

Editorial

Human Rights and the Saunders Case

At the time of writing, Michael Howard's flagship law and order measure, the Criminal Justice and Public Order Bill, is undergoing its final parliamentary stages – to the accompaniment of noisily hostile street demonstrations. Among its controversial provisions are ones to allow the prosecution in criminal trials to draw adverse inferences from a defendant's silence.

By coincidence, the European Commission of Human Rights has chosen the moment of the Bill's triumphant metamorphosis into an Act to produce a ruling on the right to silence which bodes ill for the operability of the new legislation. The Commission's report, published at the end of September, relates to the trial of Ernest Saunders, former chief executive of Guinness plc, who was convicted in 1990 on a series of charges of false accounting and theft in the context of his company's £2.7 billion takeover of United Distillers in 1986. Mr Saunders had been interrogated by DTI inspectors under the provisions of the Companies Act 1985, which required him to answer their questions or face a penalty of up to two years' imprisonment. The replies were subsequently used by the prosecution to demonstrate that Mr Saunders' evidence to the inspectors was inconsistent with some of the evidence he gave to the court, the judge having rejected defence submissions that the statements were inadmissible under the Police and Criminal Evidence Act.

The Commission decided, by 14 votes to one, that "the use at his trial of incriminating evidence obtained from him under compulsory powers was oppressive and

substantially impaired his ability to defend himself against the criminal charges facing him. He was, therefore, deprived of a fair hearing within the meaning of Article 6, paragraph 1 of the Convention on Human Rights". Unless a "friendly settlement" can be reached within six months, the case will proceed to the European Court of Human Rights (ECHR), presumably sometime next year. Given the near unanimity of the ruling, it is unlikely to be overturned by the Court.

Five separate statutes allow evidence obtained by compulsion to be used in criminal proceedings. Two years ago, the House of Lords decided that a notice under section 2 of the Criminal Justice Act 1987 could be served *after* a person had been charged, without a fresh caution (carrying with it a right to silence) having to be administered.

The *Saunders* ruling adds another episode to a long sequence of DTI embarrassments (it was followed a few days later by the abandonment of disqualification proceedings against former Blue Arrow chief executive, Tony Berry). Mr Saunders, and others covered by the ruling, may seek compensation. The government will have to decide whether to contest a probable lost cause before the ECHR. Meanwhile, the ruling has given powerful ammunition to critics of Michael Howard's Bill – too late to impede its progress onto the statute book, but with the prospect of future embarrassment to ministers (probably Mr Howard's successors) as more "right to silence" cases go to Strasbourg.

Gavin Drewry