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Chapter 10:

Football banning orders: the highly effective cornerstone of a preventative strategy?

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Abstract

The incremental development of restrictive measures and control orders intended to prevent football hooliganism has been noted by academics in both England and Scotland. Despite suggestions that the 'hooliganism problem' reached its peak in the 1980's, repressive forms of legislation (such as the Football Banning Order) have still been implemented to target supporters labelled as a 'risk'. In this chapter, consideration is given as why such repressive forms of control have been implemented and how successful they have been. It is argued a perception exists within media, government and policing that unacceptable forms of behaviour perpetrated by risk supporters need to be tackled through such control orders and although the use such orders circumvents traditional values of due process, ethical issues remain of secondary importance to tackling the problem of hooliganism. That said, evidence in relation to the efficacy of such orders remains patchy and requires further systematic evaluation.

Introduction

On 14th April 2013 Millwall played Wigan Athletic in the semi-final of the FA Cup at Wembley Stadium. Disorder involving Millwall supporters at one of the Football Associations showpiece events firmly placed the subject of football hooliganism back in the public sphere. The events at Wembley were followed by disorder at the Newcastle verses Sunderland game where 29 arrests were made on the day of the game (in total 106 were made) and a horse was captured on camera being punched by a Newcastle supporter. As the media predictably referred to 'shameful events' that were 'reminiscent of the dark days of football riots in the 1970's and 80's' (Watson & Brooke, 2013), political attention turned to what measures are in place to prevent football-related disorder. This subject was raised in parliament when, on 13th May, Dan Jarvis (Labour Barnsley central) asked the secretary of state for the Home Office what steps had been to (a) enforce banning orders and (b) reduce levels of violence around matches. On behalf of the Home Secretary, the Home Office minister Damian Green responded:

Football banning orders are the highly effective cornerstone of our preventative strategy the Home Office continues to make funding available to support local police operations gathering evidence and seeking football banning orders against persons who have been involved in football-related violence or disorder at matches.

Hansard, 2013.

In England and Wales, the current version of the football banning order (FBO) was legislated for in the Football (Disorder) Act (2000). In Scotland, the banning order was not legislated for until 2006 (in

the Police, Public Order and Criminal Justice (Scotland) Act), with subsequent developments in relation to the Offensive Behaviour and Threatening Communications Act (2012) more firmly cementing the banning order at the centre of any Scottish strategy to tackle disorder in relation to football matches. Intended to tackle the problem of sectarianism (rather than the types of football related disorder observed in England), the official Scottish Government position is that 'the introduction of Football Banning orders is a major milestone in the Governments efforts to rid Scotland of football hooliganism and sectarian bigotry' (Scottish Government, 2013).

Although the banning order seems to be strongly favoured both in England/ Wales and Scotland as a strategy to prevent football related disorder (or sectarianism in Scotland), its implementation has raised concerns amongst academics and football supporters alike. In particular the powers to issue banning orders on complaint (14b orders in England or summary orders in Scotland) where restrictions can be placed on an individual without any conviction in court, have led to criticisms of the orders being draconian and a disproportionate response to the threat of disorder. Also, claims have been made that orders have been imposed on fans who are not 'risk supporters' and have been unfairly targeted by the police (see for example, Football Supporters Federation, 2013). In this chapter we consider the implementation of football banning orders and how they became central to tackling football-related disorder in England and Scotland. First, we present an overview of the development of such forms of restrictive legislation and how they have been used to try and prevent football hooliganism. Second, we focus on the implementation of the football banning order in England and Scotland and finally, we consider what evidence exists to suggest that banning orders have reduced football related disorder.

Restrictive, exclusionary and risk-based approaches to the prevention of football violence

Giuliantti (1994) suggests football hooliganism developed as a definitive social policy issue in-between 1968-70 when it became embedded in 'national and governmental consciousness' (Giuliantti, 1994:14). Since then politicians have 'amplified' or 'de-amplified' football related violence as an issue of social policy concern. For example, there have been periods of amplification (such as between 1971-8) in order to justify more centralised and assertive forms of government interference (as was observed in the new right ascendancy between 1979-84) and de-amplification (between 1986-89) in order to confirm the efficacy of measures previously implemented.

Since the politicisation of football hooliganism as a social problem, many preventative strategies have been suggested or implemented. More draconian suggestions include identity cards and the erection of electric fences. Measures actually implemented include the widespread introduction of CCTV in to stadiums, segregation of fans, restrictions on alcohol sales in and around stadiums, changes to kick off times and bans on away supporters (see Frosdick & Marsh, 2005). Although it has been suggested that many of these measures have helped to reduce football violence (especially within stadiums), legislation encouraging more proactive forms of policing has also been introduced. Indeed, the cornerstone of the current policing strategy to tackle football violence is the football banning order. The FBO continued a trend in the incremental development of restrictive or control orders for football supporters (see Stott and Pearson, 2006, 2008; Hamilton-Smith & Hopkins, 2013) of which key developments are outlined at Table 1. The 'exclusion' order (legislated for in the Public order Act, 1986) and the 'restriction' order (under the Football Spectators Act, 1989) had been used to ban convicted supporters from football matches at home and abroad. The Football (Offences and

