

Dear Sir/Madam

Mr "*Your name*" - Application to vary Sexual Offence Prevention Order

I, the above-mentioned defendant am presently subject to a Sexual Offence Prevention Order until further order.

This order was imposed following "guilty pleas being entered on date to *OFFENCE(S)*. On the "DATE", the Applicant was sentenced to XX years *punishment* by HHJ Judge.

This letter should be read in conjunction with "*any previous letters and dates of previous letters to remove conditions date*", in which the court granted an administrative variation to *Your name*'s SOPO.

### **Recent factual background**

*"if you have previously had conditions removed then list data below"*

On *date*, the Force Solicitor for *area* Police Service confirmed in writing their agreement for the following XX conditions to be the only remaining conditions for the SOPO:

1. *Condition* details;

*Continue if more.*

On "*Date*", the court agreed to vary the order.

*Here I included the text of letters from my children*

*Here I included a private Psychologist review results*

From "*date and name*" has been the supervising Offender Manager. Upon the Courts request he will present a report supporting the application; included *Police Area* Public Protection Unit - Email *date* documents this.

*My name* has written a letter in support of his application dated XX, in which he acknowledges that he became "disassociated" with his family, which created the background against which the offences were committed. Since the offence he has tried to increase his "*support network*" thus improve his family and personal life.

He also details the precautions that he undertakes to prevent breaches of the order

*"I have learned to undertake a type of "discrete census" with all new introductions. My self-imposed "protective mechanism" being that, if I have any inclination that my conditions require my making a declaration, I refrain from forming any interaction past casual polite greetings."*

In order to prevent future offending, "*name*" confirms the following:

• "

• My relocation by definition supports my desire to remove any chance of accidental or non-advertent contact.

• I am extremely aware that to intentionally attempt contact in the future (even without a condition) would damage any quality of life they may have. I am also aware that it would undermine all the trust, faith and support given to me. Not only by my family and friends but, by those I have received guidance from because of my offence."

## **Legal Framework**

The SOPO was made under section 104 of the 2003 Act, the relevant provisions of are as follows:

- “(1) A court may make an order under this section in respect of a person (“the defendant”) where any of subsections (2) to (4) applies to the defendant and-  
...  
(b) ... it is satisfied that it is necessary to make such an order, for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant.
- (2) This subsection applies to the defendant where the court deals with him in respect of an offence listed in Schedule 3 or 5 ... “.

Paragraph 13 of Schedule 3 lists offences under section 1 of the 1978 Act and applies, inter alia, where the offender was aged 18 over.

Sections 106 and 107 contain further provisions in relation to SOPOs. In particular, these made it clear that such orders:

- (a) Prohibit the defendant from doing anything described in the order;
- (b) Have effect for a fixed period (not less than 5 years) specific in the order, or until further order<sup>1</sup>

The only prohibitions which may be included in the order are those which are

“necessary for the purpose of protecting the public or any particular members of the public from serious sexual harm from the defendant”<sup>2</sup>

“Protecting the public or any particular members of the public from serious sexual harm from the defendant” means

“protecting the public in the United Kingdom or any particular members of that public from serious physical or psychological harm, caused by the defendant committing one or more offences listed in Schedule 3 [to the 2003 Act].”<sup>3</sup>

However, the legislation has subsequently been amended by the Anti-Social Behaviour, Crime and Policing Act 2014, in short before such an order is imposed, there is no longer the need for the Crown to show there is a risk of serious sexual harm. Now Judge may make a “sexual harm prevention order” in respect of an accused (SOA 2003 s.103A; ASBA 2014 Sch.5 para.2) where, in respect of an offence listed in Schs 3 or 5 he deals with him in respect of:

- (1) such an offence;

1 Section 107(1)  
2 Section 107(2).  
3 Section 106(3).

(2) a finding that he is not guilty of such an offence by reason of insanity; or ... and the judge is satisfied that it is necessary to make a such an order, for the purpose of:

(a) protecting the public or any particular members of the public from sexual harm from the accused; or

(b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the accused outside the UK

Sexual harm from a person means physical or psychological harm caused by:

(a) the person committing one or more offences listed in Sch.3; or

(b) (in the context of harm outside the UK) by the person doing, outside the UK, anything which would constitute an offence listed in Sch.3 if done in any part of the UK;

An order may specify:

(1) that some of its prohibitions have effect until further order and some for a fixed period;

(2) different periods for different prohibitions.

The only prohibitions that may be included in an order are those necessary for the purpose of:

(a) protecting the public or any particular members of the public from sexual harm from the accused; or

(b) protecting children or vulnerable adults generally, or any particular children or vulnerable adults, from sexual harm from the accused outside the UK.

