Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from Dr Graham Keith

I can well understand that after the last season in Scottish football the Scottish Parliament should be proposing legislation to directly tackle sectarian behaviour in and around football matches. I doubt, however, the wisdom of this two-headed legislation where the issue of offensive behaviour at football matches is being combined with threatening communications in any context whatsoever. I would much prefer that these two areas were dealt with separately.

Let me deal with them in turn –

(i) Offensive behaviour – Though this aspect of the proposed legislation is restricted to football matches, in practice the context is broadened by the reference to travel to and from football matches. Since football supporters often travel by the same trains, buses or ferries used by other members of the general public, there is a real possibility that ordinary people could be caught up in this legislation if they became involved in a discussion about religion or sexual orientation with football supporters who are sharing the same public transport. This would mean a loss of rights of free speech for ordinary members of the public. I note that there are no safeguards about this in the legislation.

I believe that an opportunity is being lost here by not giving police greater powers with regard to the timing and context of Premier League matches, including travel to and from the games. Moreover, wherever circumstances require exceptional levels of policing, the cost should be borne not by the police (or the council tax payer) but by the clubs or their supporters or both.

It should not be left largely with TV companies to say when matches are to take place, irrespective of disruption and disturbance caused to particular neighbourhoods and to public transport. It may take some time to devise suitable legislation here, but this would be worth the effort, as the legislators are right to recognize the problems extend beyond football stadiums. We have also to acknowledge that the recent troubles of Scottish football go wider than Old Firm clashes, however much the Old Firm may be the primary forum of disturbances.

(ii) Threatening Communications: Here the provisions are very wide-ranging – too wide-ranging in my view. According to the proposals a prosecution may take place if any ‘communicated material’ is deemed to be ‘threatening’. But who is to define ‘threatening’? If some written or verbal statement challenges someone’s cherished religious views, they could be described as ‘threatening’ by that person. There seems to be little in the legislation to guard against a subjective interpretation of ‘threatening’ and so the Scottish Parliament would be opening the door to a sort of complainants’ charter. There are, for example, some passages in the Bible that are threatening – not
in the sense of inciting to violence, but in terms of condemning aspects of human behaviour and thought, including what it sees as false religion. Are these parts of the Bible to be proscribed?

This may seem a ridiculous outcome for the proposed legislation but experience from elsewhere has shown that religious ‘hatred’ can be interpreted very widely. Eg. In Australia two Christian missionaries speaking as a seminar on evangelism among Muslims found themselves in court as a result of complaints made by some of those in the audience, under the state’s hate crimes law.

In short, much more thought needs to be given to the concept of ‘threatening’ if the legislation is to achieve any worthwhile end. An acceptable objective definition must be found if it is not to cause more problems than it solves.

Summary: the legislation tries to do too much and for that reason may fail on both counts. The two distinct aspects should be disentangled and dealt with separately. More thought should be given regarding powers which would enable the police to exercise greater control than at present over the whole context of SPL football.

Dr Graham Keith
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