

## 5. Use of hearsay and professional witness evidence

Hearsay and professional witness evidence allow for the identities of those too fearful to give evidence to be protected. This is especially vital as cases often involve anti-social behaviour in residential areas by local people and those targeted by the behaviour feel unable to come forward for fear of reprisals. Hearsay evidence cannot be excluded (at the request of defence lawyers) simply on the grounds that it is hearsay.

### Hearsay evidence

Evidence of anti-social behaviour which occurs at any time after the commencement of section 1<sup>5</sup> may be taken into account when the court considers whether or not to grant an order on conviction under section 1C.

The House of Lords judgment in the McCann case confirmed that hearsay evidence is admissible. Lord Steyn stated that:<sup>6</sup>

'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.

'... use of the Civil Evidence Act 1995 and the Rules in cases under the first part of section 1 are not in any way incompatible with the Human Rights Act 1998.

'... hearsay evidence will often be of crucial importance. For my part, hearsay evidence depending on its logical probativeness is quite capable of satisfying the requirements of section 1(1).'

It is a matter for the judge or magistrate to decide what weight they attach to hearsay evidence.

Hearsay allows a police officer to provide a statement on behalf of a witness or witnesses who remain anonymous. Hearsay evidence must be relevant to the matters to be proved. It could include details such as dates, places, times, specific descriptions of actions, who was present and who said what.

Hearsay can include evidence from the person taking the statement. The person giving the hearsay evidence may attest to the observable conditions of the witness, for example that the witness appeared upset, and may give evidence based on their own judgement of the situation.

Where an applicant intends to rely on hearsay evidence in the county court, they must act in accordance with part 33 of the Civil Procedure Rules. Written notice must be given at least 21 days before the hearing to the other party and to the court.

### Professional witnesses

Professional witnesses can be called to give their opinions as to matters within their expertise and can give evidence about their assessments of the respondent or his/her behaviour. Examples of witnesses who may be called as professional witnesses include council officials, health visitors, railway staff, teachers, doctors and police officers.

Care should be taken to ensure that a professional witness does not inadvertently enable vulnerable or intimidated witnesses to be identified, for example from their home address.

### Vulnerable and intimidated witnesses

Witnesses who are willing to testify in court provide the best form of evidence and, where possible, should be encouraged to come forward. The new provisions introduced in

<sup>5</sup> Section 1 of the Crime and Disorder Act 1998 came into force on 1 April 1999.

<sup>6</sup> Taken from paragraphs 35, 36 and 37 of *Clingham (formerly C (a minor)) v Royal Borough of Kensington and Chelsea (on Appeal from a Divisional Court of the Queen's Bench Division); R v Crown Court at Manchester ex parte McCann (FC) and Others (FC)*.