

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

Dunfermline Athletic Football Club Ltd.

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.

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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

1.1 The concept of strict liability is one which raises all sorts of difficulties and issues which are not proportionate to the mischief which these proposals seek to address.

1.2 First, strict liability can lead to the punishment of those who have behaved entirely properly and who have taken every reasonable step within their power to prevent the mischief in question and who cannot

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reasonably be expected to be able to change their behaviour or conduct in the future.

1.3 Second, "strict liability" is unjust. Liability for negligence is by far the better and fairer means of addressing these issues. It would be better for all parties to work on agreeing what constitutes the reasonable conduct of clubs in trying to prevent Unacceptable Conduct. There is no reason why the standards of club conduct should not be as high when countering allegations of negligence than when faced with strict liability.

1.4 Third, the imposition of strict liability on one party for the conduct of a second party flies in the face of natural justice. It is fundamentally unfair to penalise football clubs for the behaviour of individuals over whom they have no control. Individuals who engage in Unacceptable Conduct almost by definition do not have their club's best interests at heart and therefore clubs should not be responsible for their behaviour.

2 The number of individuals who are guilty of Unacceptable Conduct is small. Punishing a club for such behaviour means, in effect, punishing the whole of that club's supporters, who ultimately have to bear the financial repercussions. This will lead to increases in ticket prices, commercial merchandise etc. in order to pay for fines or other penalties resulting from Unacceptable Conduct as, for most clubs, these are the only sources of revenue.

3. The evidence would suggest that the imposition of strict liability elsewhere within football has not been proved to be an effective way of dealing 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 intent on misbehaving will do so no matter what the repercussions are. In relation to these incidents the real victim was the SFA, as match host, who had to pay the hefty fines imposed by UEFA as a consequence of the behaviour of visiting fans' over whom they had no control, but in respect of whom they made every effort to minimise the risks.

4. Any proposed legislation has to be mindful of unintended consequences. Strict liability will expose clubs to acts of Unacceptable Conduct planned intentionally by individuals to harm the clubs. Unacceptable Conduct can stem from: an individual's desire for attention; 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 will know that their behaviour could ultimately punish the club financially, or in sporting terms, and therefore may act accordingly.

5.1 Given the fragile state of Scottish football's finances at present, strict liability will put virtually every club in Scotland at risk of being put out of business permanently by sanctions imposed for the conduct of supporters of another club where the host club is in no way responsible for, and can do nothing to prevent, the behaviour in question.

5.2 Strict liability could very well render clubs insolvent by exposing them to unreasonable, vexatious or frivolous claims. Unscrupulous legal consultants will jump at the opportunity to make claims, on a "no win - no fee" basis, for any form of behaviour that might be considered "Unacceptable". Given that strict liability removes any filtering process, clubs will in effect have to counter any claim, regardless of how unreasonable, vexatious or frivolous, which will be an expensive and time-consuming exercise.

6. If those individuals who indulge in Unacceptable Conduct are not deterred by the current system, which is a mix of sporting sanctions and criminal penalties, it is unlikely that the introduction of strict liability will alter their behaviours. If individuals are not deterred by the possibility of criminal prosecution, their club's being suffering a points deduction or a life ban from attending matches then clearly making clubs pay for their conduct will have no affect on these individuals. This will particularly be the case where a visiting supporter behaves improperly at a stadium other than that of his own club.

7. Many clubs can be expected to try to secure insurance cover against the eventuality of having to pay strict liability penalties. Whether or not such cover will be available and, if so, how much it might cost cannot at this stage be estimated. However, the effect of widespread insurance arrangements would be to burden every club with an additional cost.

8. The introduction of strict liability is likely to lead to all clubs having to consider, and meet the costs of, strict supporter segregation. Not only would this represent an unwelcome cost, but it would be a backward step for those clubs who have managed to allow supporters to mix and enjoy a match together.

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9. One of Scotland's most senior judges, Lord Bracadale, has been invited by the Government to undertake a review of the law relating to "hate crimes" in Scotland. One of the pieces of legislation within the scope of that review is the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. It is likely that the outcome of that review will be a simpler code of legislation addressing these matters and guidance to the football authorities and clubs on how better to combat Unacceptable Conduct. No action should be taken on strict liability until such time as the review findings are published and any recommendations tried out in practice.

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

For the reasons set out above, we are firmly of the view that the introduction of strict liability will do nothing to change the behaviours of the small minority of people attending football matches who are set on involving themselves in Unacceptable Conduct. It follows that other methods, with greater chances of success, should be adopted. Much of the root causes of Unacceptable Conduct (sectarianism, racism, homophobia etc.) exist across Scottish society generally and are not unique to football. Beliefs and prejudices need to be changed and that will not happen overnight. It will require long-term programmes at schools and through other government agencies, supported by private sector initiatives and peer-group pressure. The problems encountered by football are merely elements of this wider social malaise. If Government action is to be taken, it should attack the disease, not the symptoms. Football is already doing a great deal to address the problem of Unacceptable Conduct. We have had the benefit of seeing the SPFL's formal response to this consultation and we believe that response properly describes what is being done. We are not repeating it here.

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

It is not a case of what the advantages "would be" - clubs already are held responsible for the actions of their supporters. Unless a club can demonstrate that it has done everything that it could reasonably have done to: educate supporters against such conduct; prevent such conduct; and punish such conduct when it occurs the club will be held responsible by the SFA and/or the SPFL.

To seek to extend that responsibility to strict liability would add nothing.

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

Our responses to Question 1 of this consultation paper already set out clearly our views on this.

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)--

Please explain the reasons for your response

There should be no system of strict liability. There is already a detailed and effective system for dealing with all types of Unacceptable Conduct in Scottish football. This includes all of the above, and other, 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

We have not responded as there should be no such system of strict liability. The Scottish FA Judicial Panel Protocol and the SPFL Rules already make provision for all of the above, and other, sanctions.

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 DAFC open to crippling, and potentially fatal, costs arising from the visit to our ground of a bigger club with a large travelling support which engaged in Unacceptable Conduct. We could do nothing to stop it and our security and police could not, and would not, intervene leaving us with an open ended liability for misbehaviour for which we had neither control nor responsibility and about which we could do nothing. Ultimately the supporters who pay for entrance to matches would have to meet the financial liability for sanctions. There is no other party who could meet those costs. The introduction of strict liability would be bound to increase the number of charges/claims, with a consequent increase in the number of matters being defended. This can only add to court time and the involvement of Police Scotland.

Page 14: Equalities

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)

Please explain the reasons for your response

As has been set out earlier, we do not believe that the proposed Bill will result in any meaningful improvement in the conduct of those intent on behaving in an anti-social and unacceptable manner. Indeed, the prospect of getting the host club into trouble might well encourage visiting supporters to behave in exactly the manner that all clubs and the football authorities are trying to eradicate.

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

That cannot be achieved. The negative impacts will exist and will be unmanageable.

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?

No

Please explain the reasons for your response.

Any new legislation which seeks to restrict behaviour or impose/increase controls is bound to bring with it additional economic burdens.

Page 17: General

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

We have had the benefit of reading the SPFL's response to the consultation process and we have read their carefully set out analysis of strict liability as it might feature in Scots law. We believe that their response represents a compelling case against strict liability and we concur with it.