

“[The defendant] is prohibited from entering the Beswick area as A defined, edged in red, on the map attached. [The defendant] is prohibited from using or engaging in any abusive, insulting, offensive, threatening or intimidating language or behaviour in any public place in the City of Manchester. [The defendant] is prohibited from threatening or engaging in violence or damage against any person or property within the City of Manchester. [The defendant] is prohibited from encouraging any other person to engage in any of the acts described in paragraphs 2 and 3 within the City of Manchester.”

The defendants appealed to the Crown Court.

13 Sir Rhys Davies QC, the Recorder of Manchester, sat with two magistrates. After a review of the domestic and European case law he concluded that the proceedings under section 1(1) are correctly to be classified as civil under domestic law and for the purposes of article 6. The recorder then turned to the argument that, despite this classification, the criminal standard should apply under section 1(1). He cited an observation in *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340, 354, para 31, where Lord Bingham of Cornhill CJ described, in the context of section 2 of the Act, which deals with orders against sex offenders, the heightened civil standard of proof as “for all practical purposes . . . indistinguishable from the criminal standard”. The recorder stated:

“Having considered this authority and the arguments, we are satisfied that the standard to be applied is the civil standard, but how are we to give effect to the guidance of the Lord Chief Justice, that is to apply the civil standard with the strictness appropriate to the seriousness of the matters to be proved and the implications of proving them. This is not an easy task and we have brought to bear the judicial experience of all three of us which, it is has to be said, is considerable, and we have concluded that in reality it is difficult to establish reliable gradations between a heightened civil standard commensurate with [the] seriousness and implications of proving the requirements, and the criminal standard. And *p* we have concluded that for the purposes of this particular case, and we do not intend to lay down any form of precedent, so I emphasises that for the purposes of this particular case, we will apply the standard of being satisfied so that we are sure that the conditions are fulfilled before we would consider the making of an order in the case of each [defendant] severally, because, of course, each case must be considered separately.”

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This is an important observation, by a highly experienced judge, to which I must in due course return.

14 The defendants appealed to the Divisional Court. Lord Woolf CJ (with the agreement of Rafferty J) ruled that the proceedings under section 1(1) were properly to be classified under domestic law and under article 6 of the European Convention as civil proceedings and not criminal proceedings. The court dismissed the appeal: *R (McCann) v Crown Court at Manchester* [2001] 1 WLR 358.

15 The defendants then appealed to the Court of Appeal (Civil Division). The leading judgment was given by Lord Phillips of Worth Matravers MR; Kennedy and Dyson LJ agreed: *R (McCann) v Crown*