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An Evaluation of Football Banning Orders in Scotland

Crime and Justice



AN EVALUATION OF FOOTBALL BANNING ORDERS IN SCOTLAND

**Niall Hamilton-Smith, Ben Bradford, Matt Hopkins, Justin Kurland
Claire Lightowler, David McArdle, Nick Tilley**

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EXECUTIVE SUMMARY AND RECOMMENDATIONS

Introduction

This report presents the findings from an evaluation of the operation and effectiveness of legislation relating to football banning orders (FBOs) in Scotland. The evaluation involved a review of administrative data (including conviction records and case files) and relevant documentation (including legislation); and interviews and focus groups with strategic and operational stakeholders. The fieldwork was conducted between August 2010 and January 2011.

Key findings

The performance of the FBO regime

- The numbers of FBOs in Scotland are increasing, as is the proportion of FBO applications that are successful. As of December 2010, 101 FBOs have been issued. This is probably in no small part a reflection on the efforts of the FBO authority and other stakeholders to increase awareness of the FBO legislation, and to improve the operational processes that give effect to that legislation.
- There is a strong, and committed, strategic partnership overseeing the implementation of FBO legislation. The Scottish Government chaired Football Banning Order Monitoring Group has been the main focus for this. The group has clearly operated effectively in developing and steering improvements in the use of the legislation. For instance, the group successfully engaged with the Judicial Studies Committee to introduce measures to enhance judicial awareness of the legislation. The group also engaged with the Crown Office and Procurator Fiscal Service to develop a 'Football Liaison Depute Pilot' that aims to improve the identification and handling of FBO cases in court.
- The evaluation showed that FBOs are generally being appropriately targeted, with bans predominantly being issued to individuals who had a history of engaging in football related violence and disorder. There was also indicative evidence to show that banning orders may be reducing the intensity of offending amongst those subject to them.
- Whilst the number of FBOs issued in Scotland may look modest when compared to the numbers issued in England and Wales, our analysis concluded that the contrast is not as marked as headline figures suggest. The larger number of clubs, higher average attendances through the divisions, and the incentivising of FBO applications through pump-priming monies and target-setting, all provide grounds for anticipating much greater numbers of FBO in England and Wales.

Findings and recommendations

FBO performance – non Scottish Premier League clubs

- FBOs in Scotland are overwhelmingly (93%) focussed on followers of Scottish Premier League (SPL) clubs. This contrasts sharply with England and Wales, where 64% of FBOs are targeted at followers of clubs *outside* the premier league. This difference could be due to low attendances and a lack of serious violence and disorder outside of the SPL, or it could be interpreted as indicative of a lack of awareness and engagement by those officials dealing with match security outside the SPL.

Recommendation 1 (R1)– Levels of violence and disorder in relation to non-SPL clubs and non-league clubs, and effective engagement with FBO legislation, needs to be examined.

R2 – If significant problems exist outside of the leagues, then consideration to extending the definition of a ‘regulated football’ match to encompass all club matches in Scotland could be considered.

FBO performance – police football intelligence

- For SPL clubs, the rates at which football banning orders were issued per 1000 spectators, whilst lower than the rates found in most English premier league clubs, did not lag that far behind.
- Respondents were uniformly appreciative of the work carried out by the Scottish FBO authority.
- Some respondents felt that detailed information on FBO subjects was not as readily accessible as it needs to be within the context of match day operations, though the current drive to roll-out the UK football policing unit’s (UKFPU) Minerva database should resolve this so long as the system is properly utilised.
- The contrast in resourcing both at the level of the FBO authority and in terms of the proactive resources for policing across Scotland, when compared to England and Wales, is marked. For instance, many clubs in England have full time dedicated Football Intelligence Officers. There is also often a football liaison officer operating at police authority level, who coordinates with the UK football policing unit (UKFPU). The UKFPU also provides additional resource in terms of acting as the central point for collecting and collating football-related intelligence in England and Wales. In Scotland there is no equivalent central support provided around intelligence gathering and dissemination.

R3 – Further thought should be given to considering how football intelligence can be better coordinated and collated across Scotland.

FBO performance – effective targeting by the criminal justice system

- FBOs were – broadly speaking – being targeted at offenders with prior convictions for football-related offences
- That said there were an appreciable number of more serious offences that did not result in an FBO. It was notable that compared with violent offences sectarian offences appeared under-represented among cases that led to the issuing of an FBO. In particular, some serious sectarian, and indeed racial offences, did not result in FBOs being issued.
- Whilst there are significant differences in the gravity of sectarian offences examined as part of this research, some respondents were of the view that the indirect impact of such offences (in terms of reinforcing deep-rooted sectarian divisions in communities) merited a zero tolerance approach, with FBOs being imposed automatically.

R4 – The progress of British Transport Police in its current ‘zero tolerance’ approach to sectarian offending on public transport should be monitored, and if successful, transferable lessons should be identified.

FBO performance – the handling of cases by the authorities

- Whilst respondents were confident that appropriate cases for FBOs were identified within football stadia they were less confident about the identification of appropriate cases away from the stadia where offences may be dealt with by officers with limited knowledge of football-related matters.
- It was not viewed as practical to maintain awareness amongst all frontline officers of FBO legislation. Rather, it was more realistic, and resource-efficient, for Football Intelligence Officers (FIOs) and/or case management personnel to scan for possible football-related cases on match days. However, a very widely held view amongst respondents in this research was that some FIOs – nearly all of whom acted as an FIO part time – were not given sufficient time to perform this role or indeed their other FIO duties.
- Successful FBO cases were generally supported by clear police summaries of the offence, police remarks that explained why an FBO was an appropriate measure, and a clear explanation of the context and impact of the offence. The quality of reporting was often dependent upon the arresting officers who again, didn't necessarily have enough expertise to present evidence effectively.

R5 – Consideration should be given to agreeing a standard minimum Football Intelligence Officer resource for all divisions hosting SPL clubs, and Intelligence Officers and case management personnel need to be given enough time to spot, and quality control, football-related arrests.

FBO performance – case handling by Procurator Fiscal deputes

- Police officers could improve the prospects of getting an FBO by liaising directly with the Procurator Fiscal depute rather than simply relying on the submission of papers.
- Given the volume of cases faced by a typical Procurator Fiscal's office, it is not realistic to expect all Procurator Fiscal deputes to have an in-depth knowledge of FBO legislation.
- The Glasgow Football Liaison Depute pilot seems to provide a productive, and resource-efficient solution here. The pilot involves the identification of one Procurator Fiscal depute with an existing interest and knowledge of football, who can act as a champion for FBOs. The depute is responsible for facilitating better liaison with partners around key cases, for marking and reviewing all FBO cases, for ensuring that clear instructions are given to deputes presenting cases in court, and generally for championing and raising awareness of FBO legislation within their division.
- Respondents perceived the football liaison depute pilot to be working extremely well. The approach seemed to be well thought out and to represent a highly efficient use of scarce resources.

R6 – The performance and statistics relating to the Glasgow depute pilot, should be reviewed at the end of the current season – and subject to favourable review – consideration should be given to rolling out the pilot to all 'high-demand' divisions.

FBO effectiveness

- There was plenty of anecdotal evidence to suggest that FBOs could be highly effective in some circumstances. There was some evidence to indicate that FBOs had an impact on recipients. Whilst FBOs did not eliminate future football-related offending, in Scotland they did potentially contribute to a reduction in the general intensity of future offending within the group that received them.

FBO performance – attaching conditions

- The conditions attached to FBOs by Sheriffs were not always well-targeted: in particular, risk supporters who had no particular interest in actually attending the football were given banning orders that included only basic stadia-exclusion conditions.
- If the locus of football-related violence is violence organised away from stadia, as is the case with some Scottish risk groups, then the FBO legislation needs to be invoked to its full extent, imposing match day conditions that exclude risk supporters from certain areas of towns, or from travelling to towns on match days where their team are playing away fixtures. That such violence occurs outside stadia, does not detract from the fact that violence is inextricably linked to match days.
- There seems a marked lack of confidence on the part of the police to ask for additional conditions, and very few have been asked for, or imposed. The concern amongst interviewed Procurator Fiscal deputies and Sheriffs regarding the use of additional conditions, with the perceived disproportionate restrictions on individual movement and freedom of association that such restrictions impose, may mean that this lack of confidence is justified. These concerns though were mostly expressions of principle rather than reservations based on experience, as few Procurator Fiscal deputies or Sheriffs have faced requests for conditions.
- Both the preventative and deterrent aspect of the FBO legislation are likely to be ineffective for this group of offenders if the legislation is only focussed on stadia-centred incidents and controls. This limit to FBO powers, as they are currently used, had led stakeholders in some areas to view the legislation as of limited value.
- One alternative to the imposition of tailored FBO conditions on the back of criminal convictions, would be the greater use of civil summary applications, where tailored packages of information on the antecedent history and patterns of disorder of high risk individuals could be presented to court and judged on the basis of a civil burden of proof. However, currently few forces had any willingness to fund such applications.

R7 – Work needs to be taken forward to establish when conditions may be imposed. The level of evidence required to support such restrictions needs to be firmly established.

R8 – If the legislation as currently drafted does not adequately support the imposition of conditions, then options for either amending the legislation, or using other legal remedies, should be considered.

Sheriffs

- Some Sheriffs remain unconvinced that the FBO regime is an appropriate tool for dealing with football-related violence in Scotland. It has been described as “an English Act with a kilt on” and there is a perception that banning orders were instigated in order to deal with a very different phenomenon to that pertaining in Scotland, principally the problem of English football hooligans causing trouble abroad.
- The fact that the legislation is not perceived to be an example of ‘Scottish solutions to Scottish problems’ has made some Sheriffs, especially those who are not football fans, wary of using it in anything other than the most egregious cases. Conversely, some Sheriffs with more engagement in football are more strongly supportive of the use of FBOs.
- FBOs were regarded as appropriate in the case of persons who have a conviction for at least one related offence or for first offenders who have committed a serious act of violence, invaded the pitch in an act of aggression (rather than over-exuberance), or thrown missiles.

R9 – If a Sheriff decides not to impose an FBO, it would be beneficial if they would mark the offence as football-related so that, in any future proceedings against the same individual, the Sheriff can readily discern patterns of previous behaviour which might warrant an FBO.

Prosecution and sentencing

- The question of whether FBOs are an appropriate way of dealing with sectarian offenders continues to be a subject for debate. All Sheriffs, not only those in Glasgow, are aware of the issue’s importance, but most are not at all convinced that an FBO is a proportionate response to what may be a one-off utterance.
- There is no discernable benefit in changing the wording of the legislation as it stands. In particular, the idea that the word ‘may’ in s. 51(2) should be replaced with ‘shall’ (so that, in effect, the imposition of an FBO became mandatory upon conviction), as is the case with the legislation in England and Wales, was roundly decried as an unwarranted interference with judicial discretion and one likely to bring the law into disrepute given that most football-related offences are usually not perceived as being on the same scale of significance as, for example, knife crime or domestic violence¹, and given that considerable police resources would have to be dedicated to policing FBO holders if they are to be a meaningful sanction.
- In contrast, Procurator Fiscal deputies should be more robust in moving for an FBO. Rather than perceiving a usurpation of the judiciary’s function it is quite likely that many Sheriffs would appreciate this approach – particularly in those courts where FBO applications arise infrequently.

R10 – Work should be taken forward to explore how Procurator Fiscal deputies can appropriately raise the issue of FBOs with Sheriffs to allay any concerns about being perceived to interfere with the sentencing process.

¹ Though, it should be acknowledged, that incidents of domestic violence and indeed knife crime can, on occasion, be football-related.

Going forward

- How football is being policed is subject to ongoing ACPOS review. It is not within the remit of this work to second-guess future developments. However, it seems probable that the existing trend to reduce the policing complement at low risk football matches will continue. There is some tentative evidence to suggest that such developments need not compromise the general effectiveness of match day security operations (Wright 2007)
- In a climate of reduced resources, making optimal use of FBO legislation may be a cost-effective way of controlling football related violence and disorder.
- This would necessitate though that a certain minimal level of commitment to the FBO regime is maintained. The integrity and effectiveness of the regime would be threatened if excessive cuts are made to those resources that generate intelligence on football related violence and disorder.
- If more responsibility for security within stadia is to be passed over to match officials and club stewards, it is important that arrangements are in place to ensure that these officials can work with the FBO regime as effectively as their police colleagues, in particular sharing relevant information and intelligence when appropriate. Club officials need to have usable information on who FBO subjects are, whilst conversely communicating details on *club*-imposed bans may provide the police and prosecutors with additional evidential material to support an FBO application (e.g. if an individual has previously received club-based bans for lesser acts of violence or disorder, this record might be used in court to strengthen the case for an FBO).
- The robustness of the FBO regime in such changed circumstances also depends on the continuation of efforts to enhance the professionalism of club safety officials and stewards. Here, maintaining, and indeed strengthening, the working relationship with the Scottish Football Safety Officers' Association would appear to be vital.

R11 – Current efforts to work through appropriate mechanisms for sharing data and intelligence securely with *accredited* club-officials, needs to be maintained.

R12 – Clubs should continue to focus on opportunities for improving the quality and professionalism of their security operations and personnel.

Interpretation of legislation

- Finally, whilst there was some consensus amongst stakeholders regarding who FBOs were for (repeat and/or violent offenders), and what the FBO legislation could do (ban them from stadia), there was also a marked lack of consensus in other areas. For instance there was marked disagreement as to whether FBOs were appropriate for less serious sectarian and racial offences, and as to whether the legislation was intended to permit the widespread use of more sweeping banning order conditions (e.g. town centre bans). There were, in short, marked differences in how the legislation was interpreted.
- The legislation establishing FBOs is not so prescriptive as to exclude any of these interpretations. Other respondents also pointed out that some variation in interpretation of the legislation is both welcome and healthy, as clearly for instance the seriousness of a particular offence for a small club in rural Scotland, may be quite different if the same offence was committed at a large

city club.² Respondents were also aware however, that too much inconsistency in interpretation threatens the credibility of the legislation, whether in terms of irreconcilable expectations as to what the legislation should be achieving, or in terms of perceptions of fairness and justice when the legislation is applied inconsistently.

- Greater use of the legislation, and greater awareness of the legislation and case law that develops from the use of the legislation (which the FBO authority, and the Judicial Studies Committee in particular, were actively promoting), will in time help develop a greater consensus regarding what the legislation is intended to achieve and how. But, it is also very evident that some of the differences in current interpretation, are based not on the actual interpretation of the legislative instrument, its associated guidance, or policy pronouncements regarding FBOs, but in fact derive from much broader disagreements as to what fundamentally constitutes unacceptable behaviour in football, how such behaviour should be dealt with, and who should deal with it. These normative debates and disagreements need to be discussed and negotiated openly, if – going forward – greater consistency in the implementation of the FBO legislation is to be achieved.

R13 – Opportunities for hosting further events for raising awareness of FBO legislation amongst criminal justice professionals, and for discussing their appropriate use, should be identified.

² For example one respondent argued that an incident of disorder that might be perceived as an ‘accepted’ (if undesirable) aspect of a match at a large, city club, may stand out as more threatening and unacceptable within the context of a smaller rural match.

1 PROJECT AIMS AND METHODOLOGY

Aims and scope of the research

- 1.1 The aim of this research was to investigate the operation and effectiveness of Football Banning Orders in Scotland.
- 1.2 This involved investigating the interpretation and application of legislation; the use of operational procedures to give effect to that legislation; stakeholder understanding and perceptions of FBOs; the effectiveness of FBOs in preventing further offending; and examining – and , if appropriate, learning lessons from – the application and use of FBOs in England and Wales.
- 1.3 In pursuing these complex aims, it was intended that this evaluation should generate lessons and recommendations as to how the FBO scheme might be enhanced in Scotland.

Methodological approach – Scotland

- 1.4 In order to fulfil these aims, this project analysed relevant administrative data, assessed official documents, and explored FBO perceptions and practices amongst key stakeholders. These methods were used to build a picture about:
 - Awareness and understanding about the role of FBOs
 - Use of FBOs for different types of cases in different jurisdictions
 - Perceptions of how FBOs have been used successfully and unsuccessfully
 - Trends and patterns of football related violence and disorder
 - Trajectories of offending for those convicted of football related violence
- 1.5 *Interviews with national/strategic stakeholders and city/club level practitioners* – We conducted interviews with a wide range of relevant stakeholders, including police football intelligence officers, police match commanders, other police officials including the FBO manager, club security officials, Procurator Fiscal deutes and Sheriffs, and relevant officials in the Scottish Football Association and Scottish Premier League (see appendix 1 for further details). In addition to formal interviews, members of the research team were also able to attend formal FBO training events held, respectively, for police match commanders, and for Procurator Fiscal deutes.
- 1.6 As well as gauging respondent views on the purposes of FBOs and the ‘mechanics’ of the FBO regime, we also aimed to gauge the views of club and police officials as to current trends and patterns in football related violence and disorder. Police, Procurator Fiscal depute and Sheriff respondents were also asked, where practical, to reflect on specific FBO

cases that they had dealt with, and to use these examples to illustrate the strengths and weaknesses of the FBO regime as they saw it.

