

JUSTICE COMMITTEE

HATE CRIME AND PUBLIC ORDER (SCOTLAND) BILL

SUBMISSION FROM THE SCOTTISH PROFESSIONAL FOOTBALL LEAGUE LIMITED

I make these representations on behalf of the Scottish Professional Football League Limited ("SPFL") in response to the Committee's Call for Views.

Throughout the consultation process the SPFL has consistently made the same requests, designed to provide our member Clubs with an essential tool, already available under law, but restricted in application only to the Chief Constable. We have repeatedly asked, for the opportunity and have been just as repeatedly refused, such opportunity. There is no request for any substantial change in the law so as to afford an opportunity to the SPFL and/or its member Clubs to make orders that do not already exist in the law or to instigate and resource what would be a new or even developed procedure. Rather, what the SPFL seeks is only for it, the Scottish FA and the member Clubs of the SPFL be permitted to make application for civil football banning orders on precisely the same basis and subject to precisely the same burdens as lie on the Chief Constable where he or she makes such an application.

In responding to Lord Bracadale's invitation to make representations to him we, along with others, made strong representations in support of extending to Football Clubs the right to bring applications for 'Civil' Football Banning Orders in terms of Sections 51 to 56 of the Police, Public Order and Criminal Justice (Scotland) Act 2006. We renewed these representations to the Cabinet Secretary in his pre-Bill consultation.

Lord Bracadale responded in his report as follows:

"8.42. Football banning orders may be imposed following convictions for any offence provided that the offence relates to a football match and involves violence and disorder. The definition of 'disorder' in section 56 specifically includes stirring up hatred against groups of persons or individuals based on their membership of protected groups."

SPFL Comment: this would tie in with the football definition of "Unacceptable Conduct".

"8.43. A football banning order prohibits the person from entering any premises for the purposes of attending any regulated football matches in the United Kingdom. It also has provisions in relation to regulated football matches outside the United Kingdom. It may extend to maximum periods of 3, 5 or 10 years, depending on the circumstances. The evidence in the fact-finding stage of the review indicated that football banning orders were an effective deterrent as persons did not wish to be prevented from attending a match."

SPFL Comment: the observation that football banning orders are on the evidence effective is crucially important in the context of their proposed extension to applications made by clubs. The sanctions of removing season ticket rights and ground expulsion are useful but very limited. Travel to and from away matches are

largely unaffected and the imposition of informal banning orders at away grounds effectively impossible.

"8.44. Under section 52 of the 2006 Act there is provision which allows the police to apply to the sheriff by summary application for a football banning order in relation to a person who has not committed an offence. As some football clubs had expressed the view that a similar provision which would allow a football club itself to apply for a football banning order would be a useful tool in maintaining discipline, the consultation paper sought views on that suggestion. Although there was considerable support in principle from those who responded to this question, I am not inclined to recommend this approach. In the next section I consider the Unacceptable Conduct Rules developed by the SPFL and the SFA. These have recently been revised. The range of sanctions available against a supporter who has engaged in unacceptable behaviour includes: exclusion from the home ground of the Club concerned; exclusion from all forms of club organised and/or supported travel; confiscation, without compensation, of any season tickets held by the person for a period, or periods, of time, or indefinitely and/or exclusion from being able to purchase tickets for away matches."

SPFL Comment: none of the possible sanctions listed are new and yet Unacceptable Conduct occurs at and/or in relation to football matches. Many consultees, in fact, an overwhelming majority of those who responded on this issue, supported the extension to clubs of the ability to apply for banning orders. we have reviewed all of the consultation responses and none of them gave any substantive reason why the ability to make an application being extended to clubs should not be extended. It requires no significant change in the existing legislation, no additional cost to public funds and such orders (both civil and criminal) have been highly effective in the regrettably few cases in which they have been imposed.

The reference to "exclusion from all forms of club organised and/or supported travel" suggests an understandable misunderstanding of the typical arrangements in place for supporter travel to matches. A very small number of supporters travel to matches, either at home or away, by means of travel in which the club has any significant organisational control. Clubs are effectively unable to prevent persons travelling and whilst the agency sale of tickets for away matches by clubs acting for away clubs is useful for identification purposes it is difficult to prevent the determined criminal from gaining possession of an away supporter ticket from the many thousands which may be distributed. further, there is evidence that notwithstanding measures being taken, away supporters, usually with the connivance of home supporters, are sometimes able to access home supporter tickets.

