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Strict Liability

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SCOTTISH FOOTBALL
Supporters Association

Strict Liability

Research Report 2019/20



SCOTTISH FOOTBALL
Supporters Association

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Strict Liability

Tackling the myths and proposing better pathways for tackling disorder in Scottish football

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Contents

- 04 Part One**
Introduction and overview:
the case for a fresh approach
- 08 Part Two**
Why we are where we are
- 12 Part Three**
The need for further action is now
- 16 Part Four**
What is Strict Liability and how
does it work across Europe?
- 20 Part Five**
Debunking a variety of myths
about Strict Liability
- 28 Part Six**
What could the Scottish Govt. do
to change the landscape?
- 32 Part Seven**
Strict Liability in action across
Europe
- 34 Part Eight**
What do the football professionals
say about Strict Liability?
- 36 Part Nine**
The SFSA and our role in these
concerns
- 38 Part Ten**
Summarising our proposals
- 44 Appendix**
The FARE observer scheme
- 46 References**

Part One

Introduction and overview: the case for a fresh approach

1. Introduction and overview: the case for a fresh approach

Scotland is the only country in Europe that does not have some form of Strict Liability (SL) for supporter behaviour and overall security in football grounds. Strict Liability means being able to hold a party responsible for certain actions and behaviour, even if that party was not directly at fault or negligent.¹ In a football context, this means holding football clubs liable for the negative behaviour of their supporters. It is frequently argued both that this would be too onerous for clubs, and that it is not an effective way to tackle the issue.² Yet when Scottish clubs play in Europe, or when the national team plays, Strict Liability is enforced by UEFA with effect and with consequences which are widely seen as predominantly beneficial.

Pressure is also increasing in a number of directions. First, both UEFA³ and FIFA are being encouraged to act more boldly and decisively.⁴ Second, incidents around racism and hate crimes are bringing stronger public and media calls for action. Third, those responsible for policing and stewarding are always keen to ensure maximum cooperation in eliminating disorder

and harmful misbehaviour.⁵ Fourth, in Scotland, the Scottish Government and Parliament wish to see the football authorities, the large clubs and the whole football community take more action and greater responsibility in ensuring security, safe behaviour and the removal of hate, discrimination and threat or menace.⁶ Fifth, and most importantly, players, managers and responsible fans – the vast majority – wish to see reasonable, collaborative and sensible action to both improve the matchday experience and to tackle disorder and threatening behaviour which, in turn, harms the reputation or income of the clubs they work for and support.⁷

In tackling these issues and proposing fresh, practical pathways forward, the Scottish Football Supporters Association (SFSa) is acting on behalf of those responsible fans and all stakeholders who have the game's interests at heart and who wish it to prosper. We believe that the time for more concerted and participatory action is now, and that the football authorities and the clubs they represent have it in their own long-term interests to do so. This, together with the reasonable

adjustments involved in the shorter term, is about improving the game and enabling it to live up to its true potential.

Regarding the key issue of Strict Liability, our view is that there is widespread misunderstanding and misinformation. We appreciate the concerns raised about SL, but we also believe that many of them tend to be demonstrably misplaced or exaggerated. Our report seeks to show why this is the case, and to illustrate the gains that have been secured through Strict Liability via its implementation in different ways in other parts of the world. We recognise, of course, that there is no catch-all, guaranteed or one-size-fits-all solution to the problems of disorder and harmful behaviour (including, in Scotland, actions deriving from legacies of sectarianism).

But our argument is that Strict Liability and tough sanctions need to be kept 'on the table' in discussions about concrete action to address security and misbehaviour in Scottish football. It may be that there are alternative and better ways forward. Indeed, we make some specific proposals (including ones for testable pilot projects on 'policing through/with community

consent') ourselves. But we accept and advocate that the onus should be on those who reject and object to Strict Liability to come up with alternatives which can be shown to work as well or better than SL.

It should be more than evident by now that emollient words, claims that what is being done is sufficient, or arguments that no more can be achieved are not acceptable. Further action and a wider embracing of responsibility within the football family as a whole is required. In saying this, we recognise the force of concerns along these lines expressed by the Scottish Government and the politicians of various parties we engage with. Our desire is that football should take primary and voluntary responsibility for what happens in football. No-one expects or wants excessive state regulation or interference, least of all the Scottish Government. Yet it is clear that if the football authorities and those within the game will not act, further statutory pressure can be applied. This is a stand-off which no one wants. The solution is to act so that it is not necessary.

The Scottish Football Supporters Association (SFSA) is therefore proposing in this paper that we:

1. Re-examine and correct the myths around Strict Liability, with a view to considering its potential applications or adaptations in Scotland, through a more mature set of conversations involving all stakeholders in the game (including, crucially, supporters).
2. Implement a series of local, contextual experiments in Policing through/with Community Consent, especially at smaller clubs with fewer resources.
3. Explore the development and implementation of a Good Practice Compact within Scottish football, drawing upon (and seeking to harmonise) lessons that are already being learned across the game, drawn together in a regularly revisable Ideas Pack for sharing intelligence and advice widely and regularly.
4. Recognise the need for a variety of pathways for tackling disorder and harmful behaviour at different levels of the game, working in concert with both public order provisions and with the acceptance of more rigorous standards of responsibility from clubs and other stakeholders – in line with the intentions behind Strict Liability.
5. Accept the fundamental principle that supporters should be continuously and extensively

consulted, engaged, educated and involved in improving security, behaviour, reasonable order and the fan experience at football – rather than ignored or simply treated as potential culprits, as has sometimes been the case.

