

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from the Association of Chief Police Officers in Scotland Football Sub Group

Introductory comments

Offensive Behaviour at Football

1. ACPOS Football Sub Group fully support the introduction of legislation which is specifically enacted with the intention of tackling offensive behaviour at football. There is clearly a variety of statutory legislation already in existence which can be utilised, however this does not always fit with the variety of different incidents now witnessed throughout the football environment. Legislation currently available to officers:

- Section 74 of the Criminal Justice Scotland Act 2003, which creates an aggravation of prejudice relating to religion.
- Section 50A Criminal Law Consolidation Scotland Act 1995, which creates an offence to act in a manner which is racially aggravated.
- Crime and Disorder Act 1998
- The Offences (Aggravated by Prejudice) (Scotland) Act 2009
- Section 38 Criminal Justice and Licensing Scotland Act 2010.

2. While the above legislation is used by officers across Scotland both within and outwith the football environment, there are still incidents which do not fit well with this statutory legislation: Officers therefore require reverting to the Common Law crime of Breach of the Peace to tackle issues outwith the scope of the aforementioned statutory legislation. While this allows arrest, there remains uncertainty with conviction and the risk of stated cases impacting on our future reliance of Breach of the Peace. For that reason it is believed that the Common Law crime of Breach of the Peace cannot be relied upon indefinitely and additional legislation should be enacted and that the Bill's provisions should simplify matters for operational officers.

Threatening Communications

3. Throughout the past year, the use of the internet and in particular certain social networking sites to post offensive, unacceptable and threatening comments and images has escalated. Legislation that allows criminal justice partners to keep pace with social trends and effectively target those people who publish offensive material on the internet is desirable.

4. As the internet and its misuse continues to evolve it is essential that the legislation is broad enough to ensure it is capable of addressing today's issues and flexible enough to ensure it can tackle tomorrow's. The relationship between the Internet, telecommunications and other media is complex and the operational difficulties in capturing evidence of online offences must be carefully considered with the definitions contained in this section of the Bill drafted accordingly.

Additional Comments:

Need for clear definition of Sectarianism

5. The Scottish Government has yet to clearly define what it means by 'sectarianism'. The debate on policing sectarianism will suffer from a lack of clarity unless guidance is provided.

6. Sectarianism may be seen to take various forms, including:

- the expression of racist prejudice
- the expression of religious prejudice
- the expression of political opinion (unionist/nationalist, loyalist/republican).

7. In Scotland at present, there is *specific legislation* which addresses racist crime and racist/religious prejudice aggravations. The common law allows for the court to take into account motivation by prejudice for heavier sentencing.

It should be noted that at present, statistical information on the use of common law aggravations are only available through Crown Office, which makes the extent of their use in practice difficult to measure or analyse.

Need to make distinction between religious and political sectarianism

8. Section 74 of the Criminal Justice (Scotland) Act 2003 provides a statutory definition of religious prejudice, which is ill-suited to address the **political** sectarianism that is such a characteristic of Old Firm animosity.

9. The relevant extract from the Lord Advocate's 2010 guidelines on Section 74 is provided below

Lord Advocate's Guidelines: The Nature of Religious Prejudice

Section 74 of the Criminal Justice (Scotland) Act 2003 creates an aggravation of prejudice relating to religion and can be libelled on an indictment, or specified on a complaint, as an aggravation to any substantive offence. An offence is aggravated by religious prejudice if:

At the time of committing the offence or immediately before or after doing so, the offender evinces towards the victim (if any) of the offence malice and ill-will based on the victim's membership (or presumed membership) of a religious group, or of a social or cultural group with a perceived religious affiliation; or

The offence is motivated (wholly or partly) by malice and ill-will towards members of a religious group, or of a social or cultural group with a perceived religious affiliation, based on their membership of that group.

Note that 'membership' in relation to a group includes association with members of that group; and 'religious group' means a group of persons defined by reference to:

- *their religious belief or lack of religious belief;*
- *membership of or adherence to a church or religious organisation;*
- *support for the culture and traditions of a church or religious organisation; or*
- *participation in activities associated with such a culture or such traditions.*

10. Whilst it is most likely that police officers will encounter offences aggravated by religious prejudice in a sectarian, football-oriented Roman Catholic/Protestant basis, police officers should bear in mind that this legislation will apply where the accused shows or has shown towards the victim (if any) of the offence some form of malice or ill will based on the victim's membership (or presumed membership) of any religious group or of a social or cultural group which is perceived to have a form of religious affiliation.

11. The legislation covers offences aggravated by religious prejudice towards any of the world's major or minor religious groups or of groups which are perceived to have some form of religious affiliation.

12. There may be instances where the same conduct may have elements of behaviour aggravated by religious prejudice as well as being racially aggravated. In such cases the Lord Advocate directs that the standard prosecution report submitted to the Procurator Fiscal should highlight both the religious and racially aggravated aspects.

