Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Supplementary written submission from Tony McKelvie

Following my email to you of yesterday, and in light of the comments of Roseanna Cunningham MSP to the Justice Committee referring to ‘Aggressive making of the Sign of the Cross’ amongst other matters, I am drawn to the following paragraphs in the Memorandum attached to the Bill:

“20. At present, disorderly and offensive behaviour at football matches can, in certain circumstances, be prosecuted under the common law as a breach of the peace, or using the offence of “threatening and abusive behaviour” at section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. Where there is a racist element to the behaviour, prosecution using the offences at Part III of the Public Order Act 1986 (incitement of racial hatred) may also be appropriate. Section 74 of the Criminal Justice (Scotland) Act 2003 and section 96 of the Crime and Disorder Act 1986, which provide for statutory aggravations on grounds of religious or racial hatred, might also be relevant.

“21. However, there is concern that a substantial proportion of offensive behaviour related to football which leads to public disorder is not explicitly caught by current law. Such offensive behaviour might not satisfy the strict criteria for causing ‘fear and alarm’ required to prove Breach of the Peace, or section 38 of the 2010 Act. The Bill, therefore, seeks to put beyond doubt that behaviour related to football matches which is likely to incite public disorder and which would be offensive to any reasonable person is a criminal offence.”

Essentially, these paragraphs state that there are periodically behaviours witnessed at football grounds which are not breaching the peace, nor are they threatening or abusive, nor indeed are they racist in nature, inciting of religious hatred, discriminatory or otherwise unlawful. The example provided by Ms Cunningham is ‘Aggressive making of the Sign of the Cross’. For this we are to be convinced of the need for new legislation.

Were one to apply the Pareto Rule to the behaviour of football supporters in Scotland, it is unlikely that Aggressive making of the Sign of the Cross would figure amongst the 20% of behaviours causing 80% of the trouble. Indeed, being a frequent attender at football matches throughout Scotland for over 30 years, attending 30 senior games per season, I have yet to witness such behaviour.

Moreover, one needs to question who precisely ought be offended by such profanity such that they would be incited to public disorder? One suspects those who practice the Sign of the Cross as a pious act will be offended at its inappropriate and profane use. No doubt the Leaders of the Roman Catholic, Anglican, Lutheran and Eastern Orthodox
churches would be dismayed. None of these practicing Christian groups are likely to retaliate causing public disorder though.

As an aside: One wonders if Scotland at large needs the accolade of being the first country in the World to draft legislation, the intention of which is to make the Sign of the Cross an indictable offence.

On considering the text of the Bill, its Explanatory Notes and Memorandum, its context, and public comments made to date, one is led along a different thought path, to an altogether different conclusion.

Since 2003 and the introduction of Section 74 of the CJS Act 2003, the overwhelming number of manifestations of sectarianism in Scotland, as defined by law and confirmed by the courts, have been anti-Catholic in nature. Similarly, in the football domain, while Rangers have been brought to book for 5 successive years by UEFA for discriminatory behaviour of their supporters, no other UK team has been reprimanded in this way.

Since 2003, whenever a charge has been brought under S74 for singing/chanting Irish Republican songs, even material referring to the actions and atrocities of the Provisional IRA, the courts have rejected the charge of Religious Aggravation, leading to a reaction amongst many that the law is simply not fair.

Some, for example David McLetchie MSP, have demanded that the law is changed to allow for S74 type prosecutions for Irish Republican expressions.

Because actions against sectarianism have overwhelmingly been see to be applied to offenders on one side, a political problem has arisen.

The political problem is seen in the response of the Scottish electorate to the measures and effects of Jack McConnell's extensive anti-sectarianism programme 2003-2007. As you will recall Mr McConnell was defeated heavily in the polls.

Accordingly, any new measures addressing sectarian behaviour will, pragmatically, require to be dressed such as to avoid a repeat of Mr McConnell's electoral fate.

In considering this context therefore, it seems reasonable to conclude that S1(2)(e) is in fact designed to address the substantial imbalance in sectarian convictions, but this singularly fails to recognise that the imbalance in conviction rates exists because there is a fundamental imbalance in the nature and direction of sectarian behaviour at large. Widening the scope of the law will not address the core problem.

It is clear that this issue is a complex one and attempting to draft legislation which addresses such a difficult topic while maintaining the principles of good jurisprudence is fraught. It is therefore surprising that this Bill is being managed through the legislative process quite so quickly.
There is of course an alternative to legislation, one that will have an immediate and long lasting impact on behaviour at football grounds. It is to encourage, through appropriate actions, the SFA and its affiliates to adopt and apply the UEFA standard of accountability for behaviour inside stadiums. I provide below a quote from then SFA Chief Executive David Taylor, speaking at the launch of the SFA’s strand of the Scottish Executive’s Action Plan on Sectarianism in 2006:

"Everyone saw what happened to Rangers last season[UEFA sanction] and such sanctions should apply in Scottish domestic football as well. We couldn't have a situation where there was one standard of behaviour for European games and another for domestic matches because that would leaves us open to ridicule."

Since then, the SFA and the SPL have adopted an entirely contrary view to UEFA, with the result that while UEFA continues to sanction Rangers for the behaviour of their fans, the SFA and SPL do not. Today Scottish Football is not, in David Taylor’s words, open to ridicule, its status is somewhat less reputable than that.

The Scottish Government has the means to encourage Scottish Football to adopt the UEFA code on behaviour inside the stadium. In my view, the first time a club is docked points for the behaviour of their support will be the last time the behaviour will be seen or heard.

We do not need difficult legislation. We do not need to skirt the principles laid out in Article 7 of the ECHR. We simply need to follow through on the available sanction of docking points and disqualifying teams in Scottish competitions, in the very same manner as is done in Europe.

All that is required is a little Leadership.

I am content for this submission to be included in the Justice Committee’s call for evidence on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill.

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