These are our **five principles for action and reform**. We will examine the first one (a better conversation about Strict Liability) in particular detail in this paper, summarise ideas in a previous report about the second (Policing with Community Consent)⁸ and make further reference to the other three in anticipation of additional thinking and development.

Quite consciously, this is not a closed or finalised report. Lasting impact is achieved only through collaboration and engagement. Therefore, we wish the approach adopted in this report to be seen as an open-textured one with firm and clear principles, a practical and flexible approach to implementation, and a commitment to evidenced based consideration as the only realistic way of proceeding.

Part Two

Why we are where we are

2. Why we are where we are

The historical context

To the casual observer Scottish football may until recent times been seen to have 'grown up'. The days of the hooligans fighting every week and taking over football as a criminal and extremist political vehicle have for the best part been left far behind, despite natural and understandable concern evoked by recent resurgences in Scotland and elsewhere from 2018 onwards.⁹ Casting our mind back to the human tragedy at Hillsborough should remind us that restrictive fencing at grounds used to be common place at many towns and cities in the UK as a consequence of the violent or disordered behaviour of some spectators in the early 1980s. The aftermath of the Heysel disaster also saw the clubs from England being banned from European competition for a period of five years as a result of the misbehaviour of fans. Following the Hillsborough disaster, the Taylor Report required the radical provision of all-seater stadia that dramatically changed the environment for watching football. This in itself had a significant part to play in changing fan behavior, as did the change in the highly charged political landscape following the

miners' strike of 1984/5 and the anti-poll tax protests. Then as society moved on, the 'football casual' culture diminished.¹⁰

A significantly changing demographic

The growth of new participants (notably more women and girls playing and watching football) and the development of clubs to become more of a focal point of community activity all played a significant role in shifting the football audience beyond its historical origins in male-dominated heavy industry. The expansion of television also had an impact on the socio-economic profile of football fans. However, there remains a hard core of football diehards – those who rarely or never miss a game, home or away, if they can help it. Without doubt these are the most loyal of all within the game. They would not skip a match except in unavoidable circumstances (family illness, bereavement etc.) or unless economic circumstances prohibited it. Within this group there exists a section who aspire to get more out of the football experience, and while not all are influenced by the 'football casuals' of old, there are many who have been inspired by the 'football

ultras' who are commonplace around Europe.¹¹ Given the tribal nature of football support, there are undoubtedly dangers involved in opening up sections of a football ground to them in order to create atmosphere – something that could equally encourage inappropriate behavior unless there are proper controls in place and changes within the culture.

We have been here before

As a consequence of the 2016 Scottish Cup Final there were growing calls from many commentators for Strict Liability to be applied as a means of preventing such incidents happening in the future. Equally there were calls by ordinary football fans to explore all the necessary options available to ensure that scenes like this could be confined once more to the past.¹²

Under pressure following embarrassing scenes being beamed around the world the then Scottish Cabinet Secretary for Justice, Michael Matheson, decided that action need to be taken, and taken quickly. He called on the Scottish Football Association (SFA) to tighten rules on fan misconduct, citing Strict Liability measures as a way forward. Matheson told the governing body's

AGM that if adequate steps were not taken, then new legislation could be introduced to tackle these problems. Following the meeting, the Justice Minister declared: "The scenes we saw at Hampden last week were appalling and the Scottish Government condemns in the strongest possible terms the disorder and violence which scarred the end of the game."¹³

The SFA then tried to get Strict Liability adopted at its AGM. Although the exact details cannot be publicly verified, it appears that only around five clubs voted for the measures and the motion failed. The Scottish Government was walking something of a tightrope on the issue. It was convinced that something had to be done, but having previously jumped to legislation with the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, which proved deeply unpopular with fans (and which was heading for repeal after it became a political football for opposition parties) it felt compelled to seek to move the debate on. As a result, a review of the conduct of supporters was initiated by the Scottish Government, who sought to work with the football authorities and the clubs in order to come up with a workable solution.

The present adaptation has been described as a 'traffic light warning system' for clubs, who must prove in cases of disorder that they have acted in good faith and have taken every precaution available to them to avoid crowd problems. This plan has never been made public. Its effectiveness is now being called into question, since there is no evidence that it has provided any substantial

progress in combatting a resurgence of difficulties. League rules state that clubs can escape punishment if they can provide reasonable evidence that all practicable steps have been taken to prevent unacceptable conduct. Many suggest that this comforting prescription covers a much more problematic reality.

Part Three

The need for further action is now

3. The need for further action is now

Over recent years there has been a noticeable deterioration in supporter behaviour at football matches across the UK. From a Scottish perspective this started with coin throwing and has escalated to the throwing of glass bottles. The continued embarrassment of sectarian singing at games and in licensed premises used by fans has also been broadcast through social media.¹⁴

The Scottish Football Supporters Association (SFSA) responded when the coin tossing incidents with our “Don’t Be a Tosser” social media campaign. This reinforced the message that the vast majority of ordinary football fans do not want anybody misrepresenting their club by behaving this way. It also provided an amusing but serious fan-driven message aimed at creating peer pressure to combat those throwing coins. But with no significant budget and resource, and no support from the football authorities, its effectiveness was seriously curtailed. In December 2018 the SFSA also called for a National Summit on the game. The idea was to bring together all concerned stakeholders, including fans, players managers, coaches and officials. Again, the call was ignored

by the football authorities, who will mostly only act when the agenda is generated from within their own confines.