SOPO proceedings are civil in nature and hearsay evidence is admissible. However, the facts on which the judgment whether it is necessary to make such an order is based must be established to the criminal standard of proof.<sup>4</sup> Expert evidence as to the propensity of the defendant to commit further sexual offences is admissible within proceedings to assist the Court to determine whether an order is necessary to protect the public from serious sexual harm.<sup>5</sup>

A SOPO is regarded as “part of the total protective sentencing package.”<sup>6</sup> The general approach to making a SOPO in cases involving the viewing of child pornography was considered by the Court of Appeal in *R v Smith, Clarke and others*<sup>7</sup>. The Court must ask three questions:

- (i) Is the making of an order necessary to protect from serious sexual harm through the commission of scheduled offences?
- (ii) If some order is necessary, are the terms proposed nevertheless oppressive?
- (iii) Overall are the terms proportionate?

It is to the prevention of the commission of sexual offences that the reach of a SOPO must be tailored. The order should not prohibit unusual, or socially disapproved, sexual behaviour unless such is likely to lead to the commission of these offences. Further, there must be a real, not remote, risk of harm at this level occurring in consequence.<sup>8</sup>

<sup>4</sup> *Chief Constable of Cleveland Police v Haggas* [2011] 1 WLR 2512.

<sup>5</sup> *Jones v The Greater Manchester Police Authority* [2001] EWCH Admin 189

<sup>6</sup> See *R v C* [2008] EWCA Crim 2790 [14]/ *7* [2011] EWCA Crim 1772.

<sup>7</sup> [2011]EWCA Crim 1772.

<sup>8</sup> *Ibid* [7]

The “variation, renewal or discharge” of SOPOs are dealt with in section 108 of the 2003 Act. It is provided that, inter alia, a defendant<sup>9</sup> against whom a Crown Court has made a SOPO can apply to the Crown Court<sup>10</sup> for the variation or discharge of the order. If the application for discharge is made within 5 years of the making of the SOPO then the consent of the chief officer of police for the area in which the defendant resides must be obtained.<sup>11</sup> This application must be made “in accordance with rules of court”.<sup>12</sup>

The relevant rules are to be found in Part 50 of the Criminal Procedure Rules. By CrPR 50.5, a person making an application must

“(a) apply in writing as soon as practicable after becoming aware of the grounds for doing so, explaining—

- (i) what material circumstances have changed since the order was made, and
- (ii) why the order should be varied or revoked as a result; and

(b) serve the application on—

- (i) the court officer,
- (ii) as appropriate, the prosecutor or defendant, and
- (iii) any other person listed in paragraph (1)(b), if the court so directs.

(3) A party who wants the court to take account of any particular evidence before making its decision must, as soon as practicable—

(a) serve notice in writing on—

- (i) the court officer,
- (ii) as appropriate, the prosecutor or defendant, and
- (iii) any other person listed in paragraph (1)(b) on whom the court directed the application to be served; and

(b) in that notice identify the evidence and attach any written statement that has not already been served.

(4) The court may decide an application under this rule with or without a hearing.

(5) But the court must not—

- (a) dismiss an application under this rule unless the applicant has had an opportunity to make representations at a hearing (whether or not the applicant in fact attends); or
- (b) allow an application under this rule unless everyone required to be served, by this rule or by the court, has had at least 14 days in which to make representations, including representations about whether there should be a hearing.

The recent decision in *Sadler v Worcestershire Magistrates Court* [2014] EWHC 1715 provides some guidance. Here Lord Justice Elias appears to have picked up on the point of ‘change of circumstance’ in *R v Hoath* concerning variation of a SOPO, and applied it to an application to discharge a SOPO;

*“when the application is to discharge, it seems to me that a change of circumstance is a necessary requirement, otherwise the application is no more than an appeal against the original order.”*

9 Section 108(2)

10 See the definition of “appropriate court” in section 108(7)

11 Section 108(6).

12 Section 108(3)(a).

## **Submissions**

*It has been over XX years since Name committed these offences. Independent and Justice Service Psychologists have assessed him as not suitable to attend any Sex Offender Treatment Programme whilst incarcerated or on licence. His conduct since his arrest in date including whilst incarcerated and on licence was exemplary. He has not reoffended since. He has complied with all court orders imposed. He has voluntarily sought therapy on a private basis.*

It is submitted that the remaining conditions of the SOPO we submit are not necessary

- Condition 1:

*“condition clause words”*

*Reason for dismissal.*

- Condition 2:

*“condition clause words”*

*Reason for dismissal.*

*name* has suffered detriment as a result of the continued operation of the order which we submit is disproportionate to the risk that he poses.

If the Court deem it appropriate to hold the hearing in “open” Court and not as previous in “Judges Chambers”, the following consideration is respectfully offered:

It is requested of the Court to agree that “only the applicant’s details e.g., name and address at the time of conviction be used”. It is also requested, prohibiting the publication of the applicant’s “new name and new address etc” throughout the Court proceedings and therefore publication is prohibited in any and all media reporting.

This request is made to not only protect the applicant, but also his family and the friends who associate and support him.

Yours faithfully

*name*

*List of any attached documents you present in support*