Disorder) Act (1999) created international and domestic banning orders and widened the circumstances in which orders could be made, though the Football (Disorder) Act (2000) created the order as it is commonly used at present. The Act removed the distinction between international and domestic banning orders, further extended the scope of restrictions and allowed for civil (14b) orders to be imposed in the absence of any conviction. For orders imposed in addition to a conviction (14a orders), bans from attending specified regulated domestic football matches could be made for a period of up to ten years (these were five years for a civil or 14b order), all orders could include restrictions that went beyond stadia include to locations that also attracted trouble on match days and the surrender of passports to prevent travel abroad to England matches. The most contentious aspect of the legislation was the civil order (14b/ or orders on complaint) where an application could be made by a chief police officer to a court to issue an FBO on the basis of police intelligence to suggest there were '*reasonable grounds to believe that making a banning order would help to prevent violence or disorder.*'¹ This aspect of the legislation was a product of a paradigm shift in criminal justice towards risk-based forms of preventative measures/orders that aimed to prevent offending by placing restrictions individuals in the absence of a criminal conviction. Other examples include the Parental Control Order and the Anti-Social Behaviour Order (Zedner, 2009). Such orders are designed to target populations 'deemed to pose a threat' (Zedner, 2009:81) though some scholars suggest they create a sense that traditional values of due process; the presumption of innocence, proof beyond reasonable doubt and the proportionality of punishment are legal luxuries ill suited to present perils (Ignatieff, 2004).

Although heavily criticised as draconian, civil orders were borne out of frustration over failed attempts to place restrictions on known troublemakers who had not been convicted of a football-related offence. However, concerns have been expressed over the potential misuse of such powers and if the restrictions are proportionate to the end goal of preventing football-related violence (Stott & Pearson, 2006). Key to the debate on proportionality was a ruling made by the Court of Appeal to a civil liberties challenge to the Football (Disorder) Act 2000 made by two 'risk' supporters in 2000 (see Pearson, 2002). In this test case, Gough and Smith² challenged the application made to impose a civil banning order on them, claiming the conditions were in breach of their human rights. In this case, The Court of Appeal used the *de Freitas* test of proportionality to consider whether (i) the prevention of football violence by English fans abroad was sufficiently important to justify limiting a fundamental right of EU nationals to leave their territory; (ii) the measures designed to meet the legislative objective (the prevention of football violence abroad) were rationally connected to it; and (iii) the means used to impair the right to freedom were no more than necessary to achieve the objective (Stott & Pearson, 2006: 6). In this case, the challenge made by Gough and Smith was unsuccessful. Pearson (2002) makes two criticisms of the ruling. First, he draws attention to the fact that the Court of Appeal concluded an FBO should only be imposed where there is 'an exacting standard of proof that will, in practice, be hard to distinguish from the criminal standard' (Pearson 2002: 96). He goes on to argue that this proposed 'quasi-criminal' burden of proof for banning orders appears to contradict the original rationale for the introduction of the 2000 Act (that there was not sufficient evidence to charge those suspected of involvement in football-related disorder).

¹ Section 14B, Football Spectators Act (1989), amended in Schedule One, Football (Disorder) Act 2000: <http://www.legislation.gov.uk/ukpga/1989/37/section/14B>

² Police intelligence suggested Gough and Smith were part of the Derby County hooligan firm 'The Derby Lunatic Fringe'.

Second, he is critical of the reluctance of the Court of Appeal to apply key human rights principles to football supporters.

Table 1: The incremental development of legislation implemented to prevent hooliganism

Legislation	Year	Key areas in relation to football hooliganism
Public Order Act	1986	Created offences commonly used by police in England and Wales to deal with public disorder and violence at football matches. This Act created exclusion orders that worked to ban individuals domestically. Duration of orders at discretion of courts.
Football Spectators Act	1989	Development of what was called at the time a restriction or international orders . Those convicted of a relevant offence/ football-related offence committed in England and Wales or notification of a conviction in a foreign court for a corresponding offence up could be subjected to a restriction order of up to five years- requirement to report to a police station on occasion of designated football matches.
Football (Offences and Disorder) Act	1999	Introduced domestic and international football banning orders . This widened the circumstances in which the courts could make orders under the 1986 and 1989 Acts and extended the ambit of the offences to ticket-touting and indecent or racist chanting.
Football (Disorder) Act	2000	Created banning orders in current form. Broadened the scope of the power of the banning order by restricting individuals on banning orders to travel at certain times and in certain area in relation to football matches played both domestically and internationally. Introduced banning orders on complaint brought by the police (prior to this football banning orders could only be prompted by a conviction for a football related offence). Orders imposed for 3 to 10 years.

