**The “VOO”: another tool in the armoury of public protection**

**AN INTRODUCTORY GUIDE FOR PRACTIONERS MAKING OR DEFENDING AN APPLICATION FOR A VIOLENT OFFENDER ORDER**

**Introduction**

1. Violent Offender Orders (VOOs) are orders aimed at managing and mitigating risks posed by individuals convicted of violent crimes. They are intended to enhance public safety. VOOs impose restrictions and obligations on offenders to prevent further incidents of violence.
2. The Chief Constable of Gloucestershire Constabulary recently made a successful application for such an order. It was the first VOO to be made in the County. The VOO was introduced by the Criminal Justice and Immigration Act 2008 (“The Act”) and came into force on 03/08/2009. Although the VOO has been around for some time, they will continue to be relatively rare, given that they are not a measure of first resort. They are arguably a measure of last resort, but when public safety is significantly threatened by individuals who have demonstrated a propensity for violence and pose a significant continuing risk, the VOO ensures that the offender is subjected to rigorous oversight. The Orders are intended to bridge the gap between incarceration and liberation, offering a structured approach to reintegration within the community.
3. Rehabilitation and support for the offender, who may be returned into the community without sufficient assistance, is an indirect and important consequence of the VOO when licence conditions are about to lapse.
4. There is very little guidance on the imposition of VOOs. Practitioners may wish to go back to basic principles and issues of
   1. Necessity
   2. Proportionality; and
   3. Practicality

when considering the making of a VOO and also the terms, analogous to the public protection, analogous to the test in *Smith* [2011] EWCA Crim 1772; [2012] 1 Cr. App. R. (S.) 82 (which applied to the old SOPO regime for sexual offenders) cited in Archbold 2025 at 20-317:

“(a) An order must be necessary and proportionate, and its terms must be sufficiently clear on their face for the offender and those who have to deal with him to understand, without difficulty or the need for expert legal advice, exactly what is prohibited.

(b) *No order is needed if it merely duplicates another regime to which an offender is subject*….”

**Necessity**

1. The Criminal Justice and Immigration Act 2008 effectively states that VOOs are unlikely to be necessary *if* there are other Orders or regimes which are already in existence to protect the public from the type of harm envisaged by a VOO: -

““When deciding whether it is necessary to make such an order for that purpose, the court must have regard to whether P would, at any time when such an order would be in force, be subject under any other enactment to any measures that would operate to protect the public from the risk of such harm.”

In essence this means that if there is a lengthy extended sentence with years of licence remaining, which will be stringently monitored by an offender manager, there will be no need for a VOO. Similarly, if there is another ancillary order, such a Criminal Behaviour Order, or civil order.

1. It will almost always be unnecessary to apply for a VOO if licence conditions will be in place for some time. Sentencing judges who have an eye on dangerousness in the Crown Court will ensure that extended licence periods are imposed for offenders who pose a significant risk and require extended periods of supervision and management. In fact, VOOs cannot be ordered to run alongside periods of licence following release from prison.

Section 101 (5) and 101 (6) the Act provides: -

(5)A violent offender order may not be made so as to come into force at any time when P—

(a)is subject to a custodial sentence imposed in respect of any offence,

(b)is *on licence* for part of the term of such a sentence, or

(c)is subject to a hospital order or a supervision order made in respect of any offence.

(6)But such an order may be applied for, and made, at such a time.

Therefore if a licence is about to expire and the sentence expiry date is approaching, such as in the recent Gloucestershire case of *re LW* where the offender had been recalled and was due to be released on licence in a week. It is prudent to set up the VOO application in the weeks leading up to release, in accordance with section 101 (6) and the court should ensure that the VOO does not take effect until the licence has expired.

**The test for making a VOO**

1. What are the conditions for making a VOO?

section 100 (2) of the Act states that an Order can be made

The conditions are—

“(a)that the person is a qualifying offender, and

(b)that the person has, since the appropriate date, **acted in such a way as to give reasonable cause to believe that it is necessary for a violent offender order to be made** in respect of the person.”

1. The “qualifying offender” provision is satisfied if the offender has been convicted of a specified offence and either the offender received a custodial sentence of at least 12 months or a hospital order – see section 99 (2). It is back to the Schedule I’m afraid but by now practitioners should be alive to the usual specified offences such as section 18 wounding with intent, although offences of less serious violence and public order offences may trigger eligibility.
2. The civil standard applies: The Applicant must prove that the offender has behaved in a certain way – proof of acts - to give rise to the necessity of making a protective order. The proof of past behaviour (giving rise to future risk) only needs to be proved on the balance of probabilities. Hearsay is admissible and the court is entitled to assess the weight. If the Applicant can set out persuasive evidence which sets out a pattern of violent offending, including proof of criminal convictions for violence and some uncontroversial basic facts, proof that the offender “acted in such a way” alleged is likely to be established.
3. Section 104 of the Act deals with Interim VOOs. The same principles apply.

