

knowledge based i.e. knew or ought to have known. Most tellingly of all section 1(10) of the Crime and Disorder Act 1998 itself creates an offence without the requirement of intent- It is subject only to a reasonable excuse defence.

Whether a prohibited act leads to criminal proceedings depends upon the consequences arising from the act not the form of the statute within which it is described or the procedure by which proceedings are commenced. The procedure must be looked at in its totality from the beginning to the end. Although proceedings are started by complaint that is not conclusive. An anti-social behaviour order makes those against whom they are made subject to the risk of criminal sanctions in respect of conduct that would not otherwise be criminal. Conduct which is criminal in character may well take place only at the stage of breach of an order. Prohibitions against committing criminal offences or defined types of anti-social behaviour can be made, breach of which may expose the individual to far more serious penalties than the offence itself. Although it may have been Parliament's intention to create civil rather than criminal proceedings, one has to look at what has been created not what it was intended to create. The fact that there are different stages to the proceedings does not prevent both stages being criminal causes or matters: see *Amand v Home Secretary* [r 943] AC 147; *R v Board of Visitors of Hull Prison, Ex p St Germain* [1979] QB 425- Consequently, applications for anti-social behaviour orders are the initial step in a criminal cause or matter.

The second limb of section 1(1) of the Crime and Disorder Act 1998, the requirement of it being "necessary" to make an order is not at odds with the character of the proceedings being criminal Those elements come into play in other criminal proceedings. The first limb constitutes the "offence" the second limb the need for a "penalty".

The fact that a penalty, which may have severe consequences, is described as being imposed to protect the public in the future, and not as a punishment for a crime already committed does not prevent the proceedings being criminal proceedings when the correct test is applied: see *Proprietary Articles Trade Association v Attorney General for Canada* [1931] AC 310; *Customs and Excise Comrs v City of London Magistrates' Courts* [2000] 1: WLR 2020.

The object of a penalty by way of sentence is that it seeks to "protect" as well as to "punish" e.g. removing an offender from society by custody to prevent further offending. In sentencing protective

considerations, rather than society's need to punish the individual, often play the major role in deciding what penalty to impose. Thus, to define an anti-social behaviour order as protective does not in any way diminish its punitive effect.

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**Simon Cordell's Skeleton Argument (2) Pdf**

[2003] AC

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**R (McCann) v Manchester Crown Ct (HL(E))**

The conditions that may be attached to an anti-social behaviour order are unlimited. Curfews and orders banning people from certain areas are now expressly recognised as criminal penalties under sections 37 and 40A of the Powers of the Criminal Court (Sentencing) Act 2000. Restrictions upon liberty have also included a limit upon the number of visitors a person can have to their home or the number of persons with whom they may congregate. The injunction analogy is a false one. Injunctions seek to prevent the interference by one person with another's civil rights whether in contract, tort, or equity or to ensure that civil obligations are carried out as in the case of a mandatory injunction. They are not aimed at preserving public order or containing anti-social behaviour. Committal is in consequence of disobedience to the court not as a punishment or penalty for the actual conduct involved. Furthermore, a contempt can be purged but an anti-social behaviour order last for two years.