The SFSA’s proposal for a Summit was taken up again recently by Alan Stubbs, who witnessed at first hand the on-field celebrations that led to on-field fighting at the 2016 Scottish Cup Final when Hibernian and then Rangers fans invaded the pitch. Stubbs insisted in March 2019 that Scottish football needs an urgent summit to develop a common front against the hooligans. His concern has been that hurling bottles from the stands might end up with players suffering brain damage. The former Hibs and St Mirren boss said he was shocked at the rising number of flashpoints over the past season, as he thought the game had received its big wake-up call following the shameful scenes after that 2016 Scottish Cup Final.¹⁵

With the continuation of unwelcome and socially damaging sectarian behaviour¹⁶, the throwing of coins and bottles and now attempts by some individuals to encroach menacingly onto the field of play, it is clear that these issues need to be addressed. The SFSA feels

that the time is now right for the football industry to consider all aspects of Strict Liability (or credible alternatives to it), rather than wait for Scottish Government to press for tougher sanctions in ways that neither they nor those inside the game want to see.

To many observers Scotland still has to catch up with the rest of Europe, where Strict Liability for football clubs is widely accepted and applied by both national and international football governing bodies. The SFSA believes that it is time for our

members' organisations to put the game, the public interest and long-term progress above what can look to be immediate, short-term, self-interest. We know that is a challenge to a members' run organisation, but unless something shifts the prospect of statutory intervention looms. It is healthy and right for football to be self-governing, but that means accepting full responsibility for the difficulties as well as benefits of so doing. Similarly, SFSA believes that fans can and should share in that sense of active responsibility.

Part Four

What is Strict Liability and how does it work across Europe?

4. What is Strict Liability and how does it work across Europe?

Dr Rosmarijn van Kleef works as a sports strategy consultant in Lausanne, Switzerland and is a specialist in Strict Liability. In an article for the Nil by Mouth charity last year she observed: “At first glance and not unlike the debate on disciplinary liability, this might seem unfair to the clubs. However, similar forms of liability already exist. For example, if one gets hurt by an exploding coffee machine, the manufacturer of the machine will be strictly liable based on product liability rules. The reasoning behind Strict Liability is that whoever benefits from a dangerous activity should also bear the related losses.”¹⁷

“On one hand, football clubs that participate in league and other official matches benefit from hosting these events – financially and in other ways. On the other hand, fan disturbances are, seemingly, an inherent and foreseeable risk of participating in high level football. As such, the organisation of football matches potentially creates a genuine public safety risk. The difference between the manufacturer and the club therefore seems to be the way they are viewed by society. We see no problem in a business

being responsible for negative side-effects of their main activities. Somehow, professional football clubs touch a different nerve.”¹⁸

The FIFA sanctions regime

The world’s governing body operates a tiered system of punishment system for its Strict Liability codes. In the first instance a discretionary fine is applied for simple breaches and for so-called minor offences – see the examples set out below. Thereafter, if the problem is not dealt with or contained, there is the option to ratchet up the fines. Then a more serious sanction would be closing a section of the ground where the incident occurred.

The next stage is moving to the closing of the stadium for spectators, with a behind-closed-doors game. This damages the club’s reputation and hurts it financially by depriving it of gate receipts, match day sponsorship income and broadcast revenue. If the offence persists the stadium can and will be closed for a more sustained period of time and there is the option to dock points. The final sanction is expulsion from the competition. Sanctions are

applied through a committee.

UEFA's role and the constructive response of supporter groups

The European governing body, UEFA¹⁹, operates a tiered punishment system for its Strict Liability codes which broadly follows the punishment mechanisms laid out by FIFA. Sanctions are applied through a committee. The specific rules read as follows:

1. Host clubs and national associations are responsible for order and security both inside and around the stadium before, during and after matches. They are liable for incidents of any kind and may be subject to disciplinary measures and directives unless they can prove that they have not been negligent in any way in the organisation of the match.

2. However, all associations and clubs are liable for the following inappropriate behaviour on the part of their supporters and may be subject to disciplinary measures and directives even if they can prove the absence of any negligence in relation to the organisation of the match: a. the invasion or attempted invasion of the field of play; b. the throwing of objects; c. the lighting of fireworks or any other objects; d. the use of laser

pointers or similar electronic devices; e. the use of gestures, words, objects or any other means to transmit a provocative message that is not fit for a sports event, particularly provocative messages that are of a political, ideological, religious or offensive nature; f. acts of damage; g. causing a disturbance during national anthems; h. any other lack of order or discipline observed inside or around the stadium.

Strict Liability regulations vary across Europe and their effectiveness is open to interpretation. It is the opinion of Football Supporters Europe (FSE)²⁰, on which SFSA is the Scottish representative, that Strict Liability has potential pitfalls as well as benefits. The umbrella organisation for fans across Europe has particular concerns around the effectiveness of implementation, which may be distinguished from the principles behind Strict Liability.