Note: Non-football specific legislation is also commonly used against football supporters. For example Section 27 of Violent Crime Reduction Act allows police to move someone from a specified area for a period of up to 48 hours. No offence needs to have been committed for the act to be enforced: the legislation gives police the power to move on people who they say pose a risk of alcohol-related disorder (see FSF, 2013). Section 52 of the Act also repeals Section 52 (2) of the Football (Disorder) Act which set a latest date for applications of 27th August 2007.

In Scotland it was domestic matters that convinced legislators of the need for banning orders. Indeed, Scottish football supporters (at least since the early 1980's) have often been commended for their exemplary (although often very drunken) behaviour when following their national team abroad. As some have commented, the tartan army have used this form of high spirited, but non-aggressive behaviour as a way to distinguish themselves from the English (see Giulianotti, 2005). However, at a domestic level, Scottish football has often been associated with sectarianism³- most commonly linked to the two biggest clubs and also fiercest rivals in Scotland- Glasgow Rangers and Celtic⁴ (see Burdsey & Chappell, 2001; and also Flint & Powell in this volume). Sectarianism is a highly contested term (Flint & Powell, 2011), but is commonly thought of as bigotry, prejudice, hatred or discrimination focussed upon some aspect(s) of religious, ethnic or political identity (Flint and Kelly 2013). The traditional identity of Rangers as 'British Protestant' (and loyalist) and Celtic as

³ It should also be noted that the types of hooliganism involving 'firms' or 'casuals' commonly observed in England were also evident in Scotland. Indeed, the birth of causal culture is often attributed to the 'Aberdeen Casuals' who were notorious through Scotland in the 1980's.

⁴ Sectarian allegiances can also be found amongst other football clubs in Scotland. For example, Heart of Midlothian (Protestant) and their Catholic Edinburgh city rivals Hibernian.

'Irish Catholic' (and republican) has both defined their identities, both also created concerns in official circles about how displays of sectarianism heighten tensions on match days and also lead to wider sectarian tensions across Scotland. These concerns were raised in the 2006 Action Plan on Tackling Sectarianism in Scotland (Scottish Executive, 2006) and paved the way for the implementation of FBO's to tackle sectarian behaviours at football matches. However, as in England, this too was implemented against a backdrop of what was widely perceived to be a sustained decline in football related violence and disorder (Hamilton-Smith et. al., 2011), and indeed against the backdrop of accumulating evidence that in Scotland many of the more substantive manifestations of sectarian prejudice and discrimination (such as housing segregation and employment discrimination) were also in long-term decline (Bruce et al., 2004; 2006)

The implementation of football banning orders

As illustrated in Table 2, on average around 3,000 banning orders (14a and 14b) are in force in England and Wales each football season. In Scotland, it is more difficult to identify any trend as data are only available from 2006. However, though FBO numbers grew steadily through the first six years up to 2011-12 (only falling back to 150 enforced orders in 2012-13) it is clear that far fewer orders are imposed when compared to England and Wales. As Hamilton-Smith & Hopkins (2013) note the smaller number of orders issued in Scotland per season could be explained by the fact that fewer professional clubs operate. However, they also observe that the rate at which banning orders are imposed per club is smaller in Scotland than in England and that, in England, banning orders are issued disproportionately in the lower divisions (with hardly any at all issued in the Scottish lower divisions). For example, whereas as several football clubs in England had banning order rates of over 5 per every 1,000 spectators that attended games (in the 2008-09 season), no Scottish football clubs had a rate of over 1 per 1,000 spectators. It was also observed that, in England, banning order rates per 1,000 spectators increased further down the leagues; with a rate of 2.3 for League 1 and 2.4 for League 2 as compared to 1 per 1,000 in the Premier League (again for the 2008-09 season).

Table 2: Banning orders in force: a comparison of England/ Wales to Scotland (14a and 14b banning orders)

Season	Banning orders: England and Wales	Scotland
2001-02	687	-
2002-03	1149	-
2003-04	2596	-
2004-05	3153	-
2005-06	3387	-
2006-07	3203	5
2007-08	3172	25
2008-09	3180	53
2009-10	3248	80
2010-11	3173	129
2011-12	2750	197

Source: National statistics on football: these are orders in normally in force around November of each season. In 2011-12, 493 applications for new orders were successful in England and Wales.

Further analysis of data from England/Wales and Scotland revealed that in both jurisdictions around 13% of all are orders granted are via the 14b route (for example, in 2008-09 in England/ Wales 418 14b orders were issued) and that offences related to the imposition of 14a orders were broadly

similar across both jurisdictions. For example, Table 3 presents an overview of the main offence types relating to all banning orders imposed via the 14a route in England and Wales in 2008-09 season. Thus, the 'football-related' offences for which orders were deemed appropriate were commonly linked to public order offences (in around 70% of cases) though a range of offences from violent disorder to ticket touting could provide the conviction required for a 14a banning order.

