Examiners’ report 2013

LA1031 Common law reasoning and institutions – Zone B

Introduction

2013 was the last year that the old syllabus will be examined (except for those who are resitting the examination in October 2013). In 2014 the CLRI examination will be in the new format. If you are sitting the CLRI examination in 2014 there will be parts of this report which will be of limited relevance to you and this is explained below.

The most relevant responses are to Questions 2, 4 and 8. Section A in 2014 will be completely different from the Section A discussed below and the equivalent of Question 8 will be a compulsory question in Part C of the examination. Part B of the examination will require you to answer a choice of two essays, but, as the syllabus has been redesigned it would be wrong to take the answers below as a good indication of the questions in the examination of 2014. You are directed to the subject guide at this point. It would be useful to refresh your memory on the precise form of the examination, as the present text offers only a perfunctory overview.

The points on essay writing technique below are relevant whether you are taking the old or the new examination and you are urged to take a good look at the student extracts and the comments on them. Essay writing technique is covered in Chapter 4 of the new subject guide.

Do not make use of model answers. As you will appreciate from reading Chapter 4, or even by thinking properly about what a ‘discussion question’ involves, it should be obvious that you have to respond directly to a question and build your argument. It follows that a memorised model answer will simply not work. The form of a ‘discussion question’ also means that you should not write out notes verbatim in the hope that some of it is relevant. Candidates obtain good marks if they engage with the question and produce a well-informed and coherent argument.

Questions 2, 4, 5 and 7 were the most popular. In general, candidates tended to do reasonably well on Question 2, but had clearly not revised the impact of the European Court of Human Rights (ECtHR) on precedent. Question 4 was answered by a large number of candidates as if it was about judicial appointments. This was presumably because they had learnt a model answer on this topic and just wrote it out. If you took this approach, you would have received a fail mark. Question 5 was reasonably well done, but many candidates received a low mark or a fail for not reading the question or simply repeating a ‘stock’ Woolf reforms answer. Questions 7 (a) and (b) were popular and 7(a) produced some good answers. A common mistake was failing to understand that this is a question about the Criminal Justice Act (CJA) 2003. Unless you are analysing this Act, you are dealing with irrelevant issues. Question 7(b) was not difficult. Low marks or a fail were secured by repeating a model answer or not reading the question. Question 3 was not popular, but produced some reasonable answers. Question 6 was less popular than the
‘legal aid’ question normally is; perhaps because it is focused upon very recent events. Those that did attempt it (with some exceptions) did badly because they were unable to talk about ‘the present government’. For some it seems that Tony Blair is still Prime Minister. Although Question 8 was not popular, those who did attempt it did well and got very good marks. This is a comprehension question. The best way that you can prepare for it is to read statutes throughout the year and work your way through the questions in the subject guide and in previous examinations. You need to apply the law to the facts. This question does not require an analysis of the literal rule/mischief rule/golden rule. Further guidance notes on how to approach it are provided below.

The spread of marks saw a large banding around thirds and fails. This reflects the ongoing reliance on model answers, and a general failure to understand what Section A requires. There were not enough good 2.2s and 2.1s, and very few firsts.

It is disappointing that general advice made in 2012 can be more or less repeated with reference to the 2013 examination. Part A answers were almost universally poor. See below for some tips as to how to approach this part of the examination. As far as Part B was concerned, the major problems were reliance on model answers (or badly adapted model answers) and poor essay writing technique.

It is worth reviewing the postings on the VLE, in particular the final posting before the examination.

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**Specific comments on questions**

**PART A**

**Question 1**

Candidates must answer this COMPULSORY question.

1. (a) Answer all questions.

   i. On which freely available website can you discover the stage a bill has reached in its passage through Parliament?

   The UK Parliament site: www.parliament.uk.

   ii. What is the name given to the type of citation given in this example: R v James [2006] EWCA Crim 14?

   A neutral citation.

   iii. What information will you find in the headnote of a case report?

   ‘The headnote is an accurate summary of the issues dealt with in the case, followed by the decision or opinion that was ultimately “held” and any important statements on the law made during the course of arguments or the judgment.’

   iv. On which freely available website would you find Consultation Papers?

   The Ministry of Justice website (now moved to: www.gov.uk); the Law Commission Website.
v. What does the abbreviation Q.B. stand for in this citation: R v James [2006] Q.B. 588?

Queen’s Bench Reports.

