application for those specific penalties, not more generally about whether a youth should be arrested, whether an arrest warrant should be applied for, or whether breach proceedings should be pursued.

46. Mr Reichhold submitted that upon arrest, breach proceedings are initiated automatically. By arresting AM, the Chief Constable did not make an application for a supervision order or a detention order under paragraph 1(1) of Schedule 2. Nor was any such application made at the hearing on 30 July. It was only at the contested breach hearing, on 30 September 2019 before District Judge Qureshi, that an application was made by the Chief Constable for the court to impose a penalty. By that time, the consultation with the YOT which began on the morning of 31 July 2019 and continued prior to the hearing in September had taken place.

47. Mr Reichhold submitted that as an arrest cannot be deemed to be an application pursuant to paragraph 1(2), there is not a requirement to consult before making an arrest. Moreover, Parliament should not be taken to have imposed an obligation to consult prior to arrest, given the operationally sensitive nature of arrest and the detrimental impact on the ability of the police to properly perform their functions a duty to consult prior to arrest would have.

Q.1: My analysis

48. The 2014 Act requires an applicant to consult the YOT in three circumstances, namely:

    i) before applying for a civil injunction against a minor (pursuant to s.14(1) and (2));

    ii) before applying for variation or discharge of a civil injunction made against a minor (pursuant to s.14(3)); and

    iii) before making an application for a supervision order or a detention order in relation to a minor (pursuant to paragraph 1(3)(a) of Schedule 2). This is made clear by reading the words of paragraph 1(3), which refer to "*an application for an order under sub-paragraph (1)*", with sub-paragraph (1) which gives the court the power to make a supervision order or a detention order.

49. In each case, the statutory provisions make clear that the applicant is required to consult the YOT (a) *before* making the application and (b) *about* the application.

50. A young person who is the subject of a s.1 injunction may be arrested for an alleged breach in accordance with s.9, if there was a power of arrest attached to the prohibition or requirement which is alleged to have been breached, or in accordance with s.10 if the court grants a warrant. There is no express requirement to consult the YOT prior to arrest pursuant to s.9 or s.10. Nor can any such requirement be implied. Where Parliament intended to impose obligations to consult the YOT it has done so clearly and expressly: see s.14(1)(a), (2)(a) and (3)(a) and paragraph 1(3)(a) of Schedule 2. Whereas in s.9 and s.10 Parliament has imposed only an obligation to inform the applicant of the arrest, which obligation does not have to be complied with prior to the arrest. Moreover, I accept the Chief Constable's submission that the operationally sensitive nature of arrest militates against a conclusion that Parliament, without expressly saying so, has imposed an obligation on the police to consult with others before arresting a person.

51. AM's contention that there was an obligation to consult the YOT before the hearing on 31 July began was put in different ways in writing and then orally. The first way of putting it was a general proposition that the initial hearing following arrest is the outset of the breach proceedings and so the YOT must be consulted before the hearing. I reject this proposition. In my judgment, paragraph 1(3) of Schedule 2 places the obligation to consult prior to an application for a supervision order or a detention order precisely because it is recognised that there is no obligation to consult prior to arrest and arrest automatically triggers a hearing, arising from the alleged breach. The requirement to produce the young person within 24 hours of arrest begins the proceedings for breach, but paragraph 1(3) of Schedule 2 does not require consultation with the YOT prior to arrest or prior to the young person being produced at court.

52. AM's alternative proposition was that the initial hearing does not automatically begin the breach proceedings because the applicant could apply to adjourn the case management hearing for, say, a week, and deal with nothing at the initial hearing other than releasing the young person. But in this case, by sending papers to the court and by addressing the listing of the contested breach hearing, the initial hearing began the

breach proceedings and so represented the time by which the Chief Constable was required to consult the YOT. I reject this proposition, too.

53. The statutory provisions imposed no obligation on the Chief Constable to consult the YOT before AM was arrested at 8pm on 30 July 2019 or to consult YOT overnight before AM was brought before a justice of the peace at about 10am the next morning, as required by s.9 of the 2014 Act. The requirement for a hearing on 31 July followed automatically from the fact that AM was arrested the evening before.

54. By sending papers to the court just before 10am that day, the Chief Constable was informing the justice of the peace before whom AM was required to be produced of the reason AM had been arrested and detained overnight. The papers sent to the court on 31 July made no reference to a supervision order or a detention order and, in any event, the Chief Constable did not make an application that day for any such order. At the hearing on 31 July, in accordance with s.9(6), AM was remanded to appear before the youth court on 2 September 2019 (at which point the hearing was adjourned to 30 September 2019).