Although the lower rate of orders in Scotland could plausibly be explained by an absence of hooliganism (or sectarianism related disorder), there is clear judicial resistance to the widespread use of an Act that was seen as an English instrument designed to target English problems. In particular, there is a reluctance – perhaps reinforced by the absence of an equivalent problem of Scottish 'hooligans' travelling abroad – to use the legislation except in its narrowest terms to focus on fans convicted of offences inside football Stadia (Hamilton-Smith and McArdle 2013). Thus, there has been little appetite for imposing restrictions on fans beyond attendance at football stadia, or utilising civil powers to ban non-convicted individuals on the basis of a 'balance of probabilities'. Such scepticism has also strongly been reinforced by a lack of resourcing to incentivise banning order use, as well as difficulties encountered in imposing orders for sectarian incidents (Hamilton-Smith & Hopkins 2013). In England banning orders are managed by the UK Football Policing Unit, who provide funds for police forces to pursue intelligence packages to target 'risk supporters' for 14b orders (and also provide intelligence in relation 14a orders). In England, most police forces have Football Intelligence Officers and Banning Order Officers who have time to build intelligence packages on risk supporters at most football clubs and also prepare cases before they go to court. In Scotland, although most clubs have a Football Intelligence Officer, these roles are often part-time which limits the extent that officers can gather intelligence and liaise with the relevant criminal justice agencies in order to progress cases. In addition, a conviction for a violent offence is more likely to generate an FBO than a conviction for a sectarian offence. As Hamilton-Smith & Hopkins (2013:291) suggest 'sectarian offences that involved insult rather than actual violence threw up a range of practical and legal challenges' and proving an offence is sectarian poses a number of difficulties. Despite this, the Scottish Government is committed to imposing larger numbers of banning orders. Around £1.8m has been invested in a new National Football Policing Unit and the recent news that the number of banning orders imposed increased- from 33 in 2010 to 92 in 2012- was warmly welcomed by the Scottish Government (Daily Record, March 2013).

Table 3: Offences related to the imposition of 14a banning orders: England and Wales (2008-09)

Act and section	Offence Type	% of all offences (number)
Public Order Act 1986- S4	Fear/ provocation	21% (n=568)
Public Order Act 1986- S5	Harassment/ alarm	20% (n=553)
Public Order Act 1986- S3	Affray	15% (n=411)
Public Order Act 1986- S2	Violent disorder	15% (n=406)
Football (Offences) Act 1991- S4	Pitch invasion	6% (n=168)
Sporting Events Act 1985- S2	Drunkenness	5% (n=137)
Criminal Justice and Public Order Act- S39	Inferences from silence	4% (n=106)
Criminal Justice and Public Order Act- 1994 S166	Ticket touting	2% (n=64)
Criminal Justice and Public Order Act- S91	Supply/ possession of video recordings	2% (n=64)
Football (Offences) Act 1991- S2	Missile Throwing	2% (n=46)
Football (Disorder) Act 2000- S14J	Breach of order	1% (n=37)
Police Act 1996- S89	Assault of police officer	1% (n=35)
Public Order Act 1986- S4a	Intentional harassment	1% (n=34)
Others		5% (n=136)
Total		100 (n=2,765)

Source: UKFPU banning order data 2008-09 (data where offences resulting in banning order were known).

Whilst it has been argued that the relative restraint observed in Scotland is ‘as much driven by considerations of economy as of due process’ (Hamilton-Smith & Hopkins, 2013:291) concerns in England and Wales have often focused on what is often seen as the unfair use of such powers (particularly in relation to 14b orders). The burden of proof required to prove that offences are (a) football related and (b) a banning order is likely to prevent future violence is open to much interpretation. Although banning orders have been imposed where both of these criteria have been in question, court rulings have made it clear that there should be a distinction drawn between violence arising directly from the football/violence or disorder carried out by those who follow football and that probably would have occurred despite the fact the defendants are football supporters. For example, after organised violence between Northampton Town fans and Crystal Palace fans on Caledonian Road, North London in 2006, a court ruled that to impose an order for street violence the incident had to relate to a football match and that the violence had to be a direct result of football connections. In this case both sets of fans had been to different matches, but arranged to meet after the games they had attended. Thus the court ruled the violence was directly connected to a football match rather than being resultant of something incidental to football (R v

Arbery & Mobley, 2008 as cited in Gurden, 2012). In addition, it was also ruled in *Gough v Chief Constable of Derbyshire* (2002) that the risk of future repetition of violence or disorder at a match is not automatically satisfied simply because the defendant had previously engaged in violence. Such previous violence must indicate a likely future involvement in *football-related* violence.

