

A Evidence Act 1995, the use of which will be necessary in many cases if the magistrates are to be properly informed about the scale and nature of the anti-social behaviour and the prohibitions that are needed for the protection of the public, is admissible.

### **Are the proceedings civil proceedings?**

Counsel for the respondents and the Secretary of State were agreed that, if your Lordships were to hold that the specific guarantees in article 6(2.) and article 6(3) did not apply to these proceedings, they were nevertheless subject to the provisions of article 6(1). The question of classification is critical in this case, so it is important that the basis for these concessions should be clearly understood. They could only be accepted as well-founded if it was clear that the proceedings involved the determination of the defendant's civil rights and obligations. At first sight an order which prohibits a person from behaving in an anti-social manner has nothing to do with his civil rights and obligations. He has no right in domestic private law to use or engage in abusive, insulting, offensive, threatening language or behaviour or to threaten or engage in violence or damage against any person or property, which are among the acts which the defendants have been prohibited from doing in the McCann case. But, as Lord Nicholls of Birkenhead said in In re S (Minors) (Care Order: Implementation of Care Plan) [2002] AC 291, 32,0, para 71., by virtue of the Human Rights Act 1998 the right to respect for private and family life which is guaranteed by article 8 of the Convention is now part of a person's civil rights in domestic law for the purposes of article 6(1)}. In my opinion the same can be said of the rights to freedom of expression and of assembly and association which are guaranteed by articles 10 and 11.

Section 1(6) of the Crime and Disorder Act 1998 sets no limits to the prohibitions that may be imposed, except that they must be necessary for the protection of people in the local government area against further anti-social acts by the defendant. Among the range of orders that might reasonably be thought to be necessary are orders which may interfere with the defendant's private life, his freedom to express himself either by words or conduct and his freedom to associate with other people. Although the jurisprudence of the Strasbourg court appears to me as yet to be unclear on this point, I would hold that the fact that prohibitions made under section 1(d) of that Act may have this effect is sufficient to attract the right to a fair trial which is guaranteed by article 6(1). This means that the court must act with scrupulous fairness at all stages in the proceedings. When it is making its assessment of the facts and circumstances that have been put before it in evidence and of the prohibitions, if any, that are to be imposed, it must ensure that the defendant does not suffer any injustice.

### **Standard of proof**

As Lord Phillips of Worth Matravers MR observed in the Court of Appeal in the McCann case [2001] 1 WLR 1084, para 65, anti-social behaviour orders have serious consequences. It was with this point in mind that, at p 1101, para 67, he commended the course which, the Recorder of Manchester followed in the Crown Court when he said that, without intending to lay down any form of precedent, the court had decided to apply

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the standard of being satisfied so that they were sure that the statutory conditions were fulfilled before they would consider the making of an order in the case of each defendant. I too would endorse this approach, for the following reasons.

Mr Crow for the Secretary of State said that his preferred position was that the standard to be applied in these proceedings should be the civil standard. His submission, as it was put in his