



Gangs and Anti-Social Behaviour Injunctions – Standard of Proof

Jane Talbot

Jones v Birmingham City Council and another [2023] UKSC 27

On 19 July 2023 the Supreme Court handed down judgment in the case of [Jones v Birmingham City Council and another \[2023\] UKSC 27](#). The facts of the case involved allegations of gang related drug dealing activity which resulted in a without notice application for an injunction and power of arrest against Mr Jones and 17 others believed to be involved in a notorious Birmingham gang. Interim injunctions orders with powers of arrest were made pursuant to s34 Policing and Crime Act 2009 and Part 1 of the Anti Social Behaviour Crime and Policing Act 2014 and, in relation to Mr Jones specifically, a final injunction and power of arrest were made (pursuant to the 2009 Act only) which had the effect of prohibiting him from entering large parts of the city centre.

During the course of the proceedings, an application was made by Mr Jones to transfer the matter to the High Court for a declaration that s34(2) Policing and Crime Act 2009 and s1(2) Anti Social Behaviour Crime and Policing Act 2014 were incompatible with the Defendant's rights pursuant to Article 6 ECHR and that the criminal standard of proof (beyond reasonable doubt) should apply rather than the civil standard (balance of probabilities). Both statutory provisions expressly provide that the balance of probabilities shall be the relevant standard. The proceedings were transferred to deal with that sole issue. The declaration was refused and that decision was appealed to the Court of Appeal who dismissed the appeal. The matter was appealed to the Supreme Court.

The Appeal

The appeal concerned *"the power of the courts on the application of public authorities to grant injunctions to prevent gang-related violence and drug-dealing activity pursuant to section 34 of the Policing and Crime Act 2009 ("the 2009 Act") and to grant injunctions pursuant to Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014 ("the 2014 Act"). More specifically it concerns the question whether article 6(1) of the European Convention on Human Rights ("ECHR"), as given effect within the United Kingdom by the Human Rights Act 1998 ("HRA 1998"), requires the criminal standard of proof (ie proof beyond a reasonable doubt) to be satisfied in respect of: (1) Proof that a person has engaged in or has encouraged or assisted gang related violence or gang-related drug dealing activity within section 34(2) of the 2009 Act; and (2) Proof that a person has engaged or threatens to engage in anti-social behaviour within section 1(1) of the 2014 Act."*

Accordingly, the decision is important for local authorities, social landlords and police applying for injunctions further to either of the provisions.

Section 34 of the Policing and Crime Act 2009 provides:

34 Injunctions to prevent gang-related violence and drug-dealing activity

- (1) A court may grant an injunction under this section against a respondent aged 14 or over if the first and second conditions are met.
- (2) The first condition is that the court is satisfied on the balance of probabilities that the respondent has engaged in or has encouraged or assisted—
 - (a) gang-related violence, or
 - (b) gang-related drug-dealing activity.
- (3) The second condition is that the court thinks it is necessary to grant the injunction for either or both of the following purposes—
 - (a) to prevent the respondent from engaging in, or encouraging or assisting, gang-related violence or gang-related drug-dealing activity;
 - (b) to protect the respondent from gang-related violence or gang-related drug-dealing activity.

Section 1 of the Anti Social Behaviour Crime and Policing Act 2014 provides:

Power to grant injunctions

- (1) A court may grant an injunction under this section against a person aged 10 or over (“the respondent”) if two conditions are met.
- (2) The first condition is that the court is satisfied, on the balance of probabilities, that the respondent has engaged or threatens to engage in anti-social behaviour.
- (3) The second condition is that the court considers it just and convenient to grant the injunction for the purpose of preventing the respondent from engaging in anti-social behaviour.

Article 6(1) of the ECHR provides:

Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...
2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

By the time the matter reached the Supreme Court, the parties had agreed that the proceedings were civil in nature and were not in respect of a criminal charge.

