

Proposed Football (Strict Liability) (Scotland) Bill

Page 2: About you

Are you responding as an individual or on behalf of an organisation?

on behalf of an organisation

Which of the following best describes you? (If you are a professional or academic, but not in a subject relevant to the consultation, please choose "Member of the public".)

No Response

Please select the category which best describes your organisation

Commercial organisation (company, business)

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

Name or Name of Organisation
The Hibernian football Club Limited

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.

[REDACTED]

Page 7: Your views on the proposal

Q1. Which of the following best expresses your view of the proposal to introduce strict liability for football clubs in Scotland?

Fully opposed

Please explain the reasons for your response

This Club considers that imposed legislation is not the way to deliver improvements in the conduct of supporters for the following reasons:

It is fundamentally unfair to penalise football clubs for individuals' behaviour who they have no control of. Individuals who engage in Unacceptable Conduct do not have the club's best interests at heart and

Q1. Which of the following best expresses your view of the proposal to introduce strict liability for football clubs in Scotland?

therefore Clubs should not be responsible for their behaviour.

Individuals who commit Unacceptable Conduct are in small numbers. Punishing the clubs for their behaviour means, in effect, punishing the great majority of supporters who ultimately have to bear the financial repercussions resulting from such behaviour. This means increase in ticket prices, commercial merchandise etc in order to pay for compensation claims resulting from Unacceptable Conduct as for most clubs these are the only sources of revenue.

Strict liability has not been proven to be an effective way to deal with supporters' misconduct. Examples, such as the Croatian supporters smuggling pyrotechnics into the stadium during the FIFA 2014 qualifiers and the pitch incursion undertaken by the Polish fans at Hampden during the Euro 2016 qualifiers, show clearly that fans who are willing to misbehave will do so no matter what the repercussions are. In relation to these incidents the real victim was the Scottish FA, as match host, who had to pay the hefty fines imposed by UEFA as a consequence of the visiting fans' behaviour of which they had no control.

Strict liability will expose Clubs to Unacceptable Conduct planned intentionally by individuals to harm the Clubs. Unacceptable Conduct can be caused either by an individual's desire for attention or on the basis of his/her personal views in relation to issues such as sectarianism, xenophobia, racism, anti-Semitism etc. or in concert with others as result of his/her affiliation to a certain group. If strict liability is to be forced on clubs such individuals know that their behaviour could ultimately punish the Club financially or in sporting terms and therefore will act accordingly.

Strict liability could have the effect of every home club in Scotland to the risk of being put out of business on a permanent basis by sanctions imposed for the conduct of supporters of another Club where the Home Club is in no way responsible for and can do nothing to prevent the behaviour in question.

Strict liability will, in effect, render clubs insolvent by exposing them to unreasonable claims. Unscrupulous legal consultants will jump at the opportunity to make claims, on no win no fee basis, for any form of behaviour that can be considered "Unacceptable. Given that strict liability removes any sifting process, Clubs will in effect have to deal with any claim, even a completely unreasonable one, which will add unsuitable cost to their legal bill.

Scotland usually ranks amongst the best behaved nations in the UEFA fair play rankings. This is a testament that our currently sanctioning system is effective.

Strict liability is simply not required as there are sufficient rules in place such as sporting sanctions, life bans and criminal penalties to prevent and sanction individuals effectively.

The available statistics show that in 2015-16 there were only 287 charges under section 1 of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 which deals with football related offences. The majority of charges occurred at a football stadium (50%), followed by a main street (24%) and public transport (23%). There were no charges at Celtic Park (Celtic FC), Easter Road (Hibernian FC), Excelsior (Airdrie), Firhill (Partick Thistle), Tannadice (Dundee United FC). On this basis, it is reasonable to conclude that supporters' misconduct in real terms is a rare occurrence in Scotland and that the rules in places are effective.

If the current system which is a mix of sporting sanctions and criminal penalties does not act as a deterrent to individuals that commit Unacceptable Conduct it is unlikely that strict liability will do. If individuals are not deterred by the possibility of criminal prosecution, their club being deducted points or a life ban from attending matches then clearly making clubs pay for their conduct will have no effect on these individuals.

Strict liability will detract investors especially at the small clubs level as it would create a sense of uncertainty around where to best allocate their funds. Unacceptable Conduct is not consistent and therefore investors will have to put in place contingency plans in case of it occurring. This means ring fencing capital which could be used for youth player development, stadia enhancement etc in order to pay for liability claims.