"8.45. As explained in the next section, the implementation of the Rules is being monitored. I consider that a better approach would be to allow the effectiveness of these non-legislative Rules to be monitored and tested rather than to introduce an additional sanction at this stage. I also note that over the years very few summary applications for a football banning order have been made by the police in respect of a person who has not committed an offence. I think it unlikely that there would be many such applications made by football clubs. In any event, if in a particular case a

football club considered that it was unable to achieve the desired result through the Unacceptable Conduct Rules, it could raise the matter with the police and invite them to seek a football banning order."

SPFL Comment: in some criminal cases involving violent and/or criminal behaviour at a football match, where a conviction is secured, a football banning order is not considered by the court far less applied. The police are not focused on or resourced for the civil courts. Whether such an order is made when applied for is a matter for the sheriff so there is complete judicial control of the process. Where clubs apply for interdicts the same is the case. Since the decision to grant or refuse is always a matter for the sheriff it is not understood why clubs should not be given the option to apply in serious cases where the club considers there is no other effective order available to apply for. We are not suggesting a preliminary jurisdiction test of seriousness or 'effectiveness'; rather the scope to make the application should be the same as for the police. With the application being by summary application the procedure to be used in making the application would be largely at the discretion of the sheriff.

In the view of the SPFL an application should be capable of being dealt with by a summary sheriff but if an additional control was sought to be applied then jurisdiction to make an award of a civil football banning order might be limited to sheriffs with a requirement that every application be intimated to the Lord Advocate and the Chief Constable so either or both could enter the process if an application gave cause for concern. A civil application by a club would not be permitted where a sheriff has already granted a criminal order or refused or granted a civil order based on the same facts as applying to a specific person.

We have had non-legislative provisions in our rules for decades which have been directed at violent and/or disorderly incidents at matches, including those which are considered to have a sectarian component.

However, incidents of Unacceptable Conduct will often involve alleged criminal activity and the stadium safety officers and stewards have no powers of arrest or ability to physically intervene in such incidents. Taking the example of offensive singing, it can be extremely difficult to identify individuals participating in such behaviour in a large crowd. In order to arrest any individual for such conduct with the hope of securing a conviction for say breach of the peace, it is necessary to be able both to (i) have evidence to the requisite standard that the individual was personally responsible for using the specific words considered offensive and (ii) that the risks inherent with intervention can be justified by the possibility of making a successful arrest. This emphasises the continued need for a holistic approach to reducing Unacceptable Conduct at Scottish football matches, encapsulating both pre and post-match actions.

Evidence from CCTV and visual observation that an individual is singing is not evidence that the particular individual is singing that part of a song which is sectarian in nature. If a supporter is behaving in an enthusiastic manner whilst singing and gesturing to opposition supporters that might be sufficient to meet the evidential standard from civil law of balance of probabilities but not to meet the twin demands of proof beyond reasonable doubt and corroboration of criminal behaviour. Experimental techniques such as wearable covert cameras and microphones have their limitations in football stadia because of the difficulty in getting close to an individual and overcoming surrounding crowd noise.

We have had several discussions with Police Scotland and the difficulties associated with taking direct action within stadia against individuals engaged in acts of Unacceptable Conduct are well recognised. Operational decisions have to be taken in the context of the greatest priority being given to public safety and order. If the arrest of an individual in a partisan crowd, who is not him or herself posing a threat to public safety but where direct intervention has a likelihood of generating just such a situation, then the police priorities i.e. maintaining and ensuring public safety and order, in such situations are wholly understandable.

CCTV evidence can be highly effective in identifying individuals taking part in disorderly activities such as coin throwing, pyrotechnic misuse and pitch incursions. Whilst the evidence gathered may not in itself be sufficient to secure a conviction in the criminal courts, alternative actions may be available. For example, through 'Club' discipline or the civil courts where corroboration is not required, and the standard of proof is the balance of probabilities.

However, the limitations of the common law remedies, which are all that are currently available to Clubs, are well recognised. Clubs have concerns regarding the behaviour of a few of their travelling supporters both whilst travelling and at Away stadia but the existing option, essentially interdict, is very difficult to secure as applying to property not belonging to or under the control of the club.

Under the relevant provisions of the Police, Public Order and Criminal Justice (Scotland) Act 2006, Police Scotland is entitled to summarily apply to the courts for a football banning order to be issued to a person who has not committed an offence. In our view, permitting football clubs to apply for such orders would be an important additional measure available to clubs to counter spectator disorder.