55. The District Judge found as a fact that the Chief Constable consulted with the YOT on 31 July and 25 September. These consultations both took place before the contested breach hearing on 3 September and before any oral or written application was made for a supervision order or a detention order to be imposed on AM. Accordingly, the District Judge made no error in rejecting the submission that the consultation took place too late.

56. As regards sufficiency, AM accepts the Chief Constable consulted the YOT about the proposed penalty, but the essential thrust of his submission is that the consultation was inadequate because the YOT were not consulted about the proposal to initiate, or continue, proceedings for breach. As I have rejected AM's submission that the Chief Constable was required to consult the YOT before initiating breach proceedings (i.e., prior to arresting AM or prior to the initial hearing on 31 July), it follows that the Chief Constable was not obliged to consult the YOT about whether to institute proceedings for breach.

57. That leaves the question whether the Chief Constable failed to consult adequately because the YOT were not asked for their view as to whether to continue the breach proceedings.

58. As regards sufficiency, both parties rely on *R (Moseley) v London Borough of Haringey* [2014] 1 WLR 3947. A public authority's duty to consult those interested before taking a decision is most commonly generated, as here, by statute. Lord Wilson observed at [23] to [24],

> "irrespective of how the duty to consult has been generated, that same common law duty of procedural fairness will inform the manner in which the consultation should be conducted.
>
> Fairness is a protean concept, not susceptible of much generalised enlargement. But its requirements in this context must be linked to the purposes of consultation."

59. At [26] Lord Wilson observed that

> "the degree of specificity with which, in fairness, the public authority should conduct its consultation exercise may be influenced by the identity of those whom it is consulting. Thus, for example, local authorities who were consulted about the government's proposed designation of Stevenage as a "new town" … would be likely to be able to respond satisfactorily to a presentation of less specificity than would members of the public, particularly perhaps the economically disadvantaged."

60. Lord Reed observed that the case before them in *Moseley* was

> "concerned with a statutory duty of consultation. Such duties vary greatly depending on the particular provision in question, the particular context, and the purpose for which the consultation is to be carried out. The duty may, for example, arise before or after a proposal has been decided upon; it may be obligatory or may be at the discretion of the public authority; it may be restricted to particular consultees or may involve the general public; the identity of the consultees may be prescribed or may be left to the discretion of the public authority; the consultation may take the form of seeking views in writing, or holding public meetings; and so on and so forth. The content of a duty to consult can therefore vary greatly from one statutory context to another: "the nature and the object of consultation must be related to the circumstances which call for it" (*Port Louis Corporation v Attorney-General of Mauritius* [1965] AC 1111, 1124). A mechanistic approach to the requirements of consultation should therefore be avoided."

61. The purpose of paragraph 1(3) is to require consultation with the YOT regarding an application for one of the two penalties available for breach of a s.1 injunction i.e., a supervision order or a detention order. The YOT has an important role in getting the young person to adhere to the conditions in the injunction so it is important that they are consulted before an injunction is sought, prior to any application for variation or discharge, and prior to an application for a supervision or detention order following an alleged breach. Given the YOT's role, their input regarding any conditions or penalty to be imposed is clearly of particular importance. In respect of penalty for breach, this is reinforced by the fact that the YOT's views are a mandatory consideration for the court.

62. Nevertheless, I accept that the obligation in paragraph 1(3)(a) of Schedule 2 encompasses not only seeking the YOT's views as to whether, if a breach is found, the appropriate penalty would be a supervision order or a detention order but also enabling the YOT to express the view (where appropriate in the YOT's opinion) that the applicant should not continue the breach proceedings, or no penalty should be imposed, and taking any views expressed into account.

63. Unusually, in this case, the allegation that the consultation was inadequate is not made by a person who was a consultee. An important consideration in assessing the adequacy

of the consultation is the nature of those involved. The single statutory consultee is the YOT, a professional organisation which works in cooperation with each of the public bodies that is entitled to apply for an injunction, variation, discharge or supervision or detention order in accordance with Part 1 of the 2014 Act.

