



Fans Against Criminalisation <fansagainstcriminalisation@gmail.com>

Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012

Fiona Easton <callahanmckeownandco@gmail.com>
To: fansagainstcriminalisation@gmail.com

Mon, Oct 16, 2017 at 9:39 AM

Dear Mrs Finlay,

I note your request that I provide a brief synopsis of my professional dealings with the Crown office and Procurator Fiscal Service of Scotland in relation to the Offensive Behaviour Act and would state the following:-

I am a Director of the legal firm Renfrew Defence Lawyers and have offices in both Paisley and Renfrew. My firm specialises in criminal law. I have been practicing criminal law for a period in excess of twenty years.

I have dealt with numerous prosecutions under the above named Act in various jurisdictions across the country including Paisley, Glasgow, Aberdeen, Dundee, Hamilton, Edinburgh and Kilmarnock Sheriff Court.

My experience in dealing with cases of this nature is that the COPFS treat these cases in a particular way in so far as the Procurator Fiscal Deputes have advised me that they have little, if no, autonomy when attempts are made to resolve cases without the necessity of proceeding to trial.

I have been advised by a number of Procurator Fiscal Deputes that they are not permitted to accept any pleas of not guilty in relation to offences under this Act. This is a somewhat unusual position for them to take particularly when a criminal case is proceeding by way of summary complaint.

It is common practice that a Defence Solicitor and a Procurator Fiscal Depute can negotiate a plea in most criminal cases, a practice known as plea bargaining. For example, where there are a number of charges an accused person faces the Crown will often accept a plea of not guilty to certain charges on the complaint if the accused person is prepared to plead guilty to other charges. Similarly, where there are a number of accused persons on the same summary complaint it is often the case that if a number of those accused persons tender pleas of guilty other accused persons plea of not guilty will be accepted.

However, it has been my experience in dealing with a number of football related cases that the Procurator Fiscal Deputes are not prepared to enter into any such negotiations and have told me that it their understanding that they are not allowed to do so.

For example, in one particular case I dealt with in Aberdeen Sheriff Court it was apparent from the disclosure statements provided by the Crown that there was insufficient evidence in law for the Procurator Fiscal to secure a conviction if the matter proceeded to trial. The Depute dealing with the case agreed with me but stated that she required to seek the authority of a Senior member of staff before a decision could be made not to proceed with the prosecution. This is a highly unusual circumstance.

There have been other numerous instances where I have attempted to negotiate pleas in cases but have been unable to do so due to the stance taken by the COPFS whereby any charge raised under the Act was treated as non negotiable by the Procurator Fiscal Depute dealing with the case.

I am firmly of the view therefore having dealt with numerous cases of this nature since the inception of the Offensive Behaviour at Football and threatening Communications (Scotland) Act 2012 that there is a policy which is particular to the Act whcih is not applicable to other offences of a similar nature.

Further, offences of a similar nature involving fairly low levels of public disorder are often dealt with by the COPFS by way of offers of fixed penalty notices and other diversion schemes. In my experience I am not aware of any such offers being afforded to persons charged under the Act.

Should you require any further comment please do not hesitate to contact me.

Regards,

Anthony Callahan

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Renfrew Defence Lawyers
Callahan McKeown & Co Ltd.

[54 Hairst Street](#)

Renfrew

[PA4 8QY](#)

Tel: 0141 885 1212

Fax: 0141 885 9383

email: callahanmckeownandco@gmail.com

website: www.callahanmckeown.co.uk