

[2003] 1 AC

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

A insults and abuse and threats or assaults or damage to houses by stone throwing or the painting of graffiti. Those who are victims of such behaviour are often too frightened to be willing to go into the witness box in criminal proceedings to give evidence against those who make their lives a misery, because they fear that they will be harassed or intimidated for so doing.

B 86 The remedy provided by section 1 of the 1998 Act is to give power to a magistrates' court to make an order which imposes on the defendant the prohibitions which are necessary for the purpose of protecting persons in the local area from further anti-social acts by him. Such an 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
C from threatening or engaging in violence or damage against any person or property within a somewhat wider area.

D 87 Section 1(10) 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.

E 88 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.

F 89 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.

G 90 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

H 91 Counsel for the defendants submitted that an application for an anti-social 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. Thus the complaint against the defendant Clingham alleged: