

social behaviour (section 1(6)) and is manifestly an order designed to protect in the future, not to punish past misconduct. An analogy to the anti-social behaviour order is the banning order, which may be made by a magistrates' court under section 14B of the Football Spectators Act 1989. Such an order is civil in nature: see *Gough v Chief Constable of the Derbyshire Constabulary* [2002] QB 459. A similar comparison can be made with disqualification orders under the Company Directors Disqualification Act 1986 which are also not criminal: see *R v Secretary of State for Trade and Industry, Ex p McCormick* [1998] BCC 379.

The making of an anti-social behaviour order does not involve a trial and punishment of the individual concerned. Indeed, section 1(r)(a) of the 1998 Act does not require that a person has caused harassment, alarm, or distress, only that the same may be likely to be caused. The contrast between the provisions of an anti-social behaviour orders and section 5 of the Public Order Act 1986 is also instructive. Section 5 expressly provides that a person using threatening, abusive, or insulting words or behaviour within the hearing of a person likely to be caused harassment, alarm and distress is guilty of an offence. There is no attribution of an offence to an anti-social behaviour order.

There is no "overall scheme" to section r. to which the application for an anti-social behaviour order can be seen as a "preliminary" (non-criminal proceeding) stage. Instead anti-social behaviour orders, like an injunction may be a possible precursor to separate penal proceedings to enforce them as a distinct second stage, but they do not constitute penal proceedings in themselves. Subsequent enforcement proceedings under the 1998 Act for breach are quite separate from the initial application and order. There is no immediate danger of an individual losing his liberty merely because an order is made.

There are other features of the application for an anti-social behaviour order which tend towards it being a civil procedure: (a) Under Section 1(3) of the 1998 Act proceedings are initiated by complaint, the appropriate

**105.**

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

58

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

[2003] 1 AC

procedure for commencing civil proceedings in the magistrates' court.

The requirement to consult each other "relevant authority" and adjoining authorities where an order specifies neighbouring areas, demonstrates that it is not contemplated that penal sanctions be imposed.

Criminal sanctions are found in Part I of the 1998 Act under the heading "Crime and Disorder: general" which covers prohibitions on sex offenders (section z) and "Crime and disorder strategies" (section 5) thus emphasizing the preventative nature of the provisions; (d) Prosecutions are not conducted by the Crown Prosecution Service.

The categorization for what constitutes a criminal offence formulated in *Customs and Excise Comrs v City of London Magistrates' Court*. [2000]

• WLR 2,020 should be adopted. On that basis applications for anti-social behaviour orders involve none of the hallmarks of a criminal matter; there is no formal accusation, made on behalf of the state or by any private prosecutor, that a defendant has committed a breach of the criminal law.

There is no relevant or viable concept of "quasi-criminal" in respect of hearsay evidence, although there may be varying standards of the civil standard of proof. That is a wholly different matter to a "quasi-criminal" approach to matters of admissibility of evidence.

If applications under the 1998 Act for an anti-social behaviour order are civil in nature, the decision of the High Court in *Clingham* is final and no right of appeal lies to the House of