order is necessary to protect persons in the area, and consultation between them is required before the application is made. Thus the proceedings are identified from the outset as preventive in character rather than punitive or disciplinary. This is a strong indication that they are not proceedings for the determination of a criminal charge against the defendant. In *Lauko v Slovakia* 33 EHRR 994, 1011, para 58 the court said that the fine imposed in that case was intended as a punishment to deter re-offending and that it had "a punitive character, which is the customary distinguishing feature of criminal penalties". In *Guzzardi v Italy* (1980) 3 EHRR 333, 369–370, para 108 the court said that proceedings under which the applicant, as a suspected Mafioso, had been placed under special supervision with an obligation of compulsory residence within a restricted area did not involve the determination of a criminal charge against him within the meaning of article 6: see also *Raimondo v Italy* 18 EHRR 237. In *M v Italy* (1991) 70 DR 59, the commission held that article 6(2) did not apply to confiscation of property belonging to a person suspected of being a member of a mafia-type organisation. In neither of these cases was the imposition of the order regarded as being punitive. In *Gough v Chief Constable of the Derbyshire Constabulary* [2002] QB 459 the Divisional Court held that the imposition of a banning order under the Football (Spectators) Act 1989 as amended by the Football (Disorder) Act 2000, which was designed to combat what Laws LJ described as "the shame and menace of football hooliganism", was not in conflict with article 6. This decision has been affirmed by the Court of Appeal [2002] QB 1213.

73 In contrast to those decisions, which support the proposition that a distinction is drawn between proceedings for the imposition of preventive measures and those for the imposition of a penalty or punishment, there is *Steel v United Kingdom* 28 EHRR 603. In that case the court held that article 6(3) applied to proceedings in which the applicants, who had been arrested and charged with breach of the peace, were brought before a magistrate and bound over to keep the peace. As in the case of applications for an anti-social behaviour order, the procedure is initiated under section 51 of the Magistrates' Courts Act 1980 by a complaint, and a bind over order does not constitute a criminal conviction. It was contended for the defendants that that decision is directly in point in this case and indistinguishable, and that contention was strongly supported by Liberty.

74 But I would hold that it is distinguishable, for the reasons which were given by Lord Phillips of Worth Matravers MR in the Court of Appeal in the *McCann* case [2001] 1 WLR 1084, 1100H–1101B. As he pointed out, in contrast to proceedings for breach of the peace, there is no power of arrest for the purpose of proceedings under section 1 of the Crime and Disorder Act 1998. The fact that a warrant may be issued for the defendant's arrest if he fails to attend the hearing or an adjourned hearing does not show that they are criminal proceedings. Rather it shows that he has failed to respond to a summons by the court. In itself this is far from conclusive, as there are numerous offences in English law which are non-arrestable. But it has to be taken together with the other factors. Proof of anti-social behaviour is not the only criterion for the making of the order, nor is proof that the defendant is likely to cause further anti-social acts in the future. The order must be shown to be necessary for the purpose of protecting people against further such behaviour by him. This is not a distinction of form rather than