Claims have been made by football supporters that they have been unfairly targeted for bans. Hopkins (2013) conducted interviews across seven police areas (with Match Commanders, Football Intelligence Officers and Force Banning Officers) in order to further understand police officer perceptions of the operation and impact of banning orders. Here it was observed that officers claimed they only target football supporters perceived as being 'risk supporters', in the words of one officer 'those actually connected to a football hooligan element' (Hopkins 2013: 7). However, despite an ACPO definition of 'risk supporter' existing (a person posing a risk to public order and anti-social behaviour in connection with a football event (NPJA, 2010)), none of the respondents actually referred to this guidance and they tended to describe how they focused attention on gathering intelligence in relation to those risk supporters they labelled as 'casuals', 'those in Stone Island gear', 'those seeking out and planning disorder'. Whilst officers were keen to justify such activities as part of the preventative function of their work, there also appeared to be scope to monitor individuals who may associate with the risk group, but actually posed little threat. Whilst an evidential standard close to that admissible in court was supposed to be gathered, the research identified significant variation in practice from area to area. Indeed, some police officers queried the 'flimsy evidential packages' that seemed to be admissible in courts in some areas and (as the quote from a Football Intelligence Officer illustrates below) examples were given where banning orders had been imposed purely because supporters had been in the wrong place at the time:

In [European place name] there was really bad violence and we got a huge number of bans out of that one. Some of them had never come up before and were literally banned because of the one match. It was more serious because it was abroad; we had no trouble with the courts in getting bans for that one.

Hopkins (2013:8)

These findings seem to echo those of James & Pearson (2006) who conducted research in relation to the application process for the imposition of an FBO by conducting court-based observations. They highlighted that it was common for Magistrates to accept evidence that appeared to be 'guilt by association' rather than the exacting a standard of criminal proof as recommended in the *Gough & Smith* ruling and in some circumstances, there was an obsession with compiling evidence for profiles to secure civil FBOs, 'which could be curtailing opportunities for proffering criminal charges' (James & Pearson; 2006: 528). Indeed, concerns over the unfair targeting of 14b banning orders has been the subject of national debate, with several fan groups raising concerns over the powers and how they have been used against fans not considered to be 'hooligans' or part of the risk element (see FSF, 2013). In addition to this, James & Pearson (2006) identified that contesting the order in court can actually lead to more severe conditions being imposed and that often orders are not contested as a defeated challenge can result in a defendant having to pay higher court fees.

The impact of banning orders on football violence/ disorder

It might logically be concluded that, if targeted correctly FBOs should impact on future levels of disorder and violence. In respect to England, the official Home Office view is that banning orders 'transform the behaviour of risk supporters' and that by the time the order has expired 'in 92% of cases the person is felt by the police to no longer pose a threat' (Home Office, 2013). Whilst these confident claims are impressive, they are also problematic. Indeed, the claims made by the Home Office are not supported by any evidence (thus it is difficult to ascertain how the 92% figure has been derived) and as asserted by Hopkins (2013) and Hamilton-Smith & Hopkins (2013), the lack of any rigorous independent evaluation of the impact of banning orders on levels of disorder make it difficult to draw conclusions about their efficacy. However, it should be acknowledged that evaluating the efficacy of the order is problematic as (a) reliable data in relation to football related disorder are difficult to collect and (b) it is difficult to ascertain whether orders themselves (or other factors) lead to reductions in disorder. For instance, whilst the evaluation of FBOs in Scotland (Hamilton-Smith et al., 2011) tentatively associated the imposition of Orders with a reduction in the overall volume of offending by recipients, such recipients were still *more* likely to engage in future football-related disorder when compared to non-recipients who had been convicted of a football-related offence. Moreover, the evaluation was not in a position to attempt to link the imposition of FBOs with any broader impact on disorder at or around football stadia.

As a result of interviews with police football intelligence, match commanders and force banning officers, Hopkins (2013) suggests banning orders could impact upon hooliganism by having a both a specific and general deterrence effect. Specific deterrence can be observed when 'the apprehended and punished offender refrains from repeat offending because they realise they are certain to be caught and punished' (Hopkins-Burke, 2010:47). General deterrence works when the punishment of offenders by the state is 'seen to serve as an example to the general population who will be frightened into non-participation in criminal behaviour' (Hopkins-Burke, 2009:47). In interview, police officers suggested that football banning orders serve a specific deterrence function by targeting the population of hooligans labelled as the 'the hardcore element' as they realise there are direct consequences to their actions (Hopkins, 2013). Police officers also suggested that a general deterrence effect is observed as the behaviour of many risk supporters is modified. Indeed, 'non-participation in hooliganism' is often not driven by the threat of any criminal justice sanction, but by threatening risk supporters with exclusion from stadiums and being able to follow their team (Hopkins, 2013). Thus, the strong pursuit of the 'risk element' for banning orders was thought to send out a message that the police were monitoring the behaviour of risk supporters and that any risk supporter could be targeted next (Hopkins 2013). In contrast, in Scotland, the enforcement strategy is very much focussed on using resources to enhance the specific deterrent impact of Orders (through robust monitoring of compliance). Low numbers of imposed orders, combined with limited Scottish media interest in publicising the use of FBOs, weakens the prospects for a more general deterrent impact⁵.

