

prohibiting the defendant from doing anti-social acts in the future and its object is not the obtaining of a conviction against him resulting in the imposition of a punishment. I am in respectful agreement with the statement of Lord Bingham of Cornhill CJ in *Customs and Excise Comrs v City of London Magistrates' Court* [2000] 1 WLR 2020, 2025 that: “criminal proceedings involve a formal accusation made on behalf of the state or by a private prosecutor that a defendant has committed a breach of the criminal law, and the state or the private prosecutor has instituted proceedings which may culminate in the conviction and condemnation of the defendant.” The passages in the judgments relied on by the defendants do not, in my opinion, assist them because they emphasise that the imposition of a conviction may be a consequence of the proceedings in which the application is brought. Thus in the *Proprietary Articles Trade Association* case [1977] T 931 [1977] AC 310, 324 Lord Atkin stated that “those who commit them are punished”; in *Ex p Alice Woodball* [1902] 20 QBD 832, 838 Lindley LJ stated: “[the] whole object [of the application] is to enable the person in custody to escape being sent for trial in America upon a charge of forgery”; in *Amands* case [1971] 11:9431 AC 147 Viscount Simon LC stated, at p T 56, that the matter is criminal if it is one “the direct outcome of which may be trial of the applicant and his possible punishment”; and Lord Wright stated, at p 162, that a matter is a criminal one which, “if carried to its conclusion, might result in

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**46.**

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conviction and punishment. But an application for an anti-social behaviour order, if carried to its conclusion, will not result in conviction and punishment, it will result in the making of an order which cannot be regarded as a punishment. A conviction and punishment will only be imposed if the defendant, by his own choice, subsequently breaches the order and separate and distinct proceedings are brought against him.

I further consider that a complaint brought against a defendant under section 1(3) of the 1998 Act does not constitute an allegation of a crime. The fact that the background to the complaint will very often be the alleged commission of a number of criminal offences does not mean that the complaint constitutes a charge of a criminal offence: see *S v Miller* [2001] SC 977, 989-990, para 23 cited subsequently in paragraph 1.02 of this opinion.

There are two further considerations which support the conclusion C that an application for an anti-social behaviour order is a civil proceeding and not a criminal proceeding. First, section 1 is contained in Part I of the Act under the heading “Prevention of crime and disorder” whereas Part II under the heading “Criminal law” creates a number of offences and provides for their punishment. Secondly, section 1(3) provides that an application for an anti-social behaviour order shall be made by complaint to a magistrates’ court, and a complaint is the appropriate procedure for commencing civil proceedings in a magistrates’ court: see section 51 of the Magistrates’ Courts Act 1980.

Accordingly, I conclude that under domestic law an application for an anti-social behaviour order is not a criminal proceeding but is a civil proceeding.

**The European Convention on Human Rights**

Article 6(1) provides: “In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing. Article 6(3) provides: “Everyone charged with a criminal offence has the following minimum rights . . . (d) to examine . . . witnesses against him . . .” The defendants submitted that under the jurisprudence of the Convention an application for an anti-social behaviour order is a