(5 marks)

(b) Answer all questions.

i. On which of the six topics was the essay which you submitted via the VLE? Why did you chose that question and what was your initial understanding of what you had to do to produce a good piece of work? How did you understanding of the process develop?

A good answer would outline the candidate’s first response to the topic (the research question) and then go on to show how their thinking developed. Good marks were given for detailed discussion of how the research changed first impressions.

Student extract

I answered question 1 on the validity of declaratory theory. I chose this topic because I was particularly interested in judicial activism. I come from a jurisdiction with a continental legal system, so I was particularly interested in the common law idea that judicial law making can be legitimate. The title also interested me, as it suggested that one way of talking about common law intuitions (i.e. the declaratory theory) may have become inaccurate as the historical and political conditions in which the legal system operates have changed. In other words, a good piece of work would show how judgments become out of date, and have to be re-thought. In order to build my argument on this theme, I understood that I would have to show how ways of talking about law reflect opinions shared at a particular point in time, and that opinions change. My understanding of this basic insight developed as I appreciated that I needed to go into much more depth to persuade the reader that I had properly understood the material. This presented difficulties for how I organised my work: I had to make sure I could handle my thesis in the confines of the word limit. Rather than write about a hundred years or so of legal change, I had to use some ‘representative’ moments to illustrate and exemplify the arguments I wanted to put forward.

Comment on extract

In this extract the candidate traces the way in which their understanding has developed. The analysis is focused on the problems of writing about the declaratory theory in the confines of the essay. The candidate states their central thesis: declaratory theory ‘may have become inaccurate as the historical and political conditions in which the legal system operates have changed.’ This point is then linked to the difficulties of writing about the span of historical time that would allow the writer to make their point in a persuasive and well researched way. The analysis concludes with a statement of how this programme was resolved: ‘Rather than write about a hundred years or so of legal change, I had to use some “representative” moments to illustrate and exemplify the arguments I wanted to put forward.’ The reader gets a clear statement of how this candidate’s thinking has developed as they confronted the problems raised by writing on this topic.

ii. Explain how you found source material and what problems you encountered. Rank your five most important sources in terms of their authority and ease of understanding.
The marks in this question are for analysing the sources. To get good marks on this part of the question, a candidate needs to discuss the articles they used and precisely how the articles were illuminating or not.

**Student extract**

The essential source was Blackstone's Commentaries on the Laws of England. I used this as it was cited in most journal articles and books, and is thus clearly an authoritative source. I suspected that it would provide a clear statement of the declaratory theory, and it did. However, using the book was quite laborious. The other problem was that (hardly surprisingly) Blackstone did not weigh up his own theory. I was trying to argue that Blackstone's theory had to be understood in the constitutional context of its time. I thus had to look outside the Commentaries, to articles and books by legal and constitutional historians to make the most of this resource in the context of my essay.

**Comment on extract**

This candidate clearly deals with the points raised by the question. Note how they are assessing the usefulness of Blackstone within their own research project. As with the answer to (i) above, this response has the merits of dealing with a specific problem in detail. The candidate shows, given what they were trying to argue, just what the limits of the Commentaries were.

**iii. Outline your conclusions and explain the extent that they derive from specific sources you have identified.**

This part of the question is about relating conclusions to sources. Good marks were given for precision and detailed analysis. There has to be a clear sense of how conclusions and sources are linked.

**Student extract**

My main conclusion was that Blackstone's declaratory theory, and those that drew on it, were describing a situation that no longer properly exists. It cannot be said that the declaratory theory describes the present reality of judicial law making. In the final analysis, I preferred the analysis of the American Realists, even though they were talking more about American common law, than that of the UK. Perhaps it is the case that a decision depends on what the judge had for dinner. More properly, I concluded that it would be more important to look at specific considerations within particular areas to understand why a judge might make law, and why he might not. I concluded that the declaratory theory was not that useful.

**Comment on extract**

Note how the writer shows how their conclusions were linked to criticisms of the declaratory theory and to how they therefore look to a different way of understanding judicial law making. In particular, note how the writer introduces the point about the American Realists. This candidate is engaging in detail with the material and the problems that they had in their research. Generalities are avoided, and specific problems dealt with in a focused way.

