Interventions

A Cure Worse than the Disease? Reflections on *Gough and Smith* v. *Chief Constable of Derbyshire*

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Introduction

Gough and Smith had unsuccessfully appealed[1] against the imposition upon them of two-year football 'banning orders' under the Football Spectators Act 1989, s.14(a) as amended by the Football (Disorder) Act 2000. They both had one previous conviction for an offence of violence, unrelated to football, in 1998 and 1990 respectively. Each had been the subject of a 'profile' prepared by the police, which indicated that they had repeatedly been involved in, or had been near to, incidents of violence at or near football matches.

In their subsequent appeals to the Court of Appeal,[2] Gough and Smith contended that: (i) the banning orders derogated from their positive rights of freedom of movement and freedom to leave their own country (as granted by Council Directive (EC) 73/148), because it was not possible to justify a banning order on public policy grounds, and alternatively that no such grounds were made out in the evidence; (ii) the 2000 Act was contrary to Community Law insofar as it imposed mandatory restrictions on free movement within the Community on criteria that were not provided for by Community legislation; and (iii) the bans were contrary to the Community principle of proportionality.

The appellants further contended that the procedures for imposing banning orders contravened the European Convention on Human Rights, Article 6 and/or Article 8 because: (i) only the civil standard of proof had to be satisfied; (ii) there were insufficient procedural safeguards appropriate to a 'criminal charge'; and (iii) the geographical scope of the order was unacceptably broad.

In the event, the Court of Appeal was satisfied that there was a public policy exception to the 1973 Directive and, furthermore, that there was no absolute right to leave one's country. It held that while it may appear that

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banning all foreign travel was disproportionate, banning orders should only be imposed where there were strong grounds for concluding that the individual had a propensity for participating in football hooliganism. It was proportionate to impose upon those who had shown such a propensity a scheme that restricted their ability to engage in it. Although the civil standard of proof did apply, that standard was flexible and had to reflect the consequences that would follow if the case for a banning order were made out. This should result in magistrates applying an exacting standard of proof and in practice this standard would be virtually indistinguishable from the criminal one, and in those circumstances the article 6 challenge failed. Furthermore, if a banning order were properly made, any interference with article 8 rights would be justified under article 8(2) – that is, that it was necessary for the prevention of disorder. Although the correct standard of proof had not been applied, the case for a banning order on each of the appellants had been amply made out. Accordingly, their appeals would be dismissed.

Discussion

The Football (Disorder) Act was introduced in the autumn of 2000, allowing for the first time the serving of 'banning orders' and the removal of passports from those suspected of being 'football hooligans'. Consequent to the introduction of the Act, there was considerable anticipation from fans' groups and civil libertarians of its inevitable challenge in the courts. The case of *Gough and Smith* v. *Chief Constable of Derbyshire* in the Court of Appeal (Civil Division) this year brought an end to this wait. Carl Gough and Gary Smith were two Derby County fans appealing against the decision by Laws L.J. to reject their application that the International Banning Orders imposed on them under the Football (Disorder) Act 2000 were illegal under both the Treaty of the European Union and the European Convention of Human Rights. The case assessed the standard of proof required for the imposition of the banning orders and also looked at the thorny issue of whether such a Draconian response was proportionate to the legislative intention of combating football-related disorder.

The Football (Disorder) Act was the pinnacle of a 15-year combined campaign of legislation and development of police strategy designed to reduce football-related disorder. While the Sporting Events (Control of Alcohol) Act 1985 and the Football (Offences) Act 1991 criminalised acts deemed either to provoke or constitute 'football hooliganism', other legislation (Public Order Act 1986, s.30, and the Football Spectators Act 1989 Part II) introduced banning orders[3] for fans convicted of football-related offences if the courts considered that these would help prevent football-related disorder at home and abroad.

In tandem with this, police tactics were transformed; mass policing of football crowds evident throughout the 1970s and early 1980s became nearly obsolete, as did the disastrous undercover operations of the mid 1980s.[4] Instead, following the creation of the Football Intelligence Unit (FIU) of the National Criminal Intelligence Service (NCIS), the emphasis in the policing of fans in the UK became more specifically targeted on those 'firms' of hooligans intent on organising football violence with other gangs. Outside the ground, police forces tracked the movements of the firms, targeting football 'prominents' whom they believed were responsible for incidents of serious violent disorder. Police 'spotters', who operated openly (in sharp contrast to previous covert methods), were central to this tactic of identifying, segregating and containing the 'prominents'. This required the collation of 'intelligence' about the activities of these 'prominents', and the collaboration between different police forces in the UK and abroad.

