

A House of Lords

**Regina (McCann and others) v Crown Court at Manchester
and another**

**Clingham v Kensington and Chelsea Royal London Borough
Council**

[2002] UKHL39

2002. May 27, 28;
Oct 17

Lord Steyn, Lord Hope of Craighead, Lord Hutton,
Lord Hobhouse of Woodborough and
Lord Scott of Foscote

C Crime — Crime and disorder — Antisocial behaviour order — Applications for antisocial behaviour orders relying on hearsay evidence — Whether proceedings civil or criminal — Whether hearsay evidence admissible — Whether criminal standard of proof to be satisfied — Crime and Disorder Act 1998 (c 37), s 1 — Human Rights Act 1998 (c 42), Sch 1, Pt I, art 6

D In the first case the Chief Constable applied to the magistrates' court for anti-social behaviour orders to be made against each of the defendants, three brothers aged 16, 15 and 13, pursuant to section 1 of the Crime and Disorder Act 1998¹. The stipendiary magistrate made the orders, which, inter alia, prohibited the defendants from entering a particular area of the city in which they lived. On the defendants' appeal to the Crown Court, the judge held that the proceedings for the making of an order were civil rather than criminal and that, therefore, they were not subject to the rules of evidence which applied in criminal prosecutions or to the protection of

F article 6(2) of the Convention for the Protection of Human Rights and Fundamental Freedoms, as scheduled to the Human Rights Act 1998². However, the court applied the standard of proof of being "satisfied so that it was sure" that the orders should be made and, having done so, dismissed the appeals. The defendants brought judicial review proceedings seeking an order of certiorari to quash the judge's decision. The Divisional Court dismissed the application and the Court of Appeal upheld that decision. The defendants appealed.

P In the second case the local authority applied to the magistrates' court for an anti-social behaviour order to be made against the defendant. The application was based primarily on hearsay evidence including evidence from anonymous complainants and evidence from complainants whose identities were not disclosed. A hearsay notice under the Magistrates' Courts (Hearsay Evidence in Civil Proceedings) Rules 1999 was served on the defendant, who challenged its validity. Following a pre-trial review, the district judge stated a case for the Divisional Court raising questions about

C the admissibility of hearsay evidence in the proceedings. The Divisional Court, in reliance on the decision of the Divisional Court in the first case, ruled that the proceedings were civil and that the hearsay evidence could be admitted. The defendant appealed pursuant to a certificate granted under section 1 of the Administration of Justice Act 1960.

On the appeals—

H Held, dismissing the appeal in the first case and declaring that the House had no jurisdiction to hear the appeal in the second case, that since applications for anti-social behaviour orders under section 1 of the Crime and Disorder Act 1998 were initiated by the civil process of complaint and did not charge the defendant with any

¹Crime and Disorder Act 1998, s 1: see post, para 6. ²Human Rights Act 1998, Sch 1, Pt I, art 6: see post, para 7.

crime or involve the Crown Prosecution Service, and since the making of such an *A* order, the purpose of which was preventive not punitive, was not a conviction, did not appear on the defendant's criminal record and resulted in no penalty, the proceedings were civil under domestic law; that, since the proceedings did not involve the determination of a criminal charge and could not result in the imposition of an immediate penalty on the defendant, they therefore could not be