**iv. Offer a self-critique of your essay: what is the strongest aspect and what is the weakest?**

Most candidates approach this part of the question in a very mechanical way, repeating something about starting their research process in a more timely fashion or reading more material. To get good marks a candidate needs to be absolutely precise about the questions that remain open after they have finished their research, and how these questions might suggest a different way of thinking about the relevant area of research.
Student extract

One of the areas of my work that I would like to improve would be introducing some analysis of Ronald Dworkin’s re-working of the declaratory theory into more thinking about how judges decide cases. I simply did not have room to deal with this important theory in anything other than an outline. I think my work would have been improved by trying to show in detail how my realist argument showed Dworkin’s work to be too fixated on an abstract general theory of interpretation; in other words, I could have built the point that a proper assessment of judicial law making and its legitimacy depends on detailed study of specific cases and areas of law.

Comment on extract

Note the focused nature of this analysis of the problems encountered in the writing process and how the candidate offers a very precise description of how their work could be improved. (20 marks)

PART B

Question 2

‘The genius of the doctrine of precedent is constrained flexibility. It allows the courts to respond to broader historical and institutional developments in and outside the legal system, as well as providing guidelines for judicial law making.’

Discuss

General remarks

It would be difficult to disagree, and most good answers will assert agreement with this statement. A good answer should focus on the key words of ‘constrained flexibility’. One might elaborate this statement by arguing that precedent structures judicial law making – makes it fairly stable and predictable – but also is capable of revising its own terms. Thus precedent can be seen as a practice of the courts which constrains individual judges and (a good answer may say) allows for a coherent development of legal principles.

What provides constraints? A good answer would make reference to the structure of the court system, the provision of written judgments, academic commentary and the understandings of legal professionals. Material to be expected includes the 1966 Practice Statement. An intelligent answer might compare and contrast the Practice Statement with London Tramways, and then show how it fed into cases such as Miliangos and the court’s argument for changing the sterling damages rule. Lord Denning’s campaign in the Court of Appeal is perhaps harder to bring within the terms of the question; an ingenious answer might relate it to changing perceptions of social justice. As to changing developments in and outside the legal system some consideration of the response of the domestic courts to Strasbourg in the wake of the Human Rights Act (HRA) may feature in a good answer (a first class answer might raise the question of what inside and outside means in this context). Whereas the Supreme Court has affirmed the doctrine of precedent, the mirror principle and cases like Pinnock suggest that precedent is indeed being adapted to coordinate the common law courts with rulings of the European Court of Human Rights (ECtHR).

The background material for this answer is in Chapter 6 of the subject guide, but the primary material is in Chapter 3 of The politics of the common law.
Student extract
The important thing to understand about the 1966 Practice Statement was that it exemplified the idea that precedent is animated by a spirit of ‘constrained flexibility’. The terms of the statement were actually very conservative, allowing the House of Lords to depart from its previous rulings in only the most limited of situations. These guidelines took into account changes outside the law, but can hardly be seen as an invitation to the judges to depart from previous rulings on a whim. Furthermore, although it does not directly acknowledge it, the Practice Statement only makes sense if we assume that judges are also making law; developing common law principles in those situations when it appears right and proper for them to do so.

Comment on extract
This is good analysis. Note how the discussion of the Practice Statement sticks very closely to the issues that the question has raised. The first sentence indeed returns explicitly to the terms of the question; and the second and third sentences build this point about constrained flexibility in more detail. The last sentence makes reference to the second main theme raised by the question about judicial law making, and further nuances the writer’s thesis by pointing out that law making only takes place in limited circumstances.

Question 3
‘Article 6 of the European Convention on Human Rights is revolutionary. It has completely redefined the way in which the common law approaches fairness in criminal and civil proceedings.’

Discuss.

General remarks
This is a real overstatement, and a good answer must begin from a critical position. Article 6 is not really revolutionary, rather it restates due process values/the principles of natural justice that have always been part of common law. There have been some important changes (reforms in military justice; the test for bias, R v Gough/Porter v Magill, Saunders v UK, etc.) but it would be wrong to say that Article 6 has completely redefined the common law.

This question concerns the doctrines of open justice and equality of arms, as covered in Chapter 10 of the subject guide and The politics of the common law (Chapter 11, but see also Chapters 13 and 15).

Student extract
To argue that Article 6 has ‘completely redefined’ the approach to fairness at common law is something of an exaggeration. Although Article 6 has had an important impact on certain areas of due process in criminal and civil proceedings, it would not be accurate to argue that it is ‘revolutionary’. This essay will argue that it is possible to point to changes in the test for bias and equality of arms as a result of Article 6. It is also important to take into account changes in the common law’s approach to self incrimination, and have an eye to certain rulings by Strasbourg on the jury. On the whole, we will see that Article 6 has perhaps re-focused the common law rather than revealed any profound underlying problems. It would thus be inaccurate to refer to the revolutionary nature of Article 6.

