

The ground that it did not identify the makers of the hearsay statements. At a pre-trial review the district judge ruled that on reflection, the 1999 Rules did not apply as the borough's supporting material involved no hearsay. The judge stated a case for the decision of the Divisional Court which raised questions about the admissibility of hearsay evidence in the proceedings under section 1 (1) of the Act.

§ 10 In the Divisional Court [2001] EWHC Admin 582 the view of the district judge as to what amounted to hearsay evidence was rejected. In an unreported judgment Schiemann LJ observed that "If the policeman could only say that he had been told by such persons [who had seen the behaviour in question] that Mr Clingham had behaved in an anti-social manner that would be hearsay evidence of the behaviour": para 15. Relying on the then unreported decisions of the Divisional Court in *R (McCann) v Crown Court*

C at Manchester [2001] 1 WLR 358 and *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340 the Divisional Court ruled that the proceedings were not criminal proceedings under domestic law and did not involve a criminal charge under article 6. In these circumstances Schiemann LJ concluded, in paras 19-20:

"The [hearsay] evidence can be admitted. If its weight is slight or it is not probative the judge can say so. If he comes to an unlawful conclusion his decision can be appealed ... In the light of this judgment, it is unnecessary for us to make any order. The matter will remain to be dealt with by the magistrates' court. That court will consider the evidence on the basis that it is hearsay evidence and therefore subject to the criticisms which can be made of hearsay evidence. The court will have to consider what weight to give to the evidence in the light of those criticisms. I do not consider it appropriate for this court to express any views as to weight."

Poole J took the same view, at paras 21 and 22.

V The McCann cases

¶ I will gratefully refer to the account given by my noble and learned friend Lord Hope of Craighead of the background to these cases. I can therefore deal with the matter briefly. Between May and September 1999, the Chief Constable of Greater Manchester collected evidence with a view to seeking anti-social behaviour orders against the three McCann brothers who were then respectively aged 13, 15 and 16. They had been accused by various members of the public of criminal activity and other anti-social behaviour

C including burglary, theft, threatening and abusive behaviour, and criminal damage in the Beswick area of Manchester. Complaints were duly lodged by the Chief Constable against them. The applications sought various prohibitions against them including orders excluding them from Beswick. The seriousness and persistence of their alleged anti-social behaviour is clearly described by Lord Hope of Craighead. The evidence against them consisted of oral evidence of eye witnesses, as well as hearsay evidence consisting of a number of witness statements, and police evidence of what had been reported to them by complainants.

12 A stipendiary magistrate found the requirements of section 1(1) satisfied and made anti-social behaviour orders against all three McCann brothers on 15 December 1999. Each order provided as follows: