Justice Committee

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

Written submission from Michelle 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?

Yes wholeheartedly. The act was hastily conceived and ill thought out and was a knee jerk reaction. Since the law was passed, there have been too many people’s lives negatively affected following “charges” brought under this law. In many instances the charges brought are laughed out of court, but not before significant and negative impacts are made on an individual’s life. I agree entirely that the Act should be repealed.

I attend football matches across the country every week and have watched in horror how this has been enforced by the police. I am totally bemused that an action by an individual can be deemed an alleged offence purely because it is in the context of watching or travelling to a football match. The vast majority of the arrests under this Act have arrived with no one being “offended” other than police officers, and no threat or even hint of disorder. Like many supporters I have been subjected to constant filming as if I was a criminal, on the basis that I may or may not commit an offence. It would seem that the police are keen to try and give the impression that this Act is working by racking up as many arrests as possible, with many on ridiculous grounds.

I have personally witnessed police officers intimidating football supporters asking them for their employer’s name and address when questioning them. I have intervened on several occasion pointing out that they have no right to ask for this information and been threatened and filmed just for pointing out their mistake and abuse of power.

This Act has driven a wedge between football fans and the police in my opinion, and it will now take a lot to close that divide. I know a number of hard-working, honest individuals who have been directly affected by this Act and their families have had to put up with their sons and fathers being arrested at their homes or places of work, enduring long drawn-out court proceedings, missing numerous days at work only to be acquitted at the end of proceedings. Trust has been eroded and it is extremely difficult to rebuild that.

2. Did you support the original legislation?

No – existing provisions in law were sufficient.

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?
It is very difficult to define what “offensive behaviour” actually means, because what one person finds offensive would never appear offensive to someone else. The law demands objectivity, whilst being offended is purely a matter of subjectivity.

There were and still are ample provisions in existing legislation to deal with any criminal offences which occur related to football matches. One can think of common law offences like Breach of the Peace or specific sections of the Criminal Justice Scotland Act 2003 and also Section 38 of Criminal Justice and Licensing Act 2010. If these laws are properly implemented they can address all cases so no gap would ensue.

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?

The fact that this question has to be posed highlights just how the discriminatory and unjust this Act is. How can it be right to select members of one section of society and deem their actions criminal while not applying this to others? If this concept was applied to people of a specific gender, race, colour or creed that in itself would be deemed illegal.

I am a professional woman in her early fifties who travels to football matches with my 55 year old partner. We have travelled to and attended matches across Europe all our lives, but now feel that we are treated completely different in that context to every other part of our lives. Yet we do not act differently. How can this be justified?

The law is wrong to target football fans. The law means that for the entire duration of an individual’s travel to and from a match whether at home or abroad they can be charged with an offence under current legislation. I am certain that for this period that most fans are unaware that they are covered by a special law. This is entirely unreasonable.

I have witnessed moronic, drunken behaviour at parades, festivals and other sporting events and this is can be legislated for under separate existing legislation. I must add that the application of existing laws pertaining to offences at these events is random and used sparingly.

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?

As previously stated there is ample provision in existing legislation which if implemented properly would deal with all possible offences. In fact, it is my understanding that Section 6 of the Act has rarely been used and that those who have offended have been dealt with using the existing Communications Act 2003.

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?

I feel that the police should cease using this Act immediately and that no further charges should be brought using this legislation. I also feel that all cases at whatever stage of the legal process should be discontinued. I would go further and suggest that anyone who has been convicted under this legislation should have that conviction quashed as they have been found guilty through legislation which from the outset was discriminating against one section of society and is intrinsically unjust.

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

I have studied the wording of the Act to look for the terms sectarian or sectarianism as supporters of this Act claim it to be an anti-sectarian piece of legislation. How can supporters of the Act purport to oppose what it does not define?

There has been no discernible impact on sectarianism since the law was introduced. It is a sad reflection on society that in the 21st century sectarianism certainly still exists in Scotland and I have personal experiences of it, interestingly in situations which have nothing to do with football. I feel it would be far more beneficial if those who claim to be concerned with sectarianism dealt with the actual problem and stopped implying that it exists only in a football context.

We live in a country which allows “parades” at every conceivable time of the year. Interestingly the police turn a blind eye to the sectarian behaviour at each and every one of these events, whether it be from participants or spectators.

Michelle McFarlane
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