McCann

A panel of 7 Justices was convened due to the argument as to the applicability of the authority of [R \(McCann\) v Crown Court at Manchester \[2003\] 1 AC 787](#). It was argued for Mr Jones that the Court in *McCann* established the binding principle that article 6(1) of the ECHR requires the application of the criminal standard of proof in cases such as the present. It was submitted that the Court of Appeal erred in distinguishing and declining to follow *McCann*. It was further submitted that *McCann* is authority binding on the Supreme Court in the present appeal. In response, Birmingham City and the Secretary of State disputed that *McCann* is authority for the proposition that article 6(1) requires the application of the criminal standard of proof in cases such as the present or that it is a binding precedent for the purposes of this appeal. Alternatively, they submitted that if *McCann* is authority to that effect and if it is binding on the Supreme Court, we should depart from it in accordance with the [Practice Statement \(Judicial Precedent\) \[1966\] 1 WLR 1234](#).

McCann involved an application for an injunction pursuant to the Crime and Disorder Act 1998 which required an application to the Magistrates' Court and breach of any order made was a criminal offence. The Act did not specify the standard of proof. Injunctions were made prohibiting entry to certain parts of Manchester. On appeal to the House of Lords it was held that proceedings under section 1(1) are civil under domestic law and for the purposes of article 6 of the ECHR. On the point of the applicable standard of proof, Lord Steyn concluded:

"Having concluded that the relevant proceedings are civil, in principle it follows that the standard of proof ordinarily applicable in civil proceedings, namely the balance of probabilities, should apply. However, I agree that, given the seriousness of matters involved, at least some reference to the heightened civil standard would usually be necessary"

In my view pragmatism dictates that the task of magistrates should be made more straightforward by ruling that they must in all cases under section 1 apply the criminal standard.

The concept of a heightened civil standard arose in the decision in *Birmingham City Council v Shafi* [2008] EWCA Civ 1186. In that case, Birmingham City Council applied for injunctions to tackle gang related violence using s222 Local Government Act 1972. It was held that *such an application for the purpose of preventing gang-related activity should be refused by the court in its discretion, save in exceptional cases, because Parliament had intended the authorities to use anti-social behaviour orders under the Crime and Disorder Act 1998 for this purpose and that the applicable standard of proof in such cases as would warrant an injunction was the criminal standard so as to achieve parity with the anti-social behaviour order regime.* Parliament then introduced the Policing and Crime Act 2009 to reverse that decision and introduced statutory procedural safeguards and to ensure that gang related activity could be effectively tackled.

Supreme Court

The main points to take away from the Judgment are:

1. There are only two standards of proof – the balance of probabilities and beyond reasonable doubt. There is no “heightened civil standard”;
2. Article 6(1) of the ECHR does not require the criminal standard of proof to be satisfied in respect of:
 - a. s34(2) of the Policing and Crime Act 2009 (proof that a person has engaged in or has encouraged or assisted gang-related violence or gang-related drug dealing activity) or
 - b. section 1(1) of the Anti Social Behaviour Crime and Policing Act 2014 (proof that a person has engaged or threatens to engage in anti-social behaviour)
3. Under both Acts of Parliament there are devised statutory schemes which conform with the requirements of a fair hearing under article 6 of the ECHR and ensure fairness.

Conclusions

Those seeking injunctions under either statutory provision can now be confident that the appropriate standard of proof is the balance of probabilities. However, upon breach, the committal proceedings will require proof beyond reasonable doubt. Therefore it is important to consider the strength of the evidence both at the time of applying for the injunction and at the time of any breach. There is little practical use of an injunction obtained on hearsay evidence if any subsequent breaches cannot be proved to the criminal standard which will usually require direct evidence.

This is a short summary of a detailed judgment. I would strongly advise reading the judgment in full.

[Author Picture]

Jane Talbot

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Law is correct as at 21 July 2023

Whilst every effort has been taken to ensure that the law in this article is correct, it is intended to give a general overview of the law for educational purposes. Readers are respectfully reminded that it is not intended to be a substitute for specific legal advice and should not be relied upon for this purpose. No liability is accepted for any error or omission contained herein.

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