- 1.7 A key conceptual underpinning for the evaluation design was that FBO use can only be interpreted and assessed within the broader context of club and city level partnership approaches for dealing with football related security. With this in mind, key aspects of this evaluation were focussed on a small sample of club/city based study sites: Edinburgh (Hearts and Hibs), Glasgow (Rangers and Celtic) and Aberdeen.
- 1.8 We selected two city areas with contrasting performances in terms of the number of FBOs issued: (Edinburgh and Glasgow). The clubs covered also encompassed two big, high attendance clubs (Rangers and Celtic), and the three clubs with the next three highest average attendance figures, (Hearts, Hibs and Aberdeen). Finally, the Strathclyde area was also host to a pilot project – initiated by the Crown Office and Procurator Fiscal Service (COPFS) that aimed to improve the processing of football-related cases by appointing a Procurator Fiscal depute in three Glasgow divisions. Each depute was to take responsibility for reviewing and managing all those offences that might merit a banning order within that division (see Chapter 4).
- 1.9 *The review of administrative data* –served the following primary purposes:
 - To produce a typology of the sorts of FBO cases successfully and unsuccessfully progressed within Scotland.
 - To analyse attrition in Scottish cases.
 - To collect data on a sample of offenders convicted for football related violence during the first two years since the introduction of FBOs into Scotland (2006 to 2008) and to look at subsequent levels of offending over a two-year period, as well as for a period prior to an offender's first conviction during that introductory time period.
- 1.10 The first administrative data source used was the database of all successful and unsuccessful FBOs issued in Scotland since the launch of the legislation. As well as providing headline performance figures, these databases also contained the personal details of all individuals convicted of a relevant football-related offence of violence and disorder. This allowed us in turn to select further samples of individuals against which we could then collect further administrative data.
- 1.11 The second administrative data source was electronic case files for a sample of 60 offenders supplied by COPFS. This included a summary of the police report that went to the relevant COPFS office, the police remarks section in which any FBO request would be made, and the written court instructions that would have guided the Procurator Fiscal depute in court in terms of applying for bail or suggesting that an FBO might be appropriate in a particular case. Twenty offenders with FBOs, and 40 offenders without FBOs were randomly chosen from databases of successful and unsuccessful FBO applications. One non-FBO record had to be discarded for lack of information.

- 1.12 The final administrative data source included paper copies of criminal records provided by the Scottish Criminal Records Office, for 186 FBO and non-FBO offenders, again randomly selected from the FBO and non-FBO databases. These records were inputted manually onto a database and then analysed to examine both precursor and post-FBO offending. Details of the sample are provided in Appendix 3.
- 1.13 *The review of documentation* - This involved examining the legislation and accompanying guidance in each jurisdiction, the strategic level documentation that 'integrates' FBO provisions into broader football security provision, and the focussed guidance for practitioners in different agencies relating to the interpretation and administration of FBOs. Additionally, we reviewed the limited material available that attempts to review, evaluate, or critically consider the use of FBOs to date (e.g. Home Office 2005; Pearson and McArdle, 2005).

Methodological approach – England and Wales

- 1.14 In England and Wales interviews were completed with match commanders, football banning officers and football intelligence officers in four areas- London, Greater Manchester, Cleveland and Northumbria (a full list of those interviewed is presented in Appendix 2). The officers in London covered Arsenal; in Manchester: Manchester United; in Cleveland: Middlesbrough and Hartlepool United and in Northumbria: Newcastle United and Sunderland.
- 1.15 The interviews focused on four main themes:
- The need for FBOs within the area / use of the legislation
 - The targeting of FBOs and the evidence required to obtain an FBO
 - The enforcement of orders
 - The effectiveness of orders
- 1.16 A focus group was also held with English and Welsh stakeholders in order to obtain a strategic overview of banning orders as they have developed and are used in England and Wales. Those attending included the Crown Prosecution Service lead on banning orders, a Home Office representative with responsibilities relating to national policy relating to football and disorder, and two other members of the UK Football Policing Unit (UKFPU).
- 1.17 The issues discussed related to the background and evolution of legislation relating to banning orders, the considerations that go into applying for and obtaining banning orders, the conditions that are applied to orders, the variations in patterns of application and award of banning orders, patterns of breach of banning orders and responses to those breaches, the perceived effectiveness of banning orders and lessons that were deemed relevant to Scotland.

2 FOOTBALL BANNING ORDERS: AN OVERVIEW

Football banning orders

- 2.1 Football Banning Orders (FBOs) are a preventative measure designed to stop potential troublemakers from engaging in football-related violence or disorder. The recipient of an FBO is prohibited from attending regulated football matches and, unless there are exceptional circumstances the order must also require the surrender of the person's passport when relevant overseas matches are to be played. Additional restrictions can also be imposed, such as prohibiting movements in areas around football grounds on match days. A 'regulated football match' is defined to include all teams playing in the Scottish Premier League and the Scottish Football League.
- 2.2 Football Banning Orders (FBOs) in Scotland were introduced as part of the Police, Public Order and Criminal Justice (Scotland) Act 2006, and came into force on 1 September 2006. The Scottish legislation was based on legislation in England and Wales, principally the Football (Disorder) Act 2000. A key difference is that the Scottish legislation was originally driven by the then Scottish Government's 2006 'Action plan on Tackling Sectarianism in Scotland'³ with the intention that FBOs would help tackle violence and disorder specifically associated with sectarian rivalries.
- 2.3 FBOs can be issued by the courts following a conviction for an offence instead of, or in addition to, any sentence the court could impose for the offence. In this case, the court must be satisfied that the offence involved engaging in violence or disorder and that it related to a football match; an offence is automatically regarded as related to a football match if it is committed at the match or on the way to or from a football match, and can be regarded as relating to a match if it appears that the offence was motivated by a football match. For a court to impose an FBO, the court must also be satisfied that there are reasonable grounds to believe that making the order would help to prevent violence or disorder at or in conjunction with any football matches (Police, Public Order and Criminal Justice (Scotland) Act 2006, S.51). An FBO issued by the courts following a conviction is known as a banning order on conviction.
- 2.4 An FBO issued alongside a conviction usually originates in the police requesting that an FBO be considered by the court. The police report on an offence that is submitted to the Procurator Fiscal's Office will usually contain the request, and this may in turn be conveyed in court by the attending Procurator Fiscal depute to the presiding Sheriff. The initial decision to request an FBO may rest with the arresting officer, or subsequent to the arrest, a match commander (the officer in charge of policing at the event), a football intelligence officer, or a case management officer, may decide that the offence was of seriousness that merits such a request being made.
- 2.5 The police can also make a summary application to a Sheriff court for an FBO to be imposed against an individual who has not necessarily been

³ See <http://www.scotland.gov.uk/Publications/2006/01/26134908/4>

convicted of any offence, known as a banning order on complaint. Here, the police must evidence that a person has i) 'caused or contributed to' violence or disorder in the UK or elsewhere and ii) that the imposition of a banning order would help prevent football-related disorder occurring in the future.

- 2.6 An FBO can last up to 10 years and anyone who fails to comply with the terms of their FBO, or commits an offence while under an FBO, can be fined and imprisoned for up to 6 months.

The evolution of football banning orders

- 2.7 In England and Wales the origins of the legislation relating to banning orders lie in the mass disorder at and around football matches in the 1970s and 1980s. This was accompanied by a reduction in the number of spectators, and a national reputation for disorder at football matches both domestically and internationally (McArdle 2000).

- 2.8 The Public Order Act 1986 enabled those convicted of 'football-related' offences to be banned from attending matches in England and Wales. Before the Act came into force, keeping 'hooligans' out of grounds was dependent upon clubs using their own contractual powers to exclude known trouble-makers (McArdle 2000).

- 2.9 On the assumption that the use of banning orders had a positive effect the Football (Disorder) Act 2000 was introduced in England and Wales. After high-profile incidents involving England fans in (for example) Marseilles, Dublin and Charlerois, it had become apparent that the fans involved in acts of hooliganism while following the national side were often unknown to the police. England's hooligans seemingly regarded their endeavours as a patriotic duty, with club-level violence being deemed somewhat parochial and likely to draw unwanted attention to those involved (Stott and Pearson, 2006; 2007). These fans therefore often slipped under the authorities' radar because they were not involved in club-level violence and had thus avoided prosecution and/or club-imposed bans.

- 2.10 The 2000 Act circumvented this by allowing banning orders to be applied even if the violence did not meet the statutory definition of 'football-related' – they could now be imposed on conviction for *any* act of violence, if the court believed that the order would help prevent football-related violence too.

- 2.11 No less importantly, the 2000 Act also allowed the police to seek a banning order 'on complaint'. Under that provision (which is replicated in the Scottish legislation) a supporter who has not been convicted of any offence may still be susceptible to a banning order if the police can produce evidence they have i) 'caused or contributed to' violence or disorder and ii) that the imposition of a banning order would help prevent football-related disorder occurring in the future. So, video footage of supporters behaving badly, witness evidence, CCTV evidence, phone records, associating with known 'prominents' or otherwise behaving in a way which aroused suspicion (such as driving known hooligans to matches), could lead to an application for a banning order even if that evidence would not be sufficiently strong to justify its use in a criminal trial (James and Pearson, 2006).

2.12 Under both the English and Scottish regimes banning orders are civil matters, ostensibly designed to prevent violence rather than to punish the individual transgressor. If orders are issued in a criminal court, they are issued *in addition* to any sanction imposed by the court. However, they are sought by the criminal law agencies and there are criminal sanctions in the event of their being breached (in the form of fines or imprisonment).

2.13 In England and Wales there were over 3000 banning orders in force by the time of the 2006 World Cup and the Home Office initially set aside £5 million a year to develop evidential ‘profiles’ against what are now known as ‘risk supporters⁴.’ These monies were channelled through the UK Football Policing Unit which monitors performance, coordinates and collates intelligence, and leads with the administration of orders⁵.

2.14 In Scotland, whilst the responsibility for applying for, and enforcing, FBOs rests primarily with the police, and the responsibility for issuing orders lies with Sheriffs, the implementation and enforcement of the FBO legislation (what we shall hereafter refer to as the ‘FBO regime’) is supported by the Football Banning Order Authority. This essentially consists of a civilian FBO manager, who is located within Strathclyde police, but has a national remit.

2.15 The FBO manager within Scotland has operational, tactical and strategic roles (ACPOS Football Banning Orders: Operational Guidance). Principally the manager:

- Monitors FBO applications as they arise, and provides support and assistance to police forces and COPFS in progressing cases as required.
- Has a lead role in the day to day administration of banning orders, including ensuring that banned individuals are appropriately registered when an order is issued, and individuals are notified when they are required to comply with a particular condition of the order (for instance surrendering a passport prior to an international game). This role is based on working with – and through – local police divisions.
- Monitors compliance with orders, and progresses breaches, again working with and through local police divisions, and through liaison with COPFS.
- Works at a tactical and strategic level with all relevant partners to identify challenges confronting the FBO regime, and developing solutions. This includes representing the FBO regime with relevant stakeholder groups (e.g. the ACPOS football sub-committee) and with key partnership groups (principally the FBO monitoring group which is convened by the Scottish Government).
- Raises awareness, understanding, and appropriate engagement with the FBO regime through participating in the delivery of various accredited and *ad hoc* training programme and events.

⁴ This term is now widely used and understood to imply an individual who has a history of engaging, or seeking to engage, in football related violence or disorder, principally organised disorder.

⁵ A description of the UKPFU’s remit and duties can be found here

<http://www.scottish.parliament.uk/business/committees/justice2/inquiries/ppo/PB16%20UK%20Football%20Policing%20Unit.pdf>

- Monitors the overall performance of the FBO regime, and produces – for the purposes of accountability – performance statistics.

Patterns and trends in football violence

- 2.16 The performance of the Football Banning Order regime cannot be judged in isolation from background trends in the problems that it is intended to control. Furthermore the regime in Scotland was not intended to simply copy the English regime's focus on controlling organised violence by football hooligans and violence by fans attending matches abroad. Indeed, the Scottish legislation was introduced as part of the Scottish Executive's action plan for tackling sectarianism (Scottish Executive 2006).
- 2.17 There is unfortunately no reliable statistical data to give a precise account of trends in different forms of violence or disorder associated with football in Scotland, however there was a marked consensus amongst research participants regarding broad trends in recent years.
- 2.18 There was a widespread view that behaviour *within* stadia both in Scotland and in England and Wales, was significantly improved when compared with conditions that would have been experienced ten or twenty years ago. Controls, in terms of the stewarding and policing operations, were mostly viewed as extremely tight and professional. This, combined with a large number of regular season ticket holders for league fixtures who had allocated seats (and could therefore be readily identified if they did misbehave), was seen as creating an environment that was orderly and predictable and where everyone knew the standards of behaviour expected.
- 2.19 There were fewer problems with organised hooliganism. Whilst most of the notorious casuals firms still existed in some form or other, they were viewed as being less active than they had been in the past, in many instances focussing more on ritualised antagonism with rival supporters, rather than regularly initiating violent confrontations. There were also – at least in Scotland – few problems experienced with supporters travelling abroad. In particular travelling support for the national team was highly regulated, and had been viewed both here and abroad as markedly better behaved and less of a threat than the equivalent travelling support for the English national team (see Guilianotti 1994; 1995; 2005 and Scott *et. al.*, 2001)
- 2.20 It is notable that, whilst problems of football related violence and disorder may have significantly declined in terms of scale and scope, there was a marked absence of complacency amongst those involved in the administration of the Scottish FBO regime. This lack of complacency, in part may also have been informed by the context of violence and disorder itself, both in terms of the most recent trends, and in terms of some enduring characteristics.
- 2.21 The last two seasons have seen something of a resurgence in football related violence and disorder, including organised violence. This resurgence appears to be associated with some clubs and some fixtures. Of the five clubs included in the Scottish case study areas, Football Intelligence Officers for two clubs didn't report any significant trend, whilst the remaining three

officers noted an increase in problems. Whilst some groups of risk supporters continue to offer few problems, others have been notably active.

2.22 Many non-police research participants interviewed through this research had a tendency to conceive of football violence and disorder very much in terms of a problem occurring within stadia or immediately around stadia. This view of the problem of violence and disorder in turn informed their interpretation and understanding of what, and who, the FBO legislation was targeting. The difficulty that this presented is that few if any members of the risk groups, who may be seen as one of the primary targets for the legislation, actually went to a game to cause trouble. Indeed, many risk supporters didn't attend football matches at all.

“the football is the catalyst, but a lot of them don't go the football. It's just being.. the big attraction being part of a group, you know [...] the football is just the very vague, central theme to it all”

(Police Respondent 5)

Table 2.1: Risk, violence and disorder in three clubs			
	Problems in Stadia	Problems on the way to/from Stadia	Other problems on match days
<i>CLUB 1</i>	No significant problems. The majority of the risk supporters do not go to matches, and few are season ticket holders.	Problems with risk fans attacking risk and non-risk fans on the way to venues both home and away	Problems with risk supporters organising violence on, or around, match days away from the venue, or on routes to the venue
<i>CLUB 2</i>	No problems in stadia, the majority of the risk supporters go to the match and are season ticket holders. They are very committed fans.	A few problems with risk fans attacking risk on the way to venues at home, though occasional trouble for away matches	Some problems with risk supporters organising violence on, or around match days away from the venue, typically after the match
<i>CLUB 3</i>	Problems of disorder in the stadia, but not caused by risk supporters but by general supporters. Risk supporters don't attend matches.	Occasional problem with risk fans attacking other risk supporters on the way to matches at home, but not at away matches.	Some problem with risk supporters seeking violence on or around match days, but again rarely travel for trouble, but wait for opposing risk fans to come to them.

In practice, as Table 2.1 demonstrates, how violence and disorder presents itself varies widely by club and fixture, and this in turn suggests that the FBO legislation needs to be flexible enough to cope with different risks in different contexts.

2.23 Volatility and opportunism continue to be a marked feature of risk groups, with new allegiances and grievances forming rapidly and often by chance. This complicates policing, and puts an onus on maintaining the intelligence picture to keep abreast of emerging types of risk.

2.24 Problematic trends also have the potential to emerge from non-risk groups of fans. For instance, both in Scotland and England, new fan-based groups, some modelling themselves on European ‘ultras,’ have emerged. This was mentioned both at Celtic and in Cleveland where young supporters have adopted a similar style to the Italian Ultras. These are ‘super’ fan groups who wear club colours (unlike the casuals) and often have large banners celebrating club triumphs. Whilst these groups are not currently considered risk groups as such, and have not been actively engaged in violence, there has been some involvement in Scotland in what is *effectively*⁶ sectarian disorder. The growth and activity of these groups needs careful monitoring.

2.25 There were mixed views as to the prevalence of problems outside the Scottish Premier League (SPL). Whilst some Scottish league clubs clearly had some quite significant issues with violence and disorder, whether these merited, or required, the application of more FBOs than are currently issued is unclear. It may be that the comparatively low attendance figures associated with non-SPL clubs provides other opportunities for dealing with such problems without recourse to FBOs. The presence of violence and disorder outside of SPL and Scottish league clubs remains unclear, though some respondents were of the view that there was an issue here to be addressed,

“Most clubs have a problem, how far you want to stick your head in the sand and say we don’t have a problem?.. The problem only arises when there is a fight that takes place or an incident occurs [...] If nobody identifies people as risk supporters, then you are not going to have a problem either”

(Police Respondent 2)

2.26 The FBO legislation as it stands, only encompasses SPL and Scottish League clubs, and for the purposes of the legislation these are defined as ‘regulated football matches’ (though there are in fact other matches outside the SPL and Scottish League which are nevertheless regulated by the Scottish Football Association).

⁶ ‘The Green Brigade’, an Ultras group at Celtic, have trod a careful line in terms of engaging in provocations that whilst *technically* not sectarian, are arguably drawn from – and further stoke – sectarian rivalries and tensions. For instance, their display in 2010 of a banner depicting, rival club Rangers, Ibrox stadium burning, with the slogan ‘let’s go to war,’ was perceived by most respondents here as sectarian both in nature and intent. Some respondents however retained the view that the group’s provocations were ‘political’ and not sectarian.

3 PERFORMANCE, ENFORCEMENT AND EFFECTIVENESS

3.1 The latest figures for FBOs on conviction, as provided by the FBO authority on the 7th December 2010, are provided below.