In 2000, following widely reported disorder involving England fans at the European Championships in Belgium, the twin objectives of legislation and policing converged. The Football (Disorder) Act has been the most dramatic legal attempt to deal with football hooliganism so far, and is one of the most significant pieces of legislation in the UK affecting civil liberties, freedom of movement and civil protections under the rule of law. The statute basically extended the grounds under which banning orders for fans could be imposed, most contentiously by allowing bans to be imposed upon fans that had never been convicted of a football-related offence, and were merely *suspected* by the police of being involved in football-related disorder.[5] For the imposition of such a banning order, the police had to make a 'complaint' to a magistrate,[6] and the role of this new style of policing became essential, with the files on so-called 'prominents' becoming potentially sufficient evidence to lead to a banning order. The orders were well used by the police and courts, and according to the Home Office, 'There are currently 1,014 people subject to banning orders. 932 of those will be banned from travelling to the [2002] World Cup under international banning orders.'[7]

The appellants in *Gough and Smith* contended that the Act contravened key principles of European Union law and the European Convention of Human Rights (now enshrined within the 1998 Human Rights Act), and that their banning orders were therefore illegal. First, they claimed that the statute contravened Articles 1 and 2 of Directive 73/148 on the Abolition of Restrictions on Movement and Residence, etc. The Directive provides that Member States shall grant their nationals 'the right to leave their territory'.[8] This argument was twofold, with the appellants arguing that it was unclear whether nationals could be prevented from moving between EU member states even on public policy grounds, and that this question should be

referred to the European Court of Justice. The Court of Appeal dismissed this argument out of hand, deeming that this would be an over-literal interpretation leading to an absurdity (para. 45). It ruled that the rationale for Articles 1 and 2 was to prevent discriminatory treatment between EU nationals in a member state and stated that as a general rule, a state could stop travel for reasons of public policy, public security or public health (para. 52).

A more robust argument put forward by the appellants was that restrictions of freedom of movement were permitted under EU law, but only if they could be justified under the principle of *proportionality*. The test of proportionality submitted by the appellants – and accepted by the court – was from the case of *de Freitas* v. *Permanent Secretary of Ministry of Agriculture* [1999] 1 AC 69:

> Whether: (i) the legislative objective is sufficiently important to justify limiting a fundamental right; (ii) the measures designed to meet the legislative objective are rationally connected to it; and (iii) the means used to impair the right or freedom are no more than is necessary to accomplish the objective.[9]

Under this test, it was contended that although preventing 'football hooliganism' was a legitimate public policy aim, this could not justify prohibiting UK nationals from leaving the country. In arguing that the Football (Disorder) Act was a disproportionate response, the appellants rightly pointed out that 'there are classes of persons capable of doing much more damage than football hooligans who are free, under domestic law, to leave the country, including drug dealers and paedophiles' (para. 57). The Court of Appeal, however, for reasons that will be examined later, determined that the legislation was a proportionate and legitimate response because of the severity of the football hooliganism problem.

Finally, it was argued that the statute breached Article 6 of the European Convention of Human Rights and the Human Rights Act 1998, which guarantees the right to a fair and public hearing for any 'criminal charge', and also secures the presumption of innocence.[10] The appellants claimed that a banning order was a criminal penalty under Article 6, but that it was being imposed under a standard of proof that was so low (below even the civil standard of a balance of probabilities) as to preclude a fair hearing. They also claimed that when banning orders were being imposed, procedural guarantees in Article 6(3) were not being adhered to (para. 41). Dismissing this claim, the court ruled that *the orders were not criminal penalties*, and determined that, 'the proceedings that led to the imposition of banning orders were civil in character' (para. 89).

However, the Court of Appeal did treat the important issues raised here regarding the standard of proof more seriously than Laws L.J. had done at

first instance. First, they acknowledged the severity of an imposition of an order, because it imposed 'serious restraints on freedoms that the citizen normally enjoys'. More significantly, the court ruled that the magistrate should 'apply an exacting standard of proof that will, in practice, be hard to distinguish from the criminal standard', in the same manner as anti-social behaviour orders and sex offenders orders (para. 90).