Comment on extract
This first paragraph shows that the candidate is in control of their material and understands how to write a good introduction. We can see that the first sentence is a direct response to the ‘invitation’ to discuss the impact of Article 6. The candidate
meets this point head on when they assert that any claim as to the ‘revolutionary’ nature of Article 6 is an exaggeration. Note how the candidate then develops their point by specific reference to those areas of law that are relevant. The last sentence rather neatly returns the reader to the writer’s key thesis.

Question 4

‘The basic premise of the democratic idea is the guarantee of the basic values of liberty and justice for all and respect for human rights and fundamental freedoms. This is enshrined in the Human Rights Act 1998... The guarantor of those rights is and can only be an active but independent, neutral, and impartial judiciary.’

Discuss.

General remarks

This question requires discussion of the politics of the judiciary. The statement asserts that an active but independent, neutral and impartial judiciary are central to the defence of liberty, justice and human rights. This can be elaborated by reference to the operation of the HRA; in particular the interpretative provisions and the declarations of incompatibility. A good answer will locate the HRA in the problems of an over-powerful Parliament, but stress that the Act does not bring Parliamentary sovereignty to an end. Most importantly, perhaps, it is necessary to link these structural reforms to the senior judiciary’s perception of their role; perhaps making reference to the idea of a dialogue between judges and Parliament. The politics of the common law contains discussion of these themes; as does the last chapter of the subject guide. A well-informed answer will make reference to Jackson and the associated cases, and stress that senior judges have questioned the idea of deference to Parliament. Some reference to the Belmarsh case would also be relevant. However, despite extra-judicial writings and obiter statements, the judges are not stating that they have become overtly political. Well-informed students will make reference to the ideas of Owen Fiss, which square judicial deference and neutrality with rights adjudication and the part that judges play in defining the terms of our ‘social life’. One could also make reference to judicial appointments. Whilst this theme could be considered in passing, an answer that sticks simply to this theme risks not answering the question.

Materials relevant to this question are in Chapter 9 of the subject guide and Chapter 5 of The politics of the common law.

Student extract

Democracy does depend on the values outlined by the question: in particular human rights, liberty and justice. These are obviously very general ideas, and it is therefore important that the Law Lords share a vision of the rule of law underpinned by these values; values that inform that Human Rights Act of 1998. This essay will examine the role of the judges in upholding the values of the HRA, and assess the extent to which a neutral but activist judiciary is able to uphold them. Its main argument will be that certain flashpoints show that the judges have proved more willing to uphold human rights than Parliament; a troubling fact that suggests that new ideas of democracy are emerging in the interpretation of the HRA by activist judges committed to human rights. After reviewing the ‘theory’ of the judge’s role in upholding democracy, this essay will go on to consider certain key, recent cases such as the Belmarsh case, the Abu Qatada judgment and the prisoner’s rights case.
Comment on extract
This introduction has the merits of a direct answer to the question posed. The candidate is offering the Examiners a very clear statement of the ideas that will inform the essay and how it will develop. Note how this candidate’s main thesis is outlined: ‘certain flashpoints show that the judges have proved more willing to uphold human rights than Parliament; a troubling fact that suggests that new ideas of democracy are emerging in the interpretation of the HRA by activist judges committed to human rights.’

Question 5
‘Court proceedings have processes and outcomes that cannot be met by alternative dispute resolution: a just and effective system will have both court proceedings and ADR in balance.’

Discuss.

General remarks
A question that really fits in with the subject guide chapter, which has an extensive discussion of aims and objectives and the extent to which they may be in conflict with each other or complementary. Hazel Genn’s arguments are pertinent. In whatever way the candidate approaches this question, a good answer requires an engagement with the relative merits of alternative dispute resolution (ADR) and courts. Although courts are costly, they cannot, in all instances, be dispensed with as an appropriate forum for dispute resolution; in particular where a dispute is between two parties with significant disparities of wealth. ADR may be suitable in certain cases, in particular where the ‘winner/loser’ outcome of the court may damage parties that need to have an ongoing relationship. Clearly, ‘justice and efficiency’ require that different disputes are dealt with in different ways, and that a ‘one size fits all model’ does not become prevalent. A good essay will examine the extent to which civil justice has achieved the necessary balance between ADR and courts.

Materials relevant to this question are in Chapter 11 of the subject guide and Chapters 12 and 13 of The politics of the common law.