Table 3.1: Criminal Football Banning Orders

FORCE	FBOs REPORTED	COMPLETED CASES	CONVICTIONS	FBOs ISSUED
British Transport Police	140	107	67	9
Central	21	19	12	5
Dumfries & Galloway	4	4	4	0
Fife	9	8	4	0
Grampian	88	75	41	18
Lothian & Borders	170	140	43	4(2)*
Northern	8	6	3	2
Strathclyde	254	157	126	33 (6)*
Tayside	47	42	22	7 (2)*
TOTAL	741	558	322	88
*Numbers in bracket refer to FBOs that were not request by the police, but which Sheriffs chose to impose on their own initiative				

3.2 The police applied for seventy-eight of the granted FBOs, whilst a further 13 FBOs have been granted through civil summary applications by Scottish police forces (predominantly Strathclyde which accounts for 11 of these applications). In total, if one includes these summary applications, as of December 2010, 101 FBOs have been issued in Scotland. Whilst, these figures evidence a steep attrition from initial application through to eventual issue, they nevertheless represent a significant improvement on performance. A little over a year after the introduction of the FBO legislation Scotland, in December 2007, out of 221 completed criminal cases where an FBO application had been made only 8 FBOs were issued (just under 4% of all completed cases). This figure has now risen to just fewer than 16% of all cases, or 28% of all convictions.

3.3 A stronger indication of trends can be gained by looking at in-season figures (e.g. looking at the proportion of FBOs issued on the back of convictions in a particular football season). Complete, in-season figures were only available

for five forces⁷. In the 2007-2008 season, 26% of all applied for FBOs were issued, whilst in the 2009-10 season this figure had risen to 53%

- 3.4 Superficially, the performance in terms of civil summary applications has been stronger, with all but one civil application being granted (and the one application that wasn't granted was never fully tested in court as the police authority concerned withdrew on cost grounds). However, summary applications were no longer being applied for at the point when this research was being conducted, and the majority of applications all related to one football match (Manchester United versus Rangers in 2008), and were applied for because English FBOs issued on conviction were not enforceable at that point in time in Scotland.
- 3.5 The most relevant perspective however may be the percentage of secured convictions that lead to FBOs, and here some forces within Scotland clearly significantly outperform others, with – out of the larger volume forces – Strathclyde, Tayside and Grampian converting 31%, 41% and 44% respectively. This compares to a Scottish average of 28%.
- 3.6 Compared to figures for England and Wales these figures still look very modest, with over 2500 FBO orders having been issued in England and Wales since 2006, and with roughly an average of 1000 new orders being issued every year since the introduction of the amended football banning order legislation in the Football (disorder) (Amendment) Act 2002. Moreover, it has been claimed that nearly 80% of all FBO applications in England and Wales have been successful.
- 3.7 There are some qualifying points that significantly soften the starkness of this comparison. Aside from differences in the levels and types of football-related violence and disorder, as alluded to in the previous section:
 - The application of FBOs in England appears to have been target-driven and partially pump-primed through Home Office funding. As figures later in this report show, English FBOs are dispersed across clubs and across divisions. Whilst this may to some extent reflect the widespread presence of hooliganism, it also seems at least partially to suggest that FBO applications are driven by police-pursued, club-level quotas (whether these are formal and explicit or not).
 - 36% of FBOs in England and Wales are issued to followers of premier league clubs, compared to 93% in Scotland (FBOs issued up to the end of the 2009-2010 season). This may reflect some lack of awareness or engagement with FBO legislation by security officials outside the SPL, but the more plausible explanation lies in the comparatively small attendance figures associated with non-SPL

⁷ The five forces where complete figures were available were Strathclyde, Northern, Tayside, Fife, and Dumfries and Galloway. Two key omissions was one force (Lothian and Borders), and one police body (British Transport Police), that historically have struggled to secure FBOs (though British Transport Police have enjoyed more success of late). Whilst, we would still see an increase in overall application successes even with the inclusion of these forces, the rate of improvement would be lower.

clubs. Average attendance figures in the League's first division are typically around two to three thousand, whilst for the second division average attendance figures drop down to the hundreds. In comparison, clubs in England's Championship and first division commonly command attendances that are higher than all but the very largest SPL clubs, with average gates of 20,000 or more for some Championship league clubs. Given the significantly greater number of clubs and higher attendance figures in England and Wales, one would obviously expect a much greater number of FBOs to be issued South of the border.

- Finally, those aspects of the English legislation that make consideration of an FBO compulsory for any relevant FBO offence, and indeed make the issuing of an FBO a presumption, are also therefore more likely to lead to a higher conversion of FBO applications into 'FBOs issued'. As in Scotland, the majority of FBOs "on conviction" are not targeted at risk supporters engaged in organised violence, but are targeted against ordinary supporters who misbehave perhaps only on one or two occasions. It is precisely in these sorts of FBO cases – that are often considered to be somewhat 'borderline' in terms of meriting an FBO – that the presumptive element of the English legislation may potentially generate significantly greater numbers of issued FBOs.

3.8 However, even if one puts aside the issue of greater size and attendance associated with football in England and Wales, the rate at which FBOs are issued, even for the larger SPL clubs, is still some way below the rates found for English premier division clubs. Whilst rates of banning orders per 1000 supporters for most of these English clubs typically fall within the range of one to two banning orders per 1000 supporters, the rate for SPL clubs is typically lower, though not nearly as low as one might extrapolate based on a quick reading of FBO headline figures. For instance, two clubs, Aberdeen and Dundee United, come close to matching English clubs in terms of their banning order rates.

Table 3.2: Football Club Attendance and FBOs

	Unofficial Average Attendance 09-10	FBOs active 09-10	BO rate per 1000 attendance
Rangers	47,564	26	0.5
Celtic	45,582	21	0.5
Hibernian	11,806	3	0.3
Aberdeen	10,461	9	0.9
Dundee United	7,821	6	0.8

3.9 In contrast, the proportion of orders that are issued through civil summary application in Scotland are almost identical to the proportion of banning orders that are based on civil applications in England and Wales (roughly 13% of all FBOs issued). Thus, it might be argued that the component of the FBO regime that is most tightly targeted on risk supporters, works as well in Scotland as it does in England and Wales.

3.10 This might be partially true, particularly in the Strathclyde police force area. However, these figures somewhat flatter, as the research evidenced a steep tailing off in the propensity to use summary orders in Scotland, primarily due to budgetary constraints. Bluntly put..

“there is no money for civil applications in this force”

(Police Respondent 2)

3.11 The research also showed that in key SPL clubs the size of the risk support groups was often quite comparable to the risk groups in the English premier division. For instance, most of Manchester United’s 74 active FBOs are civil applications targeting some of its 30 to 40 core risk supporters (with roughly a further 150 ‘hangers on’ or ‘peripherals’). Several key SPL clubs have risk groups that can readily match this both in terms of core group and peripheral numbers. The likely adequacy of Scotland’s 13 orders (eleven of which fall within one force) on this basis becomes more questionable. However, without the support of individual forces in terms of committing resources, there is nothing that the FBO authority, or individual Football Intelligence Officers (FIOs), can be expected to do to increase this number.

The quality of FBO targeting and decision making

3.12 A comparative review of numbers can only tell us so much, particularly – as is touched on in the English section of this report – because the FBO numbers in England and Wales appear partially to be driven by a ‘numbers game’ which equates more FBOs with more appropriate or more effective FBO practices. To assess this more qualitative aspect of performance we need to look in more detail at who is targeted and how. To do this, the evaluation looked at:

- The criminal records of a sample of individuals, all of whom had been convicted of a football related offence and considered for an FBO, though only some of whom had actually been issued with an FBO.
- A similar paired sample of FBO, and non-FBO football related offenders, this time looking at electronic case records held by Crown Office. Our primary interest was the police report section and the police remarks section as well the court instructions given to the depute handling the case in court.

Comparing FBO and non-FBO convictions

3.13 In interviews, a number of cases were raised as examples of instances where Sheriffs had not issued FBOs to potential recipients. Complaints were also made more generally about inconsistencies in outcomes, including cases where trivial incidents led to an FBO. Undoubtedly there have been cases where individuals arguably deserving of FBOs have, for some reason, not been issued them. One case that perplexed most respondents, including Fiscals and Sheriffs, was that of a fan with a previous football-related conviction who set light to a rival supporter’s fancy dress costume on a crowded train on the way back from a match, seriously injuring him and endangering the lives of others (many of whom were dressed in similar

flammable costumes). Regardless of intent, it seemed questionable to many that a man who clearly has a record of misbehaviour within the context of football matches, escaped an FBO when an FBO was applied for. This however, is an extreme case, and to examine whether FBOs are, or are not, applied appropriately, we looked at Crown Office records (see paragraph 5.7 for further discussion of this case).

3.14 Police case descriptions were coded so that we could identify those cases – based on a close reading of the legislative guidance – that potentially merited an FBO at least in terms of the presenting aspects of the case. We also coded those that appeared so minor or trivial that the appropriateness of an FBO was questionable. These cases were rated as ‘marginal’:

- Of the 20 cases examined where FBOs were issued, only one incident was rated as marginal.
- Of the 39 cases examined where FBOs were not issued, 12 incidents may be regarded as marginal, and in a further two cases the police had not supplied information that in any way evidenced the football-relatedness of the offence.
- In contrast, 6 of the 20 FBO cases (30%) either involved incidents of group-based, organised violence (4 cases), or serious violence of some other form (2 cases). Of the non-FBO group, 11 out of 39 cases (28%) also involved what appeared to be group-based organised violence (5 cases) or other serious incidents of violence (6 cases).
- The other key difference between these two samples was that the non-FBO sample had a higher proportion of offences which had a sectarian or racial element (14 sectarian, and 4 racial, when combined 46% of the sample), compared to the FBO sample (6 sectarian and 1 racial, when combined 35% of the sample).

3.15 These findings are mixed. On the one hand there are, as one would hope and expect, more marginal cases in the non-FBO group. Whilst these cases may have received an FBO in England and Wales, it is not particularly troubling, and indeed it may be considered desirable that these cases are selected out during the course of the judicial process. On the other hand, the findings also show serious incidents being missed in terms of the issue of FBOs. Finally, it would appear that offences that have a sectarian or racial element to them are less likely to attract an FBO than those that don't. At one level, it might be argued that these offences are comparatively trivial when compared to some of the serious incidents of violence that attract an FBO. However, given the context of sectarian abuse within Scottish football, and given that the Scottish FBO legislation was framed in order, explicitly to target such abuse, this finding is problematic. The picture becomes even starker if we examine our larger set of FBO and non-FBO convictions. Here convictions for sectarian and racial offences make up 41% of non-FBO cases, but only 19% of FBO cases.

Number of previous convictions

3.16 Another way to assess the appropriateness of FBO targeting is to look at the prior convictions of offenders with, and without, an FBO. To do this we

looked at our criminal record sample. The number and nature of the convictions received by members of the two groups was a key question for the analysis.

Table 3.3: Pre-Convictions for FBO and non-FBO Groups

Percentage* of each group previously convicted of:				
	Any crime	Violence (inc. domestic and football related)	Football related	Breach of the peace (including football-related)
FBO Group	76 (66)	43 (37)	33 (29)	43 (37)
Non-FBO Group	46 (32)	23 (16)	4 (3)	18 (13)
Two sample test of proportions**	p<0.001	p<0.05	p<0.001	p<0.01

* Numbers in brackets

** This is a test of statistical significance, e.g. determining whether the observed differences between the FBO and Non-FBO group can be judged as significant and probably not due to chance. All the comparisons here, are significant at the 0.05 level or below (the conventional threshold of significance in social science statistics).

3.17 Table 3.3 shows the pattern of convictions across the two groups prior to the first day of the order. It clearly shows that the FBO group were considerably more likely to have not only any conviction (76 per cent compared with 46 per cent), but were also more likely to have been convicted of a violent offence, a football related offence and/or a breach of the peace. Note that the time periods covered are not the same for both groups – this is because FBOs often did not commence on the day of the trial, so it was necessary to add a correction to take this into account. One implication here is that those given FBOs were more likely than those not given them to have had a previous criminal conviction at the time the decision was made. Methodological caveats aside, this finding is clearly encouraging and suggests that broadly, many of the appropriate individuals are being targeted by the legislation.

Quality of written evidence

3.18 Whilst FBO targeting may broadly look quite appropriate, there clearly are cases where FBOs have not been issued, where both the case details and offender's prior conviction history would strongly suggest that an FBO was appropriate. We examined our sample of Crown Office records to see if there were any differences in the quality of written submissions between FBO and non-FBO cases.

- One key difference is that FBO cases were almost uniformly supported by well-written, and often quite extensive police reports, which summarised the offence for the Procurator Fiscal depute. They were also supported by material in the follow-on 'police remarks' section that often went beyond making a standard request for an FBO, but which reinforced the impact or gravity of the offence: sometimes describing how an FBO would help

prevent future offending; sometimes directing the Sheriff to guidance on FBO legislation enclosed in submitted papers; and often directly alluding to the offenders' prior football-related convictions, or their status as a known risk supporter. There were a small number of high-profile cases where no remarks were entered on the electronic record, but in each of these cases it is known that the police had face-to-face liaison with Procurator Fiscal deutes to prepare these cases in detail.

- In contrast, 14 (36%) of the non-FBO cases were poorly supported either by police reports, or by police remarks. Typically, the football-related nature of the offence wasn't emphasised, or the remarks section failed to reinforce the impact or context of the offence (e.g. why a sectarian offence may be more serious than it appears to the untutored eye within a particular context).

- Finally, there were clear differences between the two samples in terms of written instructions for Procurator Fiscal deutes. In only 6 of the FBO cases (30%) were no clear instructions provided. Many of the instructions that were provided also went beyond the basic re-iteration that an FBO should be asked for, but also again re-emphasised the impact of the offence. In contrast, in 29 out of 39 non-FBO cases (74%) the FBO was not supported by written court instructions. In some instances, bail was supported but an FBO was not. In six cases there were no court instructions at all.

- It is important to note though that this is only written material from court papers, and the absence of an instruction does not mean that an FBO wasn't in fact asked for by the Procurator Fiscal deute. However, one must presume, and interview evidence would back this up, that in a number of cases Fiscal deutes aren't asking for FBOs even though the police have requested them. Indeed in one case here an FBO for a sectarian offence was explicitly discounted in the written instructions on the grounds that the FBO legislation did not cover such offences, clearly indicating that the knowledge and awareness of FBO legislation is not always what it might be.

The effectiveness of issued FBOs

3.19 This leads to the question of whether issued FBOs are effective in preventing future football-related offending. Technically, this is a difficult question to answer definitively, though we will present what figures we can below. There was also ample anecdotal evidence from respondents on the effectiveness of orders, both in terms of impacting on those subject to them, and in terms of deterring others. For example as one respondent observed when talking to a banned supporter:

"...he basically says, 'that's my life, take anything away from me but don't take away my ability to go to a football match'. And that individual he had bail conditions that lasted for about six months, and he openly admitted that was like the hardest six months of his life"

(Police Respondent 5)

3.20 Taking again the FBO and non-FBO conviction samples, we looked at convictions after the first day of the FBO/day of the trial. Because the motivation behind the analysis was to examine whether receiving an FBO had an influence on subsequent offending, a six month delay was added in each case, making it more likely that the offence tried was committed after the FBO was granted (or the 'non-FBO' trial was over – note that missing data reduced the sample size to 69 in this case). In the event, it appeared that the FBO group were more likely to have been found guilty after receipt of an order than were the non-FBO group after their trial – but only in relation to football related offences (none of the non-FBO group were convicted of a football related offence after the original trial). For 'all offences', violence and breach of the peace there was little difference between the groups. This finding is perhaps not surprising given the much higher levels of football related offending among the FBO group prior to receiving an order (see Table 3.3). A higher rate of re-offending might have been expected on the basis of their prior conviction history, but this does also suggest that orders are not fully effective at preventing or deterring recipients from re-offending.

Table 3.4: Post-Convictions for FBO and non-FBO Groups

Percentage* of each group convicted 6 months or more after initial conviction				
	Any crime	Violence (inc. domestic and football related)	Football related	Breach of the peace (including football related)
FBO Group	28 (24)	7 (6)	9 (8)	9 (8)
Non-FBO Group	18 (13)	7 (5)	0	4 (3)
Two sample test of proportions	p=0.19	p=0.94	p<0.05	p=0.23

* Numbers in brackets

3.21 Tables 3.3 and 3.4 show the proportion of each group found guilty of at least one offence of each type. Another way to slice the data is to look at the average number of guilty verdicts received for each group, before and after the FBO commenced compared with before and after the non-FBO trial. Table 3.5 shows that, the FBO group appeared to be the more prolific offenders before receiving an order, with an average of 6.1 offences per person compared with 2.0 for the non-FBO group. By contrast, the difference between the groups was much smaller (and non-significant) after the granting of the order/day of the trial. This finding needs to be treated very cautiously, but it may indicate that the FBOs have some influence in decreasing the intensity of offending among those who receive them, even if

these individuals are still more likely to go on to commit offences than those considered for but not given an order⁸.

Table 3.5: Average number of convictions for FBO and non-FBO Groups

	Prior to first date of FBO/date of trial at which FBO could have been issued	After first date of FBO/date of trial at which FBO could have been issued
FBO group	6.1	0.6
Non-FBO group	2.0	0.5
T-test, independent samples*	p<0.001	p=0.42

* A test of statistical significance.

Note: Averages calculated including those with zero convictions. 'After' figures calculated excluding offences tried within 6 months of FBO commencing/non-FBO trial date

The squeezed middle?

3.22 One final aspect of orders, that hasn't been examined in detail to date, is the conditions associated with those orders. Beyond a basic ban on attending football matches, or individual stadia, or the standard additional ban on travelling abroad during certain match periods, what other measures are put in place to control the behaviour of misbehaving supporters? Here the contrast with England and Wales is at its most stark, because the answer to date for Scotland is that with literally two or three exceptions, additional conditions have not been imposed on any convicted FBO-recipient.