One of the biggest potential pitfalls would be the introduction of collective punishment (where all fans are impacted, the innocent as well as the guilty). This is an approach which is not only unfair, but often can be viewed as counterproductive. The Scottish Football Supporters Association agree with that sentiment. We know that many

fans would be concerned about the ability of a governing body to fairly administer such a scheme.

However, Strict Liability can be implemented proportionately and discriminately, fitting the punishment. It should be perfectly possible to develop a 'Scottish approach' with fairness at its heart. Moreover, the Scottish Football Supporters Association believes that the evidence for adopting Strict Liability for inappropriate (that is, threatening and menacing) chanting throughout the world is compelling. If it can be used successfully to neuter homophobia and racism by the threat of action, then there is every reason to believe that it can be

used to help eradicate sectarianism and hate at our grounds here in Scotland.

Pavel Klymenko of the anti-discrimination FARE Network in Eastern Europe recently opened a conference in Croatia by pointing out that FARE²¹ works with UEFA and FIFA directly to fight discrimination and use football as a tool for social change. A large part of their work is lobbying for basic human rights and fighting discrimination in relation to Strict Liability. He commented that "when the system is in place it works – the fans and the clubs understand it. The clubs are saying that bad behaviour won't be tolerated. As a result, fan behaviour changes".

Part Five

Debunking a variety of myths about Strict Liability

5. Debunking a variety of myths about Strict Liability

Myth 1. FIFA hates interference from politicians and parliaments, so Strict Liability will cause the football authorities in Scotland problems.

While this line of resistance is often used by the SFA / SPFL to ensure there is minimal interference to its existing governance structures, the reality is that FIFA has had its own (far greater) governance issues in recent years. It really does not want interference from the FBI or the Swiss and German courts either, but whether it likes it or not there are higher legal powers than FIFA in world affairs. There is also a huge change in the dynamics of this members' organisation: one that has been seen to be riddled by corruption for decades. Controversy surrounding the bidding process for the Qatar World Cup in 2022 is only the latest example. So, while FIFA does not approve of political intervention in football affairs and would prefer the football authorities to fix their own problems²², statutory authorities only generally intervene in cases where there is evidence of corruption. SFA opposes intervention for political purposes, but the fair application of the law

and democratic accountability is another matter. Moreover, adopting Strict Liability or equivalent measures within the game is a way of ensuring that football can and does regulate itself, matching responsibility with a fair system of sanctions. It is the failure to do this that risks external intervention or pressure. The Scottish Government has repeatedly made it plain that it would seek intervention only as a last resort, but that the football authorities and other stakeholders must act.

Myth 2. FIFA does not take Strict Liability seriously.

If we look at how FIFA imposes sanctions we will see that in 2018 different cases were dealt with in different ways. What is interesting is that using the 'ratchet effect' means that the more serious the offence becomes, the more serious the applicable penalty becomes. This is a proportionate approach.

Last year FIFA confirmed sanctions imposed on several football associations for incidents during 2018 FIFA World Cup qualifying matches and international friendlies.

England was fined CHF 45,000 for several incidents in the framework of the England v Scotland match “including the display by the host association, the English team and spectators of a political symbol and several cases of spectator misconduct. Scotland, as the visiting association, was fined CHF 20,000 for the display of the same political symbol and cases of misconduct committed by its own group of spectators.” Much was made of these particular incidents given that the symbols were poppies. But this is different to a self-regulating code that might be adopted in Scotland. The English FA applies Strict Liability within its own jurisdiction.

The following are examples of how FIFA itself sees managing Strict Liability, with the response to national team offences going from a fine for small incursions right through to sanctions where a ground needs to be closed. In the past, teams have been thrown out of tournaments or indeed tournaments have actually been removed from the jurisdiction of national associations if they fail to adhere to Strict Liability rules.

The Disciplinary Committee has taken these decisions after analysing all of the specific circumstances of

each case. “With these decisions, it is not our intention to judge or question specific commemorations as we fully respect the significance of such moments in the respective countries, each one of them with its own history and background. However, keeping in mind that the rules need to be applied in a neutral and fair manner across FIFA’s 211 member associations, the display, among others, of any political or religious symbol is strictly prohibited. In the stadium and on the pitch, there is only room for sport, nothing else,” declared the chair of the FIFA Disciplinary Committee, Claudio Sulser, in explaining the actions taken.

Moreover, in proceedings relating to incidents involving unsporting and discriminatory conduct by fans, the Disciplinary Committee imposed the following sanctions from its rules around Strict Liability last year (directly quoted from FIFA):

Chile has been sanctioned with a ban on playing at the Estadio Nacional Julio Martínez Prádanos in Santiago for two official matches and fined CHF 30,000. The ban will be served at Chile’s 2018 FIFA World Cup™ qualifying matches against Paraguay and Ecuador. The proceedings relate to homophobic chants by the team’s

fans and follow previous sanctions for similar incidents during the preliminary competition of the 2018 FIFA World Cup™.

Romania has been sanctioned with a ban on playing at the Arena Natională in Bucharest for two matches and fined CHF 95,000 for a series of incidents during the Romania v. Poland match. The first ban will be served at the next match of the 2018 FIFA World Cup™ qualifiers between Romania and Denmark, whereas the implementation of the second ban is suspended subject to a probation period of two years in application of art. 33 of the FIFA Disciplinary Code (FDC).