64. The Chief Constable provided the YOT with all the relevant evidence and materials. The YOT was fully cognisant of the background, having been engaged in the consultation before the injunction was imposed. The Chief Constable sought the YOT's views regarding the appropriate penalty before the contested breach proceedings. For the consultation to be adequate, the Chief Constable did not need to ask the YOT specifically whether, in its view, the breach proceedings should continue. There is no evidence that the YOT considered that breach proceedings should not be pursued, and it would, perhaps, be surprising if they had taken that view given that an injunction with a power of arrest had been imposed and allegedly breached only 11 days later. But if that had been the YOT's view, they had an opportunity to express it during the consultation on 31 July and 25 September.

65. Accordingly, in my judgment, the answer to question one is yes. The District Judge was correct to find that the mandatory consultation requirement under paragraph 1(3) of Schedule 2 to the Anti-Social Behaviour Crime and Policing Act 2014 had been complied with.

QUESTION 2: WHETHER THE PROHIBITION WAS ENFORCEABLE

Q.2: The case stated

66. The District Judge addressed the second question in paragraphs 15 to 21 of the case stated. Between 17 and 21 he said:

> "17. Mr Robinson called both AM and AM's mother. In evidence, AM accepted he had been given a copy of the civil injunction and the map but said that he could not read the names of the roads as it was unclear. Mr Reichhold did not dispute that the inner section of the exclusion zone is difficult to read. AM also said that the civil injunction had banned him from the area of Handsworth but not Handsworth Wood, and that the park in question (Hamstead Pavilion Playing Fields) was actually in Handsworth Wood and not Handsworth. In answer to a question from me, AM said since the last hearing (i.e., after the alleged breach) he had been given a clearer copy of the map. From his answers about the park and its location, I had little doubt that the legal submission made on AM's behalf was simply relying upon the absence of full names of the districts in Birmingham since the exclusion zone clearly covered parts of both Handsworth and Handsworth Wood. I considered that the map represented the best pictorial depiction of the exclusion zone and that AM and his mother should pay more attention to that rather than the words typed in paragraph 2 of the civil injunction. In my view the argument over the misdescribed name of the districts was just a red herring in this case.

> 18. Since AM began to demonstrate a knowledge of these areas, he was asked further questions about the locality. In response to a question from Mr Reichhold, AM said that he knew of the railway line near Hamstead Pavilion Playing fields. He said that he used to live around the corner form the park and knew it well. He considered that the park was in Handsworth Wood and not Handsworth. He declined to accept that despite the incorrect name of the district, the park was still within the exclusion zone of the map. After repeated questioning and clarification, I understood him to be saying that he always knew from his local knowledge that the park was on the other side of the railway bridge but he was not aware of the railway line marked on the map. In my view, the railway line was clearly marked, even on the poor copy of the map initially provided to AM. I was satisfied beyond reasonable doubt that AM was not credible, and despite his denials that he fully knew the actual geography of the locality where the park and the railway bridge are located.
>
> …
>
> 20. It became apparent to me that the arguments by Mr Robinson about the illegibility of the map, whilst true in relation to the unclear streets inside the exclusion zone, rapidly fell away when the evidence of AM and his mother revealed that he knew full well where the park in question is located since he used to live near to it, and it also involved crossing the railway line, which is clearly marked on the map. I acknowledge that AM's mother drove him to the park inside the exclusion zone since he does not drive at his age, but in my view both knew the park was off limits. It is a matter for mitigation that his mother drove him there.
>
> 21. If a person subject to an injunction declines to study the legible part of the map properly, then that ignorance is no defence. I was satisfied so as to be sure that AM knew the park was inside the exclusion zone as it was bordered by the railway line, which is clearly marked on the map, and that he and his mother had deliberately gone into the park in breach of paragraph 2 of the civil injunction. I did not find AM and his mother credible witnesses and found the case proved to the criminal standard."

Q2: The parties' submissions

67. Mr Markus contended that the second prohibition in the injunction was insufficiently clear for the alleged breach by AM to be enforced. His contention was not that the injunction was invalid, but that it was not clear enough that he was prohibited from entering the Playing Fields for AM to be found to the requisite standard to have breached the prohibition by his presence there.

68. Mr Markus accepted that, as was held by the Divisional Court in *Director of Public Prosecutions v T* [2007] 1 WLR 209 in the context of an anti-social behaviour order, the normal rule that an order of the court must be treated as valid and must be obeyed unless and until it is set aside on appeal applied to the injunction. But Richards LJ observed at [37] in *DPP v T*:

> "It does not follow that the district judge lacked any means of giving effect to the concerns he had about the width and uncertainty of the order. It was open to him to consider whether the relevant provision lacked sufficient clarity to warrant a finding that the defendant's conduct amounted to a breach of the order; whether the lack of clarity provided a reasonable excuse for non-compliance with the order; and whether, if a breach was established, it was appropriate in the circumstances to impose any penalty for the breach."