3.23 If an individual is passionate about attending football, or only misbehaves within football stadia, then a ban on attending matches may be effective either in terms direct preventative control, or in terms of deterring that individual from misbehaving away from the stadia in the future. But, if the individual concerned, as is characteristic of a significant number of risk supporters (though by no means all), has no interest in attending the match, but rather uses match days and bonding over club-allegiances as a way of accessing opportunities for recreational violence well away from the stadia, then FBOs without conditions (for instance banning them from city centre pubs on match days, or stopping them from visiting towns, and going on trains to towns, where 'their team' are playing away) are going to have no plausible impact.

"no impact on them whatsoever, because they can't go to the football match. So what! They can still go to the city centre, they can still meet with their chums in the bar, he can still travel"

(Police Respondent 4)

⁸ The difference between these groups may have been smaller still if one could control for the fact that most non-FBO recipients would have received bail conditions that would have been largely identical to the conditions contained in an FBO (e.g. being banned from attending regulated football matches). These, albeit shorter bans, may have had some long-term deterrent effect on non-FBO recipients.

“For me the banning order legislation is fine in its own right, however, the risk supporters won’t fight at the stadium they will fight outwith the stadium, so me for the legislation’s got to go further and to ban them from a town or city where that club is playing”

(Police Respondent 3)

3.24 Interviews with Sheriffs and Procurator Fiscal deputies have evidenced why gaining such conditions may be difficult. As it stands these professional groups are demanding of clear evidence that incidents away from stadia are football related. It may be that they require an appropriate level of linkage or that there is a lack of awareness of the dynamics of this sort of violence. As one respondent noted:

“If these people really wanted to engage in violent disorder, in those sorts of numbers why not do it this afternoon? Why not go up to _____ Park this afternoon and, er, one group approach from the West and one from the East at twelve o’clock today? Why does that not happen? Why does it have to be a football day?”

(Police Respondent 5)

3.25 However, the case for conditions has rarely been tested, as officers themselves have admitted that they very rarely try and ask for conditions. In their view getting a basic FBO is hard enough without trying to argue for more restrictions. This is supported by our sample of Crown Office data, where only one out of fifty nine cases included a request for additional conditions. But these restrictions are enshrined in the legislation, and their inclusion was based precisely on the anticipated need to deal with organised violence away from the ground.

3.26 In England and Wales conditions have been pursued and pushed – often at a club level based on well-evidenced knowledge of out-of-stadia trouble spots associated with match days – through the pursuit of civil banning orders. In Scotland the data analysed here would suggest that it is neither the sectarian offender nor risk groups – the two primary targets for the Scottish legislation – who are most likely to be affected by that legislation. Rather, it is in fact ordinary fans in the middle who commit acts of violence and disorder within or immediately around stadia, who are arguably most likely to feel its full force. This is not to put forward the view that this group don’t fully deserve banning orders when committing often quite serious criminal acts, but it is worth considering whether more needs to be done to improve the ‘reach’ and effectiveness of the legislation in terms of these other groups.

4 POLICING, STADIA SECURITY AND ENFORCEMENT

Identifying a football-related offence

4.1 A successful FBO regime starts with, and is wholly dependent on, the successful identification of football related offences in the first place. Such identification may be by a police officer outside football stadia, or by a steward or an officer within stadia. When an incident is recognised as football-related, the regime then relies on the decision making of police officers to determine whether the offence is of a seriousness that merits a football banning order application. In the first instance this may be the arresting officer or the match commander, the latter being responsible for reviewing all arrests made in and around the stadia.

In stadia

4.2 Within stadia the responsibility to control behaviour falls between the club and police. As per the Lord Advocate's 1995 Guidelines,⁹ the initial responsibility for policing the behaviour of both players and spectators within the ground lies with the clubs and its officials, though it is then for the police to use their discretion when determining whether an incident is serious enough to merit arrest and referral of a case to a Crown Office and Procurator Fiscal Service (COPFS) office. As mentioned, there was a general consensus that these arrangements work well and that the different sets of officials work with general accord in terms of what behaviour merits formal criminal justice intervention and what behaviour merits lesser sanctions. The general opinion of Match Commanders was that they were a highly competent and professional group. Qualification as a match commander has, in recent years, required more formalised training at the Scottish Police College, including training directly on the application of FBOs.

4.3 However, it should be noted that this evaluation focussed on five of the biggest clubs in Scotland, and there was a view among some participants that the quality of process and decision making was less assured elsewhere. In particular the engagement of divisional commanders was seen as being fairly critical in terms of how much resource and attention was paid to football-related violence and disorder. The extent to which, for instance, football intelligence officers (FIOs) were given any time to do their work, was largely at the behest of divisional commanders rather than pre-determined through any national standards, or ACPOS policies. Whilst it could be argued that dedicating less resource and attention may be a reasonable response to the fact that there is less of a problem, police respondents were not always convinced that less resource equated to less of a problem. Football violence and disorder can easily be seen as of limited concern if incidents of violence or disorder are not appropriately identified as football-related in the first place.

4.4 Within stadia there was general confidence in the quality of decision making, though some respondents felt that – given the dynamic, fast-paced nature of decision making in this environment – information on FBO subjects and FBO conditions were not always readily available. Some FIOs helped here,

⁹ <http://www.crownoffice.gov.uk/sites/default/files/Publications/Resource/Doc/9/0000128.pdf>

providing briefing packs and photographs of all relevant FBO subjects for key games, though the capacity to do this for every game was limited. In England and Wales, the Minerva system provides all match commanders and FIOs with a live source of intelligence, photographs and FBO condition information for all FBO subjects. The system is now being rolled out in Scotland, and if it is used and properly, this system should resolve this issue.

- 4.5 Participants also identified a potential problem during the early period of the FBO regime with the quality of decision making by arresting officers and match commanders, with a tendency initially to sometimes request orders for incidents that were too trivial. It was thought, however, that the quality of decision making had improved, and there were broad levels of confidence in how the FBO regime was administered in response to incidents within stadia. This included a reasonable level of confidence in terms of current coordination and communication between club stewards and the police.
- 4.6 In most stadia, for most games, police officers no longer actively police inside the stadia, with this role formally being passed over to club stewards. Instead, police officers remain in concourse areas, ready to step in if a steward needs assistance with the removal of a fan, or if a fan merits arrest. Whilst some respondents expressed concern about the variable quality of stewards, respondents were still of the view that fans who needed to be arrested were being arrested. The one area of residual concern for some respondents related to those offences of disorder that stewards might be reluctant to challenge, notably sectarian offences. Whilst, large scale incidents could still be investigated through use of CCTV systems, more minor ones might escape attention if stewards chose to ignore the behaviour.

“if the same steward patrols the same part of the ground week after week, which they do, and if they are seen to arrest someone.. what the reaction to them will be I don’t know. There is a level of tolerance”

(Police respondent 7)

- 4.7 The Green Guide, which prescribes the standards of security that all SFA registered clubs need to follow, has been gradually tightened in line with the increasing responsibility being handed to clubs. Already, all club security managers require a high level of professional training. The Guide also prescribes a lower level of training for stewards. However, the high turnover of club stewards has made this difficult to achieve, with only the core of more professionalised stewards receiving the full prescribed level of training. Nevertheless, the quality of stewarding in terms of training provision does appear to have moved on from that previously described by O’Neil (2005), though one club official acknowledged that if greater responsibilities continued to be placed on clubs, then clubs would probably need a larger, more highly-trained, body of retained stewards.
- 4.8 Sectarian offences presented particular challenges for police officers as well as club officials. Whilst, the formal ACPOS position on dealing with sectarian offences may be characterised as ‘zero tolerance’ (ACPOS 2009: 14), it was not always possible for officers to immediately apprehend offenders. If an offence was largely confined to the actions of a single individual fan, then the

opportunity for taking appropriate action was greater. A steward however, might still be intimidated to take action against an individual situated within a large group of supporters, whilst match day officers might also view it as unwise to intervene there and then in view of the potential for sparking wider scale disorder. Nevertheless, respondents acknowledged that the opportunity would still arise later, when an individual for instance went to fetch their 'hot pie', for an arrest to be made. Large scale sectarian action, for instance a large section of a crowd singing abusive songs, presented more of a challenge.

"it does boil over at football and you hear sectarian chants from both sides, and it's not right, but it's hard to take action against twenty, thirty thousand people who are singing the same song"

(Police Respondent 7)

4.9 Stewards were instructed by clubs to report any such incidents to match commanders, though commanders would usually not be able to intervene 'there and then' on safety grounds. Evidence could of course be gathered for taking subsequent action, and this was done on some occasions. However, there was a lack of consistency and consensus here amongst respondents about the practicality and appropriateness of targeting individuals within such large crowds for FBOs. If a ringleader presented themselves then respondents certainly agreed that action was appropriate. But in the absence of an obvious ringleader there was little clarity about how FBOs could or should be used. There was universal agreement that sectarian issues went well beyond football, that they stemmed from historic tensions, and that 'something needed to be done' about them. But what that 'something' amounted to, in terms of specific club and police responsibilities within the confines of a specific football event, remained unclear.

4.10 Finally, a key quality that both police and club officials identified as vital to the robustness of security arrangements, and more specifically, to the robustness of FBO processes in and near stadia, was achieving a reasonable degree of consistency in terms of key officials responsible for these provisions. For instance club officials clearly valued having a limited pool of police match commanders running match day operations. In their view this helped ensure: that match commanders understood the specific issues relevant to that club and its fans; that they could communicate effectively with each other and with club officials through the course of a season; and lastly, that there was a consistency of judgement when dealing with issues of violence and disorder.

Away from the stadia

4.11 There is evidence to suggest that the more removed incidents of football related violence and disorder are from the stadia, and from the routes to the stadia, the less likely it is that incidents will be dealt with appropriately.

4.12 As with incidents inside the stadia, incidents in the immediate vicinity or on obvious routes to and from the stadia were viewed as being fairly effectively policed by public order units, forward intelligence teams, spotters, and – for routes involving public transport, by members of British Transport Police (BTP). BTP in particular appears to be very active in identifying football

related offences, and pursuing banning orders, notably targeting sectarian disorder on public transport. Whilst BTP had limited success with these applications at first, there are indications that their attention to detail, in terms of: ensuring that all its officers are fully briefed and are aware of football issues; that they evidence cases properly and emphasise offence impacts; that they support applications where appropriate with video evidence of incidents; and where they liaise with COPFS and the Glasgow Deputes to ensure that cases are properly presented in court – have all begun to pay dividends.

- 4.13 Participants identified the problems emerging when incidents took place well-away from stadia and direct travel routes, or occurred after dedicated match policing operations had ‘stood down’. The difficulty in these circumstances was that football related offences would be dealt with by officers who may, or may not, have any particular understanding of football related violence and disorder or football banning orders. Moreover, in the absence of the Match Commander there would be no immediate form of quality control to assess the arrests made in terms of their suitability for an FBO application. This would not be problematic where football violence and disorder is conveniently concentrated in and around stadia, and closely within the period before and after matches. But several police respondents were candid in their assessment that risk supporters knew ‘right well’ when police operations wound down, and would often wait to organise violence shortly after the police vans had departed. Similarly, incidents of organised fights between rival sets of risk supporters would often not be arranged for anywhere near the confines of stadia or on the public travel routes to them (which appear to be very well monitored by British Transport Police). Indeed, as respondents made clear, risk supporters would often ‘hole up’ in pubs or other venues away from stadia and wait for the police operation to wind up before looking for rival supporters.
- 4.14 In this context, it becomes important that arrests made away from match operations, are identified and processed appropriately. However, FIOs were fairly unanimous in the view that this often didn’t occur. Officers either didn’t realise the value in alluding to the fact that an incident was football related, or if they reported an incident as football related, they didn’t write their arrest report in such a way would support an FBO by clearly evidencing the link to football. Given the large number, and high turnover, of frontline officers, it would not appear reasonable to expect frontline officers to have a working knowledge of FBOs, nor would it probably be realistic in resource terms to expect that such knowledge could be reliably imparted to all frontline officers and maintained. A further potential area of oversight would be that a failure by the arresting officer to check PNC and the Scottish Intelligence Database (SID) could mean that an arrestee’s antecedent history of football related violence and disorder, or their status as a ‘risk supporter’ was missed.
- 4.15 One respondent provided a good example of the ways in which frontline officers may fail to clearly communicate the football-related nature of incidents in their arrest reports. This case involved two males shouting sectarian abuse on leaving a railway station. This was all that was communicated in the arrest report. What was not conveyed was that the incident took place on a

match day, that the two males were wearing club colours, that they were leaving the railway station to walk directly to the match venue, that they were planning to attend the match, and that fans of both teams were present at the incident.

4.16 More realistic, and sustainable ways to pick-up incidents that may be missed by arresting officers include the following:

- Case management staff have a general duty to quality control arrest reports, and indeed have a role in spotting football-related cases. However, FIOs were of the view that case management units could not – given the volume of work they faced – be solely relied on to pick up all such cases.
- FIOs often attempted to scan weekend arrest records in an attempt to spot likely incidents that might be football related. They could then contact the arresting officer if they found incidents that they felt merited an FBO application. FIOs did often attempt to do this, though they also admitted that the limited time they had to dedicate to the football intelligence role restricted the extent to which they could do this in any way systematically.
- Finally Procurator Fiscal deputies or even Sheriffs could pick up on cases that were clearly football related, but which had not been considered in terms of an FBO. There have indeed been a number of cases where Sheriffs have imposed FBOs of their own volition where none were requested by police. As part of the Glasgow Depute pilot, Procurator Fiscal deputies are also scanning incoming cases both to spot missed opportunities, but also to generally check the quality of reports where FBOs are being requested.

4.17 There was some concern and frustration that this type of violence and disorder was not always being effectively targeted. Even some clubs that had risk support that went nowhere near the ground, still believed that such groups needed tackling because they inflicted reputational damage upon the club. At least one force was reviewing how it conducted match day operations, with a view to extending the focus of match day operations to cover this more distant type of match day trouble, potentially re-positioning match-day stadia security within a broader 'event planning' framework.

But what, and who, is an FBO actually for?

4.18 Whilst police and clubs processes for identifying suitable FBO cases may account for some under-performance in the FBO regime, a more fundamental issue that may underpin inconsistencies in the use of FBO powers was very evident in interviews with stakeholders at every level (police, Fiscals, Sheriffs and club). Namely there was a wide range of views regarding who FBOs should be targeted at, and for what types of behaviour.

4.19 Whilst all respondents agreed that FBOs were suitable for violent offences, and for racist and sectarian disorder, there was considerably less agreement about how serious or aggravated some of these offences needed to be, or the extent to which an FBO might be suitable for a first time offender if an offence was of a certain level of seriousness.

4.20 For instance, some respondents took what might be termed a 'zero tolerance' approach viewing FBOs as suitable for any offence committed in a football

ground. Others saw this as disproportionate, and would only consider an FBO as suitable for repeat offenders, in particular those engaged in repeated, organised violence, or for a very serious first offence. Some respondents held the view that any sectarian offence, regardless of seriousness or the record of the accused, merited an FBO. Others were of the view that sectarian offences did not merit an FBO unless there were aggravating factors (such as the fact that the individual was a ringleader, inciting others to join in the disorder).

Identifying risk supporters, emerging risks, and organised violence

4.21 Much of the preceding chapter has considered the quality of police and club processes for appropriately identifying cases that merit an FBO after an arrest for violence or disorder has been made. However, part of determining and *effectively evidencing* whether an FBO is appropriate, is having a knowledge of the context of a particular incident (e.g. was it an instance of planned violence), and having a knowledge of the key individuals involved (e.g. are they known risk supporters, or do their associations on this occasion suggest their 'emergence' as a new risk supporter). Moreover, incidents of organised violence are unlikely to be picked up in the first place if appropriate intelligence and surveillance work is not undertaken to identify times and venues. This requires proactive policing strategies.

4.22 Police respondents were, without exception, of the view that undertaking proactive operations to monitor, and gain new information on risk supporters was essential. Central to this work was maintaining an overt and visible presence on match days, using high visibility 'forward intelligence teams' and police 'spotters', both to identify possible signs of trouble, and to 'spot' known risk supporters who might be intent on trouble. The long-term, strategic value of such work was that it allowed officers to keep abreast of new venues for association (and possible disorder), new allegiances and rivalries, and the identity of new recruits.

4.23 In terms of supporting the FBO regime, the value of this intelligence work was that it provided a bedrock of evidence that could be used in support of any FBO case, should known individuals subsequently be charged. An FBO application is more compelling if it can be shown that an individual has a history of behaviour and associations that marks them out as persistently troublesome. Moreover, for particular high risk individuals, intelligence could also be used to support – in the absence of a criminal conviction – a civil summary application for an FBO.

4.24 The use of spotters and visible intelligence teams was also seen as having a strong deterrent value. Fans, and risk supporters alike, could see that the police were keeping an eye out for misbehaviour. But this approach was also commonly characterised as relatively low key and non-confrontational, depending as it did on police officers having some rapport with legitimate fans and risk supporters alike, mingling with them and talking to them.

Pursuing an FBO application

4.25 There were clear benefits to police officers liaising with Procurator Fiscal deputies to ensure that all the relevant evidence in support of an FBO application is provided, and that the context of the case is clearly explained. In

practice such liaison appears to have been patchy. However, in most of the more serious or high profile cases, the FBO manager and/or FIOs did liaise with local Procurator Fiscal deputies, and the FBO manager took a general responsibility for monitoring progress for these cases.