Honduras has been sanctioned with a ban on playing at the Olympic Stadium in San Pedro Sula for one match and fined CHF 40,000 for several incidents during the Honduras v. Panama match. The suspension will be served at Honduras’ 2018 FIFA World Cup™ qualifier against Costa Rica.

Greece has been fined CHF 80,000 for several incidents during the Greece v. Bosnia and Herzegovina match, including the display of a political banner by fans, and Ukraine has been fined CHF 60,000 for

discriminatory chants by fans during the Ukraine v. Serbia friendly match.

In addition, Poland has been fined CHF 35,000, Argentina CHF 30,000, Bosnia and Herzegovina CHF 25,000, Colombia CHF 25,000, Panama CHF 25,000, Mexico CHF 20,000 and Venezuela CHF 20,000 for various incidents involving unsporting conduct by fans, including homophobic chants in some instances. Another procedure opened against Mexico is currently on going.

Myth 3. FIFA or UEFA will intervene if the matter of Strict Liability ends with legislation being adopted by the Scottish Parliament.

Scotland is one of the founding members of FIFA. Yet it is one of the few developed countries which have not formally adopted Strict Liability for its domestic game. This makes it a double anomaly, since all Scottish teams playing internationally at home or abroad are subject to Strict Liability. Therefore, pressure to get it to comply with widely adopted standards is highly unlikely to attract any form of threatening concern from FIFA, provided that this does not impinge upon what would otherwise be the normal operation

and self-regulation of the game. There is no reason at all to suppose that this would be the case.

Scottish clubs who have played in European competition are subject to Strict Liability rules and have to accept this, or else forfeit their right to play in these competitions. So it is reasonable to assume that a form of Strict Liability for the domestic game in Scotland would be welcomed by the European and World bodies as a progressive step towards better governance.

Myth 4. Could FIFA / UEFA be lobbied to change their rules, so that it would make it compulsory for Scotland to adopt Strict Liability?

Trying to lobby these sporting bodies is almost impossible, given the closed structures under which they operate. It is unlikely that they would force change themselves, as this would be inconsistent with the wider policy.

Myth 5. Strict Liability will simply not work in Scotland.

This is a very poor argument, since Strict Liability is currently used successfully for non-domestic matches in our country and when our

teams play abroad. As highlighted above, Scotland is subject to FIFA Strict Liability rules when any of our teams play in internationally any FIFA sanctioned tournament. Over the years this regime has been successful in ensuring that the good reputation of the national team is maintained.

As has also been observed, Scottish domestic clubs who have played in European competition are subject to playing under Strict Liability rules and have to accept this or forfeit their right to play in the competitions. There have been no objections that we are aware of about those grounds, though in 2019 sides competing in the Champions League and the Europa League have been the subject of sanctions for fa misbehaviour.

Over the years there have also been many occasions where some of our larger clubs have sought to play in England, or indeed to discuss the possibility of an Atlantic League. If any of these circumstances came to pass then games would be played under either English FA or UEFA rules, which employ Strict Liability criteria. So why is playing a game at Stranraer an issue to those clubs if Strict Liability were to apply, yet playing in Swansea or Stavanger with

Strict Liability (as it currently needs to be) is not?

Equally, Scotland will be hosting matches during the rescheduled Euro Championships in 2021. All of these matches will be played under Strict Liability conditions as per UEFA's tournament rules.

So Strict Liability already works in Scotland every time there is a European or International match played by our teams, either at home or abroad. It is only ungrounded fears from some clubs concerning draconian sanctions, and myths being perpetuated along the lines of those noted above and below, that have hampered meaningful debate about a fair, sensible, proportionate and contextually appropriate regime in keeping with Strict Liability.

Myth 6. What happens if a fan from one club infiltrates into another club's support to get the opposition club into trouble?

This is probably the largest urban myth surrounding Strict Liability. The chances of this are so unlikely, given the ticketing procedures that are already in place. Equally, given the tribal nature of fan culture, it would be very difficult to happen undetected. Yet it is perhaps

the most frequently used excuse deployed by those opposed to Strict Liability. The SFSA has been unable to find any examples of this type of problem hampering any Strict Liability sanctions that have been applied anywhere in the developed world. This is because it is in the interests of all clubs to cooperate maximally to reduce or eliminate disorder when a fair and agreed escalating sanctions regime has been adopted by everybody.

Myth 7. Can we trust the SFA to administer Strict Liability?

Given where the debate has gone concerning refereeing issues, where contention is still high, there are concerns that there would need to be very clear guidelines and protocols put in place to allow a measure of confidence that all was being handled fairly and equitably regarding the application of Strict Liability. In fact, the adoption of Strict Liability could provide the perfect opportunity to have appropriate external input into disciplinary and misbehaviour prevention process, in order to avoid accusations of preferential treatment by any of the parties involved. The SFSA would certainly back proposals for an independent FARE-style observer scheme.

Myth 8. Strict Liability is a ‘one size fits all’ proposal.

This need not be the case at all, as FARE involvement in the process illustrates. A system of Strict Liability or its equivalent adopted by Scotland, for Scotland, sensitive to the vagaries of the Scottish context, is what is needed and what SFSA commends. We believe that tackling discrimination, threat and disorder in football requires a multi-dimensional approach that combines educational activities, self-regulation among fans, and appropriate measures by clubs and the governing bodies.

FARE does not issue sanctions. Instead, the FARE network has developed an observer scheme at

European level matches as part of its work to tackle and educate against discrimination and challenge far-right extremism inside football stadiums.