Mr Markus submitted that, applying the words I have underlined, the District Judge should have found the alleged breach was not proven. He eschewed any reliance on reasonable excuse, as breach was a question of strict liability.

69. Mr Markus contended that certainty as to the scope and meaning of an injunction is essential if it is to be enforced, citing *Manchester City Council v Lee* [2003] EWCA Civ 1256, [2004] 1 WLR 349 at [54], *Circle 33 Housing Trust Ltd v Kathirkmanathan* [2009] EWCA Civ 921 at [15] and, in the context of anti-social behaviour orders under the predecessor legislation to the 2014 Act, *Boness & Ors v R* [2005] EWCA Crim 2395, [2006] 1 Cr App R (S) 120, in which Hooper LJ said at [20]:

> "Because an ASBO must obviously be precise and capable of being understood by the offender, a court should ask itself before making an order: 'Are the terms of this order clear so that the offender will know precisely what it is that he is prohibited from doing?'"

70. Mr Reichhold did not dispute the applicability of these authorities or that the effect of a civil injunction must be clear, precise and capable of being understood by the respondent to the injunction (i.e., here, AM), leaving no doubt as to what can and cannot be done.

71. On the facts, AM's challenge to the second prohibition is twofold:

i) First, the injunction and the exhibited map are inconsistent because the words of the injunction limit the scope of the exclusion to "Handsworth" whereas the exclusion zone delineated on the map covers a wider area extending into Handsworth Wood, which is where the Playing Fields are located.

ii) Secondly, the map is extremely difficult to understand and it is at least uncertain where the exclusion line is drawn and whether the Playing fields are contained within it.

72. In oral argument, Mr Markus focused primarily on the first point. He contended that when proper weight is given to the words, the prohibition would have been understood

as covering that part of the area within the exclusion zone on the map that is within Handsworth only.

73. The District Judge referred to the railway line as a point of reference, but Mr Markus contended it is uncertain from the map where the line runs, particularly in the top left corner. As the map does not disclose any features, including parks or railway bridges, it is possible that AM could have crossed a railway line reasonably believing himself not to be within the exclusion zone.

74. It was submitted on behalf of AM that it is irrelevant whether (as the District Judge found) AM knew the geography of the park, and where the railway was located because the issue for the District Judge to determine was whether the injunction, read as a whole, made clear beyond doubt that the Playing Fields were included in the area that AM was prohibited from entering.

75. Mr Reichhold acknowledged that the map that was attached to the injunction should have been clearer. The names of smaller roads and landmarks within the exclusion zone drawn on the map cannot be read. The names of a few main roads can be discerned and the district names "Handsworth" and "Handsworth Wood" can be read. Nevertheless, he submitted that what is required is that the exclusion zone must be "clearly delineated".

76. Mr Reichhold drew attention to three authorities which provide guidance on the use of maps to demarcate prohibited areas in relation to civil orders:

i) In *R v Khan* [2018] EWCA Crim 1472, the appellant appealed against a criminal behaviour order which was made upon conviction under Part 2 of the 2014 Act. Bean LJ held at [15]:

> "Exclusion zones should be clearly delineated (generally with the use of clearly marked maps, although we do not consider that there is a problem of definition in an order extending to Greater Manchester) and individuals whom the defendant is prohibited from contacting or associating with should be clearly identified. In the case of a foreign national, consideration should be given to the need for the order to be translated."

ii) *R v Cornish* [2016] EWCA Crim 1450 was an appeal against sentence for affray. The Judge made a restraining order under s.5 of the Protection from Harassment Act 1997 prohibiting the appellant from "*entering the village of St Germans in Cornwall and surrounding areas*." No map was provided to demarcate that village and "*surrounding areas*". In relation to that prohibition, Nicol J held at [19]:

> "Since this was an order whose breach had potentially serious penal consequences, it was essential that it should be precise; it was not. The term "St Germans village" itself lacked definition. The additional phrase "or surrounding areas" was vaguer still. If the appellant was to be prohibited from entering a particular area, it should clearly have been delineated.

> This could most easily be done by a boundary drawn on a map, although we do not preclude the possibility of other methods as long as these sufficiently clearly spell out what the defendant could not do."

iii) *R (Allan) v London Borough of Croydon* [2013] EWHC 1924 (Admin) was an appeal concerning an anti-social behaviour order which *inter alia* prohibited the respondent from entering an exclusion area marked on a map. Simon J held at [25]:

> "the terms of any order must be precise and capable of being understood by the offender. Thus, for example, an exclusion zone should be clearly delineated by a map which should clearly identify those with whom the offender should not associate."

