



Call for Evidence - Legislative Scrutiny:

Police, Crime, Sentencing and Courts Bill

Submission from the Football Supporters' Association

1. Overview of Concerns

The FSA have a number of serious concerns relating to the current draft of the Police, Crime, Sentencing and Courts Bill (PCSCB). These concerns focus on the potential of Sections 54, 55, 56 and 59 PCSCB in particular to have the following effects:

- a. To criminalise peaceful and long-established forms of football fan identity and expression.
- b. To disproportionately and unlawfully infringe the Article 10 and 11 ECHR rights of supporters.
- c. To increase the risk of short-term disorder as a result of conflict between police and supporters and damage to fan/police relations, dialogue, and engagement.

Moreover, the FSA is concerned that football fans will be the forgotten and unintended victims of the PCSCB, lacking many of the protections against the Bill's most draconian powers that will be enjoyed by protest and other groups. As a result, we strongly oppose the introduction of the sections identified below.

2. Legislation Rationale

The rationale explained by the Government for the extension of the powers relevant to this response relates solely to disruptive forms of protest, and does not reference football fans. However, the new powers will accidentally, and without justification, capture and limit peaceful, traditional, and culturally-significant fan behaviour.

3. Section 54 and Football ‘Walk-ups’

By introducing the power for a senior police officer to impose conditions on processions in the event that they may cause noise that creates “serious unease” for persons in the vicinity, the section potentially criminalises traditional football ‘walk-ups’ from train stations or pubs to the stadium. These ‘walk-ups’ are often a necessary part of attending matches (and away matches in particular), and also have an important cultural significance for football fans. They are almost always accompanied by chanting which could be interpreted by a senior officer as having the potential to cause “serious unease” to rival fans or members of the public. The situation is exacerbated in situations where the police make the decision to corral fans and enforce a coercive police ‘escort’ from which fans are not able to leave. Attempts to re-route ‘walk-ups’ or escorts, or to impose noise-level conditions upon them, have the potential to lead to unnecessary criminalisation, conflict and disorder, and breaches of Art.10 ECHR Freedom of Expression.

4. Section 55 and Fan Gatherings

By introducing the power for a senior police officer to impose conditions on assemblies in the event that they may cause noise that creates “serious unease” for persons in the vicinity, s.55 potentially criminalises gatherings of football fans in popular locations. These may include culturally-significant gatherings outside popular pubs, or in town squares (e.g. Trafalgar Square, London, or Shambles Square, Manchester) ahead of important matches, after significant victories or achievements, or for the purpose of protest (e.g. against club owners). These fan gatherings typically involve the chanting of traditional football songs which in turn could be interpreted by a senior officer as having the potential to cause “serious unease” to rival fans, members of the public, or the target of protests. Attempts to disperse or impose conditions of noise-level or maximum number of attendees upon either celebratory or protest fan assemblies have the potential to lead to unnecessary criminalisation, conflict and disorder, and breaches of Arts.10 and 11 ECHR (Freedom of Expression and Assembly).

5. Section 56 Breach of Conditions

By reducing the criminal liability for breach of conditions imposed by ss.54-55 from “knowingly” failing to comply to situations where the individual “ought to know”, this potentially criminalises fans participating in walk-ups or celebratory or protest assemblies. One reason that this is of particular concern in the football supporter environment is the well-established divergence of fan identities and ‘subcultures’ within a team’s overall support.¹ Knowledge about gatherings is often drawn from traditional knowledge or word-of-mouth, and often have no formal organiser.

Further, while, to a greater or lesser extent, Dedicated Football Officers have lines of communication open to certain fan groups or platforms to highlight any conditions, research has shown that these messages often have a very limited reach in terms of the number of fans receiving such communications.² This is in contrast to many protest gatherings or marches which are organised by a particular group or on a particular platform, making messaging more effective. The extremely severe potential custodial sentences for breach of conditions make this proposed reform particularly dangerous and disproportionate for fans who attend a traditional celebratory gathering where, unbeknownst to them, the rules have changed.

6. Section 59 Public Nuisance

The proposed placing of common law public nuisance on a statutory footing will invariably lead to this offence being used more regularly against football fans, mirroring the pattern of use of other generic public order offences in football.³ The new offence will criminalise traditional, accepted, and non-harmful fan behaviour that is currently not captured by the extensive spread of offences fans are subjected to (most notably s.5 Public Order Act 1986 and ss.3-4 Football Offences Act 1991).

Section 59(2)(c) defines “serious harm” to include “serious annoyance”. This again brings us back to football chants. While FOA1991 s.3 outlaws “racialist” and “indecent” chants, and s.5 POA prohibits chanting that

¹ Pearson, G. *An Ethnography of English Football Fans* (2012, Manchester University Press); Richards, J. *Sports Space* (2017, PhD Thesis, University of Sydney).