FARE believes that such a scheme is necessary because “from media reports and high-profile incidents involving players, we know that the problem of discrimination remains an issue across the continent. As Europe struggles with its changing demographics against a backdrop of economic disparity, intolerance continues to be a feature of some football stadiums with abuse against minorities and far-right symbols being used by some supporters.”

Part Six

What could the Scottish Government do to change the landscape?

6. What could the Scottish Government do to change the landscape?

It is possible that the Scottish Government could withhold or prescribe funding that is earmarked for sport, often at the grassroots level. Prescriptions around particular programmes might be one way to put pressure on the football authorities to encourage their member clubs to support Strict Liability, or to come up with a credible set of policies as an alternative to it.

Secondly, Scottish football has its own SFA-run Club Licensing Scheme, where key criteria have to be fulfilled by a club before it is allowed to participate in SFA run football activities. In addition to this there could be a sliding scale of Strict Liability-style sanctions written in.

Could an identity scheme work instead?

A national identity scheme was introduced in Italy as a way to combat some of the more extreme violent episodes that emanated from the 'ultra' movement at games. However, this has had little impact on these incidents. It is also difficult to administer and expensive to run. The identity scheme has proved deeply

unpopular with fans' groups across the country, who have continued to protest rigorously against it. It should be noted that this is an additional measure that brought in after the death of policeman at a ground. It should be noted that Italy already has Strict Liability, so this was an added controlling measure. It is not a necessary or appropriate corollary of SL itself.

The Tessera del tifoso (Supporter's ID card) was the identity document introduced in 2009-2010 by the Italian Ministry of the Interior to identify fans and supporters of specific association football clubs. It was introduced in order to counter the level of hooligan violence during games, and it was made compulsory during the 2010/2011 season. It should be noted that there was no objection by FIFA/UEFA of the type often suggested by the Scottish football authorities, despite the programme being implemented by statute rather than by football as a self-regulating ordinance.

The identity card identifies fans as supporters of specific teams and is checked by police or security at the stadium entry. In addition, it doubles

as a points collection scheme whereby fans can cash in points at banks for season tickets and away tickets. The Tessera has been criticised by fans' organisations, ultras, consumer protection NGOs, civil rights groups and pro-privacy organisations for a variety of reasons.

It has been blamed for a reduction in ticket sales, while being unable to prevent hooliganism violence. It is also said to have had a detrimental effect on the occasional football

spectators that we in Scotland refer to a "walk-ins". Around 20% of Scottish fans come into this category. There would be further complications in Scotland, since we do not currently have a national identity card scheme, nor is one planned. Given the overall feelings that ordinary football fans have around being treated as second class citizens, there would be little support for this measure. It could also be contended as a significant human rights violation.

Part Seven

Strict Liability in action across Europe

7. Strict Liability in action across Europe

In 2013, OGC Nice versus AS Saint-Etienne. Before and during the French Ligue One match between OGC Nice and AS Saint Etienne violent clashes erupted between supporters of both clubs. During the match several dozen supporters of AS Saint-Etienne threw stones and seats in the direction of supporters of OGC Nice and attempted to invade the other section before riot police moved in to restore order. Damage: eight injured and 200 broken seats. Sanction OGC Nice: EUR 15,000 fine; sanction AS Saint-Etienne: two matches without spectators, one of which was conditional.

In 2014, Dutch Cup Final PEC Zwolle versus FC Ajax. The 2014 Dutch Cup Final between PEC Zwolle and FC Ajax took place in the stadium of FC Feyenoord, FC Ajax' arch rival. During the opening minutes of the match, underdogs PEC Zwolle scored, after which Ajax fans threw fireworks and smoke bombs onto the pitch causing damage to the field of

play and also causing an advertising sign to catch fire. The match had to be suspended for 30 minutes and again for 20 minutes after PEC scored a second goal. Damage: EUR 70,000 in property damage. Sanction: withholding of damage from premiums.²³

In 2013, Dynamo Kiev versus PSG and versus Bordeaux. Kiev were warned that unless racism towards black players stopped then they would be penalised: Sanction by UEFA following two games were behind closed doors

In 2016, Croatia versus Italy. Fans etched a swastika onto the pitch and persisted with racist chants: Sanction by FIFA Croatia v England: one of two games that followed this to be played behind closed doors.

In 2018 Lyon versus CSKA Moscow. Crowd trouble from the home support Sanction by UEFA: next game versus Shakhtar Donetsk to be played behind closed doors.

Part Eight

What do the football professionals say about Strict Liability?

8. What do the football professionals say about Strict Liability?

From a European perspective

Pavel Klymenko of the FARE Network says: *"The punishment works, because fans eventually put*

the love of their club their team ahead of offensive behaviours when the system is in place."

In England

Talking after the well-publicised Smalling, Tavernier, Grealish incidents, national women's coach and former Manchester United defender and England international Phil Neville said: *"We don't need to put up with this anymore. We need the strongest message to stamp this out."*

Former Newcastle United and England international Alan Shearer says: *"Football needs to take the strongest possible action - points deduction, playing behind closed doors, now is the time for a response."*

In Scotland

Stephen Thompson says: *"There has been no deterrent. To fix this, we need leadership. I am in favour of Strict Liability"*.