13. The Lord Advocate's guidance on 'prejudice relating to religion' does not address the issue of Irish Loyalist/Republican **political** prejudice, which is arguably the greater driver of sectarian behaviour in Scotland.

14. The Scottish Government and the Scottish Criminal Justice system may benefit from recognising - as both Northern Ireland and the Police Service of Northern Ireland does - that political sectarianism is distinct from religious sectarianism, and needs to be addressed in its own right. PSNI uses the term 'sectarian' to describe 'incidents based on a person's perceived religion **or political opinion**'.

Difficulties of recording politically sectarian criminal behaviour as 'religious'

15. Difficulties can arise when dealing with politically sectarian criminal behaviour by means of Section 74's categorisations. Treating Celtic or Rangers supporters as a "**social or cultural group which is perceived to have a religious affiliation**" fits poorly with sectarian incidents which involve expression of political partisanship (pro-IRA, pro-UUVF etc).

16. There would not appear to be scope to capture, other than to badge it under inciting public disorder, those who sing or chant **politically** sectarian messages that

are pro/anti IRA, UVF, UDA, Fenian, Hun etc that are intended to offend other people.

Impact of new legislation on Scottish Police

Impact

17. The Scottish Police Service already adopts a robust policing model when dealing with anti social behaviour, including all forms of hate crime, associated with football. The enactment of additional legislation will not impact greatly on this policing model which will continue to be robust, professional and proportionate. It will however allow officers to apply the most appropriate legislation to the crime they are presented with.

18. In terms of the impact on the wider community it is essential that the Bill defines offensive behaviour in a manner which permits transport networks to be included, and does not restrict police powers to within close proximity of matches.

19. In relation to internet offending there are varying degrees of offences. These range from the posting of simple, horrific examples of sectarianism on internet notice boards to clearly defined threats to kill individuals. Scottish Police will require to prioritise and target the worst offences and there will have to be an understanding from partners that the tackling of internet offending will remain a challenging and resource intensive task.

Arrests

20. It goes without saying that arrests will continue to be made where necessary, in a safe and controlled manner, although officers will not destabilise a crowd by wading into it and trying to take out large numbers of fans. The number of arrests and any year on year additionally cannot be predicted and numbers of arrests should certainly not be used to judge success. What can be predicted is the continuation of proactive match day enforcement.

21. In relation to post match investigation and internet offending both areas can be challenging, costly and resources intensive. However, the Football Coordination Unit for Scotland will bring consistency and expertise to both areas, which will see arrests being made. However the impact of the 'Cadder' ruling on internet investigations cannot be overlooked due to the difficulties in evidence gathering around internet investigations and reliance on suspect interviews.

Resources

22. This Bill is being introduced at a time when the Scottish Police Service has been working towards a significant reduction in the number of police resources deployed at football matches.

23. If Forces work within existing resources, then the policing response will be proportionate, as there are competing priorities throughout the community. There will

not be a significant increase in the number of officers allocated to policing football, unless a specific risk is identified at a particular fixture.

24. Scottish Police will review any implication on resources as a result of this legislation very carefully as the season progresses. Should resources become an issue then this will be evidenced and presented to the Scottish Government.

25. In relation to Threatening Communications, Internet investigators are specialists within the service, however they are not always police officers and such roles are allocated to people who are gifted in the field of IT and the internet. It is therefore anticipated that investment in resources to tackle internet offences will be required in the future to allow police to deal with these present day and future challenges. The people trained will be multifaceted and will not deal solely with sectarianism due to the wider issues seen on the internet.

Deterrent of new legislation

26. There will undoubtedly be much publicity around the enactment of this proposed legislation and it is likely that supporter behaviour will be positively influenced by this publicity and media discussions which ensue.

27. Police will attempt to influence supporter behaviour by publicising the fact that these new powers exist and carry a significant sentence. Where arrests occur during or post match they will be publicised, as will the issue of football banning orders, and that offenders have been banned by their clubs.

Football Coordination Unit for Scotland

28. The Football Coordination Unit for Scotland will provide the Scottish Police Service with additional access to:

- Specialist policing to specific games on an intelligence-led basis.
- Additional deployments, available to match commanders based on need.
- Access to officers available to conduct retrospective investigation into cases of disorder at or relating to football matches.

Training

29. There will be a training requirement to ensure that officers were aware of the scope and practicalities of new legislation. The impact would be no greater than any other new enactment and it is likely that training will be delivered through an intranet training package, which can reach a large number of officers within a relatively small timeframe. Work is ongoing via ACPOS Hate Crime Sub Group to produce a training package in line with timescales for likely enactment of the proposed provisions.

Legislation

30. It would be of benefit if the legislation defined that the offending behaviour can take the form of words, songs, chants, gestures and displays to remove some

ambiguity and give the clubs and police more powers to deal with offensive banners, scarves and other displays.

ACPOS Football Sub Group
26 August 2011