Offensive Behaviour and Threatening Communication Act
Scottish FA written submission

Background

The Scottish FA was a committed and proactive member of the Joint Action Group (JAG) established by the then Chief Constable of Strathclyde Police, Stephen House, in the aftermath of the Scottish Cup replay between Celtic and Rangers in March 2011.

As well as helping ministers to take forward the eight-point commitment from the original summit hosted by the then First Minister, Alex Salmond, the Scottish FA was also at the vanguard of positive changes implemented as part of the 41 recommendations drawn-up by the JAG to improve unacceptable behaviour within Scottish football.

Indeed, that year the Scottish FA undertook the most wide-ranging modernisation programme in its history. The membership unanimously approved governance changes designed to ensure greater transparency and independence of decision making through the creation of the Judicial Panel and appointment of a new independent Compliance Officer to oversee disciplinary matters and implement more robust powers in line with the wishes of the JAG.

The merger of the two league bodies and creation of the Scottish Professional Football League has also been key to implementing stronger and more consistent disciplinary procedures irrespective of the jurisdiction between the Scottish FA and SPFL.

In summary, the football authorities continue to work hard to improve procedures in the area of unacceptable conduct and have taken a series of steps to ensure member clubs are aware of their responsibilities to ensure the behaviour of their supporters.

Offensive Behaviour at Football and Threatening Communications Act

The Scottish FA, in line with all football bodies invited to be part of the JAG, was supportive of the founding principle of the OBTC Bill – namely to take a consistent approach to eradicating sectarianism and other forms of offensive behaviour from football stadia, society and online.

However, concerns were raised during the process of drafting new legislation over the enforceability and unintended consequences. Indeed, the Scottish FA released a statement during that period thus: “Ultimately, we expect new legislation from the Scottish Government to be practical and enforceable. It is important the necessary groundwork is undertaken to ensure this is the case.”

Unfortunately, the issue over enforceability – and the concerns raised over the perceived discrimination against football fans – has come to bear. Notwithstanding the views of other football stakeholders, including those members of the JAG, recent
evidence suggests that the Act, and particularly the Section 1 Offence, has inadvertently served to worsen relations between supporters, their clubs and the authorities, rather than improving them. We believe this situation to be unsustainable, not least since the emergence of new, proactive measures that have already borne fruit in improving behaviours and dialogue in a collective and inclusive manner.

In the most recent survey conducted by Supporters Direct Scotland (“SDS”), in conjunction with the Scottish FA and SPFL, 71% of respondents (in a sample of 13,000) did not believe the Offensive Behaviour Act has been effective in preventing unacceptable conduct.

The ongoing discussions at parliamentary level on a Private Members’ Bill into the proposed introduction of Strict Liability, as well as the review of Scottish Hate Crime legislation undertaken by Lord Bracadale, have served only to add to the confusion among supporters and heighten anxieties that they are being unfairly discriminated against.

It is important to acknowledge that the vast majority of games within Scotland take place each week with supporters behaving impeccably. When we compare ourselves to other parts of Europe we would suggest that the general outlook is favourable. In the recently published UEFA Fair Play Rankings for season 15-16 relating to spectator behaviour in UEFA competitions, we were ranked 12th of the 55 UEFA countries. Against this backdrop, for logical natural justice reasons the members of the Scottish FA do not believe that it is appropriate for a club to be responsible for the behaviour of its fans where it can evidence that it has taken all reasonably practicable steps to prevent such behaviour taking place.

The Scottish FA has issued revised guidance to members last year, providing the governing body with enhanced powers to sanction under its jurisdiction and place more responsibilities on clubs to demonstrate they have taken all reasonably practical steps to prevent unacceptable conduct. This followed discussions with government on this issue, and we will work with the Scottish Government, Police Scotland and the SPFL to ensure these new measures are effective.

Lord Bracadale’s review into Scottish Hate Crime legislation will include legislation that applies to the conduct of football supporters. As part of his work the Scottish FA met Lord Bracadale and, we are of the view that the outputs of this review will be a key component to taking forward some of the issues around unacceptable conduct within a footballing context and look forward to seeing the recommendations that follow from said review.

Next Steps

As previously intimated, the strengthening of Scottish football’s disciplinary procedures has afforded the football authorities greater powers to encourage and, if required, sanction member clubs for unacceptable conduct. Indeed, the SPFL and Scottish FA have a commitment to reviewing the success of their enhanced powers to Scottish Government at the end of this, the first season of implementation.
As an antidote to the growing sense of persecution by supporters, Scottish football has embraced the role of Supporters Liaison Officers (“SLO’s”). The Scottish FA has worked in partnership with SDS to deliver a development programme to improve consistency in recruitment and deployment of SLOs across the country.

SLOs are a vital new role - mandatory for clubs participating in UEFA competitions - which requires a full-time member of staff appointed to work and engage with supporters, acting as a key point of contact and providing benefits in:

- Improved relationships with fans such as national team supporters’ clubs, national fan organisations, as well as relevant fan groups at club level
- Greater insight into supporter viewpoints
- Reduced violence and better conflict management

The Scottish FA and SDS have developed a network of SLOs on a national level and facilitated the sharing of knowledge and best practice to improve the relationships between various stakeholders, in particular the relationship between supporters and club directors, owners, safety and security organisations.

Activities have included the creation and distribution of a best practice handbook, a development day and communication channels for SLOs to network and share ideas among themselves.

We believe the role of SLOs to be an essential tool in continuing to improve behaviours and, crucially, in repairing the relationships between football fans, clubs and the police and football authorities that have undoubtedly been adversely affected as an unintended consequence of the implementation of the Offensive Behaviour and Threatening Communications Act.

**Summary**

The Scottish FA has tightened its rules on Unacceptable Conduct to place greater responsibility on clubs to demonstrate that it has taken all reasonably practicable steps before during and after instances of such misconduct.

Since 2011 the creation of an independent judicial panel and the appointment of a Compliance Officer has radically improved the transparency and independence of its disciplinary procedures.

We have listened to the concerns raised by clubs and supporters over the unintended consequence of perceived discrimination of the Act and believe the Scottish Parliament should work to allay those concerns.

We also believe the review of Scottish Hate Crime legislation undertaken by Lord Bracadale should ensure punishment for such offensive behaviour is adequately provided for across all of society, and that this enhanced provision should consume existing legislation for offensive behaviour at football.