

The House of Lords and Hain's direct action offences

When looking back on activities for which Peter Hain was tried at the Old Bailey in 1971 (and on one count convicted) do people nowadays retain a proper sense of proportion towards those events? I think not. Here is an example. In debating the Bill which became the Football (Disorder) Act 2000 some members of the House of Lords took a remarkably relaxed view of activities that earlier brought Peter Hain into trouble with the law.

Lord Phillips of Sudbury said it had occurred to him that 'a Member of this House and a Minister in the other place would, in their time, have been caught slap bang by [the Bill]'. He went on-

'I think of David Steel and Peter Hain, both of whom were engaged in anti-apartheid demonstrations, particularly in relation to rugby. Am I not right in thinking that both of them would have been caught slap bang by the provisions of new Section 14B and by the second test mentioned by the noble Lord, Lord Cope; namely, that a court would indeed be satisfied that there were "reasonable grounds to believe that making a banning order would help to prevent . . . disorder . . . in connection with any . . . football matches"? Is that not a worrying example of the way in which this legislation could - I suspect that, if the legislation had been in force at the time, it would have been used in this way - have been used to close down the civil demonstrations that I mentioned?'¹

The Labour Government minister Lord Bassam of Brighton said in reply-

'Famously, I am not a lawyer. I should think that the actions of someone involved in a demonstration would be extremely important; whether they were acting in a disorderly way; whether they were being provocative; whether they were inciting others; whether they were encouraging others to acts of violence; or whether they were intimidating in some way. Those circumstances could be described as contributing to violence or disorder . . . I am not entirely convinced with the example the noble Lord, Lord Phillips, raised about Peter Hain. I think that Peter Hain's leadership of the anti-apartheid movement was something of which he was probably rightly proud, and many others were too. It was certainly a noble cause and one which I am sure Members of the Committee will have supported. I do not think that one would necessarily transpose Mr Hain's activities into contributing or making it plain that he would have been a contributor to violence in and around surrounding football matches, certainly in the circumstances in which we envisage this law to operate.'²

Lord Phillips of Sudbury answered-

'I was not seeking to disparage Mr Hain, rather the opposite. I was a strong supporter of his courage then and would be now. This is not unimportant because the Minister constantly refers to violence. This new section deals with disorder and violence. Disorder is defined, I repeat, in a most modest way, as, "using threatening, abusive or insulting words or behaviour or disorderly behaviour". Those demonstrations in the days when Peter Hain was on the barricades were certainly disorderly behaviour within that definition. There are no two ways about it. Therefore, it demonstrates the kind of conduct which is perfectly lawful³ and yet falls within the new section.'⁴

¹ HL Deb 24 Jul 2000, Column 223. This assumes that it would have been wrong to 'close down' demonstrations that contravened the criminal law, a strange position for a legislator to adopt!

² Ibid, column 225.

³ Of course Hain's conduct was not 'perfectly lawful'.

Lord Woolmer of Leeds said-

'The noble Lord quoted the Hain case. Even if that behaviour was thought to have a degree of disorder about it, that is not itself an action that would actually result in a banning order. It could only result in banning if, "the court is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence and disorder at or in connection with any regulated football matches". Frankly, the case being made simply does not bear examination. There is no connection between the two. I honestly think that that is a red herring. I am more concerned with people who genuinely have some violence in their background. The authorities will have to be able to choose out of the tens of thousands of people who have a violent background but do not have convictions the few that they will ban. However, I believe that the Hain case is a red herring.'⁵

Here the Earl of Onslow pointed out that the new Section 14C(3) states: 'In this Part, 'violence' and 'disorder' are not limited to violence or disorder in connection with football'.

Earl Russell said-

'I thank the Minister for doing the best he could about the words "contributed to". He has reduced my anxiety . . . I thank the noble Lord, Lord Woolmer of Leeds, for an extremely helpful and thoughtful contribution. If there is a solution to the points we are debating, it is along the lines that he is thinking that we would be most likely to find it. On the other hand, I am not so sure that the case of Mr Hain is a red herring, though it seems to me that in the event he will personally be protected by the Government's amendment, which I welcome in advance, to introduce the principle of spent convictions. But were someone to have done something like that rather less than 10 years ago, the same principle could still apply. Even granted that Mr Hain is now an extremely respectable citizen, I could imagine certain former Springbok forwards who might regard his presence as being of itself provocative. There is that aspect of the matter to be considered as well.'⁶

When the debate resumed next day Earl Russell said-

'An awful lot of people - I think of some of my former pupils now in distinguished and responsible positions - have been at some time in their lives in a position where they might be held to have contributed to violence or disorder. In not all of those cases would it be just, reasonable or helpful to impose a banning order on them under the Bill, especially if they wished to travel during one of the many periods of football matches for some completely different purpose. What will single out those who are likely to contribute to violence or disorder from all the rest in the opinion of the court? . . . We discussed, for example, the case of Mr Peter Hain sprinkling tin tacks on the pitch at Twickenham. That, I imagine, is disorder within the meaning of the Bill. If the Minister tells me that it is not, I shall be interested to hear that. Clearly in Mr Hain's case the conviction is spent, and rightly so. However, if this legislation had been introduced in 1975, when his conviction was not spent, whether it would have assisted Mr Hain's rehabilitation into a respectable citizen to be caught and be subject to a banning order and reminded of past misdeeds which had faded in everyone else's memory is a question that I leave to your Lordships' consideration.'⁷

Francis Bennion
16 November 2000

⁴ Ibid.

⁵ Ibid, column 226.

⁶ Ibid.

⁷ HL Deb 25 Jul 2000, Column 345.