This condition placed on the imposition of banning orders is critical. In principle it should ensure against some of the more extreme applications of the Act that could in effect lead to a suspension of the presumption of innocence for those suspected of football-related crimes. But there must be serious doubts as to whether, with the vague wording of the statute, and under pressure from police to prevent potential 'outbreaks' of violence, magistrates will in practice impose such a strict quasi-criminal burden of proof. More importantly, it should be asked – if such evidence exists, *why are the accused not being charged with criminal offences*? Clearly there cannot be any public policy reasons for this (surely only a cynic would suggest it provides a justification for the continued funding of the FIU!), as convictions would not only lead to punishment for criminal offences already committed, but could also lead to banning orders under the more reasonable parameters of the previous legislation.

Furthermore, this proposed quasi-criminal burden of proof for banning orders appears to contradict the original rationale for the introduction of the 2000 Act. It would appear that banning orders under the Act were introduced because the police often *did not have sufficient evidence* to charge those fans that they suspected were involved in football-related disorder. In justifying the introduction of such banning orders for unconvicted 'hooligans', then Sports Minster Kate Hoey commented at the Committee stage of Football (Offences and Disorder) Bill that, 'From football intelligence we know that some people commit offences or are involved in organising violence but cleverly manage not to be where they may be arrested. We need to find a way of dealing with those people.'[11]

Clearly then, the motive behind the introduction of the Act – and the reason that it was backed so enthusiastically by the police and Home Office – was to overcome the evidential difficulties that had arisen in the standard criminal procedures for those accused of football-related offences. Most conspicuously, it was introduced to circumvent the burden of proof beyond reasonable doubt. Therefore, if the burden of proof for the imposition of banning orders must be 'hard to distinguish' from this standard, then the claimed objectives of the Football (Disorder) Act are surely damaged. *If* the decision by the Court of Appeal was consistent with the legislature's intention, then this must bring us to ask the question why the legislation was introduced in the first place, when banning orders for those convicted

(under proof beyond reasonable doubt) of offences already existed under the Football (Offences and Disorder) Act 1999, the Football Spectators Act 1989 and the Public Order Act 1986, s.30.

The Court was of the opinion that the serious restrictions on the fundamental freedoms of citizens who have not been convicted of any offence enforced by banning orders should be taken seriously, and only imposed where serious evidence of criminal offences existed. However, they did not go as far as defining the orders as criminal penalties, even though the restrictions of such orders so closely resemble a judicially imposed punishment that many would argue that they should be treated as such. If this argument is followed, then banning orders should only be imposed following an adherence to the same standard of proof required for criminal convictions. To do otherwise not only subverts Article 6 of the European Convention, but also essentially suspends important rule of law protections, such as the presumption of innocence and the principle that citizens should not be punished unless they have been found guilty of an established criminal offence in an impartial court of law.

However, it is interesting to compare the Court of Appeal's claims that banning orders should only be imposed under a quasi-criminal burden of proof with the type of evidence that it took into account when imposing the orders upon Gough and Smith (and presumably the other 930 fans who were served with international banning orders prior to the 2002 World Cup in Japan and Korea by Magistrates Courts under an even weaker burden of proof). The disorder at Euro 2000 that led to the Football (Disorder) Act is important here. Scenes of the Belgium police using water cannon on England fans gathered in the main square in Charleroi before the England v. Germany game were beamed around the world and presented as evidence of another 'outbreak' of English football hooliganism. In reality there had been little serious disorder, and a police response targeted on the individuals responsible for the minor acts of vandalism and disorder, rather than corralling large groups of fans and indiscriminately using water cannon, would have probably avoided serious escalation.[12] Lord Phillips M.R., outlining the background to the Act, talked of the 'appalling scenes' in Belgium (para. 25), and highlighted the fact that a huge number of English fans were arrested – 965 in total. This is crucial to the debate, as even the Belgium police have accepted that *innocent fans* were arrested as a result of extremely harsh policing.[13] One example of this was an incident where, in a response to minor disorder taking place in a bar in Brussels, the police fired tear gas inside and arrested every fan coming outside to escape from the fumes. Significantly, Lord Phillips declined to note that, of these 965 arrests, only *one* fan was actually convicted of an offence.[14]

This is important, because it raises serious questions as to the reliability of intelligence files upon which banning orders can be imposed. Have those

arrested been filed and blacklisted by NCIS? Are they now considered 'prominents'?[15] It was notable that one of the defendants in *Gough and Smith* v. *Chief Constable of Derbyshire* had a police profile that Lord Phillips considered to be 'of particular relevance'. This stated that, 'Smith was seen in the square in Charleroi after the disorder had occurred corralled by the Belgium police with around 15 other Derby prominents and 1,500 other England supporters' (para. 35). The value of this particular profile in proving that Smith was prone to committing football-related crimes is highly questionable, bearing in mind the tactics employed by the police against anyone who happened to be in the wrong place at the wrong time.