Allan Preston says: *"Scottish Football needs to adopt Strict Liability and change the way it governs itself."*

Pat Bonner says: *"Strict Liability is the deterrent that we need to fix this."*

Willie Miller says: *"If you own a bar or a nightclub and there are disturbances, you are responsible for what happens in your environment. Football clubs should be no different, so Strict Liability should be agreed."*

Michael Stewart says: *"Now is the time for Strict Liability. We need to address these issues once and for all"*

Part Nine

The SFSA and our role in these concerns

9. The SFSA and our role in these concerns

The Scottish Football Supporters Association is the national football supporter's umbrella group in Scotland, representing fans of all Scottish clubs. It is the only independent fans' body with representation at Football Supporters Europe (FSE) level. SFSA has over 71,000 members across three categories: individual fans, fan groups and affiliates. It is well placed to support and deliver innovative programmes that can use the power of football to enhance the community. The organisation is a volunteer run, not-for-profit social enterprise. It is a Community Interest Company registered in Scotland.

SFSA has knowledge and experience of the structure and organisation for fans groups across the UK and in Europe. It has direct access to

leading experts on Community Ownership structures at football clubs. The organisation has consulted widely with many football clubs, supporter groups, as well as the Scottish Government and major political parties on fans' affairs. It has direct engagement with both the SFA and the SPFL, wishing to be seen as an independent but critical friend in assisting the improvement of governance within Scottish football.

The SFSA believes that the success of football as our national game rests with the participation and the contribution of supporters and that there is a need for them to have an independent collective influence within all aspects of the running of the game.

Part Ten

Summarising our proposals

10. What do the football professionals say about Strict Liability?

Keeping Strict Liability on the Table – as part of wider learning / exchange

As this paper acknowledges, Strict Liability is not a one-size-fits-all solution. It can be conceived and implemented in different ways in different contexts. This is both a strength and a weakness. The strength, as we have noted, is that it is perfectly possible to come up with a version of SL which suits the particularities of the Scottish context. What is particularly important, from our perspective, is that SL is kept on the table. It is a measure of what assuming proper responsibility and liability looks like in many industries, including entertainment. It is not acceptable for the football community simply to excuse itself, or to seek to wriggle off the hook of taking responsibility by dismissing notions of legal responsibility for what goes on in and in the immediate vicinity of football grounds. If SL is not the way forward, another robust and adaptable formula is needed to address disorder in football – one that needs to engage all stakeholders, including fans, in finding the right solutions.

In our view there are a variety of possible responses to the situation we face. SL may be seen at the ‘hard’ end, but the sanctions it involves can be modified and adapted through engagement, consultation and experiment. This is the terrain we would like to see the conversation move towards. Both wider civil society and the government should have a reasonable expectation that football puts its own house in order. The Scottish Government, while wishing this to be the case, will naturally reserve the right to intervene where it feels the wider public good and the interests of citizens are being infringed by the failure of the football authorities, football clubs and the football community to deal with forms of misbehaviour and disorder which exact a wider price (including in economic terms) on society. If football wishes to be a community partner, with all the benefits that accrue both to the game and to society, then it needs to face up to its share of responsibility.

Continued...

Looking to the experience of clubs proactively taking responsibility

An important way forward is to look at what is already working (and not working) in terms of the response of clubs both large and small in relation to misbehaviour, disorder, and the attempt to create a friendly and welcoming atmosphere for all within football. One positive way forward would be for all clubs and supporter groups to respond to a questionnaire, and to face-to-face contact in order to share lessons and ideas.

These could be collated in an online Ideas Pack, with examples, lessons, outcomes and contact details for guidance. This is a straightforward, collaborative and communicative way of sharing best practices, avoiding 're-inventing the wheel' and showing that solutions in different contexts and at different levels within the game are indeed possible.

Responding to UEFA enforcement and gradations of liability

Further study and reflection are needed concerning what has and has not worked at regional and international level. We have begun that process in this paper. FARE, Football Supporters Europe (FSE),

Nil by Mouth and other organisations – not least those aiming to tackle racism and hate crime within and around the game – have much to offer as partners within this endeavour. Again, effective solutions will come from a dialogue between administrators, clubs, supporters, government and civil society organisations. What Scotland can learn, what we can offer and what we can innovate should be at the centre of this conversation.

The role of initiatives coming from lower league football

While the fact that major disorder is most noticeable and prominent at the elite level of the game, where large numbers of people gather and the media acts as a spotlight and a magnifier, we recognise that there are behavior problems that need to be addressed throughout Scottish football. Equally, self-policing, or the development of enforceable policy with the engagement of clubs and fans, can perhaps most readily and flexibly be developed at a smaller scale. The difficulty for smaller clubs is that they usually lack the financial and other resources needed to do this. The advantage they have is that they operate at a scale, with a set of personal relationships and with a proximity to the community that

makes innovation possible as well as desirable.

The Scottish Football Supporters Association has been proposing for some time that a series of local pilot studies be conducted, enabling smaller clubs to look at how to promote a family, supporter and neighbourhood friendly atmosphere; how to address incidents of misbehaviour and disorder, and how to share good and effective practice from hands-on experience. One of the ways this can be expressed is in the idea of 'policing with community consent' – drawing together all those responsible for good order within a football club (both externally and internally) and enabling them to work and learn together through a series of workshops involving people with proven skills in crowd management, human behaviour, non-violent communication and civic engagement. The ideas coming out of this discussion would then be piloted, tested for impact and effectiveness, costed, and shared. SFSA can play a key role in putting together a modest but creative and practical positive programme. We would look to work with partners and secure resource support from clubs, the football authorities and the Scottish Government in initiate such a proposal.