If the imposition of the banning order acts as a specific form of deterrence and the threat of a banning order, a general form of deterrence, then one might expect to see a direct impact on the

⁵ Interviews with Scottish Football Banning Order Authority, 23rd August 2010 and 22nd July 2013

level of football related disorder/ violence. Indeed, relatively low levels of breach rates for banning orders (the statistics for 2011-12 show around 2% of banning orders are breached per season) suggest a degree of compliance with the conditions of the order, though any long-term impact on violence is both difficult to measure and thus questionable. Analysis of the extent of disorder involving English football supporters abroad pre and post the implementation of banning orders indicates some impact might be observed. For example, Table 4 uses arrest data to compare the levels of disorder involving England supporters at the six international tournaments where England qualified prior to the mass implementation of banning orders (pre the world cup in Japan/ Korea 2002) and the five tournaments since. As McArdle (2000) points out there were tournaments prior to Japan/ Korea 2002 where some restriction/ bans were in place (such as in France 1998 and Belgium/ Holland 2000), though large numbers of bans were not in place until 2002. Prior to 2002 disorder and large numbers of arrests of England supporters was relatively common. Of course, caution has to be expressed. Such numbers of arrests may purely relate to policing activities in the host countries (in Italy 1990 over zealous policing tactics were flagged as a human rights concern (Law Gazette, 1990) and Frosdick and Marsh (2005) suggest indiscriminate arrests and deportations were made at Euro 2002). However, over a thousand banning orders were in place for Japan 2002; 2000 for Portugal 2004 and in the region of 3000 for Germany 2006, South Africa 2010 and Poland/ Ukraine 2012. Both Japan and Portugal saw little serious disorder, despite large numbers of travelling English supporters. In relation to Japan 2002; Pearson (2006) asserts, 'a lack of disorder at the 2002 World Cup saw claims by the media, academics, the Football Authorities and the Home Office that FBOs had played a vital role in preventing hooliganism at the tournament'. However, several arrests were made in Germany, mainly as a result of disorder in Stuttgart. South Africa 2010 and Poland/ Ukraine 2012 remained largely trouble-free.

At first glance the evidence for banning orders looks strong, though a number of further observations might be made. Disorder has often surfaced when England plays in major tournaments in Europe and prior to 2002 none of the tournaments were outside of the continent. After the widespread implementation of banning orders two tournaments were outside of Europe, disorder was observed in Germany in 2006 (when large numbers of bans were in place), though Portugal 2004 and Poland/ Ukraine 2012 were trouble free. Stott et al (2008:115) suggest the lack of disorder in Portugal might have been the result of the style of non-paramilitary policing 'adopted in cities hosting tournament matches'. A lack of disorder in Poland/ Ukraine 2012 might partially explained by the relatively small number of England fans that travelled, though for a tournament where problems were predicted (and occurred between Polish and Russian fans) the absence of disorder involving England fans is noteworthy. However, whilst the UK government remain convinced of the impact of banning orders at international tournaments, the potential for disorder (as evidence by Germany 2006) still seems apparent when England take large numbers of supporters to European countries. Further weight to support the efficacy of banning orders might be made by pointing to the relative absence of disorder involving English club teams in European competition. That said, a UEFA report in 2007 branded Liverpool supporters the 'worst in Europe' for their behaviours since 2003 where a total of 25 incidents involving their supporters had been catalogued (BBC News, 2007). However, the report primarily related to problems surrounding the 2007 Champions League final where poor stewarding and ticket allocation led to thousands of ticketless fans travelling to the game.

Table 4: Disorder and arrests at the five major tournaments involving England supporters pre and post widespread implementation of football banning orders in 2000.

Tournament	Banning orders in place (approx)	Evidence of disorder involving England supporters
European Championships- West Germany 1988	-	381 arrests of England Supporters.
World Cup- Italy 1990	-	Mass deportation of over 200 England supporters, despite the tournament being relatively trouble-free
European Championship- Sweden 1992	-	250 England fans arrested for violence and disorder.
European Championship- England 1996	-	942 arrests for violence and disorder.
World Cup- France 1998	70 restriction orders	278 arrests for violence and disorder
European Championship- Belgium/ Holland 2000	106 banning orders (1999 Football Offences Act)	945 arrests
Commencement of widespread implementation of banning orders		
World Cup-Japan/ Korea 2002	1,053	13 arrests (1 for disorder)
European Championship- Portugal 2004	2,188	53 arrests- though mainly in holiday resorts
World Cup-Germany 2006	3,000	Around 400 arrested as England and German supporters threw missiles at each other in Stuttgart. In total around 800 arrested or detained.
World Cup-South Africa 2010	3,200	No arrests of England supporters
European Championship- Poland/ Ukraine 2012	2,800	No arrests of England supporters

The evidence in relation to the impact on domestic hooliganism is less compelling. Figure 1 compares data in relation to the numbers of banning orders issued from the 2001-2002 season to numbers of arrests made within a period of 24 hours either side of all football league matches in England & Wales from the 1992-93 season (eight years before the 2000 Football Disorder Act) through to 2011/12⁶. This shows that the reduction in arrests at football matches seems to be part of a continuing long-term trend rather than an outcome of the imposition of the banning order. As illustrated, the numbers of arrests at football matches⁷ fell rapidly from 4,588 in 1992-92 to 3,000 in 2001-2002⁸. After implementation of the order in August 2001, one might expect to see arrests fall