Certainly much of the 'evidence' held on FIU files is of dubious value, and the profiles of Gough and Smith included seemingly irrelevant entries such as, '7/8/99. Leeds v. Derby, Gough seen leaving stadium with three other males', and '11/12/99. Smith seen sitting in the south-east corner of the ground during the Derby v. Burnley FA Cup game' (para.30). The strongest evidence noted in the judgment seemed to revolve around Smith and Gough being seen in a group of fans apparently known as 'The Derby Lunatic Fringe', which on occasion became involved in disorder with other firms (paras. 30–31). No evidence noted in the judgment actually pointed to either Gough or Smith committing any specific criminal offence. This is hardly evidence pertaining to a standard of proof anywhere near that of a criminal trial. Instead it is nearer to guilt by association. There is no reason to suppose that the police are mistaken in their belief that there are individuals in the 'Derby Lunatic Firm' that commit criminal offences. However, if this group is under police surveillance, then it follows that specific evidence on individuals should be available, and that those criminals should be charged with the relevant offences.

These issues are also important when considering whether the Football (Disorder) Act was a proportionate response to the scale of football-related disorder. The reasoning of the Court of Appeal in ruling that banning orders for unconvicted fans satisfied the test of proportionality relied upon the same nebulous and one-sided arguments about the 'menace' of football hooliganism. The test of proportionality set out in *de Freitas* surely requires a more impartial and unprejudiced assessment of the importance of the legislative intention than is set out in *Gough and Smith*. However, in the judgment there is little analysis of the phenomenon of football-related disorder caused by English fans abroad, and instead the court relies on the opinions of the police and Home Office and the old media-based metaphors about the 'disease' of football hooliganism, much of which is highly contentious.[16] Considering that the legislation supposedly under evaluation is supported by both the police and Home Office, it is extraordinary that the court should be satisfied by a reliance upon these interested parties in

constructing the meaning and seriousness of football hooliganism. It can be argued that these parties have a vested interest in accentuating the severity of the problem in order to justify the extended use of banning orders provided by the Football (Disorder) Act. This was, of course, a piece of legislation they had called for in the first place. In addition, the blanket use of the term 'football hooliganism' has had the effect of simplifying the complexities of the issue. It bundles together the criminals who deliberately organise and participate in serious violence with those fans who are often caught up in running battles with police and rival supporters purely because they were 'in the wrong place at the wrong time'.

At first instance, Laws L.J. described football hooliganism as a 'shame and menace' (para. 3), and was quick to resort to the long-established metaphor of football crowd disorder as a disease in order to rule that the legislation was proportionate: 'The State is entitled to conclude that very firm measures were justified to confront the various sickening ills of football violence' (para. 81). This type of unreflexive, unelucidated and reactionary construction of football hooliganism has characterised judicial responses to the phenomenon for the last two decades. In the case of *R* v. *Rogers-Hinks* [1989] 11 Cr App R (S) 234, for example, Justice Milmo stated that, 'I know of my own knowledge that the foreign press call this particular form of mindless violence "the English Sickness". It is a sickness and a scourge that threatens to destroy civilised life in our country …'.[17] Obviously, such a construction by judges is likely to lead to extreme and Draconian responses. In the *Rogers-Hinks* case, the defendants received high deterrent sentences, and at first instance in *Gough and Smith*, the assertion that banning orders were inappropriate for unconvicted fans was dismissed out of hand.

