Equality and Human Rights Commission Consultation Response on Strict Liability in Football in Scotland

Creating a fairer Britain
Equality and Human Rights Commission
Response on Strict Liability in Football in Scotland

March 2017

Contact details:

Chris Oswald, Head of Policy
Equality and Human Rights Commission
2nd Floor 151 West George Street
Glasgow
G2 2JJ

0141 228 5910

Email: chris.oswald@equalityhumanrights.com
The Equality and Human Rights Commission is the National Equality Body (NEB) for Scotland, England and Wales. We work to eliminate discrimination and promote equality across the nine protected grounds set out in the Equality Act 2010: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

We are an “A Status” National Human Rights Institution (NHRI) and share our mandate to promote and protect human rights in Scotland with the Scottish Human Rights Commission (SHRC).
SECTION 1 - ABOUT YOU

1. Are you responding as:
   - [ ] an individual – in which case go to Q2A
   - [ ] on behalf of an organisation? – in which case go to Q2B

2A. Which of the following best describes you? (If you are a professional or academic whose experience or expertise is not relevant to the proposal, please choose “Member of the public”)
   - [ ] Politician (MSP/MP/Peer/MEP/Councillor)
   - [ ] Professional with experience in a relevant subject
   - [ ] Academic with expertise in a relevant subject
   - [ ] Member of the public

2B. Please select the category which best describes your organisation:
   - [ ] Public sector body (Scottish/UK Government/Government agency, local authority, NDPB)
   - [ ] Commercial organisation (company, business)
   - [ ] Representative organisation (trade union, professional association)
   - [ ] Third sector (charitable, campaigning, social enterprise, voluntary, non-profit)
   - [ ] Other (e.g. club, local group, group of individuals, etc.)

3. Please choose one of the following; if you choose the first option, please provide your name or the name of your organisation as you wish it to be published.
   - [ ] I am content for this response to be attributed to me or my organisation
   - [ ] I would like this response to be anonymous (the response may be published, but no name)
   - [ ] I would like this response to be confidential (no part of the response to be published)

   Name/organisation:

4. Please provide details of a way in which we can contact you if there are queries regarding your response. (Email is preferred but you can also provide a postal address or phone number. We will not publish these details.)
   Contact details:

SECTION 2 - YOUR VIEWS ON THE PROPOSAL

Aim and approach

1. Which of the following best expresses your view of the proposal to introduce strict liability for football clubs in Scotland?
   - [ ] Fully supportive
   - [ ] Partially supportive
   - [ ] Neutral (neither support nor oppose)
   - [ ] Partially opposed
   - [ ] Fully opposed
   - [ ] Unsure

Please explain the reasons for your response.

Whilst there are a number of criminal charges that can be brought against supporters who chant or sing offensive, racist, homophobic or sectarian songs the application of these laws has proved difficult and has not led to the intended outcome - a reduction and end to such behaviour in and around football games. The EHRC believes that by adopting an approach similar to that
practiced elsewhere in the UK and by UEFA this would signal clearly to the clubs that it is their responsibility to reduce and end offensive, racist, homophobic or sectarian conduct within their grounds. The introduction of this law would bring Scotland into line with international peers and apply the same sorts of sanctions on conduct at domestic fixtures which is already the case in international club fixtures. Such behaviour is contrary to good community relations and the continued existence of this type of conduct at grounds presents Scotland in a poor light whether or not the opponents in any particular game are Scottish or international opponents.

2. Could the aims of this proposal be better delivered in another way (without a Bill in the Scottish Parliament)?

☐ Yes (if so, please explain below)
☐ No
☐ Unsure

Please explain the reasons for your response.

We feel it is appropriate to introduce expectations of good conduct, and sanctions against poor conduct which are already in place in England and apply to Scottish clubs playing in UEFA tournaments. Currently the law criminalises only individual’s conduct. This change in the law would extend liability to in which the conduct takes place. Given the persistent nature of offensive chanting in Scotland, and the lack of progress being achieved through individual prosecutions we believe it is proportionate to introduce an expectation and sanction on to clubs to compel them to take all possible actions to curtail it. Whilst we accept that clubs are not wholly responsible for the actions of their fans, any perceived tolerance of offensive chanting will be exploited by those who are committed to creating offense. We believe that the introduction of penalties on clubs for the conduct of their fans will act as peer pressure which isolates those who currently feel license to act in offensive ways.

In this respect we support the findings of the “review of the Implementation of the Recommendations of the Advisory Group on Tackling Sectarianism in Scotland” (Morrow, SG March 2107) – “It needs to be clearly kept in mind that Scottish football is very much part of Scottish society and needs to take full responsibility for tackling the offensive and abusive behaviour that occurs within the commercial spaces (football stadia) that they own, operate and govern”.

. What do you think would be the main advantages, if any, of holding clubs responsible for the behaviour of their supporters?

