the standard of being satisfied so that they were sure that the statutory A conditions were fulfilled before they would consider the making of an order in the case of each defendant. I too would endorse this approach, for the following reasons.

82 Mr Crow[T] for the Secretary of State said that his preferred position was that the standard to be applied in these proceedings should be the civil standard. His submission, as it was put in his written case, was that although the civil standard was a single, inflexible test, the inherent probability or improbability of an event was a matter to be taken into account when the evidence was being assessed. He maintained that this view was consistent with the position for which he contended, that these were civil proceedings which should be decided according to the civil evidence rules. But it is not an invariable rule that the lower standard of proof must be applied in civil proceedings. I think that there are good reasons, in the *C* interests of fairness, for applying the higher standard when allegations are made of criminal or quasi-criminal conduct which, if proved, would have serious consequences for the person against whom they are made.

83 This, as I have already mentioned, was the view which the Court of Session took in *Constanda v M* 1997 SC 217 when it decided that proof to the criminal standard was required of allegations that a child had engaged in [D] criminal conduct although the ground of referral to a children's hearing was not that he had committed an offence but that he was exposed to moral danger. There is now a substantial body of opinion that, if the case for an order such as a banning order or a sex offender order is to be made out, account should be taken of the seriousness of the matters to be proved and the implications of proving them. It has also been recognised that if this is done the civil standard of proof will for all practical purposes be *E* indistinguishable from the criminal standard: see *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340, 354, para 31, per Lord Bingham of Cornhill CJ; *Gough v Chief Constable of the Derbyshire Constabulary* [2002] QB 1213, 1242-1243, para 90, per Lord Phillips of Worth Matravers MR. As Mr Crow pointed out, the condition in section i(i)(b) of the Crime and Disorder Act 1998 that a prohibition order [F] is necessary to protect persons in the local government area from further anti-social acts raises a question which a matter for evaluation and assessment is. But the condition in section i(i)(a) that the defendant has acted in an anti-social manner raises serious questions of fact, and the implications for him of proving that he has acted in this way are also serious. I would hold that the standard of proof that ought to be applied in these cases to allegations about the defendant's conduct is the criminal standard. *C*

Conclusion

84 In the *Clingham* case I would make the same order as that proposed by Lord Steyn. In the *McCann* case I would dismiss the appeals.

LORD HUTTON

85 My Lords, section 1 of the Crime and Disorder Act 1998 was enacted to remedy a grave social problem. In some parts of England, particularly in urban areas, there are vulnerable people who live in constant fear and distress as a result of the anti-social behaviour of others.

The anti-social behaviour can take different forms and may consist of

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.