Admittedly, the Court of Appeal's opinions on football crowd disorder were slightly less reactionary, with Lord Phillips admitting that, 'we have found the issues less easy to resolve than did Laws L.J.' (para. 82). However, there was still virtually no analysis of the actual nature or severity of football-related disorder by England fans abroad. Surely issues such as the number of deaths, injuries, convictions and damage to property directly caused by football violence should be debated here. In addition, the Court continued to rely upon the prejudiced construction of the phenomenon espoused by the Home Office and police. For example, Lord Phillips's claim that, 'to describe what takes place by the word "warfare" is hardly too strong', is backed up only with a statement from a senior police officer describing the organisation of the firms and noting that the fights, 'often involve the use of weapons e.g. knives, bottles and CS Gas' (para. 6). A statement by David Bohannan of the Home Office is also used as evidence of the seriousness of the problem, claiming that 'each incident [of

hooliganism abroad by English fans] has brought shame on our national reputation' (para. 7).

The three reasons given for the Court of Appeal's decision that the Football (Disorder) Act was a proportionate response to football crowd disorder abroad included the fact that other countries had requested the UK Government to act to prevent English supporters causing disorder in their own countries, and that disorder could potentially lead to a ban on English clubs competing in Europe that would have serious financial implications for the game. The other reason given was merely that, 'Hooliganism by English and Welsh supporters abroad tarnishes the reputation of this country' (para. 62(ii)). After couching football-related disorder in these terms, it is hardly surprising that the Court then considered the imposition of such Draconian measures to be proportionate.

Another problem with the legislation that needed to be raised in the proportionality arguments is that the majority of those arrested in Belgium were *unknown to the police*. The FIU only knew of 30 of those arrested, and only 40 per cent had previous convictions (the vast majority of which were not football-related). Even if we assume that most of those arrested *were* actively involved in disorder, to suggest that the Football (Disorder) Act would have prevented the 'hooliganism' at Euro 2000, and will necessarily prevent similar scenes at either Euro 2004 in Portugal or the World Cup in Germany in 2006 is probably misleading. This reality discredits the claim that the legislation is necessary, and therefore makes it more difficult to claim that, 'the measures designed to meet the legislative objective are rationally connected with it',[18] and that the measures are proportionate.[19]

Conclusion

In terms of the civil liberties of those attending football matches, the judgment in *Gough and Smith* can be seen both positively and negatively. The decision – *if* it is strictly applied by magistrates dealing with requests by police forces to impose banning orders upon those merely suspected of 'hooligan activity' – undoubtedly checks the worst extremes of the Football (Disorder) Act. Its ruling that banning orders should only be imposed if there is evidence presented to the court that proves guilt of football-related offences to a standard of proof nearly identical to that of a criminal trial should be welcomed. Such a ruling at least provides some protection of rights under the rule of law and Article 6 of the European Convention of Human Rights, even if it essentially hamstrings the purpose of the legislation. However, it should also be asked why these suspects are not being charged with criminal offences. If Gough and Smith are active members of a criminal gang known as the 'Derby Lunatic Fringe' that

rampages through Europe smashing up property and attacking people, why (if they have been under constant surveillance by NCIS) have they not been charged with these offences and banned for possessing previous football-related convictions?

What should also be welcomed from the case is the ruling that, in determining whether a banning order should be imposed, the magistrate must focus on the individual behaviour of the suspect in question, rather than merely assuming that anyone suspected of involvement in football violence must automatically be served with a banning order.[20] Accordingly, the court should ask whether it is necessary for the individual in question to be banned from travelling abroad, when England or an English club team are playing, in order to prevent disorder:

> The Court has to be satisfied both that the individual has, in the past, caused or contributed to violence or disorder, and that there are reasonable grounds to believe that making the order will help to prevent violence or disorder in connection with football matches in the future (para. 70).

However, despite this rhetoric, there was little evidence that Carl Gough needed to be served with an international banning order, *even if* it was accepted that he was a prominent member of the Derby County firm who had previously been involved in football-related violence. Gough gave uncontested evidence at first instance that, 'he had never been to a football match outside the United Kingdom' (para. 34). Therefore, it is difficult to justify the serving of an international banning order, since the evidence is weighted against the likelihood of his travelling abroad to cause disorder.