4.26 Such instances though were the exception rather than the rule, and failing to follow cases through was clearly seen as detrimental. The primary reasons behind this lack of follow-through appear to have been:

- The onus for liaising with Procurator Fiscal deputies or attending court primarily falls on FIOs, who again do not appear in most cases to have the time to take on this extended role.
- Even if resource was available there was an evident cultural reluctance, found both amongst police officers and amongst some Procurator Fiscal deputies, to directly track cases through to prosecution. Some officers viewed it as procedurally proper that once reports and paperwork had been submitted that they should then have no part in court proceedings unless called as witnesses.
- However, at least one Procurator Fiscal deputy felt that this cultural 'reason' for police officers and fiscals not routinely liaising over cases was spurious, a post-hoc rationalisation of a distance that had grown up between the two agencies largely because of other factors (principally changed working practices, computerisation, and heavy workloads). The Procurator Fiscal deputies' view was backed up by internal COPFS guidance on FBOs that in fact encourages liaison with police officers.

Pursuing summary applications

4.27 Finally, it should be noted that outside of Strathclyde officers gave limited consideration to the use of civil summary applications (e.g. the equivalent of civil orders in England and Wales). A few had been made. They had exclusively been targeted at risk supporters, and all but one of these had succeeded with little difficulty. One force had even temporarily employed a civilian worker to help develop intelligence packages on all their major risk supporters with a view to pursuing summary applications against all of them. However, the resources were not available to develop further intelligence packages that would support summary applications. Nor were most forces on the whole prepared to consider funding such applications.

Enforcement and the FBO Authority

4.28 Once an FBO had been applied for many of the practical mechanics of enforcing bids rested, in the first instance, with the FBO Authority. The Authority was responsible for facilitating the compliance of FBO recipients with the conditions of their ban, and for ensuring that any breaches of those conditions were appropriately acted on. This role typically involved liaison with FIOs and with COPFS. The general consensus was that the FBO Authority operated very effectively in this regard.

4.29 An FBO usually was limited to individuals being banned from attending stadia during matches. Occasionally this could include an exclusion zone around stadia of several hundred meters. Very few breaches had been reported, though the broad phrasing of the FBO legislation had made it difficult to

evidence some breaches in court. In particular, the requirement to prove that a banned individual had 'entered premises' for 'the purposes of attending any regulated football match' gave plenty of scope for argument as to what constituted 'premises' and what constituted sufficient proof that an individual was planning to attend a match. Catching a banned individual directly outside a stadium, even if they were in possession of a ticket (which they could argue they were going to give to someone else) was not necessarily sufficient (though exclusion zones could help here). However, given the very low number of breaches *to date* – backed up with ample anecdotal evidence to suggest that many banned supporters were fully compliant – the implications of these difficulties should not be overstated.

4.30 Police respondents were quick to acknowledge that enforcing these bans, or judging their success is difficult. Picking out a face from a crowd of 40,000 individuals, sophisticated CCTV systems or not, is a tall order. Clubs usually support bans by also withdrawing season tickets, but of course this does not preclude individuals buying tickets from third parties, or attending with someone else's ticket. Detecting breaches was therefore very much viewed as intelligence dependent. Having a tip-off that a banned individual was planning to attend a match, and passing details of those individuals to those policing the match, was considered essential. Given the increasing reliance on club officials to monitor crowds within stadia, there was a strong consensus that more needed to be done to ensure that appropriate information and intelligence could be safely shared between the police and club officials (and indeed vice-versa). This requires the further development of both individual relationships at club-police divisional level, but also strategic relationships between ACPOS and the Scottish Football Safety Officers' Association (the umbrella body to which all Safety Officer's in Scotland have to belong).

4.31 Whilst intelligence officers were mostly well networked with each other, and with the FBO manager, there was no individual formally tasked to undertake the role of collating and coordinating football-related intelligence in Scotland. This stands in contrast to the intelligence-coordinating function of the UK Policing Football Unit in England and Wales, which produces both tactical and strategic intelligence products. A number of police respondents argued that the value of a central intelligence capacity would include: having the ability to collate trends in football-related violence across Scotland; being able to monitor and observe existing and emerging cross-club collaborations between risk supporters; and finally, being able to provide a single point of contact with which to liaise with equivalent authorities both south of the border and more widely in Europe.

5 SHERIFFS AND PROCURATOR FISCAL DEPUTES

Introduction

5.1 This chapter discusses the data which emerged from semi-structured interviews carried out with Sheriffs and Procurator Fiscal deputies from across Scotland that covered their perceptions of the banning order legislation.

Appropriateness of FBOs

5.2 In the context of this small sample, the one issue that seemed most germane to the Sheriffs' and Fiscals' approach to FBOs was whether they regarded themselves as football fans. Seven of the ten Sheriffs and all four Procurator Fiscal deputies defined themselves as such, usually being supporters of particular clubs and longstanding season-ticket holders. They were particularly knowledgeable about the history of their team, the 'problem' of football hooliganism and sectarianism, and the scope of the legislation. Indeed, one particular Sheriff who has granted "at least a dozen" FBOs since the regime came into force was quite explicit about how his knowledge of the game has impacted upon his approach to football-related cases:

"I'm a football man so I understand the dynamics of football behaviour, and I'm really against a lot of the behaviour that goes on... When there has been an opportunity, I have never not imposed an FBO. I'm very aware of them, I don't need to be told about it and it surprises me that there aren't more imposed."

(Sheriff 1)

5.3 This approach, where the granting of a banning order even for relatively trivial offences is the default position - and where a one-year ban is merely a starting-point - stands in marked contrast to the perceptions of all the other Sheriffs, most of whom had never imposed an FBO of more than one year's duration and all of whom felt a banning order would be unnecessary in the absence of aggravating factors. In every Sheriff interview the words 'Draconian' and 'disproportionate' were repeatedly used, regardless of where the interviewees were based or whether they regarded themselves as 'football fans' or not. They were certainly not comfortable with the idea that FBOs should be the norm upon conviction for all football-related offences:

"There's a distinction to be drawn between people who are involved in football clearly for the purpose of causing violence...and the majority of cases which tend to involve generally law-abiding people who've had a little too much to drink and have started behaving in a silly, childish way and done things they'd never do sober or if they weren't at the football. These people probably learn their lesson by being hauled before the court with a conviction for sectarian-aggravated breach of the peace or whatever...I don't think they necessarily require to have the full force of an FBO imposed on them."

(Sheriff 2)

“Banning Orders are a fairly Draconian response to what is pretty low-level stuff – sectarian chants, verbal abuse. I think they are too high up the scale unless that person has a history (of previous convictions).”

(Sheriff 3)

- 5.4 The Sheriffs’ quite conservative approach to the legislation contrasts with the perceptions of the Procurator Fiscal deutes we have interviewed. From this limited interview data it appears possible to discern potentially significant differences of approach between the two groups. The Procurator Fiscal deutes had all been perplexed by cases where FBOs had been sought in respect of offences committed inside grounds, and guilty pleas secured, but the Sheriffs had declined to grant the Order on the grounds that they perceived them to be a disproportionate response to a relatively minor offence. The Procurator Fiscal deutes interviewed were largely of the view that the imposition of an FBO ought to be the norm – that any criminal offence committed inside a football ground, or which was otherwise football-related, should lead to an FBO unless there were very exceptional circumstances.

“I’ve been involved in two applications in the last couple of years, and on both occasions the Sheriff declined to grant the FBO even though the offence had taken place inside the ground. He did so on the basis that what I was asking for was a pretty Draconian measure for something that was pretty minor. So far as I was concerned, a crime had been committed – a crime of public disorder inside a football ground – and I couldn’t see any reason as to why an FBO shouldn’t be granted”

(Procurator Fiscal Depute 1)

- 5.5 The small number of persons interviewed means it is unwise to attempt to offer any general guidance on the circumstances in which FBOs are likely to be granted, at least until the perceptions of this cohort have been tested against those of a much wider sample through quantitative research. However, as a broad rule of thumb and while acknowledging the research’s limitations we can say with some confidence that, in contrast to the Fiscals’ general view, the Sheriffs’ opinion was that individuals who have no previous convictions either for football-related offences or acts of violence in other contexts are unlikely to receive an FBO. That state of affairs will change if their offence has involved violence or the threat of it, running on to the pitch in circumstances which indicate something more sinister than an act of exuberance, or if missiles are thrown – or if the offender has the misfortune to be before one of the Sheriffs who takes a particularly dim view of football-related offences.

“In respect of a first offender who loses the plot in response to some perceived injustice on the field of play, I can’t see it being proportionate in the absence of an aggravating factor. If there was sectarianism or racism it wouldn’t need much of a level of violence, or a threat of violence, for me to decide it would be appropriate and if we got to a position where violence actually happened I think I’d have a low threshold for an FBO to become a real possibility”

(Sheriff 4)

- 5.6 Whilst most respondents' views of the legislation ostensibly accord with ACPOS' assertion that "FBOs will target those who display the most extreme behaviour", there is the potential for differences of opinion among Sheriffs, the Police and the Procurator Fiscal deutes as to what amounts to 'extreme'. For example, several Sheriffs thought the recent trend towards "players badgering the referees, creating a disturbance inside the ground, can actually cause a greater problem than some ned shouting sectarian abuse" and they asserted a willingness to deal robustly with such incidents. Indeed, one intimated he would be perfectly willing to consider imposing an FBO on a player whose on-field conduct had resulted in their being convicted by the criminal courts (as occurred in *Ferguson v Normand* [1995] SCCR 770 for example).
- 5.7 Clearly, it would be too simplistic to suggest that Procurator Fiscal deutes routinely advocate a more robust approach whereas the Sheriffs tend to be more cautious. The Procurator Fiscal deutes were well aware that few cases are ever clear-cut, and even the court's unwillingness to impose an FBO in the most high-profile case where one was sought but not granted (the case of Peter Wallace, see <http://www.bbc.co.uk/news/uk-scotland-north-east-orkney-shetland-11084526>) merits some degree of empathy. In this case, the Crown had accepted there had been no intent to injure (although the defendant's behaviour was clearly culpable and reckless), so consequently the Sheriff had grounds for deciding that an FBO would not reduce football-related violence or disorder as s. 51(3) of the legislation requires. The level of fine imposed on the defendant, Peter Wallace (with a twelve-month custodial sentence perceived by one of the Procurator Fiscal deutes as the only viable alternative), together with a £25,000 compensation order, reflected the severity of the incident; but no matter how egregious the offence or how heavy the penalty, that 'preventative' element of s. 51(3) – the concept of this additional sanction helping reduce violence or disorder associated with football - still needs to be established before an FBO can be regarded as a proportionate sanction.
- 5.8 All that said, it remains the case that many, perhaps most, Sheriffs would have imposed an FBO in the particular circumstances of this case. But there was at least the potential for a contrary view because the guilty plea had been tendered, and accepted, on the basis that there had been no intent to injure. In those circumstances, perhaps the decision not to grant an FBO is not as perverse as it may at first appear; but the fact that one was not granted despite Wallace's previous conviction for a football-related offence means the decision cannot be easily reconciled with the perceptions of most of the Sheriffs interviewed here, even though the incident took place some time after the match, on public transport and a considerable distance from the ground.
- 5.9 Most of the Sheriffs were alive to this need to be satisfied that granting an FBO will actually contribute to a diminution of violence or disorder at, or associated with, football matches as the legislation demands; they will not grant them if the FBO would simply be another aspect of the offender's individual punishment and has no wider effect. While one can argue that

granting an FBO might 'deter' others from committing similar offences (and some of the Sheriffs made that point strongly), others were not comfortable with granting them in the absence of prior relevant convictions, unless it had been established that the individual was inciting others:

"I've never had occasions when the Fiscals have tried to convince me that the guy in the dock is some sort of ringleader or that the violence was orchestrated. It's always been individuals who have reacted badly to what's happened on the pitch, they've usually been drunk and they've not been leading anything...but I've still granted the Order"

(Sheriff 1)

5.10 This difficulty in establishing the link between the individual's behaviour and the s. 51(3) requirements can be further explored through consideration of the High Court's judgment in *Walls v Brown* [2009] HCJAC 59. Here, in the course of a SPL match between Kilmarnock and Rangers, the appellant (a Rangers fan) had repeatedly sung one particular line from the infamous 'Famine Song' and had shouted sectarian abuse. No less important was Walls' making 'gestures' in the direction of the home supporters, ignoring repeated requests from stewards that he sit down and refusing to leave the ground when they asked him to do so. He was convicted of a breach of the peace aggravated by religious prejudice under s. 74(2) of the Criminal Justice (Scotland) Act 2003 and by racial prejudice under the s. 96(2) of the Crime and Disorder Act 1998. He was placed on probation for eighteen months and given a two-year football banning order.

5.11 Walls appealed by way of stated case, contending (inter alia) that the 'Famine Song' did not contain racist elements but was a legitimate expression of political opinion and the reference to 'Fenians' was merely a legitimate criticism levelled at the Fenian Brotherhood, a republican organisation founded in New York in the 1850s. He argued that if these references were seen in their proper context there could be no breach of the peace, given that there was no evidence of anyone actually being caused alarm or distress by what he said and that the swearing which accompanied his politically-inspired rhetoric was commonplace at a football match. Walls also sought to argue that the complaint against him was incompatible with his rights under Articles 8 and 10 of the ECHR. The appeal court refused to entertain that argument on the ground that neither argument had been pursued at trial, and that the first morning of a stated case appeal was neither the time nor the place to introduce it.

5.12 The High Court upheld the decision, confirming the Sheriff had been correct in her application of *Smith v. Donnelly* [2001] SLT1007 to the effect that a breach of the peace may occur where the conduct complained of is 'severe enough to cause alarm to ordinary people and threaten serious disturbance to the community'. The High Court affirmed that the conduct of the appellant did amount to a breach of the peace because:

'Even in the context of a football match...presence inside a football stadium does not give a spectator a free hand to behave as he pleases. There are limits and the appellant's conduct went well beyond those limits.... It is a

legitimate inference that persons in the crowd are likely to be alarmed and disturbed by such behaviour and that it does have the potential to cause or threaten serious disturbance'

(paras 18-20).

- 5.11 The testimony of a police Superintendent to the effect that he, like most fans, knew the words of the rest of the Famine Song (which had not been sung by Walls), that he found those words offensive and that “sectarian and bigoted chants could have an impact on parts of a football crowd...were they to take offence” (paragraph 2) were combined with evidence from a Kilmarnock FC steward and a Rangers FC steward to the effect that they were ‘bothered’ by the potential for an adverse reaction from the crowd around him. There had in fact been no such reaction - to the contrary, Walls successfully exhorted some of them to join his refrain – but the stewards’ evidence as to the totality of his behaviour took him comfortably beyond the bounds of what was acceptable, even in “the context of a football match”. It was clearly sufficient in law for the Sheriff to convict and for the High Court to uphold her decision.
- 5.12 Adducing evidence that an offender successfully encouraged the others to follow suit has at least the potential to be an important aspect of a s. 51(3) application because the requirement that a banning order would ‘help to prevent violence or disorder at or in connection with any football matches’ can invariably be made out if it can be established that the defendant was a ringleader, and a number of Sheriffs spoke of occasions where the Crown had tried hard to establish the link between the offender’s behaviour and its effect on those around him in order to strengthen the case for a banning order. On this occasion, however, Walls’ long record of convictions for violent offences (which included at least one football-related offence and a period of imprisonment for possessing a knife) meant there was no need to show that he had incited anyone. Perhaps he had, but the court’s approach in *Walls* reflects what the Sheriffs repeatedly indicated during the interviews: the strongest arguments for imposing a banning order will arise where a defendant has prior relevant convictions. Had Walls not been a serial offender many Sheriffs would have required clear evidence of a tangible link between his activities and the s. 51(3) requirements, and in those circumstances his effect on those around him would patently have been relevant. His conviction for breach of the peace reflected the totality of his conduct – both his sectarian bile and his repeated gesturing and posturing - while the consequences of what he specifically said were his convictions under the 1998 and 2003 Acts. The two-year banning order reflects his criminal history, which clearly illustrated that football grounds would be safer places if Walls was not allowed in them for a lengthy period.

The sectarian aspect

- 5.13 As intimated throughout this report, it is inevitably the case that any discussions about the behaviour of football fans in Scotland, and the policing thereof, will raise the spectre of sectarianism. Again, the dangers of making generalisations on the basis of such a small interview sample must be borne in mind, but it is fair to say that, with one clear exception, there was little enthusiasm amongst these interviewees for the proposition that a one-off

sectarian utterance should result in an FBO, especially for a first offender. That certainly does not mean that any of the Sheriffs regard sectarianism as an insignificant issue, and while it is possible that many Sheriffs sitting in Glasgow will grant an FBO for a sectarian-motivated offence when those sitting elsewhere might not, the question of whether granting an FBO was a proportionate response to the circumstances of a particular case was always in the minds of even those least likely to grant them.

- 5.14 Sheriffs outside Glasgow who identified themselves as football fans were probably more attuned to the realities of the situations in which sectarian offences are likely to arise than were those whose leisure interests lie elsewhere, but we are not in a position to say if that means they are more or less likely to grant FBOs. The most that can be said is that most Sheriffs we interviewed were wary of deciding that granting an FBO against a particular individual who uses sectarian language is appropriate if they are surrounded by up to 50,000 other people who know what they are going to hear when they choose to attend Old Firm matches and would not be offended by it;¹⁰ the others accepted that the legislation was not perfect but firmly believed “*you can’t condone and you have to start somewhere*”. While the Sheriffs in Glasgow might be more willing to look beyond that difficulty in interpreting the Act, most had yet to be convinced that banning one individual from grounds (particularly if he were a first offender) would help reduce the incidence of violence at, or associated with, football matches as the legislation requires:

“When you look at the type of people who are coming they tend to be overwhelmingly male, in their 20s, 30s and older, dyed-in-the-wool fans, who probably go to every game, go abroad...and if one individual in the middle of a group of [...] fans shouts something it’s not likely to upset too many people around him.”

