crime, and it seeks to do so by preventing future crimes rather than by punishing past ones. If a sanction is imposed for the purposes of deterrence or punishment, then it is likely to be regarded as a criminal penalty: see *Öztürk v Germany* (1984) 6 EHRR 409; *Han v Customs and Excise Comrs* [2001] 1 WLR 2253. By contrast, a sanction that is imposed for preventive reasons is not so regarded (even if it involves a restriction on liberty, and/or an interference with property rights, and/or it is imposed in the context of criminal proceedings: see *Raimondo v Italy* (1994) 18 EHRR 237; *M v Italy* (1990) 70 DR 59. A decision whether to impose an anti-social behaviour order does not involve the determination of a criminal charge simply because the matters on which reliance is placed might also happen to constitute the necessary elements of a criminal offence: see *Pelle v France* (1986) 50 DR 263; *McFeeley v United Kingdom* (1980) 3 EHRR 161. Finally, the existence of past misconduct cannot of itself trigger an anti-social behaviour order: there must also be a need for protection for the future under section 1(1)(b).

An anti-social behaviour order is clearly not a criminal penalty. Section 1(4) precludes any order being made other than as a prohibition. The court can neither fine nor imprison a person. There is a very significant difference in the European jurisprudence between imposing a restriction on a person's liberty (which will not be a criminal penalty) and depriving a person of his liberty (which will be a criminal penalty): see *Guzzardi v Italy* 3 EHRR 333; *Raimondo v Italy* 18 EHRR 237. The court cannot deprive a person of his liberty under the cloak of an anti-social behaviour order, and the fact that an order might interfere with his freedom of movement (e g by excluding him from designated areas) does not convert it into a criminal penalty.

The fact that a person may be imprisoned for acting in breach of an anti-social behaviour order does not mean that the imposition of the order itself involves any criminal penalty: see by analogy *Ibbotson v United Kingdom* (1998) 27 EHRR CD 332. The reason why a different conclusion was reached in *Steel v United Kingdom* 28 EHRR 603 was that the penalty was available to be imposed at the outset by the sentencing court in order to enforce compliance with the order. The difference in *Ibbotson* was that in that case separate proceedings would have to be brought for a breach of the statutory obligation before any criminal sanction could be imposed. The same is true under section 1 of the 1998 Act.

Steel v United Kingdom 28 EHRR 603, *Garyfallou AEBE v Greece* 28 EHRR 344 and *Lauko v Slovakia* 33 EHRR 994 merely illustrate the application in very different factual situations of the three criteria in *Engel v The Netherlands (No 1)* 1 EHRR 647 without adding any points of principle.

Applying the criminal standard of proof is wrong in three respects. First, it undermines one of the purposes of section 1 of the 1998 Act, namely to render it easier to obtain an anti-social behaviour order than it would be to obtain a conviction for a comparable offence. Second, it conflates the two elements in section 1 of the 1998 Act. There is no reason why the criminal standard should be applied in relation to the question whether section 1(1)(b) is satisfied: that is a matter of evaluation as to future risk, and simply does not lend itself to being tested by reference to the criminal standard of proof. Third, in relation to the issues generally under section 1, the Court of