Justice Committee

Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill

Written submission from Michael McFarlane

1. Do you agree with the proposal in the Bill to repeal the 2012 Act? What are your reasons for coming to this view?

The Act is a discriminatory and draconian piece of legislation. Football fans – mainly young men like me – are being prosecuted or are attending football matches with a fear of being prosecuted when they would otherwise be members of society never likely to appear in front of a judge. I know a large number of educated, non-violent individuals who have suffered under the Act – people who, without the Act’s existence, would have continued their entire lives without trouble from the law. Even those who are found not guilty suffer via lengthy bans from attending football matches: presumed guilty until found innocent – a disgrace in a modern Western society.

I am a 28-year-old professional male – a life-long Celtic fan – University educated with a management job in the city. I drink socially and I do not partake in drug use. I have never been involved in a violent incident nor have I ever been cautioned by the police. This does not automatically make me a better person than people who have been involved in one or more of those things. However, I am, categorically, not in a ‘problem demographic’ for the police in any way – except for 2-3 hours any given weekend, when I become a target, attending football matches up and down Scotland, and feeling like I run a genuine risk of arrest just for being a football fan. In an otherwise progressive country, it is entirely unacceptable to make citizens feel this way when they simply want to enjoy a sport they love and have no intention of hurting anyone or committing any real crime.

If it is the case that I or any other individual wish to show support for the state of Palestine, chant anti-Establishment slogans or sing folk songs of Irish rebellion in the early 20th century, then this cannot, and should not, be illegal. Football, worldwide, has always been a vehicle for strong, political expression and these positions are legitimate, anti-Establishment, left-leaning views; views which happen to be found amongst many football supporters in this country. To criminalise them is an authoritarian destruction of free speech, nothing more. To give police carte blanche to decide what is and is not criminally offensive is illogical, unworkable and immoral.

I ask this: what is the thematic difference between a song celebrating/commemorating Irish rebellion against oppression and occupation (the Easter Rising) and our country’s national anthem, Flower of Scotland, celebrating the same thing, a few hundred miles away, a few hundred years earlier?

The answer is ‘there is no difference’. But, in this country, we actively seek to criminalise one whilst parading and flaunting the other. The Act is an embarrassment in an otherwise progressive country.
2. Did you support the original legislation?

No. Football in this country is a passionate sport and the so-called ‘shame game’ a number of years ago, which was the catalyst for the Act’s progression, shows that the Government have managed to muddy the waters between passion and crime. In this game, it was the managers and players who behaved irresponsibly – Rangers players fighting and getting sent off, and Neil Lennon and Ally McCoist squaring up to each other. Bizarrely, this behaviour was superimposed onto the supporters, with all manner of passion and vigour on show at the game vaguely wrapped together with the violence on the pitch. How this ridiculous confluence between player/manager ill behaviour and invented mass sectarianism from supporters was allowed, I still don’t know.

I would understand the need for a football-specific law if the hatred that bubbles amongst some supporters genuinely burst into wide-spread disorder and regular violence at football matches. The fact is, I have watched football in Germany, Italy, Ukraine, Russia and Holland, and Scotland is far and away the safest and most comfortable place to watch football as a fan – discounting the post-Act threat of arrest and intimidation by police. We do not have a hooligan problem, a violence problem, or a thug problem – certainly not on the scale found across the whole of Europe and even England. Does that mean we should accept isolated acts of violence and hooliganism? No, of course not. But such incidents can be dealt with using current legislation, prosecuting those who seek to be violent or disorderly and rightfully filtering out those whose crime is to be nothing more than a politically expressive and vibrant football fan.

3. Do you consider that other existing provisions of criminal law are sufficient to prosecute offensive behaviour related to football which leads to public disorder? If so, could you specify the criminal law provisions? Or does repeal of section 1 risk creating a gap in the criminal law?

Yes, other existing provisions of criminal law are sufficient to prosecute offensive behaviour, regardless of context, football or otherwise, without question. Breach of the Peace, Section 74 of the Criminal Justice (Scotland) Act 2003, Section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 – all of this covers instances of genuine threatening, anti-social and discriminatory behaviour. We have laws which protect against racially motivated and religiously bigoted abuse out with a football context and these are sufficient for prosecution within a football context also. All the Act allows for is vague and dangerous subjectivity – subjectivity which has been ridiculed and proven weak in courts – asking police officers to decide what is ‘offensive’ at a whim. This offensiveness catchment ranges from crude but not illegal shouts from supporters to songs of genuine political expression, the suppression of which is tantamount to draconian, authoritarian dismantling of free speech in this country.