(Sheriff 2)

- 5.15 And some pointed out that there are other Orders which can be used in respect of sectarian offences, and these might be a preferable to FBOs:

“I might make a criminal Anti-social Behaviour Order which would be as effective, I think, and would be as specific because I’m saying ‘your behaviour at this locus was disgraceful and you need a year or so away to think about it’.”

(Sheriff 7)

- 5.16 As noted above, some Sheriffs sitting in Glasgow were markedly less troubled by these difficulties, and were clearly more likely to at least contemplate an FBO for a sectarian offence even in respect of a first offender. But the treatment of sectarian offences is clearly problematic and, as one might anticipate, it is an issue which attracts markedly different opinions in different parts of the country. Through further research it might be possible to ascertain whether a Sheriff’s personal interest in football, and whether they sit in Glasgow, are the two factors which most influence their decision on whether

¹⁰ This assumption that other fans *expect* such language – and *would not be* offended by it – was strongly disputed by other respondents in this research.

to grant an FBO; our tentative conclusion is that this is so, but we will assert it with some diffidence until we are able to test it against a bigger sample. Perhaps of more immediate use for policy-makers and the game as a whole is the Sheriffs' intimation that while the Old Firm could perhaps do more to 'deal with' sectarianism (and it is not for us to say whether that is a fair criticism to level at the clubs), the 'problem' is Scotland's: like football hooliganism in 1980s England, football is merely the stage upon which the greater social ill is manifested

"This is all about education, trying to bring people up in their formative years to understand certain types of behaviour are not acceptable. I'm not trying to play down the problem, but what is behind (the legislation) is the grave concern in the central belt that sectarianism is a major problem which needs to be addressed, and I entirely agree with that. I'm just not sure an FBO for somebody who says something while surrounded by thousands of others is really going to achieve that objective."

(Sheriff 2)

The duties of the clubs

5.17 In that respect, several Sheriffs intimated that they are interested in how the clubs respond to offences committed within grounds, particularly on those occasions when they were contemplating the imposition of an FBO. It was our impression that Sheriffs (especially those in Glasgow) were more likely to grant an FBO if the club had already taken steps to ban an individual from the ground. It was acknowledged that actually being able to enforce such bans is usually an unrealistic proposition unless the individual draws attention to themselves or is recognised by stewards or the police (which is far less likely to happen in a crowd of 50,000 than in a crowd of 350), but it is perceived to be important in 'sending out the message' to the wider community— and for the Sheriffs, it is quite possibly a more significant guide to the seriousness of an incident than anything the Crown might say in what is often a fairly anodyne narration.

"If I'm told the club has taken away their season ticket, that gives me some sort of guidance as to how serious they perceive it – guidance that I don't get from the (legal) authorities. It helps me look at the whole package of the incident and the seriousness with which those involved on the ground consider it."

(Sheriff 6)

5.18 Most of these interviews took place shortly after a high-profile incident in which a section of the Celtic support had displayed banners condemning the club's decision to embroider the player's shirts with poppies for a home game (<http://news.bbc.co.uk/sport1/hi/football/teams/c/celtic/9168655.stm>). In the immediate aftermath the club announced it would take steps to identify and ban those responsible. Whether such action is taken or appropriate in this case is still to be decided, but in general terms even relatively short bans imposed by clubs in circumstances like this can help make the case for a banning order, should the recipients of those club-imposed bans appear before the courts as a consequence either of the incident which led to the ban or in respect of future

offences. It would be perfectly proper for the Crown to say, in the course of its narration, that a particular offender has received one or more short bans in the past, and to respectfully suggest that an individual whose past behaviour was so bad that the club felt obliged to take unilateral action along those lines is one for whom a banning order is eminently appropriate - that notwithstanding the absence of prior convictions, the s. 51(3) requirements are made out.

- 5.19 Banning Orders are part of a comprehensive initiative involving the police and the clubs, and the clubs' role in that 'comprehensive initiative' is of fundamental importance. Banning a fan for even a relatively short period is not an empty gesture regardless of how impracticable it may be to enforce it – it has the clear potential to influence the decisions that Sheriffs ultimately reach. To draw an analogy with the approach taken by the Sheriff in Walls, it helps illustrate the 'totality' of the offender's behaviour – a pattern of misconduct over a period of months or even years, together with a failure to respond appropriately to the clubs' unilateral action in respect of it, is a strong argument in favour of an FBO once an individual has crossed the line between club-imposed sanctions and the involvement of the criminal courts.

Attaching special conditions

- 5.20 Again, we are mindful of the difficulties in trying to discern general principles which may inform our understanding of the FBO regime beyond a very superficial level; but it was a great surprise to learn that none of the Sheriffs – even those generally minded to grant FBOs – had ever made an Order which prohibited an individual from being at other locales, such as specific public houses. These can be granted under s. 53 of the 2006 Act, but occasions where such orders have even been sought have been incredibly rare. Any possible reluctance to seek such orders may be understandable if one takes the view that an FBO has the clear potential to be a disproportionate sanction if used unwisely:

“I’ve never been asked to impose anything that covers a pub, a train station or whatever... It would be hard to make the link between what happens in the pubs and violence at football matches so, no, I’ve never been asked to make an order in those terms.”

(Sheriff 1)

- 5.21 That said, it is not the case that the pre-arranged confrontations or large scale disturbances outside never arise (although they remain exceptional and they have never occurred in Scotland with remotely the same frequency as in England and Wales). One of these incidents, a prearranged confrontation between Celtic and Aberdeen fans which occurred at a public house to the north of Aberdeen at a considerable time prior to kick-off (with many of the protagonists having no intention of actually attending the match), has clearly been the subject of some high-level discussion as to why the Banning Orders had not been sought in the terms desired by the Police:

“This case was raised at a JSC training event because the police were clearly concerned that the banning orders hadn’t been imposed, or that they related only to prohibiting participants from attending at grounds, (rather

than) to keep out of a certain defined area. The point was made that if the trouble is not being caused in the ground there is not much point imposing an FBO to keep them away from grounds if they are going to be organising violence away from it.”

(Sheriff 2)

5.22 One of the Procurator Fiscal deputies involved in that case illustrated how the reluctance to seek the Order resulted from how the legislation had been interpreted by COPFS: Strathclyde Police had wanted an Order which covered particular parts of Glasgow, the two ‘Old Firm’ grounds and the city centre – and also covering a 5KM radius of the ground in Aberdeen, but the Fiscal’s understanding of the Act was that the reference to ‘locations’ precluded FBOs which covered general geographical areas rather than named pubs or grounds. While it is not for us to advise on how the legislation should be interpreted, there is clearly a degree of confusion as to the legislation’s ambit and this may explain, in part, the lack of applications for FBOs covering anything other than a specific football ground (in respect of offences committed on public transport, for example). This may be one area where further training or written instruction (and, ultimately, guidance from the High Court) would be beneficial. There are clearly differences of opinion on precisely what the banning order regime allows Sheriffs to impose, and allows Fiscals to seek, and it ought not to be a major task to clarify precisely what the banning order legislation makes provision for.

5.23 Other provisions can also be used to exclude people from particular licensed premises but the Aberdeen case clearly illustrates i) the Sheriffs’ difficulty in regarding an incident which may be quite removed from a football match (either in time or in space) as sufficiently closely linked to that match to justify making an Order; ii) the utility of making an Order against somebody who has no intention of actually attending matches; and iii) the feasibility in banning somebody from named pubs given the perceptions that under the Act individuals cannot be excluded from general geographical areas. That does not mean Sheriffs would never make an order in those terms if they appreciate that the legislation provides for it, and if there were more confrontations outside the grounds, it is very likely that the number of FBOs granted in those terms would increase:

“We don’t live in ivory towers and we do respond to what’s happening in the wider world. We are aware of what’s happening and if it became a major problem then I’m sure you’d see more FBOs being applied for, and more of them being granted.”

(Sheriff 5)

5.24 However, despite the evidence that pre-arranged confrontations outside the grounds cause a particular challenge for the judiciary there is evidence that Orders might be granted in those broader terms (as indeed they have been on at least one occasion). And perhaps more FBOs would be granted generally if there were a greater degree of proactivity from the Procurator Fiscal Service than has been the case hitherto.

The contribution of the Crown

5.25 The complex working relationship between Procurator Fiscal deutes and Sheriffs, in the context not only of FBOs but of analogous Orders, is one of the more surprising aspects to have arisen in the course of these interviews (though the imposition of an FBO is entirely a matter for the Sheriff). These interviews suggest that different perceptions exist of what the role of the Procurator Fiscal deutes should be, how proactive they should be when seeking FBOs and, no less important, the Sheriffs' perceptions of the Fiscals' relationship with the police when Banning Orders are to be sought:

"It came as a matter of some surprise at the FBO training event, where we were all told that in any case where an FBO was in contemplation there would be liaison between someone from Strathclyde Police and the local Fiscals' office, so that not only the question of whether an FBO should be sought would be discussed but also the precise terms of it would be finalised – so that when the court was asked to make an Order it would be on the basis that the specification was set out in advance and the Sheriff knew precisely what he was being asked to do."

(Sheriff 2)

5.26 This degree of liaison between Procurator Fiscal deutes and the police, and the Sheriffs' perceptions of it, needs to be considered in the light of ACPOS' assertion that approximately seventy Sheriffs (out of about 150 in total) have attended one of the two FBO training events for Sheriffs. If those figures are correct, and if the Sheriff's recollection of the training event is accurate, it means almost half Scotland's Sheriffs have been explicitly advised to expect a clear steer from the Crown when it considers an FBO to be appropriate. If that perception has thereafter been communicated to other Sheriffs – whether through informal channels, via the Sheriffs' intranet resources or in the written documents disseminated by the Judicial Studies Committee after those events - it will be held even more widely. One can therefore understand if Sheriffs are not disposed to make an Order because that degree of robustness has not been forthcoming, although there have been many occasions where s/he does so *ex proprio motu*. That said, one Sheriff indicated that "if you're suddenly confronted by one of these (FBO) applications in a busy court, well, a bit of guidance wouldn't go amiss" while another asserted that:

"So long as it's done in the proper form, without the Crown substituting its view for the sentencing judge's, I quite favour it."

(Sheriff 5)

5.27 Some Sheriffs thought the perceived lack of robustness might be indicative of factors other than the legislation's drafting ("the traditional reticence to do anything more than move for sentence"), while others thought (and at least one Procurator Fiscal deute agreed) that this 'traditional reticence' was perhaps compounded by a desire not to appear to usurp the function of the court. This was considered most likely to happen in particularly complicated cases, but of course it is in these cases where a greater degree of input from Procurator Fiscal deutes would most likely be quite welcome:

“If (the police) think it’s necessary, they should explain why to the Fiscal and the Fiscal should explain why to me. And, ideally, have a clear draft (Order) prepared in advance that can be handed to me.”

(Sheriff 2)

5.28 Ironically, the Sheriffs’ general view is closer to COPFS official guidance, which explicitly encourages Procurator Fiscal deutes to raise the possibility of a banning order with Sheriffs. A closely-related aspect concerns the Procurator Fiscal deutes’ role in marking up a case for presentation to the court, and in narrating the circumstances of the offence (which is a separate function from moving for sentence). Several Sheriffs thought this could be particularly important in respect of those incidents that did not arise inside the ground.

5.29 The interview data rather gives the impression that an individual has to be quite unlucky to be visited with a Football Banning Order in anything other than the most egregious of cases. A club steward would need the courage to get involved in an incident when self-preservation would lead most of us to turn the other cheek, and then to perceive the incident as sufficiently serious to justify drawing it to the attention of a police officer; the police would need to regard the matter as sufficiently serious to justify arresting the offender rather than just evicting them from the ground (a decision which is in turn influenced by what other problems the police may have to deal with at that time), and thereafter to liaise with the Procurator Fiscal deutes and to persuade them that i) court disposal is necessary and ii) they should mark up the case as one where an FBO should be sought. Crown Office guidance states that the prosecutor's role is to advise the court that an offence may be considered to be football related and that the imposition of an FBO or the making of the relevant declaration may be appropriate in all cases where such information is contained in the prosecution report. However, contrary to Crown Office policy on FBOs, one respondent took the view that they would not seek an FBO if doing so were to threaten their credibility in court (e.g. if they took the view that the application was ill-founded in law or unattainable).

5.30 This relationship between the various actors is clearly a problematic one and it would be far too simplistic to suggest that the will of Parliament is being wilfully stymied by “Sheriffs who simply refuse to do what it is we want them to do”. But several Sheriffs were at pains to point out that even if the work of the other actors did result in an FBO application being made, they alone would decide if such an order was proportionate.

“Sheriffs take an oath to do justice in a particular case ... we have to decide whether making an Order is necessary in public interest terms – and is it an appropriate punishment? If it is excessive, then it will not be imposed regardless of what the Crown or the Police might want.”

(Sheriff 2)

Training and informal learning

5.31 Not all of the interviewees have been among the 70-odd who have participated in the Sheriffs’ FBO training events, but those who had attended

all spoke very highly of the people who delivered them and were impressed by their understanding of the law and their ability to argue cogently in favour of FBOs being granted in appropriate cases. Those who did not have that direct experience of attending the course had become familiar with the FBOs through alternative sources, most notably a discussion document that was circulated in connection with a domestic violence seminar. The author of that document had surmised that, in appropriate circumstances, FBOs could in principle be sought if a link could be established between a football match and an incident of domestic violence.

“As a domestic abuse Sheriff a course on FBOs wouldn’t be high on my agenda, but I can see why there might be a domestic abuse paper which covers the connection... We have online resources, the judicial studies website, papers like the domestic violence one and that’s how I know whatever it is I know about FBOs.”

(Sheriff 6)

“I don’t regard myself as a football fan...training is done by JSC but I’m not aware of this being covered, and that’s probably because it’s not coming up with enough regularity. FBOs are not particularly relevant – that’s not to decry them, I’m sure they have their place for the bad guys that are regularly doing it – but they’re not the most pressing judicial problem.”

(Sheriff 8)

5.32 On the basis of the interview evidence, the recent training courses have been very well received and should certainly be repeated, perhaps prior to the 2014 Commonwealth Games, so that FBOs can be covered in conjunction with other offences and sanctions which might arise in connection with a major sporting event; but there is no evidence to suggest that any unwillingness on the part of the Sheriffs to grant FBOs can be ascribed either to inadequate training or a lack of awareness about the legislation’s scope, with the possible exception of their utility in banning offenders from particular geographical areas or named public houses. Clarification of those matters, together with a more consistent, robust approach on the part of the prosecuting authorities, may yield dividends; but it will not overcome what appears to be a widely-held perception (among these interviewees at least) that FBOs will only ever be appropriate in exceptional circumstances.

6 FOOTBALL BANNING ORDERS IN ENGLAND AND WALES

Introduction

6.1 This chapter explores the operation and effectiveness of football banning orders in England and Wales, in an attempt to benchmark their operation in Scotland and to learn from their experiences, good and poor practice.

Method

6.2 Data about FBOs in England and Wales were obtained from the Minerva system in relation to the numbers of orders in force and new orders made for the six football seasons from 2003-2004 to 2008-2009. In addition data were also obtained for the offence types to which the imposed banning orders relate. Unfortunately the UKFPU does not keep data on the total number of banning orders attempted for each year, a breakdown of the expired bans achieved by type or the total number of violations of FBOs relating to domestic fixtures so the possibility of doing any quantitative analysis on the overall effectiveness of FBOs was not possible.

Numbers of banning orders in England and Wales

6.3 Data in relation to banning orders in England and Wales were available for six seasons (2003/4 to 2008/9). The number of FBOs in force in England and Wales increased from 2,596 for the 2003-2004 season to 3,241 for the 2008-2009 season (an average of between 20 and 25 per club). On average just under a thousand new FBOs were imposed each season (or 5 and 10 per club).

Table 6.1: Total number of FBOs in force and new per season: 2003/04 to 2008/09

	Number in force	Average number in force per club	Number of new orders	Average number of new orders per club
2003-2004	2,596	20.0	1,263	9.7
2004-2005	3,207	24.7	989	7.6
2005-2006	3,367	25.9	995	7.7
2006-2007	3,000	23.1	618	4.8
2007-2008	3,168	24.4	1,038	8.0
2008-2009	3,241	24.9	944	7.3

Base: all orders by club (total of 129 clubs, which includes football league clubs, non-league clubs and a small number from Scotland and Europe¹¹)

6.4 There is obviously variation in the rate of orders imposed according to the club affiliations of the individuals for whom the orders are imposed. Over the six seasons for which data are available, ten clubs had had an average of over 60

¹¹ Non-league, Scottish and European clubs may have supporters that are banned as a result of Cup play, preseason matches, and European competitions that take place in England

FBOs in place per season. Three clubs (Cardiff City, Leeds United and Portsmouth) had an average of over 100 FBOs in place per season.

Table 6.2: Average number of orders in force per club: highest ten clubs 2001/2002 season to 2007/2008 season (6 seasons in total).

Club	Total FBOs 2001/02 to 2007/08	Average per club per season
Cardiff City	795	132.5
Leeds United	753	125.5
Portsmouth	614	102.3
Stoke City	553	92.2
Manchester United	536	89.3
Millwall	521	86.8
Aston Villa	447	74.5
Chelsea	427	71.2
Middlesbrough	379	63.2
Wolverhampton Wanderers	368	61.3

Base: all orders by club (total of 129 clubs)

6.5 Further analysis was conducted to establish if there was a correlation between average attendances and the number of banning orders issued. This comparison (for season 2008 to 2009) is presented in Table 6.3 and shows that:

- Few of the clubs with the highest attendances feature in the list of those with the highest rate of banning orders.

