



## Applications for Anti-Social Behaviour Injunctions and Gang-Related Violence Injunctions – changes to the N16A

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Local authorities, social housing providers and their advisors are well-versed in the ways in which they can seek injunctions against anyone engaging in or threatening to engage in anti-social behaviour under section 1 of the Antisocial Behaviour, Crime and Policing Act 2014, or gang-related violence injunctions under section 34 of the Policing and Crime Act 2009.

But a recent change in the Civil Procedure Rules has been catching some out.

### Requirements of the Civil Procedure Rules

Paragraphs 42 to 49 of Part 65 of the Civil Procedure Rules govern how such applications are to be made to the Court, with an important recent amendment.

Paragraph 65.43(2) requires that the application:

- (a) must be made by a claim form in accordance with Practice Direction 65;
- (b) may be made at any County Court hearing centre;
- (c) must be supported by a witness statement which must be filed with the claim form; and
- (d) **must include a statement that the respondent is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test.**

43(2)(d) is a new requirement, introduced in June 2023 in response to paragraph 196 of the Civil Justice Council's report on ANTI-SOCIAL BEHAVIOUR AND THE CIVIL COURTS (<https://www.judiciary.uk/wp-content/uploads/2020/10/ASBI-final-accessible.pdf>).

Following the revision of the civil legal aid contract in 2018, civil legal aid is available for a person facing an application for an injunction under the 2014 Act, and providers have delegated functions to be able to grant certificates for emergency representation (without having to wait for a decision from the Legal Aid Agency). Legal aid is not limited to housing related anti-social behaviour injunctions; all antisocial behaviour injunctions sought under the Act are in scope for legal aid.

Some claimants and their advisors were already providing defendants with a reminder to seek legal advice when responding to applications that might see them subject to restrictions on their behaviour (the breach of which could lead to a prison sentence), but there was previously nothing mandating such a step.

However, giving defendants that information is now a mandatory requirement when making an application.

By putting the information in the application, the court can be assured that defendants are aware of the right to seek time to prepare their case, the right to be legally represented and the availability of legal aid.

The above reflects the changes that had already been made to CPR 81.4 - which provided similar safeguards for anyone facing an application to commit them to prison for contempt.

### **Why compliance is important**

The changes to the Civil Procedure Rules were made earlier this summer without much fanfare, and the inclusion of the 65.43(2)(d) statement may have been overlooked in some quarters.

However, the judiciary – and especially those District Judges who regularly deal with ASB matters – have been briefed on the changes to the CPR, and anecdotally it appears that judges are looking out for any omissions on the N16A application form that make an application non-compliant.

As legal aid is available to a person facing an application for an injunction, a failure to inform a defendant of that right to legal aid might be viewed as a breach of common law principles of fairness as well as a breach of their Article 6 rights.

As a consequence, applications without the 65.43(2)(2) statement are being adjourned, for the N16A to be amended and reserved. It is possible that judges will start to dismiss non-compliant applications.

### **Conclusions**

It is important that those who issue proceedings to make sure that their application includes on the face of the form itself the information that the defendant is entitled to a reasonable opportunity to obtain legal representation, and to apply for legal aid which may be available without any means test.

Those organisations that use templates or proformas are urged to check that their templates are brought up to date, lest the omission of the required information leads to a costly adjournment (or even more costly dismissal).

Legal representation for defendants is almost always beneficial to both parties, as it allows each side to better understand the strengths and weaknesses in their own case and means that often complex issues such as capacity and disability can be grappled with head-on.

It was already best practice to include this sort of information in a covering letter to defendants, and any such correspondence can (continue) to urge defendants to seek legal advice, provide a geographically-appropriate list of local providers or details of the Civil Legal Advice Service ('CLA') telephone helpline. The CLA provides specialist legal advice to people across England and Wales who qualify for legal aid.

**[Author Picture]**

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Law is correct as at 25 August 2023

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