

A *Court at Manchester* [2001] 1 WLR 1084. In a detailed judgment Lord Phillips MR concluded that both under domestic law and under article 6 the correct categorisation of proceedings under section 1 of the Act is civil. He then turned to the issue whether the standard of proof should nevertheless be the criminal one. He referred to the observation of Lord Bingham of Cornhill CJ in *B v Chief Constable of Avon and Somerset Constabulary* that the heightened civil standard is for all practical purposes indistinguishable from the criminal standard: p 1101, para 65. He quoted the passage from the judgment of the recorder about the difficulty of establishing “reliable gradations between a heightened civil standard commensurate with the seriousness and implications of proving the requirements, and the criminal standard” and pointed out that the Crown Court decided to apply the criminal standard. Lord Phillips MR observed, at p 1102, para 67:

C “I believe that the course followed by the Crown Court in this case is likely to be appropriate in the majority of cases where an anti-social behaviour order is sought and I would commend it.”

At present therefore the position is that in proceedings under section 1(1) magistrates have to decide, on a case by case basis, what standard of proof to apply. The Secretary of State has challenged this ruling of the Court of Appeal. Counsel submitted on his behalf that it is preferable to apply a single fixed standard of a balance of probabilities.

VI *The social problem*

E 16 Before the issues can be directly addressed it is necessary to sketch the social problem which led to the enactment of section 1(1) and the technique which underlies the first part of section 1. It is well known that in some urban areas, notably urban housing estates and deprived inner city areas, young persons, and groups of young persons, cause fear, distress and misery to law-abiding and innocent people by outrageous anti-social behaviour. It takes many forms. It includes behaviour which is criminal such as assaults and threats, particularly against old people and children, criminal damage to individual property and amenities of the community, burglary, theft, and so forth. Sometimes the conduct falls short of cognisable criminal offences. The culprits are mostly, but not exclusively, male. Usually they are relatively young, ranging particularly from about 10 to 18 years of age. Often people in the neighbourhood are in fear of such young culprits. In many cases, and probably in most, people will only report matters to the police anonymously or on the strict understanding that they will not directly or indirectly be identified. In recent years this phenomenon became a serious social 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. This was the social problem which section 1 was designed to address.

H VII *The legislative technique*

17 The aim of the criminal law is not punishment for its own sake but to permit everyone to go about their daily lives without fear of harm to person or property. Unfortunately, by intimidating people the culprits, usually