The role of fans in the future of our game

As we have pointed out on several occasions in this paper, fans need to be seen as part of the solution to disorder and misbehaviour within football, not just as its source and as a problem. Treating supporters as adults, as protagonists, as co-owners of the game and as those who are able to contribute to its flourishing is vital if we are (a) to move away from the non-constructive 'us and them' mentality in boardrooms and elsewhere, and (b) if we are to tap the potential, energy and multi-layered expertise that exists among the large number of people who follow Scottish football, and whose contacts run deep within our communities and civic society. In this context, SFSA seeks not simply to be a union for fans (though we are that, and proudly so), but a professional organisation with and of supporters, engaged in sustaining, improving and developing the game. The ideas set out above are ones our members, old and new, have the capability and capacity to contribute to.

The path to effective responsibility in Scottish football

Our ethos, intention and aims/objectives are clear. We believe that football supporters should be encouraged to take responsibility and propriety within our national game, and welcomed for doing so. The means for this is conversation and practical partnership. This paper has been produced over a period of several months and has involved not only discussion within the SFSA, but also participation in meetings involving the football authorities, the police and representatives of players and officials, as well as the Scottish Government. For the foreseeable future, issues around the future of Scottish football are likely to be framed by the impact of the COVID-19 outbreak. The financial and logistical implications of this are massive. It is not difficult to see the threat posed to us all, and to the very fabric of our game, by coronavirus. Equally, however, there will be potential opportunities arising from this crisis, both evident and those that are not so evident now.

These require deeper conversation, engagement and practical action as an urgent necessity. One thing that is quite clear from the impact of COVID-19 is that the security and flourishing of each of us depends upon the security and flourishing of everyone. This goes beyond the immediate ties of family and football tribal loyalties.

It is within this context that the SFSA offers this paper, our reflections on the shared path to the future, and our current and developing series of activities. By 2021 we would like to see the establishment of a Scottish Football Parliament or Council. That would include two or three stakeholder meetings, sub-meetings and working groups to look at the future of the game. We would look to develop and gain commitment to a common vision and map out a set of strategic improvements that can be implemented over the next five to ten years. Despite the difficulties we all currently face, we hope to take this proposal forward as soon as possible.

APPENDIX

Further specification of the FARE observer scheme ²⁴

The observer system allows us to better understand the scope of the problem, collect evidence and conduct an analysis, and call for responsible action by governing bodies.

The data collected is used to focus stakeholder attention on particular problems and incidents, and to stimulate a debate on measures to tackle the problem on the part of NGOs, fans, clubs and governing bodies. The evidence suggests that highlighting incidents and clear regulatory action raises awareness and debates.

We want to ensure that football fans and other stakeholders are doing everything they can to prevent racist and discriminatory incidents from occurring and react when incidents occur.

Which matches are monitored?

Members of the FARE team assess all international matches in Europe for the likelihood of discriminatory behaviour and send observers to matches that we identify as a risk

for potentially high levels of racism, extreme nationalism, xenophobia, antisemitism or homophobia.

The assessment is made on the basis of previous reports received by FARE and an evaluation into the nature of the fixture in its socio-cultural context.

FARE does not send observers to domestic league fixtures. However, we receive reports through the media, from members and incoming reports, which help us to develop a picture.

Who are the FARE observers?

The FARE observers are experts who have been recruited through an open process from across Europe. All have background knowledge in anti-discrimination issues and fan scenes.

All observers speak the language of the teams they have been appointed to observe and are familiar with the corresponding fan cultures. The observers are working on a voluntary basis and are committed to being unbiased. They are not appointed as an observer at a game involving a team they follow themselves as supporters, or a close rival team.

All observers receive training and agree to a strict code of conduct before they start their work. Observers are independent individuals and are not required to be FARE members. FARE members, conversely, are not usually FARE observers.

To protect the personal safety of our observers, FARE guarantees their anonymity towards third parties and we vouch for the quality of their work. All reports are vetted and checked for quality.

How do the Observers prepare for matches?

FARE observers conduct research and draw on their own experience prior to their designated match. They observe the game in the stadium to record incidents of discriminatory chanting, displays of far-right symbols and other examples of overt discriminatory activities. After the final whistle, the observer will submit a report to FARE detailing all discriminatory incidents noted during the match.

An assessment of the report is made by FARE and it is filed with the appropriate international governing body.

What are we reporting?

FARE reports all activities of a discriminatory nature: racist, homophobic and sexist incidents, abuse of disabled people and far right or nationalist symbols or actions.

Incidents can include overtly discriminatory behaviour such as monkey gestures or Nazi salutes, chants, banners, flags, clothing, parts of choreographies, slogans or songs that can be heard or seen during the respective game.

FARE does not issue sanctions

FARE has third party reporting status with UEFA and has recently launched a global monitoring scheme with FIFA. It is our policy to call for regulatory action; however, as a reporting agency we are not responsible for the procedures in place by the governing bodies. Sanctions are the responsibility of governing bodies and are subject to strict legal rules, FARE does not influence them. observer scheme.

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SCOTTISH FOOTBALL
Supporters Association

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