77. Mr Reichhold submitted that in all three cases the test was whether the exclusion had been "*clearly delineated*" on the map. He submitted that test was met because on the map initially provided to AM, each of the roads and railway lines which form the boundary of the exclusion zone are clearly marked. By depicting in a thick red line the railway line which runs along the northern edge of the exclusion zone, and by clearly labelling each of the roads which form the exclusion zone boundary, the edge of the exclusion zone was clearly marked. It is also possible to make out the outline of roads, lakes and ponds, parks, and the names of motorways, larger A and B roads and various neighbourhoods (including "*Handsworth*" and "*Handsworth Wood*", both of which are within the exclusion zone).

78. In relation to the wording of the prohibition, Mr Reichhold submitted that just as in *R v Cornish* the words "*St Germans village*" lacked definition, so does the reference to "*Handsworth*". But the injunction did not simply refer to "*Handsworth*"; it referred to "*the area of Handsworth outlined in red on the attached map*". So AM could not close his eyes to the existence of the map which, on its face, includes reference to Handsworth Wood within the exclusion zone.

Q.2: My analysis

79. A civil injunction must be clear, precise and capable of being understood by the respondent to the injunction, leaving no doubt as to what can and cannot be done. As the Chief Constable has recognised, a clearer map ought to have been attached to the injunction. On a clearer version of the map that was provided to AM on 31 July 2019 (i.e. after the alleged breach), the words "*Playing Field*", "*Hamstead*" and the abbreviation "*Pav.*" can be read, indicating the location of the Playing Fields within the exclusion zone. None of those words are legible on the map attached to the injunction.

80. Nevertheless, in my judgment, the District Judge made no error in finding, to the requisite criminal standard, that AM breached the second prohibition in the injunction by his presence on the Playing Fields on 13 July 2019. I agree with Mr Reichhold's submissions on this issue.

81. AM's reliance on the reference in the injunction to "*Handsworth*" rather than also specifying "*Handsworth Wood*" is misplaced. The injunction made clear, and AM

knew, that he was prohibited from entering the area outlined in red on the map. First, it was clear from the words of the injunction that AM was prohibited from entering the area outlined in red on the attached map. Secondly, this was reinforced by the map itself which was labelled in clear black capital letters "EXCLUSION ZONE" and which contained a box in the top right-hand corner which depicted a rectangle with a thick red border and labelled this "EXCLUSION ZONE". It was readily apparent that the area outlined in a thick red line extended to cover Handsworth Wood, a district which was labelled legibly within the exclusion zone.

82. The injunction, read as a whole, was not ambiguous. It could not sensibly be read as meaning that AM was only prohibited from entering a vague and undefined part of the area within the exclusion zone which was within the "*area of Handsworth*" and was free to go elsewhere within the exclusion zone.

83. Although it would have been better if a clearer version of the map had been provided, I agree with Mr Reichhold that the key issue is whether the boundary of the exclusion zone – that is the roads and the railway that delineated its edge – was marked so that AM knew the roads and railway line that he was required not to cross. As the District Judge rightly found, the boundary was clearly delineated. Each of the roads which form the boundary of the exclusion zone is clearly labelled, with the name appearing in white capitals within a black box. The same is true where the edge of the exclusion zone is a railway line rather than a road, it is labelled, with the words "RAILWAY LINE" appearing in white within a black box. The part of the railway line which forms the boundary is clearly labelled in the top left corner as starting at Craythorn Avenue and ends on the right at Birchfield Road.

84. Accordingly, as (i) the fact that AM was prohibited from entering the area bounded in red on the map was clear and (ii) the precise location of the boundary of the exclusion zone was clear, I reject the contention that the alleged breach of the second prohibition was unenforceable. The District Judge heard evidence from AM and his mother and made a finding of fact that he was satisfied beyond reasonable doubt that AM knew full well that the Playing Fields were "*off limits*", that is, within the exclusion zone that AM was prohibited from entering. There is no sensible basis on which that finding of fact can be challenged.

85. It follows that the District Judge made no error in concluding that AM breached the injunction and the answer to question two is yes.

Conclusion

86. Accordingly, for the reasons I have given, the answer to both questions is yes and the appeal is dismissed.