Man ordered to wear an electronic tag to stop him visiting 'red-light' areas.

The Court of Appeal has upheld the right of a Magistrates Court to make a man wear an electronic tag as part of his Sexual Offences Prevention Order (SOPO) conditions (*Richards, R (on the application of) v Teesside Magistrates' Court & Anor [2015] EWCA Civ 7 (16 January 2015)*).

The SOPO made at Teesside Magistrates Court contained the wording that he was prohibited from 'approaching, enticing or otherwise seeking to communicate with, or communicating with any female he knows or suspects to be involved in prostitution without reasonable cause'.

As others have said of such civil orders this is in effect a prohibition on doing something that is perfectly legal and which other men are entitled to do without being monitored by the police. In effect a two tier system of law is being created whereby two people can do exactly the same things but one might end up in custody for their actions while the other has not done anything wrong.

The man's most recent conviction for sexual assault were 20 years ago in 1995 and the SOPO was based on a 1983 conviction. A current medical assessment reported the likelihood of a 'high risk of sexual recidivism'; presumably they meant sexual 'offence' recidivism.

The man is reportedly 'the subject of restraining orders for the protection of three specific adult women who have been the subject of harassment or violence by him'. We are not told if these were sex workers.

A report from a forensic community psychiatric nurse said he was 'one of the most worrying and dangerous individuals he had come across' although the same nurse admitted that 'to a degree the appellant responded to boundary setting and the requirement to reside at the specified location where his movements were monitored'.

The man's counsel argued that:

(1) the Sexual Offences Act 2003 ss104-113 makes no express provision for electronic tagging unlike other statutes that authorise tagging;
(2) prohibitions imposed by SOPOs are meant to be 'negative' in nature but the wearing of an electronic tag is 'positive'; and
(3) it interfered with his right to privacy under the ECHR Article 8

All of these arguments were lost.

Mention was made that the man had initially agreed to the voluntary wearing of a tag but then had changed his mind and withdrawn that consent. Why this needed to be reported on is uncertain given that such withdrawal of consent would be perfectly acceptable and legal.

The wearing of the tag would not of course indicate who the wearer was actually talking to but the court took it as indicating whether or not he had entered a 'red-light' district; even though no attempt had seemingly been made to define where the 'red-light' district was.

The wearing of the tag would also not reveal whether the wearer had met a sex worker in his own house through an escort agency contacted by telephone or through the internet.

The principles behind the SOPO are based very much on the principles behind the old ASBO whereby civil prohibitions are placed on a person and these are followed up by criminal sanctions if compliance is not forthcoming; what some have referred to as the 'two-step' process. The SOPO's successor – the Sexual Risk Order and the Sexual Harm Prevention Order - still waiting in the wings for implementation will be even easier to apply for than the SOPO (Anti-Social Behaviour Crime and Policing 2014 Part Nine).

We might also speculate that electronic monitoring can now also be added to the Injunctions that replace the ASBO and are available from the Anti-Social Behaviour Crime and Policing 2014 Part One.

Given that ASBOs have been used on sex workers and that their use in this manner has been approved by the courts (*Chief Constable of Manchester v Potter [2003] EWHC 2272 (Admin)*) we also wonder how long it will be before some enterprising police force apply for an Injunction with an electronic monitoring tag on a sex worker to keep them away from 'red light' areas.

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