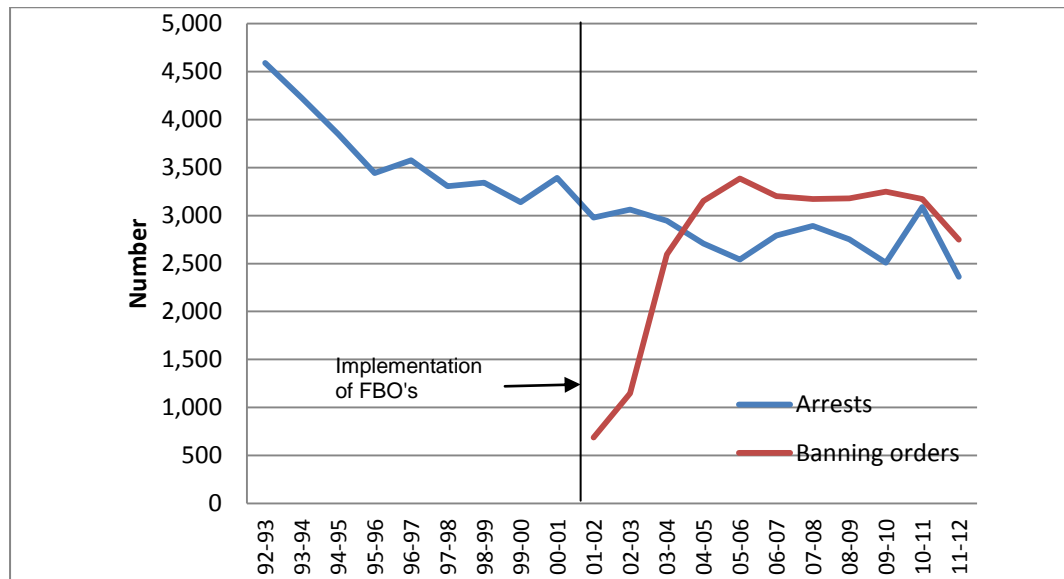
⁶ This covers all arrests designated in law under schedule 1 of the Football Spectators Act 1989 (as amended) reported by police to the Football Banning Orders Authority. This includes football specific offences (e.g. throwing missiles in a stadium, pitch encroachment) and a wide range of generic criminal offences committed in connection with a football match.

⁷ The data here is for all arrests as arrest data for violence and disorder are not available prior to 2000/01. Therefore, this includes violence and public disorder, missile throwing, racist chanting, pitch incursion, alcohol offences, ticket touting, carrying offensive weapons and property offences.

⁸ Though no comparable, centrally-collated arrest figures are available for Scotland over this period, the overwhelming consensus of professionals interviewed during the football banning order evaluation was that a similar trend had existed in Scotland over roughly the same period (see Hamilton-Smith *et. al.*, 2011)

at an increased rate. However, despite the rapid implementation of banning orders from 687 in August 2001 to a peak of 3,387 in August 2006, the arrest rate continued to fall at the same pace.

Figure 1: Comparison of banning orders and arrests 1992-93 to 2011-2012



Source: national statistics on football banning orders

Of course, a number of factors might be attributed to declining numbers in hooligan incidents. The installation of CCTV in stadiums, all seated stadiums and stricter ticketing policies have all been cited as reasons (Frostdick & Marsh, 2005). However, it has also been suggested that the installation of security objects such as CCTV have helped to displace incidents away from stadiums and encouraged hooligans to carefully plan where 'meets' will occur (in the absence of police attention). Indeed, evidence exists to suggest that hooligans have pre-arranged fights away from stadiums and this observation does raise some questions about official interpretations of the success of banning orders. On the one hand, Hopkins (2013) identifies that police officers claim banning orders have been effective by controlling risk supporters and dismantling hooligan firms, though police officers also suggest that disorder involving risk supporters can often take place in locations unknown to them. If this is true, then potentially, many incidents may occur that are unknown to the police and these may involve risk supporters with banning orders in place.

As official data sources might be deemed an unreliable indicator of the levels of disorder, further exploratory research was completed in order to try and ascertain what impact banning orders have on the behaviours of risk supporters. This included conducting an online survey with football supporters. Online surveys are limited in that it can be difficult to obtain reasonable response rates, a representative sample and to ensure valid responses are made to questions (Fielding et al, 2008). In order to explore the views of football supporters in relation to banning orders it might have been more desirable to have conducted face-to-face interviews with a representative sample of risk supporters. However, an online survey does represent a quick (and relatively cheap) way to quickly canvass opinion on a subject (Fielding et al, 2008). The survey was administered between April and July 2013. In order to try and ensure that 'risk supporters' were contacted a link to the survey was posted on a number of websites that were (a) either specifically set up to discuss football hooliganism or hooligan culture/ clothing or (b) where football hooliganism was a subject of

discussion on message boards (see appendix A). The survey asked respondents about a number of themes in relation to banning orders, including:

1. Whether respondents have ever had a banning order;
2. If respondents considered the last banning order they received to be fair;
3. What impact banning orders had on their behaviour/ the behaviour of risk supporters generally.