Question 6
EITHER
a) ‘While defenders of the jury look to its symbolic role, those who wish it reformed look to efficiency; both arguments are partial. The jury is both symbolically important and effective.’

Discuss.

General remarks
This evokes the discussions around reform of the jury and the strong symbolic role it has in the narrative of the common law. A review of the reform attempts may be expected. The research Are juries fair? (C. Thomas, MoJ 2010) is likely to be mentioned. The successful ‘reform’ is the Criminal Justice Act 2003 and a good answer will explain the terms of the Act in the way the question is framed: the need to bring together both symbolism and effectiveness. The 2003 Act made provision for applications by the prosecution for certain fraud cases to be conducted without a jury (s.43) and also some cases where there is danger of jury tampering (s.44). Under s.43, in cases of serious or complex fraud, the prosecution may apply to a judge of the Crown Court for the trial to be conducted without a jury. If the judge is satisfied that the complexity or length of the trial (or both) are likely to make the trial too burdensome to the members of a jury, he or she may decide that, in the
interests of justice, that the trial should be conducted without a jury. In deciding this, the judge should take into account any steps that could reduce the complexity or length of the trial. If he or she does so decide, then the Lord Chief Justice or such judge nominated by him must approve the decision. In the case of jury tampering, there would have to be a substantial likelihood of tampering taking place to make it necessary in the interests of justice for the trial to be conducted without a jury. A well-informed answer will also consider the recent case law on these sections: KS v R [2010] EWCA Crim 1756 (23 July 2010) and J, S, M v R [2010] EWCA Crim 1755. Note that in J, S, M v R, the court stressed that the arrangements for juryless trials ‘remain[s] and must remain the decision of last resort’ and should only be used in ‘extreme case’. Note also the guidelines issued in KS v R: ‘the link between the nature of the threat and danger of jury contamination, and the steps reasonably available to be taken to reduce the risk to manageable proportions and caution against any unduly alarmist proposals, alarmist, both in the sense of the likely adverse impact on the members of the jury themselves, and on the drains on precious police resources of providing them.’ The two cases suggest that the judiciary take juryless trials very seriously, and that it may be the case that limiting the right to a jury trial does not compromise the trial process.

OR

b) ‘We know the causes of miscarriages of justice in criminal trials but lack the political will to eradicate them fully from the system.’

Discuss.

General remarks
A straightforward looking question: the trick is to confront the idea that we really ‘know’ the causes of miscarriages in criminal trials. This question gives scope to candidates to express themselves and a variety of material is to be expected.

Material relevant to both parts of this question is contained in Chapters 8 and 10 of the subject guide and Chapters 14 and 15 of The politics of the common law.

Question 7

‘The present Government’s Legal Aid reforms are controversial, but necessary.’

Discuss.

General remarks
This essay can be argued either way. Whatever approach one takes, one needs to review the Legal Aid, Sentencing and Punishment of Offenders Act 2013. The fundamental objective of the Act is to ‘[reconcile] the reduced but generous funding that fiscal reality requires, with the protection of fundamental rights of access to justice for critical issues that no civilized society can do without.’ A good answer should perhaps go into some of the changes the Act attempts to achieve, for instance amending the Access to Justice Act 1999 to limit the availability of legal aid for civil cases. If one feels that these reforms are unnecessary, then one would need to show in detail how they compromise the principle of access to justice. If one is arguing that the reforms are necessary, the argument must show how such radical limitations to legal aid are for the general good.

Material relevant to this question is contained in Chapter 12 of the subject guide and Chapter 16 of The politics of the common law. See also recent postings on the VLE.
Question 8

Please read the Act on pages 5 and 6 and advise on these situations.

a) Superintendent Alan wants to issue a DVPN. Explain to him the matters he must take into account under s.24 of the Crime and Security Act 2010.

(5 marks)

General remarks
Superintendent Alan may issue a DVPN against someone over 18 if he has reasonable grounds for believing that the person against whom he seeks a DVPN has either been violent or threatened violence towards another person, and the DVPN is necessary to protect the victim from violence or the threat of violence. Furthermore, Alan must consider the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN and the opinion of the person for whose protection the DVPN would be issued. To get all five marks, the candidate must cover all these points and explain to Alan how he could understand terms like ‘reasonable grounds’ and ‘welfare.’

b) Superintendent Beth is considering issuing a DVPN in the following circumstances. Guy was beaten up by his partner Butch six months ago. Butch has been released from prison and Guy – although he fears that he will be attacked again – has invited him back to live in the house they share. Guy’s social worker fears for his well being and physical safety if Butch returns. Butch has started to send Guy threatening text messages which threaten violence against him. Advise Beth whether a DVPN can be issued under s.25, and, if so, the terms of the DVPN.