Most clubs will be required to purchase insurance as they are not financially or logistically capable of dealing with claims on their own. These are likely to be costly given the complexity of the insured risk given that there is simply no way of telling whether Unacceptable Conduct will occur at a certain match. If

Unacceptable Conduct occurs repetitively the insurance premium will increase with each occurrence. Such expenditure is simply unsustainable.

Q1. Which of the following best expresses your view of the proposal to introduce strict liability for football clubs in Scotland?

Insurance companies will force Clubs to put in place specific measures in order to access insurance cover which for small Clubs with a small amount of cash flow will be impossible to do.

Strict liability will require strict segregation which will increase costs for clubs but which, most importantly, will damage the overall match experience. Many people attend matches to socialise, communicate and exchange ideas about football or perhaps engage with other supporters from different cultures in European and International matches.

Q5. 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)--

Please explain the reasons for your response

There should be no system of strict liability. As noted before, there are already detailed and effective

Q2. 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)

Please explain the reasons for your response

We take the view that Unacceptable Conduct can be best dealt with in the following ways: Supporters' safety is best secured through the cooperation of everyone involved in the match experience such as Police authorities, local authorities, and match attendees. Enhancing the channels of communications between these parties would invariably make UC less likely to occur. Programmes should be provided in schools at formation ages in order to counterbalance any exposure to sectarian or other unacceptable conduct. In addition to educational programmes, clubs should strengthen their own channels of communication with fans through fan forums, working groups and other modern platforms Improving the online presence, through the club website and a wide range of social media platforms. Most clubs in the SPFL already have dedicated departments in this area. Strengthening their operations will facilitate the message getting through to fans of the reputational and financial damage that UC cause to the Club. Enhancing the role of the Supporter Liaison Officer. Currently, only clubs that play in UEFA competitions are under an obligation to have a named SLO. Creating a similar role, on a voluntary basis, within SPFL clubs will ensure effective and permanent engagement with supporters. Creating legislation by which clubs can apply for temporary or permanent banning orders which if not complied with can result in civil penalties or criminal prosecution.

Q3. What do you think would be the main advantages, if any, of holding clubs responsible for the behaviour of their supporters?

No Response

Q4. What do you think would be the main disadvantages, if any, of holding clubs responsible for the behaviour of their supporters?

I have noted my full comments in question 1

Page 11: Behaviours and sanctions

Q5. 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)--

systems of dealing with all types of Unacceptable Conduct in Scottish football. This includes the above and more types of misconduct.

Q6. 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)--

Please explain the reasons for your response

There should be no system of strict liability - again I refer to my answers in question 1 and 2. The SFA Judicial Panel Protocol and SPFL Rules already make provision for all of the above and more types of sanction.

Q8. 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?

Neutral (neither positive nor negative)

Page 13: Financial implications

Q7. Taking account of both costs and potential savings, what financial impact would you expect the proposed Bill to have on:

	Significant increase in cost	Some increase in cost	Broadly costneutral	Some reduction in cost	Significant reduction in cost	Unsure
(a) Football clubs	X					
(b) Football supporters and other individuals	X					
(c) Scottish Government and public sector bodies (such as Police Scotland)						X

Please explain the reasons for your response.

A system of strict liability would leave us open to crippling costs arising from the visit to our home ground of a large club with a travelling support which engaged in unacceptable conduct. We could do very little to stop it and our security and police potentially could not and would not intervene which leaves the club open to open ended liability for misbehaviour for which we had no responsibility and about which we could do nothing. Ultimately supporters who buy entrance to matches would have to meet the financial liability for sanctions, this is unworkable and will effectively kill the game in Scotland

Page 14: Equalities

Q9. In what ways could any negative impact of the proposed Bill on any of these protected characteristics be minimised or avoided?

There should be no system of strict liability - again I refer to my answers in question 1 and 2

Page 16: Sustainability of the proposal

Q10. Do you consider that the proposed Bill can be delivered sustainably, i.e. without having likely future disproportionate economic, social and/or environmental impacts?

Unsure

Page 17: General

Q11. Do you have any other comments or suggestions on the proposal to introduce strict liability for football clubs in Scotland?

No Response