**The Battleground**

1. The real battleground for practitioners is likely to be necessity and proportionality
   1. Is it necessary to make the VOO in the first place?
   2. Is it proportionate to impose the terms sought or the duration requested.
2. The minimum period for a VOO is 2 years and the maximum is 5 years. The Order can be varied upon application and the Court may vary a VOO by imposing more stringent conditions, per section 103 (5) of the Act.

1. Proportionate terms and the balancing of rights: The term “rights” is often used loosely. The ECHR sets out examples of “rights”. Many “rights”, when properly analysed, are simply privileges. A "right" is a fundamental, inherent entitlement, whereas a "privilege" is a special advantage or benefit, often granted or available to a specific group or individual. One example of this in the context of public safety is the notion of the “right” to have a firearm. In the UK we regard this is as a privilege although a transatlantic journey may find a popular opinion that the possession of a firearm or the entitlement to bear arms is an inalienable right.
2. Our jurisprudence recognises that “everyone’s right to life shall be protected by the law” – see article 2 of the ECHR. This is arguably of greater importance than the right to carry a weapon or even keep a dangerous weapon at home. However, this does not mean that the rights of people to enjoy their private life and some of the freedoms we all enjoy, such as freedom of association and expression should be unduly curtailed. In the recent VOO obtained by Gloucestershire Constabulary in *LW,* the Applicant did not pursue a non-contact prohibition in relation to the female partner of the offender. LW was an undoubtedly violent woman who had committed a series of brutal attacks. Although there was evidence of volatility and even violence in the relationship between LW and her new partner, it was not proportionate to impose a prohibitive non-contact condition in relation to the partner she intended to marry. Such a prohibition would interfere with offender’s “right to respect for her family life”, because the offender’s partner (and potential victim) also confirmed to the Police shortly before the application for the VOO that the relationship difficulties were very much in the past and they were committed to starting a life together and were engaged. If evidence had been obtained that the existing partner had informed the police that she was very much in fear and would require the protection of VOO, a prohibitive non-contact requirement may have been sought.
3. The Applicant did not seek such a non-contact prohibition in *LW* in relation to the future spouse. There was no evidence that there had been any volatility in the relationship for over a year and the offender’s new partner was visiting the offender in prison. The Applicant drew the Court’s attention was drawn to the decision of the Court of Appeal in *R v Herrington* [2017] EWCA Crim 889, which related to the reluctance of the court interfering with private relationships in the context of an application for a restraining order against an undoubtedly “unruly and violent man. In *R v Herrington* [2017], the judgment of Edis J. at [2] was that: -

““This is not a jurisdiction which can be used to prevent an adult from deciding who she wants to live with. Although any person considering this case would consider that Holly Jones is at serious risk of violence from the appellant, she has the right to live with him if she chooses. It is to be hoped that she is genuinely aware of the risk she is running in doing that, but ultimately she is an adult and free to take those decisions for herself. The law does not presently permit the criminal court to act to protect victims of domestic violence against the consequences of decisions of this kind which they freely make.”

1. Risk and public protection are matters that have to be kept under continual review. It would not be improper for the Police to apply to amend by adding more onerous conditions including separation from the offender’s new partner, if substantial concerns about the safety of the partner came to light– section 103 (5) of the Act. However, this was not a case which needed such State intervention at the initial application. The VOO tackles offending behaviour, monitors movements and associations, while seeking to minimise incursion into private lives. Proportionality is important.

# **And finally…**

1. It is neither prudent nor lawful for Applicants to make wide-reaching applications with a myriad of clauses which seek to minimise activity such as internet usage or denial of access to tablets. there should not be a “cut and paste” approach of other civil orders such as SHPOs but a tailored approach. Location Device Monitoring equipment may be appropriate for an offender who poses a significant risk to the public and has also failed to comply with licence conditions in the past. This is not a restriction on liberty, since the offender is free to move as they choose, but their location will be monitored to minimise the risk to the public.
2. Defence practitioners should be astute to the concept of necessity. The focus should be on ensuring that blanket prohibitions are not imposed without good reason, since they are likely to be unlawful. There should also only be minimal and proportionate incursion into the private and family life of the offender to fulfil the aim of public protection, even if it is clear that the offender has a track record of serious violent behaviour and the public need to be protected by a VOO.

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