and obvious penal consequence. Properly analysed this case does not assist the defendant's argument.
The conclusion I have reached is reinforced by a cogently reasoned judgment on the interpretation of article 6 by the Lord President (Lord Rodger of Earls ferry) in ***S v Miller*** 2001 SC 977. Section 52(2) of the Children (Scotland) Act 1995 provides that a child may have to be subjected to compulsory measures of supervision when he "has committed an offence". The question arose whether in such proceedings article 6 is applicable. The Lord President observed, at pp 989-990: at the stage when S was arrested and charged by the police on 31 October, he was indeed 'charged with a criminal offence' in terms of article 6, since he was liable to be brought before a criminal court in proceedings which could have resulted in the imposition of a penalty. He remained 'charged with a criminal offence' in terms of **article 6** until the procurator fiscal decided the following day—in the language of section 43(5) of the Criminal Procedure Act— 'not to proceed with the charge'. At that point the criminal proceedings came to an end and the reporter initiated the procedures under the 1995 Act by arranging a hearing in terms of section 63(1), In my view, once the procurator fiscal has decided not to proceed with the charge against a child and so there is no longer any possibility of proceedings resulting in a penalty, any subsequent proceedings under the 1995 Act are not criminal for the purposes of article 6. Although the reporter does indeed intend to show that the child concerned committed an offence, this is not for the purpose of punishing him but in order to establish a basis for taking appropriate measures for his welfare. That being so, the child who is notified of grounds for referral setting out the offence in question is not thereby 'charged with a criminal offence' in terms of article 6.
"24, It is not now disputed, of course, that the children's hearing proceedings involve the determination of civil rights and obligations. Article 6 therefore applies. But, since the proceedings are not criminal, the specific guarantees in article 6(2) and (3) do not apply."
I am in complete agreement with this reasoning as correctly reflecting the purpose of article 6. And it applies a fortiori to proceedings under section 1. After all, section 1(1) does not require proof of a criminal offence.
In my view an application for an anti-social behaviour order does not involve the determination of a criminal charge.

121,

Simon Cordell's Skeleton Argument (2) Pdf

73

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

Lord Steyn

[2003] 1 AC

The admission of hearsay evidence

• Having concluded that the proceedings in question are civil under domestic law and article 6, it follows that the machinery of the Civil Evidence Act 1995 and the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 allow the introduction of such evidence under the first part of section 1. The weight of such evidence might be limited. On the other hand, in its cumulative effect it could be cogent. It all depends on the particular facts. In my view the ruling of the Divisional Court, set out in paragraph Ro above, was correct.
• It is submitted that, even if the relevant proceedings are civil, words must be implied into the Civil Evidence Act 1995 which give the court a wider power to exclude hearsay evidence. As the Divisional Court judgment makes clear this is unnecessary and unwarranted. Counsel in the C***lingham*** case then argued that, even if the proceedings are civil, nevertheless the introduction of hearsay evidence infringes a defendant's right to a fair trial under article 6(1) "in the determination of his civil rights and obligations". This is a misconceived argument. The case has not been heard. Such a challenge is premature. Upon a due consideration of the