

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from the Celtic Supporters' Trust

In an attempt to avoid repetition of other submissions we would, at the outset state our agreement with the following elements of submissions from other bodies/individuals. In particular, though not exclusively, we wish to record our agreement with the following:

1. The Law Society of Scotland submission in its entirety which points out
 - a. that the behaviours which this Bill seeks to outlaw are already covered by existing law
 - b. that the Bill lacks clarity and, as a result
 - c. parts of the proposed legislation may prove unenforceable

2. The submission by Dr Sarah Christie and Dr David McCardle to the effect that the

Policy Memorandum contains an important error of law: it notes concern that the type of behaviour covered by the Bill may fail the strict test currently laid down for breach of the peace, of "causing fear and alarm". The flaw in this argument is that this is not the test for breach of the peace at all. Smith vDonnelly (2002 JC 65) sets out the conjunctive test – conduct severe enough to cause alarm to ordinary people and threaten serious disturbance to the community – and in the football context this test was applied by the High Court in Walls v Brown [2009] HCJAC 59. If measured against this proper test, any form of behaviour expressing or stirring up hatred against a group (as defined in s1(2)(a) and s1(4)), in such a way as to be likely to incite public disorder would also amount to behaviour that would alarm ordinary people and threaten a serious disturbance.

This reinforces the point that existing legislation covers adequately the behaviours which this Bill intends to outlaw.

3. The submission by the Scottish Human Rights Commission which refers to:
 - a. Restrictions on freedom of expression and whether or not the provisions of this Bill meets the three requirements of the ECtHR which must be met in order to legitimately interfere with freedom of expression
 - b. The sections on legal certainty and the confusion which would surround this Bill if enacted in its current form. Specifically, we concur with their interpretation of Article 7 of the ECHR which in this context, and given the lack of clarity of the current draft of the Bill, might mean that someone could find themselves convicted of an offence which is not currently an offence and which they did not know to be an offence.

Furthermore we wish to make the following additional points:

- It is our view that the case has not been properly made for creating a new offence which is aimed specifically and uniquely at football fans. The statistics used by the Police in the public debate leading to this Bill being proposed have been selectively produced. There are many more types of events and times of the day and year which lead to increased incidences of violence of varying degrees of severity. Fol requests submitted by the Celtic Trust to Strathclyde Police in April and May of 2011 revealed that the 'most prolific' dates for domestic violence are 25,26 and 27 December and 1 and 2 January. A request for figures on other incidents/events which coincide with peaks in arrests for violent offences was denied on grounds of costs but the Justice Committee may wish to consider a fuller examination of the figures rather than relying on those selective statistics produced for public consumption so far.
- In support of this point ie that no case has been made for the creation of a new offence we would point out that figures obtained from Strathclyde Police under the Fol request referred to above, show that arrests made at Celtic Park on 2nd March in the so-called 'Shame Game' amounted to 34 ie approximately 0.065% of those who attended the game. Those arrests involved 8 home supporters and 28 away supporters and none of them were for violent offences. We have no knowledge of how many of those arrested were actually convicted of any offence and, again, the Committee may wish to obtain figures for convictions which correspond to the figures for arrests which the Police have repeatedly quoted.
- The whole thrust of the Bill and the accompanying debate is very anti-football and specifically anti-football supporters. As a supporters' organisation we take very grave exception to the notion that all, or even many, football supporters are regularly engaging in criminal acts or represent a social problem. We challenge the supporters of this bill to point to any group of equivalent number to those who regularly attend football matches who are less problematic. Even in terms of football, in comparison with European and even English football supporters, there are far fewer crowd-related problems in Scotland.
- Our fear if this Bill is passed is that it will at worst criminalise supporters (most probably young, male supporters) or at best lead to those same young men being held in cells overnight and subjected to repeated court appearances on the basis of police officers and the Procurator Fiscal's office trying to enforce an unenforceable, badly written piece of legislation.
- We object, in principle, to any act being made unlawful in the context of a game of football that is not otherwise unlawful when attending any other type of event or none.

- We object, in principle, to the notion that people should be legally entitled not to be 'offended'.
- We have no difficulty with the enforcement of any legislation relating to hate crimes in the context of any of the categories listed in the Bill. Celtic supporters do not engage in mass singing of any songs of hate for any other group of people on grounds of religion, nationality or any of the other categories listed in the Bill.
- We wish to give qualified support to the parts of the Bill relating to Threatening Communications. The qualification being that it is on the basis that the maximum penalty will only be applied in the most serious cases.
- Notwithstanding the points made above we welcome the fact that the inclusion of 'national origins' in the list of categories to be protected under this Bill, will for the first time offer protection to Scotland's largest ethnic minority group ie those of Irish descent in celebrating their history and culture without fear of being abused for so doing by racists and bigots. In terms of the current wording of the Bill one wonders how this protection on grounds of national origin might conflict in practice with any expression of Irishness being seen as 'offensive' by those who might otherwise consider themselves 'reasonable'.

The Celtic Supporters Trust
25 August 2011