4. Do you have a view on the focus of section 1 of the 2012 Act, which criminalises behaviour surrounding watching, attending or travelling to or from football matches, which may not be criminalised in other settings?
Legislation which creates crimes in only a ‘football context’ is discriminatory. Pure and simple. Last year, I attended a Scotland Six Nations rugby match in Edinburgh. There, I saw fans – including off-duty police officers (I overheard their conversation about work) - drinking outdoors, singing, being merry (but occasionally urinating outdoors also), and drinking their own alcohol within the stadium, passing bottles of whiskey around. This isn’t behaviour I want to see criminalised, per se. I don’t think any real harm was done, to be honest. However, it struck me that the nature in which these fans were treated – with respect, with an appropriate amount of freedom to roam, drink, sing and be joyous, as they pleased – probably meant the behaviour never reached antagonistic or violent levels because aggressive authoritarianism was not forced upon them, as fans. Supporter reputations are in part created, rather than earned. We have decided, as a society, that football fans should be treated differently compared to fans of other sports – that football fans are problem individuals. Whilst the passion involved with supporting football in this country is incomparable to other sports – and fans will lever freely mingle in stadia or pubs because of it – that does not mean that they are, by association, thugs. To assert so is classist – that is the distinction we have made as a society.

I counted dozens of incidents in Murrayfield at the Scotland rugby game that day – non-violent, funny, happy incidents of drinking or singing which hurt no-one – which would have resulted in an immediate arrest and prosecution if the ball on the field was round instead of oblong. That can never be considered fair in a decent, progressive society.

5. Do you consider that other existing provisions of criminal law are sufficient to prosecute threats made with the intent of causing a person or persons fear or alarm or inciting religious hatred? If so, could you specify the criminal law provisions? Or does repeal of section 6 risk creating a gap in the criminal law?

Section 6 has barely been used since it was enacted. In fact, police and prosecutors often resort to using other legislation such as the Communications Act, 2003. No part of the Act warrants retention. Current legislation is already sufficient for tackling incidents of genuine religious, racial, bigoted hatred. Social media has provided a platform for the masses and many people fall foul of the fact they are publishing themselves and their unfiltered thoughts. Whilst grey areas exist, we have clear laws defining what is racially aggressive or bigoted and people making threats/communications of this kind can be dealt with under areas of the law which pre-exist the Act. The Act has done nothing but muddy the waters, bringing legitimate, anti-Establishment political views into the realm of ‘offensiveness’, making it harder to identify genuine acts of bigotry.

6. Do you have a view on the proposed transitional arrangements in the Bill: that there should be no further convictions for section 1 and 6 offences from the date on which the repeal of those offences takes effect; and that the police will cease issuing fixed penalty notices at least from the point at which the Bill is passed?
Convictions should cease with immediate effect, ongoing cases should be dropped, and, beyond this, previous convictions under the Act should be quashed, as the Act has been a sham piece of legislation from the start.

7. To what extent do you consider that the 2012 Act has assisted in tackling sectarianism?

The Act has not assisted in tackling sectarianism in any way. I stress that I have a real problem with genuine religious, xenophobic or racial hatred and violence – sectarianism, bigotry – and that is why the Act angers me so much: it does nothing to combat these issues as it instead seeks to punish legitimate political expression, symbolism and free speech in order to give the vague impression to the masses that authorities (the Government, the Police) are tackling a real problem. If anything, the Act is detrimental to the fight against religious hatred as it has done nothing but stoke ill-feeling towards lawmakers for punishing anti-Establishment views, which creates an environment where no-one can advance morally.

The Act itself is discriminatory. In my experience, as a Celtic supporter, I have seen that the Act largely targets young, working-class men who – in shows of vigorous support and via the singing of anti-Establishment political songs – are deemed ‘offensive’ at the whim of individual police officers. The Act is unwittingly classist, sexist (open misandry against young men), ageist and authoritarian, especially against left-leaning, anti-Imperial (anti-British Establishment, monarchy and Empire) views.

Whilst I have not been charged under the Act myself, I have seen its destructive force amongst fellow fans. I’ve seen kind, non-violent individuals - who just happen to have strong anti-establishment political views – persecuted; I’ve seen their livelihoods ruptured, their families affected, their love of sport curtailed: jobs lost, money lost, friends lost, happiness lost. These are people who, if the Act did not exist, would have never been implicated in crime. That is unacceptable.

The level of distrust this Act has created in the police force in this country, especially relating to the policing of football matches, is the biggest crime of all. I’ve gone from barely noticing police officers at games to (after the Act’s creation) being hyper aware of a) the officers themselves and b) the palpable tension between them and supporters. It’s time to repeal the Act and start mending the damage done.

Michael McFarlane
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