(10 marks)

General remarks
The focus of this question is s.25(1). Beth can consider making a DVPN even though Guy does not appear to want one against Butch. Beth must consider the issues of welfare under s.25(2). Even though Beth can include in the order terms banning Butch from the premises she used to share, to ban Butch from the premises she must also consider Butch’s welfare under s.25(4). To make an order against Butch, Beth must also consider the requirements of s.24. She must be sure that Butch is over 18, and must have reasonable grounds for believing that violence has been used or threatened against Guy. The evidence in the question suggests that it has. Whilst Beth must take into account the welfare and interests of Guy, s.25(1) would allow her to override Guy’s desire not to have a DVPN issued. The evidence from Guy’s social worker suggests that a DVPN may protect Guy’s welfare.

c) Superintendent Christine has been advised that Danny and Sandy are members of a group of youths who congregate in a shopping precinct in the centre of Fulchester. Superintendent Christine has evidence from the manager of the shopping precinct that the youths with whom Danny and Sandy associate shout abuse at passers by and prevent people from entering and leaving the shops. Danny and Sandy, as well as the other youths, wear distinctive jackets with the slogan “T-Birds” on the back. Advise Christine if she can apply for an injunction against Danny, Sandy and the others under s.26.

(10 marks)
General remarks
The focus of this question is on s.26 and gang-related violence. In order to make an injunction on the grounds of gang related violence, Christine would have to be satisfied on the balance of probabilities that Danny and Sandy have engaged in or encouraged violence. She also has to persuade the court that an injunction is necessary to prevent them from engaging in gang-related violence, and/or to protect them from the same. Christine must also be aware that the definition of ‘gang-related violence’ relates to violence or a threat of violence which uses a gang name or distinctive symbol and is associated with a particular place or area. On the facts, the injunction might be awarded to prevent Danny and Sandy engaging in or encouraging violence. The evidence from the manager of the shopping centre does suggest on the balance of probabilities that they are engaging in violence to the extent they prevent people entering or leaving shops, although the evidence here is a little ambiguous. Shouting at passers by may not constitute violence. Christine would probably be able to show that on the facts the violence is gang-related, because of the distinctive ‘T-Birds’ slogan on the jackets, and the fact that the violence is associated with the shopping centre.

The Crime and Community Security Act 2010 (a fictitious Act) includes the following provisions:

s.24

(1) A police superintendent (“the authorising officer”) may issue a domestic violence protection notice (“a DVPN”) under this section.

(2) A DVPN may be issued to a person (“P”) aged 18 years or over if the authorising officer has reasonable grounds for believing that—

(a) P has been violent towards, or has threatened violence towards, an associated person, and

(b) the issue of the DVPN is necessary to protect that person from violence or a threat of violence by P.

(3) Before issuing a DVPN, the authorising officer must, in particular, consider—

(a) the welfare of any person under the age of 18 whose interests the officer considers relevant to the issuing of the DVPN.

(b) the opinion of the person for whose protection the DVPN would be issued as to the issuing of the DVPN.

s.25

(1) The authorising officer may issue a DVPN in circumstances where the person for whose protection it is issued does not consent to the issuing of the DVPN.

(2) Before issuing a DVPN under subsection (1) the authorising officer must consider the welfare of both the person who will be protected by the DVPN as well as the person who will be subject to the DVPN.

(3) A DVPN must contain a provision to prohibit P from molesting the person for whose protection it is issued.

(4) If P lives in premises which are also lived in by a person for whose protection the DVPN is issued, the DVPN may also contain a provision to prohibit P from coming within such distance of the premises as may be specified in the DVPN.
(5) Before issuing a DVPN under subsection (4), the authorising officer must consider the welfare of the person subject to the order.

s.26

26 Injunctions to prevent gang-related violence

(1) A court may grant an injunction upon application from a police superintendent under this section 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 in, or has encouraged, gang-related violence.

(3) The second condition is that the court thinks it is necessary to grant the injunction for either or both of the following purposes—

(a) to prevent the respondent from engaging in, or encouraging, gang-related violence;

(b) to protect the respondent from gang-related violence.

(4) In this section “gang-related violence” means violence or a threat of violence which

(a) uses a name, emblem or colour or has any other characteristic that enables its members to be identified by others as a group, and

(b) is associated with a particular area.