² See for example Stott, C. et al ‘Enabling an Evidence-Based Approach to Policing Football in the UK’, (2019) 14(4) *Policing: A Journal of Policy and Practice*: 977–994.

³ Pearson, G. ‘A Beautiful Law for the Beautiful Game? Revisiting the Football Offences Act 1991’ (2021) *The Journal of Criminal Law* <https://doi.org/10.1177/00220183211007269>; Salter, M. ‘Judicial Responses to Football Hooliganism’ (1986) 37(3) *NILQ* 280.

causes harassment, alarm, or distress, s.59 Public Nuisance could extend this to non-indecent traditional chants which make fun of rival teams or supporters but could be classed as causing “serious annoyance” to those fans. Both traditional cultural expression and ‘banter’ in the form of chants or ‘tifo’ displays could become criminal offences without proof of harassment, alarm, or distress. And s.59(2)(d) goes even further than this, making it an offence not only to seriously annoy an opposition supporter, but to put them “at risk” of being seriously annoyed. This far-reaching offence, which requires no victim, has the potential to be applied arbitrarily to football fans and to criminalise much harmless and culturally-accepted expression.

7. Disproportionate Effect on Fan Human Rights

The concerns raised above all engage the human rights of fans under Articles 10 and 11 ECHR, by potentially restricting supporters’ rights of assembly and expression of identity in a disproportionate manner. In doing so PCSCB also increases the risk that police forces managing crowd events will suffer reputational or financial damage through failing to facilitate these human rights as required by s.6 Human Rights Act 1998.

These two risks are much greater than in the comparable situation in protest policing. Developments in human rights law as a result of a number of decisions of the European Court of Human Rights⁴ (and also supported by the majority of the House of Lords),⁵ have meant that over the past 12 years or more, it has been established that those participating in assemblies and forms of expression of a cultural nature, such as football supporters, can also call upon Art.10 and 11 ECHR protections. Unfortunately, at present there is no national recognition of this in the College of Policing’s *Authorised Professional Practice* for Public Order Policing. While the policing of protest requires forces to adhere to APP and HMIC’s ‘Adapting to Protest’ guidance, no such protection currently exists for football fans to protect them from the full rigours of PCSCB. Fans are therefore left more vulnerable to the Bill infringing their human rights

⁴ *The Gypsy Council and Others v. the United Kingdom* (dec.), no. 66336/01, 14 May 2002; *Djavit An v. Turkey*, no. 20652/92, ECHR 2003-III; *Friend, the Countryside Alliance and others v. the United Kingdom* (dec.), nos. 16072/06 and 27809/08, 24 November 2009; *Emin Huseynov v. Azerbaijan*, no. 59135/09, 7 May 2015.

⁵ *R (on the application of Countryside Alliance and others and others (Appellants)) v Her Majesty’s Attorney General and another (Respondents)* [2007] UKHL 52 (see especially judgments of Lady Hale and Lord Bingham).

than other groups, and police forces are subsequently more vulnerable to successful legal challenge of their use of the Bill's new powers.

8. Increasing Conflict Between Fans and Police

Where police forces look to enforce laws against fans breaching conditions under ss.54-56, or enforce s.59, this will invariably bring them into conflict with large numbers of football supporters. Research into football crowd behaviour and 'hooliganism' has demonstrated that when police attempt to enforce laws or strategies that are seen by the crowd as illegitimate by coercion (e.g. dispersal tactics, kettling, or arrest), this creates an increased risk of the crowd becoming disorderly.⁶

Evidence shows that football crowds will not rapidly change established and (in their eyes legitimate) practices and behaviours due to a change in the law;⁷ PCSCB will just make these behaviours illegal and bring those fans into conflict with the police. Therefore, PCSCB is likely to be counter-productive in terms of managing public order situations; rather than preventing disruption, the use of the new powers in a football crowd context – at least in the short- to medium-term – is likely to lead to incidents of violence and disorder. The changes also have the potential to put back relationships between fan groups and football policing officers and organisations that have been developing over the previous decade or more.

⁶ Reicher, S, and Stott, C. 'How Conflict Escalates: The InterGroup Dynamics of Collective Football Crowd "Violence"' (1998) 32(2) *Sociology*: 353-377; Stott, C. and Pearson, G. *Football 'Hooliganism', Policing and the War on the 'English Disease'* (2007, Pennant Books).

⁷ Pearson, G. *An Ethnography of English Football Fans* (2012, Manchester University Press).