We believe that it creates a sense of collective responsibility in which fans know that their clubs can and will suffer penalties if offensive conduct is not actively discouraged and eventually eliminated. Other sanctions such as individual prosecutions have not succeeded. Ultimately we want to create the conditions in which fans in all of their diversity are able to attend games without the fear that they will be the subject of or witness to offensive conduct. We believe that the toleration of such behaviour currently may act to discourage parents from taking children to grounds, or that fans who are from ethnic minorities, or are disabled or from LGBTI
communities may be dissuaded from attending because of the fear that they will be subject to, or witness offensive conduct.

4. What do you think would be the main disadvantages, if any, of holding clubs responsible for the behaviour of their supporters?
In the short term it will take time to develop a new culture within grounds where offensive conduct is currently tolerated. In the short term this may lead to some clubs facing sanctions despite their efforts to reduce or eliminate offensive conduct. We believe that peer pressure in this regard is a powerful tool, making fans responsible for their clubs success and creating an incentive for good conduct.

Behaviours and sanctions
5. If there is to be a system of strict liability, which of the following behaviours do you think should be covered (choose all that apply)—
- The invasion or attempted invasion of a field of play
- The throwing of objects
- The lighting of fireworks or any other incendiary objects
- The use of laser pointers or similar electronic devices
- Violent or threatening behaviour
- Abusive or offensive language or messages (including verbal abuse of any person by reference to their race, sex, sexual orientation, religion or belief or disability)
- Acts of damage
- Disorder in or near the stadium
- Other (please specify)

Please explain the reasons for your response.
The EHRC has a particular concern with these issues and is restricting its submission to these issues alone.

6. If there is to be a system of strict liability, which of the following sanctions do you think should be available (choose all that apply)—
- Warning/reprimand
- Fine
- Ban on selling tickets to supporters for away matches
- Match-specific penalties (e.g. annulment of result; requiring a match to be replayed; forfeiting a match)
- Competition-specific penalties (e.g. deduction of points; withdrawal of title; disqualification/exclusion)
- Playing of a match behind closed doors (i.e. fans not able to attend)
- Partial stadium closure (i.e. certain sections of a stadium closed to fans)
- Playing of a match in a neutral stadium
- Restriction on the number of players that a club may register for participation in SFA competitions
- Community action (e.g. education programmes or working with local schools)
- Other (please specify)

Please explain the reasons for your response.
It is for Parliament to determine what are the most appropriate and effective sanctions that could be placed on clubs to prevent offensive conduct are and we are content to leave it to Parliament to identify sanctions. However, for sanctions to be effective they need to be seen to have an impact and are proportionate to the reputational damage that continued offensive conduct with cause,

Financial implications
7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:
   (a) Football clubs
   - Significant increase in cost
   - Some increase in cost
   - Broadly cost-neutral
   - Some reduction in cost
   - Significant reduction in cost
   - Unsure

Please explain the reasons for your response.
In the short term we would expect some clubs to be subject to sanctions as the new regime beds in. However we support the purpose of the law which is to create behaviour change amongst fans, and anticipate that in a relatively short space of time fans will understand the implications of continued offensive conduct for their club

(b) Football supporters and other individuals
   - Significant increase in cost
   - Some increase in cost
   - Broadly cost-neutral
   - Some reduction in cost
   - Significant reduction in cost
   - Unsure

Please explain the reasons for your response.
(c) Scottish Government and public sector bodies (such as Police Scotland)
   - Significant increase in cost
   - Some increase in cost
   - Broadly cost-neutral
   - Some reduction in cost
   - Significant reduction in cost
   - Unsure

Please explain the reasons for your response.

Equalities
8. What overall impact is the proposed Bill likely to have on equality, taking account of the following protected characteristics (under the Equality Act 2010): age, disability, gender re-assignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation?
   - Positive
   - Slightly positive
   - Neutral (neither positive nor negative)
Please explain the reasons for your response.
Offensive conduct in football grounds discourages some fans from attending so we believe there would be positive impact on those fans who would like to, but currently do not, attend frequently. More broadly the tolerated persistence of this type of offensive conduct every weekend in Scotland could be seen as a “permissive” encouragement to those who wish to continue acting in this way. We believe that this sort of conduct would not and should not be tolerated in Scotland’s pubs, clubs, or other sporting arenas, and so therefore football clubs should come into line with other environments in condemning and eliminating it.

9. In what ways could any negative impact of the Bill on equality be minimised or avoided?
There will undoubtedly be a small but vocal resistance to this change in the law who will claim that their freedom of expression is being curtailed. We believe that this argument is incorrect and that freedom of expression does not permit the gratuitous use of songs or words which are deliberately deployed to either insult, offend or instigate hatred against other groups in Scotland.

Sustainability of the proposal
10. Do you consider that the proposed bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?
☐ Yes
☐ No
☐ Unsure