Most importantly, it was disappointing that the Court of Appeal was incapable, or unwilling, of looking beyond the 'common sense' construction of football hooliganism,[21] supported by statements of interested parties, that has so characterised judicial responses to football-related disorder since the late 1970s. Despite the case being centred on issues of proportionality, there was little analysis of the actual nature, scale and impact of football hooliganism. And yet without this, how could the court ever reach an objective and rational decision on what manner of legislative response was necessary and justifiable? It must be a matter of concern that the Court of Appeal is unwilling to consider applying key principles of the Treaty of the European Union, the European Convention of Human Rights and the rule of law in cases where the accused happens to be suspected of an offence committed in the context of a football match. These apparent protections are proving incapable of protecting the civil liberties of football fans that have been convicted of no offence from an overly zealous executive that has become obsessed with protecting the nation's reputation from the so-called 'disease' that is football crowd disorder.

NOTES

1. *Gough and Smith* v. *Chief Constable of Derbyshire* [2001] 4 All ER 289; [2001] 3 WLR 1392, DC.
2. *Gough and Smith* v. *Chief Constable of Derbyshire* [2002] EWCA Civ 351, C.A. Before Lord Philips M.R., Judge and Carnwath L.J.J.
3. Then called Exclusion Orders (for domestic bans) and Restriction Orders (for overseas bans).
4. See G. Armstrong and D. Hobbs, 'Tackled from Behind', in R. Giulianotti *et al.* (eds.), *Football Violence and Social Identity* (London: Routledge, 1994), 196–228.
5. A private members bill that became the Football (Offences and Disorder) Act 1999 paved the way for this. The 1999 Act originally proposed the idea but dropped it from its provisions because it was considered too contentious for a private members bill and because the government promised to come back to this idea themselves in the near future. See G. Pearson, 'Legislating for the Football Hooligan: A Case For Reform', in S. Greenfield and G. Osborn (eds.), *Law and Sport in Contemporary Society* (London: Frank Cass, 2000), 195.
6. Section 1(1)(b).
7. www.nds.coi.gov.uk, accessed May/June 2002.
8. Council Directive 73/148/EEC, Article 2(1).
9. *de Freitas* v. *Permanent Secretary of Ministry of Agriculture, Fisheries, Lands and Housing* [1999] 1 AC 69, para.63.
10. Article 6(2).
11. Standing Committee D, 5 May 1999.
12. These observations were based on participant observational research carried out in Charleroi at the time. The more targeted style of policing by the Dutch police had seen no serious disorder at the previous match in Eindhoven.
13. *Hooligans*, Part II, BBC2, 19 May 2001.
14. And this conviction itself is highly contentious. Ironically, British intelligence officers have declined to serve a banning order on the individual because they are convinced the conviction is unjust! (Interview with Mark Forrester, 1 September 2001).
15. Armstrong and Hobbs (note 4), 221, note how English fans arrested and deported from the Italia 90 World Cup were photographed and filed by NCIS upon their arrival back in the UK, even though many who had been arrested were innocent.
16. For example, would many fans who attended matches in the 1970s and 1980s agree that football has 'been *increasingly* accompanied by a degree of physical conflict between certain elements of the supporters' (para.5), when it is clear that violence in and around English grounds has reduced dramatically since the mid-1980s?
17. *R* v. *Rogers-Hinks* [1989] 11 Cr App R (S) 234, at 237. See G. Pearson, 'The English Disease? The Socio-Legal Construction of Football Hooliganism', *Youth and Policy – The Journal of Critical Analysis* 60 (Summer 1998), 1–15; and G. Pearson, 'Legitimate Targets? The Civil Liberties of Football Fans', *Journal of Civil Liberties* 4/1 (March 1999), 28–47 for more on these arguments.
18. Part II of the proportionality test used in *de Freitas*.
19. There will undoubtedly be those that will claim the lack of serious disorder involving England fans during the 2002 World Cup was a result of the banning orders imposed under the Football (Disorder) Act. However previous experience indicates that disorder involving England fans abroad is more likely when large numbers travel, and there is an anticipation of violence by police and, more importantly, the fans themselves. Neither factor was evident at the 2002 World Cup.
20. Such an assumption would over-simplify the phenomenon and would fail to explain, for example, why some firms will become involved in serious disorder domestically but will be extremely well-behaved abroad. It was also constructive in the judgment to see that magistrates should temporarily suspend banning orders if there were 'special circumstances' whereby a suspect needed to travel abroad for holiday or work. This serves to protect the legitimate interests of suspects, whilst also protecting the legislation from potentially breaching Article 39 of the Treaty on the European Union (Freedom of Movement of Workers within the EU).
21. Pearson, 'The English Disease?' (note 17), 1–3.