

order will frequently prohibit the defendant from entering a defined area where he has been particularly troublesome and from using or engaging in any abusive, insulting, offensive, threatening or intimidating language or behaviour or from threatening or engaging in violence or damage against any person or property within a somewhat wider area.

Section 1 (to) provides that if a person does anything which he is prohibited from doing by an anti-social behaviour order he shall be liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding a specified amount, or to both, or on conviction on indictment to imprisonment for a term not exceeding five years or to a fine, or to both.

The remedy given by section 1 has operated effectively because the courts have held that proceedings under section 1 are civil proceedings and not criminal proceedings. Therefore, it has not been necessary for those who allege that they have suffered as a result of anti-social behaviour on the part of the defendant to go into the witness box to give evidence against him, because hearsay evidence can be given of their complaints and allegations pursuant to section 1 of the Civil Evidence Act 1995 which provides that in civil proceedings evidence shall not be excluded on the ground that it is hearsay.

It is rulings that applications for anti-social behaviour orders are civil proceedings which are challenged by the defendants in these appeals. They submit that both under domestic law and under the jurisprudence of the European Convention for the Protection of Human Rights and Fundamental Freedoms (“the Convention”) **the proceedings against them under section 1 of the 1998 Act are criminal proceedings and constitute criminal charges against them so that hearsay evidence is not admissible.** They contend in their submissions in reliance on the **Convention that the use of hearsay evidence against them violates their human rights.**

The facts of the present cases and the proceedings before the magistrates and on appeal have been fully set out in the speeches of my noble and learned friends Lord Steyn and Lord Hope of Craighead. I gratefully adopt their accounts and I therefore turn to consider the submissions advanced on behalf of the defendants.

Domestic law

Counsel for the defendants submitted that an application for an antisocial behaviour order is a criminal proceeding because the complaint against the defendant alleges anti-social behaviour which, in effect, is an allegation of the commission of criminal offences. I bus the complaint against the defendant Clingham alleged:

PART 5 © SWEET & MAXWELL

44.

Simon Cordell’s Skeleton Argument (2) Pdf

Page: 9

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

It appears to the local authority, the Royal Borough of Kensington and Chelsea, that the following conditions are fulfilled with respect to you, namely—(a) that you have acted between 9 December 1999 and 15 April 2000 on or in the vicinity of the Wornington Green Estate, London W10 in an anti-social manner, that is to say, in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as yourself, namely by: assaulting residents, threatening to assault children of residents, verbally abusing residents and police officers, threatening and intimidating shopkeepers, engaging in car related crime, throwing objects at persons and property and entering property as a trespasser; and (b) that an anti-social behaviour order is necessary to protect persons in the Royal Borough of Kensington and Chelsea in which the harassment, alarm or distress was caused, or was likely to be caused from further anti-social acts by you .

Counsel submitted that the great majority of this conduct constituted the commission of separate criminal offences. They also relied on the close similarity between the wording of