Appeal's approach subverts the proper classification of an anti- social behaviour order as involving civil proceedings.

The civil standard of proof should be regarded as a single fixed standard. However, the more serious the allegation the more cogent the evidence will need to be: see *In re H (Minors) (Sexual Abuse: Standard of Proof)* [1996] AC 563.

Solley QC in reply. *Kostovski v Netherlands* (1989) 12 EHRR 434 and *Saidi v France* (1993) 17 EHRR 251 involved a lack opportunity to examine witnesses.

The criminal standard of proof would not lie comfortably with the hearing of hearsay evidence under the Civil Evidence Act 1995. There should be a declaration of incompatibility under section 4 of the Human Rights Act 1998.

Fulford QC in reply. *Raimondo v Italy* 18 EHRR 237 and *Guzzardi v Italy* 3 EHRR 333 involved very different proceedings from an anti-social behaviour order. See also *Krone-Verlog GmbH v Austria* (Application No 28977/95) (unreported) 21 May 1997 and *Nottingham City Council v Zain (A Minor)* [2002] 1 WLR 607.

Their Lordships took time for consideration.

17 October. **LORD STEYN**

1 My Lords, section 1 of the Crime and Disorder Act 1998 ("the Act") provides for the making of anti-social behaviour orders against any person aged ten years or over. It came into force on 1 April 1999. Between 1 April 1999 and 31 December 2001 magistrates in England and Wales made 588 such orders and refused 19. It is important social legislation designed to remedy a problem which the existing law failed to deal with satisfactorily. This is the first occasion on which the House has had to examine the implications of section 1.

2 There are two appeals before the House. They are unrelated but raise overlapping issues. Both cases involve the power of the magistrates' court under section 1 of the Act, upon being satisfied of statutory requirements, to make an anti-social behaviour order prohibiting a defendant from doing prescribed things. Breach of such an order may give rise to criminal liability. That stage has, however, not been reached in either case. In the case of *Clingham* no order has been made. In the case of the *McCann* brothers anti-social behaviour orders have been made against all three. The appeals are therefore concerned only with the first stage of the procedure under the Act, namely, the application for such an order, and the making of it, and not with the second stage, namely proceedings taken upon an alleged breach of such an order.

3 In *Clingham* the district judge gave a preliminary ruling on 14 September 2000. In the *McCann* case the recorder gave judgment on an appeal from a stipendiary magistrate on 16 May 2000. In both cases the Human Rights Act 1998 is not directly applicable: *R v Kansal (No 2)* [2002] 2 AC 69. The House has, however, been invited by all counsel to deal with the appeals as if the Human Rights Act 1998 is applicable. My understanding is that your Lordships are willing to do so.