

Justice Committee

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

Written submission from Celtic plc (Celtic Football Club)

Celtic Football Club was founded in 1888 with two main aims: the first was to raise funds to provide food for the poor of the East End of Glasgow. The second was to use football as a vehicle to improve social integration and reduce friction between the growing Irish community in the East End and the native Glaswegian population.

The Club is proud of its Irish links and heritage. Its business is run on a professional basis, with no political agenda. It recognises its wider role and responsibility as a major Scottish social institution promoting health, well-being and social integration. Its aims remain consistent with those on which it was founded and it seeks to maximise opportunities to disassociate the Club from discrimination, sectarianism and bigotry of any kind and to promote Celtic as a football club for all people regardless of gender, age, religion, race, or ability.

Recent background

The Club is committed to tackling and eradicating unacceptable behaviour at its stadium. Considerable work has been done with the police, other football clubs and the football authorities over a number of years, particularly in connection with issues involving sectarianism. Significant efforts have also been devoted to a wide range of community and social policy issues.

The Club participated fully and actively in the Joint Action Group formed in the Spring of 2011. The Joint Action Group report was published in July 2011 and includes a number of recommendations which are relevant to the comments made below.

A substantial amount of time and effort was taken during the Joint Action Group to consider and identify additional steps that could be adopted to assist in tackling extremes of behaviour and the concerns identified at the outset of the JAG process – domestic abuse, alcohol misuse, violence and sectarianism.

The JAG recognised that these problems were not ones for football alone but affected and involved Scottish society as a whole.

A number of initiatives were suggested and agreed upon. These included the formation of a new Football Policing Unit and more consistent and extensive use of Football Banning Orders. The Club supports these initiatives, particularly against the background of falling crime rates generally and the low rates of arrests at its stadium.

The prospect of legislation was raised only at the very end of the process with no real time or opportunity to assist on how it might be framed, or its scope.

The Club has consulted with several supporters' groups and taken legal advice on the content and potential effect of the proposed legislation.

Need for and timing of legislation

Where legislation is contemplated, particularly in the context of sensitive and complex issues such as sectarianism, it must be approached very carefully, be capable of being applied in a fair and proportionate manner, and achieve the intended objective.

There is considerable debate in legal circles over whether existing laws are sufficient to deal with the behaviour contemplated by the Bill, or whether there is a gap that ought to be filled. No consensus appears to have been reached. We share these doubts and believe that they should be resolved before new legislation is introduced.

Having recognised that sectarianism is an issue that affects and involves Scottish society as a whole, if there is indeed a gap in the law relating to sectarian behaviour, it is then not clear to us why that should only be closed in relation to regulated football matches, and not wider society. To address this important issue only in a football context ignores underlying causes and ultimately does not meet the wider policy objectives of the Bill.

In our view legislation should be the last step, when it can be demonstrated clearly that existing laws and the additional steps being proposed through the JAG process have not been successful in achieving an improvement.

Effect on football supporters

Active football supporters, and those who follow or have an interest in football, make up a substantial part of the Scottish population. The vast majority of supporters are law – abiding.

Although the JAG identified and agreed that the behaviour which is of concern, and the issue of sectarianism, is a wider problem for Scottish society and not simply for football or any individual football club, the legislation is clearly targeted at football supporters.

The legislation potentially discriminates against the football supporter by reason of that person being a football supporter. It criminalises him or her for being a football supporter and not only because of the nature of his or her behaviour. In other words, exactly the same behaviour could be deemed illegal if performed by a football supporter, while not constituting an offence by anyone not participating in a football environment.

This must surely be wrong in principle and runs contrary to the Joint Action Group recommendations. Those have recognised the importance of not stigmatising football or football supporters and indeed seek the participation of supporters in a variety of initiatives to bring about behavioural change.

The defining element of the offence ought to be the behaviour itself and not the fact that the person undertaking it is linked in some way to the occurrence of a football match. Individuals should not be subjected to a different standard merely by reason of being a football supporter one day, and an “ordinary” citizen the next.

The Scottish Government has made clear, correctly in our view, that the context of the behaviour will be a critical question. But that context does not need to rely on the occurrence of a football match; the legislation could have the same overall effect by removing the football-specific references from it.

Scope and enforceability

The legislation identifies various new offences. Several are set out clearly – for example sections 1(2) and 1(4) - and refer to sectarian or religious hatred, among others. Many of these are already reasonably well understood through other legislation or the aggravating factors to breach of the peace.

In contrast, an offence of “offensive behaviour” and the test of the reasonable person, are introduced in section 1(2) (e). This test is extremely wide and creates considerable uncertainty over what is or is not acceptable.

If this offence is to be introduced notwithstanding our comments above, clear guidelines should be published by the Lord Advocate to explain what sorts of conduct are considered as offensive or unacceptable. The potential for confusion in the absence of clear and consistent guidelines is potentially limitless and runs the risk of the law becoming unenforceable, or brought into disrepute.

Such guidance must also take account of individual rights and applicable laws including those arising under the European Convention on Human Rights. Expert legal opinion will no doubt be proffered on issues of enforceability, and the application of section 29(2)(d) of The Scotland Act in that context.

Extraterritorial application

The proposed legislation has wide extra- territorial reach. The Joint Action Group sought to concentrate on changing the behaviour of those whose conduct was unacceptable, with a focus on offending and issues domestically.

We suggest that the legislative efforts being made would be best concentrated in Scotland, not only in principle, but also to address potential questions over enforceability, conflict with other nations’ laws and restrictions within The Scotland Act on functions exercisable otherwise than in or as regards Scotland.

Threatening Communications

This section of the Act, in contrast to the rest, accepts that communications may be considered as threatening whether in a football context or not. We support that approach and believe it should be applied to the Bill as a whole. While very obvious examples have been publicised and have involved people associated with Celtic

Football Club, the threatening behaviour contemplated can arise irrespective of the surrounding reasons.

Consideration could be given to a separation of the threatening communications element of the Bill from the football-related element, if this was considered by the Parliament to be capable of proceeding on a standalone basis.

Issues of extraterritoriality will undoubtedly apply due to the nature of the internet. We also note that there are questions over the existence and suitability of existing United Kingdom legislation in the Communications Act 2003 and whether internet services, telecommunications and wireless telegraphy are reserved matters for the Westminster Parliament.

Overview

Celtic Football Club remains supportive of the willingness of the Scottish Government to tackle difficult issues such as sectarianism and extremes of behaviour.

The outlawing of behaviour which we would all find offensive, such as the hate-based offences listed in the Bill, is welcome if these are not adequately provided for in existing law. But these offences should not be applied in a purely football context. Behaviour which is genuinely so offensive as to be considered criminal has no place anywhere in Scottish society.

The Bill has already attracted substantial comment on the perceived gap in existing law, its scope, enforceability and the potential for conflict with rights of freedom of expression. There is considerable merit in arguments that existing laws are sufficient and that in the areas mentioned above, the Bill, if made into law, may struggle to achieve its objective.

In the specific context of football we consider that the existing legal framework, with the more consistent and comprehensive approach to football banning orders and the new Football Policing Unit proposed by the Joint Action Group should first be applied and the effectiveness of those measures then reviewed before additional legislation is considered.

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For and on behalf of Celtic plc
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