Table 6.3: Rate of orders by average attendance figures: season 2008 to 2009

Top ten average attendances				Top ten banning order rate			
Team	Average attendance	Division	BO rate per 1,000 attendance	Team	Average attendance	Division	BO rate per 1,000 attendance
Manchester United	75304	P	1.0	Millwall	8940	1	12.3
Arsenal	60039	P	0.7	Chesterfield	3448	2	10.4
Newcastle United	48749	P	2.0	Grimsby Town	4474	2	9.2
Liverpool	43625	P	1.8	Aldershot Town	3276	2	8.5
Manchester City	42900	P	1.2	Darlington	2931	2	7.8
Chelsea	41588	P	1.5	Cardiff City	18043	C	6.9
Sunderland	40163	P	1.7	Leeds United	23813	1	6.8
Aston Villa	39811	P	2.0	Tranmere Rovers	6575	1	6.5
Tottenham Hotspur	35928	P	1.1	Hartlepool United	3834	1	6.5
Everton	35662	P	1.6	Rochdale	3222	2	6.2

- The top rates of banning orders tend to be for clubs who played in the lower leagues (with the exception of Cardiff City & Portsmouth)
- Of the teams with the highest average number of orders per season (Table 6.2), four still appear in the top twenty banning order list

Banning orders by offence type

- 6.6 In England and Wales, as of December 2010 there were 3,183 banning orders being imposed of which 86.8% (n=2,765) were on conviction and 13.2% (n=418) were on complaint (i.e. civil orders).
- 6.7 The majority of orders on conviction (70%: n=1,938) related to Public Order Act (1986) offences, with a further 8% (n=234) relating to offences covered under the Criminal Justice and Public Order Act (1994), 7% (n=168) Football (Offences) Act 1991 and 6% (137) Sporting Events Act (1985).
- 6.8 All civil orders (on complaint) related to the Football Disorder Act (2000), with 99% applied for under section 14B (one was a S14J¹² and two S21B¹³).

Banning order by length in England and Wales

- 6.9 There is some interesting variation in the length of bans by type. Successful bans by complaint (14Bs) do not appear to extend beyond 5 years in length and the overwhelming majority of these bans are for three years. On the other hand, the FBOs by conviction (14As) which again are dominated by 3 year bans but also have a high number of individuals who are currently on FBOs that range from 6 to 10 years. These longer bans typically stem from convictions for violence based football related crimes.

Table 6.4: Breakdown of the Total Number of Present FBOs by Length

Type of ban	Length of ban							
	3 Years	4 Years	5 Years	6 Years	7 Years	8 Years	9 Years	10 Years
Complaint	327	41	46	N/A	N/A	N/A	N/A	N/A
Conviction	1805	175	207	338	79	85	5	75

Performance and Effectiveness

- 6.10 In England and Wales focus group members were keen to stress that the purpose of banning orders is preventative rather than punitive, and that they had worked hard to get that message across. Though they conceded that those subject to banning orders experienced them as punitive measures, indeed their effectiveness in part depended on their being punitive.

¹² A Section 14J application can be made after a failure to comply with the requirements of a previous order.

¹³ A Section 21B order is a notice made in writing to inform the recipient that an application has been made.

- 6.11 The issue of proportionality was stressed. Banning orders were not and should not be applied for and awarded arbitrarily. All the circumstances needed to be considered: a great deal of discretion is used in the interests of applying for them only when it appeared justified. Processes within police services before application for banning orders, processes in the CPS to determine when it was reasonable to apply for banning order and court processes were deemed sufficient to make sure that banning orders were not abused or applied arbitrarily, a consequence that had been quite widely feared when they were first introduced.
- 6.12 The current legislative framework is deemed very good: so much so that one participant in the focus group said, 'We love the legislation.'
- 6.13 Banning orders were deemed to be very effective in relation to those subject to them, in relation to others who did not want to risk being subject to one and in relation to those overseas who had become persuaded that English football related disorder was being taken seriously and serious measures were being taken to prevent it. Awareness of banning orders had grown over time and they were seen as an effective general deterrent against disorderly behaviour. Moreover those subject to them did not want to suffer the consequences of being found to have engaged in further antisocial behaviour. The national reconviction rate was said to be only eight per cent, which compares very favourably with rate for the Anti-Social Behaviour Orders. The banning orders were perceived to be so powerful a preventive measure that those in other jurisdictions were looking to try to emulate their provisions.
- 6.14 In Manchester, it was suggested that the general atmosphere around games is a good indicator of the way that hooliganism and the 'less desirable' fans have disappeared. This is partly down to the legislation and (of course) the way football has changed. The example of Manchester United Versus Liverpool was given. This is a fixture where widespread violence was once common though now the atmosphere around the stadium is relatively pleasant.
- 6.15 Effectiveness also depends on the way other areas use FBOs. For example, in Manchester, a game against Leeds United is regarded as a very difficult game to police as Leeds were said to have a large hardcore of problem fans.
- 6.16 In all interview areas, it was thought the civil order has broken up many of the hardcore hooligan groups. The police now have powers to deal with the persistent hooligans who they just can't convict. This has also led to behaviour modification of the hangers on. All areas commented that many hooligans would actually rather get to see their team on a Saturday than risk getting banned.
- 6.17 Greater Manchester Police (GMP) suggested that they think some fans with FBOs have been to Old Trafford but that those with FBOs wouldn't want to draw attention to themselves by causing trouble and getting thrown out of the stadium. Middlesbrough also said that many of the old hardcore are no longer involved in violence as they don't want to risk being banned from the Riverside Stadium. Put simply, '*most would rather give up 'aggro' and be able go and see Boro on a Saturday*'.

- 6.18 The police did say for some, giving up the 'buzz' of aggro was difficult and some had repeat orders imposed on them.
- 6.19 In Newcastle risk groups have changed their behaviour, they now have a less visible presence and quite often without the large numbers seen in the past.
- 6.20 All areas remarked that fans are now more 'camera' aware and try to resist being filmed.
- 6.21 In Newcastle there is a belief that media support has helped in preventing violence by letting hooligans know that the police have powers to ban and that breach is taken seriously. Northumbria Police have a very close relationship with the Newcastle Chronicle. They ran a large story when one 'hard-core' hooligan was banned (with the strong support of Newcastle United F.C). Therefore, media coverage is thought to be an important tool.
- 6.22 Despite the media attention in Newcastle they appear to be unique among the areas that were identified for the study because Newcastle hooligans who receive FBOs in Northumbria have a recidivism rate of approximately 70% which lies in stark contrast to the national estimate of only 8%, a figure referred to during the national level focus group.
- 6.23 Generally, it was thought that in the 1980's the police did not have the tools to deal with hooliganism, but now they do. As one officer in Manchester stated:

'In the old days two groups would come together and have a punch up, the police would try to deal with it the best they could by dragging them apart and getting the away fans out of town. It was like we would try to keep the peace, but then the Saturday after we would all reconvene for the next round'.

- 6.24 In practice breaches vary in type. At one extreme is a wilful effort to defy the order by attempting to evade it. At the other are more technical breaches, where for example there has been a failure to notify the authorities of a change of address. Practices may vary according to the nature of the breach. Moreover police services vary in their policing following breaches. Some will not act until, for example, there have been three breaches, which in the view of those at the focus group could lead to a weakening of the preventive power of the order. Other police services will take action on the first taking those involved back to court. It was said that courts tend to take breaches very seriously. They are apt to lead to a prison sentence.

Police processes

- 6.25 All four areas examined in England and Wales were fairly clear about who the targets for the FBOs should be. The FBO gives the police the power to try and impose restrictions against a group of hardcore hooligans. The civil orders (14b) are particularly useful as they allow the police to take action against a group of people who it is often very difficult to get the required standard of proof to convict. The banning orders allow for action to be taken, but also reduce the time it takes police to draw together the evidence required for

criminal conviction (the evidence dossier one intelligence officer in Middlesbrough showed us on one hooligan was over 50 pages long, showed him in regular contact with other hooligans and he was always present when it 'went off'. However, there was never enough on him to convict).

6.26 The football intelligence officers stressed the importance of proper 'targeting' of FBOs. The FBO is there to use as a tool against the 'risk' supporters (those organising/ committed to becoming involved in trouble). This is not to be used against 'over-excited' fans. Types of targets are:

1. **Those convicted (14A applications):** Mainly "ordinary" supporter who has behaved in an out of character but nonetheless is problematic, probably has a history of public order/violence elsewhere or another football related arrest/fpn/conviction. A few may be "risk" supporters who have been "caught in the act" on match day.
2. **Civil applications (14B applications):** Mainly known "risk" supporters who have not been convicted of any offence but on whom there is further evidence available of their behaviour. This is usually one "trigger" incident supported by evidence of association with other known "risk" supporters.

6.27 Many of the most serious hooligans fall into the 14B category. The 14B targets are identified by FIO at the start of each financial year (the funding of posts by the UKFPU is dependent upon FBOs actually being implemented). The banning officer then prepares applications, usually by drawing evidence together into a dossier.

6.28 Ticket touts are also problem at Manchester United and they are targeted by the police. They are problematic as they can potentially sell tickets to banned supporters or upset segregation in the stadium. Touting is an offence, though is also used as evidence for an FBO application.

Evidence Required

6.29 The evidence required for a sec 14A application is pretty straightforward as it is tied to a conviction (i.e. a conviction for hitting somebody over the head after a game is pretty good evidence that an FBO might be appropriate). There were slight differences of views in relation to the evidence threshold for a sec 14B order. All areas acknowledge that involvement or association with one incident was enough to make a civil application, though whether this was actually enough to get an order granted by the magistrate was subject to debate. For example, in Middlesbrough civil applications had occasionally been pushed through where there had been involvement in just one incident. An example was given where after a UEFA Cup game in Czech Republic in 2006 many applications were pushed through on the strength of video evidence against some known hooligans and first time hooligans. Only one application was rejected in relation to that incident; against a fan who was present, but not directly involved and had no known history of hooliganism.

6.30 In Manchester the threshold for evidence required for a civil order appears to be higher. There is a 100% success rate, but only because the force case review solicitor will not allow an application to proceed if there is flimsy evidence as it will not get past the magistrates (the CPS review applications

linked to a conviction). The example was given of Merseyside where there are far higher numbers of orders because the threshold of acceptable evidence is lower.

6.31 In Northumbria there is 40% failure rate with civil orders. They have now taken steps to ensure that evidence is very tight to push orders through.

6.32 The suggestion is that, orders are 'easier' to obtain in some areas. However, there was a general view among interviewees that for a civil application to be successful there was a requirement to prove association between people (hooligans) and that the individuals that are identified present a risk of engaging in violence. It is necessary to try and prove:

1. Proof of proximity to events (i.e. the person was there when it kicked off)
2. Association with other hooligans (i.e. Person 'A' is a hooligan and person 'B' hangs out with them/ goes to same pubs etc)
3. Routine/ persistent behaviour pattern (i.e. often around when there is trouble, always with group of hooligans etc)

6.33 In one area, the Head of Legal Services mentioned that the time it takes to gather the dossier of evidence together for an order can be an issue. Here it was stated that the FBO was the only type of civil order where an interim order couldn't be made for 14Bs. For example, for an ASBO, whilst the application is being processed through the system, an interim ASBO can be made where the individual concerned is subject to the conditions of the order before the full ASBO is imposed. She made the point that there can be a 2-3 month delay between the date the application is made and when it is imposed. Therefore, this can be a further 2-3 months when hooligans are active.

6.34 Northumbria Police did state that there are likely to be issues in the future in relation to building a case using video evidence. This is due to the possible tightening of rules in relation to routine, continual and indiscriminate video-taping of football supporters.

Court processes

6.35 The police in all three areas commented on the perceptions of FBOs amongst magistrates and within the CPS, suggesting that there is a view the legislation is draconian and restrictive. In one area an officer was so frustrated by the views of a member of the CPS (who appeared to sympathise with a number of hooligans for whom applications had been made) he took her to a major policing operation to get some firsthand experience of what can happen on match days (and to begin to understand the difficulties the police face in policing determined hooligans who know what police tactics are and how they can avoid detection). A lack of understanding in the CPS/ courts as to how football hooligans operate appears to be an issue.

6.36 Stakeholders in England and Wales felt there may be more scope for specialist prosecutors in Scotland, given small number of cases.

Enforcement

- 6.37 In London, Northumbria and Greater Manchester Police (GMP) the clubs were very supportive of the police in relation to issuing and enforcing FBOs and there was close coordination in relation to policing and club stewarding. Only in Cleveland were there tensions between the police and the club, with Middlesbrough F.C requesting FBOs be imposed on a group of fans which the police do not view as a problem.
- 6.38 GMP had a fairly relaxed view about enforcement in relation to domestic fixtures. Those hooligans with banning orders will quickly come to the attention of the police if they are involved with the hooligan firm or violence (through the police hooligan spotters). As long as those with FBOs behave/ their behaviour is modified, then GMP had little concern if fans actually entered the stadium (which is a clear breach). GMP were clear that it is not about imposing a set a conditions/ restrictions on somebody and just making sure they comply, it is about ensuring behaviour is modified.
- 6.39 Unlike GMP, Cleveland Police were harder on enforcement and viewed this as a problem. Anybody breaking the restrictions on movement on a banning order or entering the stadium is a concern and the police take a serious view on breaches. There have been some breaches here- though police say this is normally because these people (these hooligans) forget the conditions of their order.
- 6.40 In all areas a fan breaching their order will normally (first) be given a telephone call by the force banning officer to see why they had failed to comply or broken restrictions of the order. Breaches in all areas tend to be progressed, unless there is a good reason not to. Breach is a criminal matter and breaches do lead to a court appearance (a civil breach is then a criminal matter- like an ASBO).
- 6.41 Northumbria Police are heavily reliant on match day spotters to know who their banned supporters are and to see if they are around on match days. They said there was no intelligence to suggest breaches are taking place on match days. They have had very few arrests on match days for breach's (2 or 3 out of 167 since 1/11/08).
- 6.42 Police hooligan spotters travel away from home with all main clubs.
- 6.43 A growing tactic is now for hooligans to drink and occasionally arrange a 'meet' outside of restricted areas.

Policing/ enforcement in relation to domestic European fixtures

- 6.44 The police in GMP had most experience here. Due to the long history Manchester United have of playing in European competition the police have vast experience of dealing with United hooligans travelling, foreign fans visiting Manchester and working with foreign police. Policing European games is more difficult than domestic games because of the large travel distances involved and the different travel arrangements that can potentially be put in place by fans. For example, if United are away at West Ham, in London on a Saturday, generally, fans will travel on a Friday night or Saturday morning by

car down the M6 or by train in to London Euston. This is easy enough to predict and to police. However, if United are away in Europe at Milan or Rome it is harder to police. Fans might (perfectly legitimately) want to travel a week before and take a holiday, they could fly from Manchester or Birmingham. It creates so many more potential headaches in terms of predicting what the travel arrangements are and what risk supporters might be up to.

- 6.45 As with England games abroad, the police will liaise with foreign police forces prior to games and they travel to away games. At the time of interview, GMP were very closely involved with Strathclyde ahead of the Manchester United v Rangers game in Glasgow (24th Nov 2010).
- 6.46 Intelligence information will flow in from foreign police about what GMP can expect from foreign fans both at home and abroad (i.e. ahead of the recent Manchester City v Lech Poznan game intelligence was received that there would be tensions within the travelling fans between ex-pat Poles living in the UK and the travelling Poles- there were problems at the game between these groups, not involving Man City fans)
- 6.47 The risks from away fans visiting England tends to be low for most European teams- the big risks can be teams from Scotland and Holland/ Germany; though hooligans rarely travel in large numbers with continental teams.
- 6.48 The really big concern is when English fans travel into Europe and ensuring that the conditions of banning orders are observed. Preparation for games will take place weeks in advance and FIOs will know exactly who should not be travelling/ surrendering passports etc.
- 6.49 Enforcement is also reliant on close working with the club in relation to ticketing. Ticketing is very strict for these games and Manchester United are careful to make sure tickets do not get into the wrong hands. When a season ticket holder buys a ticket for a European fixture away from home, they actually buy a voucher. They can only get their ticket when they arrive at the stadium on the day of the game and the ticket is claimed by producing an original passport as proof of ID. *It has to be an original*. This is designed to stop anybody with an FBO travelling.
- 6.50 Some banned supporters have tried to travel on false or borrowed passports. There was an example where a fan with an FBO did travel to Moscow for the Champions League final by using his brother's passport. Somehow he got to Moscow, but was then intercepted by police spotters and deported.

Policing/ enforcement in relation to international fixtures

- 6.51 Many of the processes used by the police/ clubs and the issues arising in relation to enforcement of international games are similar to those observed in relation to European club fixtures. However, some interesting points in relation to policing FBOs in international games were raised and are worthy of mention.
- 6.52 All areas are very tight on enforcement here. The match commander in Northumbria was vehement about this as he did not want Newcastle/

Sunderland hooligans slipping through the net and tarnishing the image of the country and the reputation of Northumbria police (for poor enforcement).

6.53 Hooligans have tried to get around police patrols at ports and airports by exiting the country through Scotland.

6.54 In Northumbria it was reported that when surrender of passports/ reporting is required is when most breaches occur. Their preparation for the World Cup (2010) began in November 2008. Their process for dealing with FBOs in the run up was to:

- Send over 120 individual letters reminding them of their FBO responsibilities (January 2010)
- Over 70 letters hand delivered to individual's subject of FBOs (April 2010)
- Members of the Northumbria police that were responsible for the policing of football matches as part of their primary duties gave training to front office and admin staff on dealing with FBOs (May 2010).
- Football Staff worked late shifts in front offices to assist with individuals reporting for their FBOs (May/June 2010).

6.55 It was generally agreed that the FBO needs to be a key tool looking towards Euro 2012 in Ukraine and Poland. The police see European games involving England as a problem and these do attract hardcore hooligans. The context in Poland is very different to other places where the world cup has been held without problems – i.e. Japan, South Africa. The potential for trouble in the Ukraine and Poland is high because of the geographical proximity. Banning orders should work to take out the hard core hooligans. There is a perception in England that hooliganism has disappeared, though police intelligence, crowd control tactics and tools such as FBOs appear to have curtailed the problem.

