

“In recent years this phenomenon became a serious problem. There appeared to be a gap in the law. The criminal law offered insufficient protection to communities. Public confidence in the rule of law was undermined by a not unreasonable view in some communities that the law failed them.”

13 There are various procedures which can lead to the making of an ASBO, in particular, that which involves an application by a relevant authority (e.g. a local authority) to a magistrates’ court. We are concerned with the power to make an ASBO following conviction for a relevant offence, a power granted to avoid the need to invoke the procedure in the magistrates’ court and thus a further hearing. The power was granted by s.1C of the Crime and Disorder Act 1998 (“CDA 1998”), as inserted by s.64 of the Police Reform Act 2002 and amended by s.86 of the Anti-Social Behaviour Act 2003. However the principles are the same irrespective of the procedural route.

14 Section 1C(2) of CDA 1998 provides:

“If the court considers—

- (a) that the offender has acted, at any time since the commencement date [1st April 1999] in an anti-social manner, that is to say in a manner that caused or was likely to cause harassment, alarm or distress to one or more persons not of the same household as himself; and
  - (b) that an order under this section is necessary to protect persons in any place in England and Wales from further anti-social acts by him,
- it may make an order which prohibits the offender from doing anything described in the order.” (Underlining added)

15 An ASBO is an order prohibiting a person from doing the “thing” described in the order.

16 We deal first with some procedural points. In *McCann* the House of Lords held that the proceedings on complaint by a relevant authority under s.1 of CDA 1998 were civil in nature, that hearsay evidence was admissible, that the magistrates’ court had to be satisfied to the criminal standard that the defendant had acted in an anti-social manner. The test for whether the order was necessary required an exercise of judgment or evaluation and did not require proof beyond a reasonable doubt. In *W. v Acton Youth Court* [2005] EWHC 954 (Sedley L.J. and Pitchers J.) confirmed that proceedings under s.1C are civil proceedings.

17 In that case Pitchers J. said that:

“The actual and potential consequences for the subject of an ASBO make it . . . particularly important that procedural fairness is scrupulously observed.”

18 *P (Shane Tony)* [2004] EWCA Crim 287; [2004] 2 Cr. App. R. (S.) 63 (p.343) Henriques J. giving the judgment of the Court (presided over by Lord Woolf C.J.) said (para.[34]):

“In our judgment the following principles clearly emerge:  
(1) . . .