The police have historically been very limited in their willingness to pursue such orders in the civil courts and without a small change in the law it is not possible for Clubs to make the required application. These 'civil' orders should be differentiated from the equivalent order in the criminal courts which are available as part of the 'suite' of criminal law 'sanctions' available to Sheriffs.

It is inevitable that the police and prosecuting authorities will be more focused on securing a criminal conviction potentially with a criminal banning order as part of a sentence. The amount of time and resource required of police to pursue a civil banning order means that they will inevitably be very much reduced priority in comparison to the processes of the criminal law and prosecution. The very few such 'civil' applications made by the police serves to demonstrate that they are not regarded as a priority for the expenditure of scarce resources. However, that does not mean that they would not be effective where serious misbehavior has occurred, there is a real danger of its repetition and where criminal proceedings have not been possible.

Persons who may be established as having behaved unacceptably should not be immune from being prevented from acting in respects encompassed within a civil football banning order solely because the available evidence is insufficient to establish the commission of a criminal offence. The 2006 Act by creating the possibility of civil banning orders clearly recognised that there will be circumstances where there is no conviction but that it would be appropriate, for the protection of the public, for a civil banning order to be made. However, the reality is that, for whatever reasons, the civil banning order procedure has been very underutilised

and as a consequence one of the measures available to challenge unacceptable conduct at football matches has effectively not been engaged. All that the SPFL and its members seek is the right to engage the civil banning order procedure so that it can be used to challenge unacceptable conduct at football matches.

Without a change in the law it is impossible for clubs to secure a wider ranging legal order to stop the serious 'offender' without a criminal conviction attending matches. This is because at present no such effective order is available to clubs to seek. For example, a club may remove a season ticket and try and prevent an individual from attending home matches, but they can have no effect on his attendance on transport to and at away matches. The availability of interdict as a potential remedy is clumsy, limited and largely ineffective since, for example, a club could not hope to secure an interdict preventing a supporter from visiting an away ground in which the home club has no interest.

Of course, the circumstances in which such orders could be applied for would require careful procedures, but it is essentially no different, in principle, from allowing a person to make an application for a 'civil' anti-harassment order. These are instruments, both the banning and anti-harassment order with real and effective 'teeth' to stop what are significant 'social misbehaviours' which are not always addressed by the existing criminal law or authorities.

As with the current 'police only applications' there may not be many applications for banning orders made by clubs, but in serious and difficult cases, the existence of the right to apply for such an order would enable the relevant club to have some hope of securing a solution in the case of a particularly difficult individual. In reality it is only where the club has invested the time and expense in securing the inevitably extensive evidence which will be required, and the likely irrecoverable expense involved such an order will be granted by a sheriff.

If the 'difficult' individual, with long entrenched behaviours, is to be stopped from spreading his or her poison amongst other supporters and from causing great offence and fear to the sections of the public to which his prejudices relate, then clubs should be given the authority to seek the remedies and measures which already exist in law. This will enable individuals to be pursued with a hope of success and a meaningful order where proof beyond reasonable doubt cannot be established and/or corroboration is not available, where the police are unable to devote scarce resources to a non-criminal processes and where the range of restrictive measures available to the sheriff extends far beyond what could be secured by a club using any other legal process.

Existing CCTV systems in grounds are, per our guidance, required in Premiership grounds to be able to identify individuals in crowds both in the stadium 'bowl' and in exits, vomitories and public areas generally. They are particularly useful in identifying individuals who have covertly entered a ground in breach of a banning order, allowing the police to later arrest the individual and to have him punished for that breach. there exists no such 'easy and effective' measures in the case where only a breach of interdict is alleged. The police are in no way involved unless another offence is committed, and breach of interdict proceedings are cumbersome, expensive and time consuming.

It is very difficult to identify where the disadvantage is considered to exist in giving the clubs the power to apply for such orders since the grant of the order will always

be under the judicial control of the sheriff or, if considered appropriate, summary sheriff.

The Scottish Parliament is requested to include in the Bill and in the resulting Act the very modest amendments required to existing legislation to allow such applications to be made by the SPFL, the Scottish FA and by Clubs. In the case of the Scottish FA it would apply only to international matches and to the semi-finals and final of its national cup competition, the Scottish Cup and in the case of the SPFL it would apply only to the semi-finals and final of the League Cup.

We would be happy to provide any further information or material which would be considered helpful to the committee and would attend before the committee to give oral evidence/representations if requested.

The Scottish Professional Football League Limited

21 July 2020