7 CONCLUSIONS

- 7.1 The evaluation found that the implementation of the FBO legislation has improved over time, with more FBOs being issued, and with a greater proportion of FBO applications being successful. Our analysis of FBO cases also shows that FBOs are generally being correctly targeted at appropriate offenders, individuals with a history of engaging in football-related violence and disorder. Moreover, from a statistical analysis of conviction data there was indicative evidence to show that FBOs may be reducing the intensity of offending amongst those subject to banning orders.
- 7.2 Whilst there are some ongoing challenges confronting the FBO regime, a commitment to tackling these was very evident across the range of agencies involved in implementing the legislation. Recommendations deriving from this evaluation as to how to meet some of these challenges are contained in the report's executive summary.
- 7.3 The successful implementation of new legislation usually requires a range of partner agencies to act in concert to 'deliver' or 'give effect' to that legislation. In the case of Football Banning Orders, this report has hopefully demonstrated how the effective use of the legislation requires coordinated and consistent actions from club officials, through to police officers, Procurator Fiscal deputies and Sheriffs.
- 7.4 There are a variety of ways in which one can model the delivery of legislation, though for our purposes it is helpful to think of legislation requiring a coordination and consistency of implementation on three inter-related levels:
- Legislation needs to be underpinned through robust and agreed *processes*;
 - These processes in turn need to be supported through the provision of appropriate *resources*;
 - And finally, there needs to be a reasonable degree of agreement as to the *interpretation* of that legislation.

Processes

- 7.5 The evaluation found that FBO processes were largely robust and well-aligned across partner agencies, and where problems did exist, plans or projects were already in place to remedy these deficiencies. Processes were strongest when it came to targeting in-stadia violence and disorder and incidents that occurred on obvious travel routes to and from the stadia, but were weaker when it came to problems occurring away-from the stadia.
- 7.6 Whilst the rate of FBOs being issued at Scottish Premier League (SPL) fixtures was not – in fact – far below equivalent rates for English Premier League clubs, FBOs were rarely used *outside* of the SPL. This stands in stark contrast to the situation in England and Wales where *the majority* of FBOs are issued at fixtures outside the Premier league. It was beyond the scope of this research to determine whether this represents a missed opportunity to use the legislation to tackle problems that are – indisputably – not confined to the SPL.

7.7 Some missed opportunities for imposing FBOs have resulted from police officers or Procurator Fiscal deputies not having sufficient awareness, or specialist knowledge, to either initiate or progress FBO cases appropriately. However, it does not appear realistic for all officers or deputies to have more than a basic level of awareness of FBO legislation. Rather, approaches that rely on designated officers or deputies taking responsibility for identifying and 'steering' FBO cases seems more achievable and resource efficient. Models for doing this are already in place to a limited extent, though there is clear scope for their more widespread adoption.

Resources

7.8 The introduction of the FBO legislation in Scotland was not supported by the 'pump-priming' monies made available by the Home Office in introducing legislation in England and Wales. However, whilst this may partially account for the initial, slower uptake of the legislative provisions in Scotland, this funding disparity seems less relevant going forward.

7.9 Rather, a key issue for Scotland appears to be to achieve a suitable degree of resourcing across all those geographical areas where football related violence and disorder is a significant issue. The resourcing required is not primarily monetary, but ensuring that key officials already required to deliver the legislation, have enough 'ring-fenced' time to do so (acknowledging that in most instances there will be few officials with a full time role for dealing with FBOs or indeed football-related violence and disorder more broadly). Where resourcing is already sufficient, the challenge going forward is clearly preserving this capacity in the current fiscal climate, though an argument can surely be made that investing in a preventative measure such as an FBO is likely to be more cost-effective than dealing with future incidents of football-related violence through more conventional policing and criminal justice responses.

7.10 A minimum level of resourcing for effectively maintaining the FBO regime, includes not only those resources required for directly applying for, and administering FBOs, but in particular those intelligence and policing resources which underpin the FBO regime in the first place (by knowing where trouble may be, who troublemakers are, and having the resources to intervene). These broader resources are shared between both police and club officials, and the effectiveness of the relationship between these two sets of officials is of increasing importance.

Interpretation

7.11 Across all parties, irrespective of their official function, there were quite marked differences in terms of how the legislation was interpreted. One would of course anticipate this to an extent when it comes to new legislation. Moreover, one might convincingly argue that some flexibility in interpretation is healthy, both in terms of accurately reflecting normative differences as to how football related violence and disorder is viewed, and in terms of being a by-product of judicial independence.

7.12 That said, the degree of some of the observed differences was quite problematic, limiting the effectiveness of the legislation, and indeed undermining the credibility of the legislation for some respondents. There were two major

areas of disagreement. First, there were clear disagreements as to how vigorously FBOs should be utilised against sectarian offences. Second, there was disagreement and uncertainty as to the degree to which the legislation permitted more extensive restrictions being placed on certain types of offenders (e.g. imposing additional conditions on risk supporters who didn't attend games, for instance preventing them from travelling to away matches or excluding them from a city centre on match days). Even if the legislation permitted such restrictions, there was also clear disagreement as to whether imposing them would be fair or proportionate.

7.13 It is not clear at this stage that there would be any benefit in tightening the existing legislation further to attempt to resolve these issues. In particular, both Sheriff and Procurator Fiscal depute respondents were very wary of any move to make the legislation more prescriptive. On the contrary, most respondents felt that the drafting of the existing legislation did not in any way hinder the effective use of FBOs. This viewpoint will be tested over time as the legislation is utilised – and indeed challenged – more.

7.14 It may be that many, if not all of these issues regarding the legislation will be resolved in due course– as more guidance is issued, as more case law is available to inform the decision making of legal professionals, and as training and awareness raising events pay further dividends. However, it also appears likely that some of these issues stem – not purely from a close reading of the legislation and its associated guidance – but from broader normative debates regarding the acceptability of different forms of behaviour within the context of football matches, and regarding how best to deal with different forms of unacceptable conduct. As a consequence, advancing the effectiveness of the FBO legislation may hinge as much on achieving some measure of consensus on these broader issues, as focussing on the understanding and implementation of the legislation itself.

APPENDIX 1: LIST OF INTERVIEWEES AND EVENT ATTENDANCE IN SCOTLAND

The qualitative research for the Scottish dimension of this project consisted of:

- In-depth interviews with eight police officers supervising, or acting, in the role of Football Intelligence Officer covering the three case-study areas
- Two interviews with the Scottish FBO authority manager
- Ten interviews with Sheriffs
- Four interviews with Procurator Fiscal deputes and One with a Crown Office and Procurator Fiscal depute service policy lead
- Two interviews with the security leads from the Scottish Football Association and the Scottish Premier league respectively.
- Attendance at a COPFS-run training event aimed at raising awareness of FBOs amongst fiscals
- Interviews with match commanders and public order police officers (numbering Six officers in total)
- Interviews with Four club security managers
- Attendance at the FBO and sectarian training elements of the Match Commanders Course at the Scottish Police College.

APPENDIX 2: LIST OF FOCUS GROUP MEMBERS AND INTERVIEWEES FROM ENGLAND AND WALES

Focus group members for strategic overview

Name	Organisation
Chief Crown Prosecutor - CPS Football Lead	Crown Prosecution Service
Director	UKFPU
National Policy	Home Office
Assistant Director	UKFPU
Football Banning Order Authority Team Leader	UKFPU

Police interviewees for operational overview

Name	Organisation
Match Commander	Greater Manchester Police
Football Intelligence Officer	Greater Manchester Police
Match Commander	Cleveland Police
Head of Legal Services	Cleveland Police
Football Intelligence Officer	Cleveland Police
Football Intelligence Officer	Cleveland Police
Match Commander	Northumbria Police
Force Football Intelligence	Northumbria Police
Force Banning Officer	Northumbria Police
– Silver Commander	Metropolitan Police
Match Commander	Metropolitan Police

APPENDIX 3: DETAILS OF SCOTTISH CRIMINAL RECORDS OFFICE SAMPLE OF CONVICTED FBO AND NON-FBO OFFENDERS

Football Banning Orders: the Scottish data

This analysis covers two groups of individuals: the 'FBO' group, those who actually received an FBO in the period up to 2010; and the 'non-FBO' group, a sample of 100 from the 260 or so individuals identified to the researchers as being potential recipients of an FBO, but for whom an order was not granted by the relevant court. Data was obtained on the conviction histories of the two groups, as well as evidence concerning the conviction that did or did not lead to an FBO.

The aim of the analysis presented here is to compare these two groups in broad terms. For example, what were the geographical and age distributions of the two groups? Were the FBO group more prolific offenders before receiving an order? Did they appear to offend less after it? What types of offence were linked to receiving an FBO?

Note the distinction between the FBO group, which is essentially a census of all those individuals who have received an FBO in Scotland, and the 'non-FBO' group, which is a sample from a larger group of failed applications. Because of variations in the data received direct comparisons between the two groups were not always possible; furthermore, there were definitional differences in the data obtained, and the two data sets had very different patterns of missing data. Formal tests of statistical inference, while sometimes included below, should therefore be treated with caution, and the data presented should be seen primarily as descriptive and indicative. A further note is that the records obtained related to successful prosecutions only; where the discussion concerns trials, these are only trials which the individual was found guilty (so we do not know what offences may have been committed and not detected, detected and not brought to trial, and/or detected and tried without success).

Geographical Distribution

Glasgow/Strathclyde dominates both FBO and non-FBO groups (Table 1). Half of all the failed applications were made in Strathclyde, while just under two-fifths of the FBOs were issued in Glasgow Sheriff's court. Elsewhere there was some potential variation, and it is possible that Edinburgh/Lothian and Borders has fewer FBOs issued than might be expected, while Aberdeen/Grampian has more (20 per cent of all FBOs issued at Aberdeen Sheriff's court, compared with 10 per cent of failed FBOs in Grampian region).

Note that, for several reasons, it was not possible to combine the geographical breakdown. For example, 8 non-FBO cases were recorded by British Transport Police, meaning it was impossible to know which would have been the appropriate Sheriff's court(s).

Table 1
Region for non-FBO cases

	Percentages
Strathclyde	51
L&B	12
Grampian	10
Tayside	9
BTP	8
Central	3
DG	3
Fife	2
Northern	2
Total (numbers)	100

Courts issuing FBOs

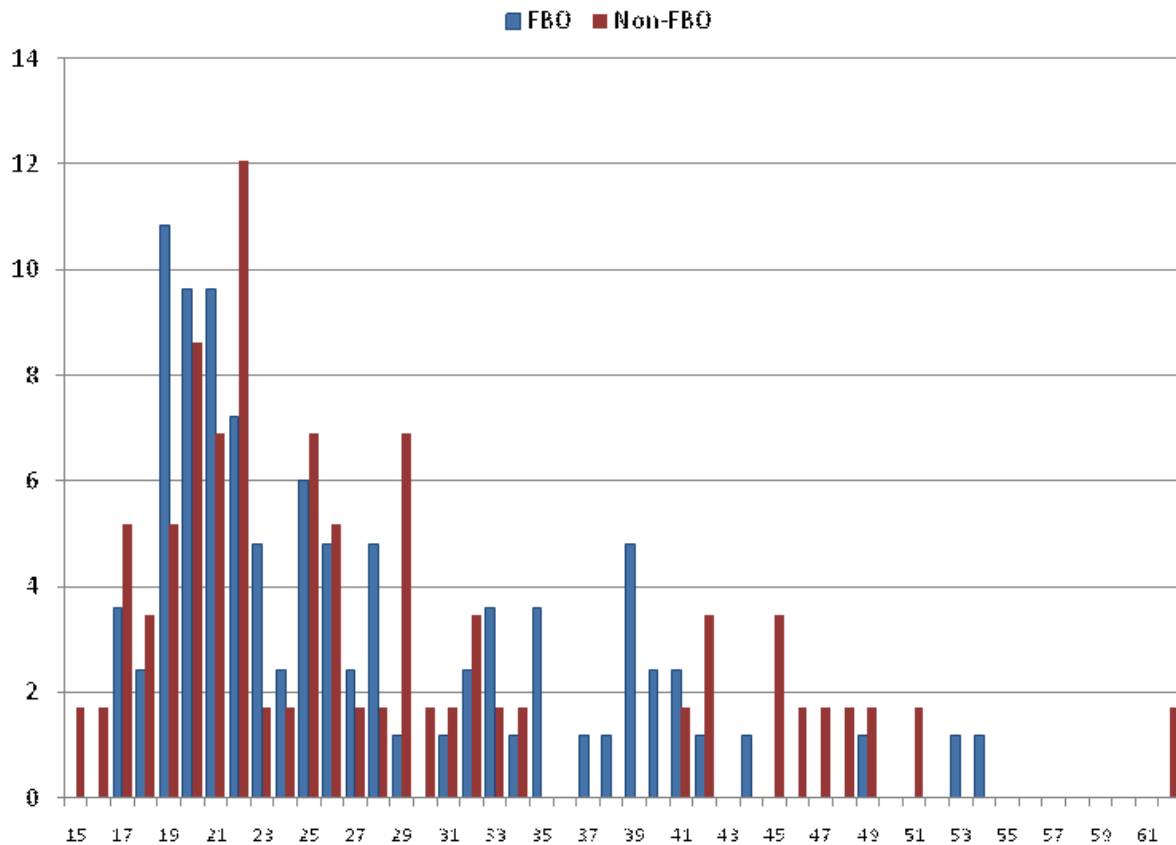
	Percentages
Glasgow Sheriff	39
Aberdeen Sheriff	20
Dundee Sheriff	10
Hamilton Sheriff	8
Edinburgh Sheriff	7
Alloa Sheriff	5
Greenock Sheriff	2
Inverness Sheriff	2
Perth Sheriff	2
Falkirk Sheriff	1
Kilmarnock Sheriff	1
Livingston Sheriff	1
Paisley Sheriff	1
Total (numbers)	87

A similar pattern can be observed in relation to the clubs supported by the FBO and non-FBO groups (Table 2). The Old Firm dominates, with Rangers the most popular club among both groups. By contrast, it again appears that Hearts and Hibs were less well represented in the FBO group than might be expected, with substantially fewer successful applications than unsuccessful ones.

Table 2
Team supported, FBO and non-FBO groups

Team	Numbers		Total
	No	Yes	
Rangers	26	28	54
Celtic	11	21	32
Aberdeen	10	12	22
Hearts	16	3	19
Hibs	7	4	11
Dundee	3	6	9
Dundee United	2	1	3
Scotland	3	0	3
Other	12	11	23
Total	90	86	176

Figure 1: Age, FBO and Non-FBO groups (percentage)



NOTES: AGE ON FIRST DAY OF ORDER FOR FBO GROUP; ON DAY OF TRIAL FOR NON-FBO GROUP.

There was little difference in the age profiles of the FBO and non-FBO groups. The mean age of the FBO group on the day the order commenced was 27.1 years (S.D. 8.8); while the mean age of the non-FBO group on the trial date was 27.9 years (S.D. 10.5). The age distribution of the two groups was also similar (see Figure 1): overall, there is very little to suggest any substantive difference in the ages of those who received an FBO and those who did not.

Note that everyone in the sample was male.

APPENDIX 4: ENGLISH FOOTBALL BANNING ORDER DATA

Table A1: Total number of banning orders on conviction by type of legislation to which they relate [all years]

Order Type	Act	Section	Count of Section	% of Section
Conviction	Public Order Act 1986	S 4	568	20.5
Conviction	Public Order Act 1986	S 5	553	20.0
Conviction	Public Order Act 1986	S 3	411	14.9
Conviction	Public Order Act 1986	S 2	406	14.7
Conviction	Football (Offences) Act 1991	S 4	168	6.1
Conviction	Sporting Events Act 1985	S 2	137	5.0
Conviction	Criminal Justice & Public Order Act 1994	S 39	106	3.8
Conviction	Criminal Justice & Public Order Act 1994	S 166	64	2.3
Conviction	Criminal Justice & Public Order Act 1994	S 91	64	2.3
Conviction	Football (Offences) Act 1991	S 2	46	1.7
Conviction	Football (Disorder) Act 2000	S 14 J	37	1.3
Conviction	Police Act 1996	S 89	35	1.3
Conviction	Public Order Act 1986	S 4a	34	1.2
Conviction	Criminal Damage Act 1971	S 4	24	0.9
Conviction	Football (Offences) Act 1991	S 3	23	0.8
Conviction	Criminal Justice Act 1988	S 139	20	0.7
Conviction	Football (Disorder) Act 2000	S 14 B	17	0.6
Conviction	Criminal Justice Act 1988	S39	11	0.4
Conviction	Offences Against the Person Act 1861	S 47	11	0.4
Conviction	Prevention Of Crime Act 1953	S 1	11	0.4
Conviction	Offences Against the Person Act 1861	S 20	5	0.2
Conviction	Firearms Act 1968	Section 5	4	0.1
Conviction	Criminal Damage Act 1971	S 1	3	0.1
Conviction	Football Spectators Act 1989	S 14 (1)	3	0.1
Conviction	Offences Against the Person Act 1861	Battery	2	0.1
Conviction	Public Order Act 1986	S 1	1	0.0
Conviction	Sporting Events Act 1985	S 1	1	0.0
Total			2765	100

Table A2: Total number of banning orders on compliant by type of legislation [all years]

Order Type	Act	Section	Count of Section	% of section
Complaint	Football (Disorder) Act 2000	S 14 B	414	99.0
Complaint	Football (Disorder) Act 2000	S 14 J	1	0.2
Complaint	Football (Disorder) Act 2000	S 21 B	3	0.7
Total			418	100

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