In total, 199 responses were received. Of these 20% (n=39) said they were currently regularly involved in hooligan activities (29 or 74% of this group had previously received a banning order) and a further 27% (n=54) of the total sample indicated that they would not shy away from trouble if it came to them. Of the total sample, 45% (n=90) had previously received a banning order (20 had received two or more) of which 20% (n=18) said the last order received was via the civil (14b) route. A total of 64 respondents who had received a banning order in the past were able to describe their involvement with hooliganism at the time the order was imposed. Of these, 61% (n=39) said they were prominent members of hooligan firms and a further 28% (n=18) said they were not involved with a hooligan firm, but were happy to get involved in trouble if came to them. Worryingly, 11% (n=7) supporters who had received a banning order said they had not been involved in any hooligan activities at all.

Just under half of the total sample (48%: n=96) thought that banning orders gave the police too much power and of the 90 who had previously received a banning order nearly half (48%: n=43) thought that restrictions imposed on them were unfair. Indeed, several respondents also suggested they were either 'stitched up' or made claims that bans were received on top of a sentence for minor indiscretions they considered to be a part of supporting a football team. For example, comments included:

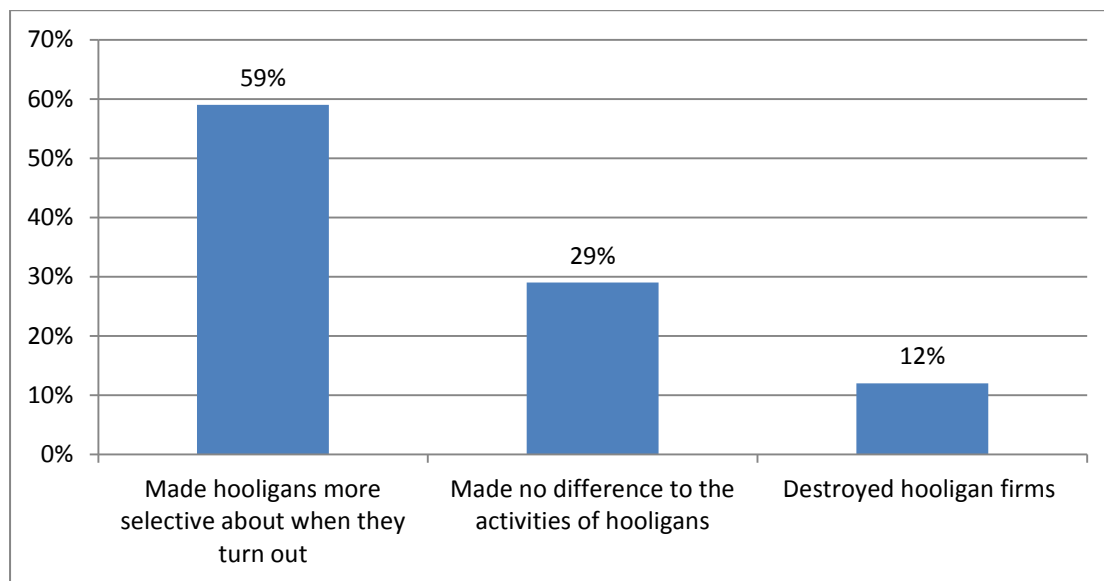
-I encroached an asphalt track behind a goal through an already open emergency exit whilst celebrating a goal.

-I was arrested for being drunk in a football stadium, although I had only fallen asleep.

-I was not involved in the said offence, but pleaded guilty under the direction of a solicitor to avoid a lengthy court case and time off work.

Evidence of the impact of banning orders on the behaviour of risk supporters suggested that the impact might be one of behaviour modification, rather than desistance from hooliganism altogether. All respondents were asked what they thought the impact of banning orders was on hooliganism in relation to their football club/ hooligan firm. The findings, illustrated in Figure 2, show that 59% (n=85) believed FBOs have made hooligans more selective when they turn out (in order to avoid police attention), 29% (n=41) claim that banning orders have made little difference at all as hooligans still regularly turn out when they want, though 12% (n=17) did suggest that FBOs have destroyed hooligan firms.

Figure 2: The impact of banning orders on hooliganism: supporter views



Source: online survey: response = 143.

Indeed, this is further verified by responses from those previously subject to a banning order. A total of 63 respondents commented on the impact of receiving a banning order on their behaviour. Three distinct outcome patterns could be observed.

1. **Behaviour modification:** a total of 37% (n=23) said their behaviour changed as a result of the order. This group became more selective about when and where they turned out to seek disorder- they continued to be involved in hooliganism, but to a lesser extent.
2. **Desistance from hooliganism:** a total of 30% (n=19) said they either stopped going to football altogether or they continued to attend matches, but were no longer involved in any hooligan activities.
3. **Continuation of behaviour:** a total of 33% (n=21) said the banning order made no difference to them. They were still involved in hooliganism to the same extent as prior to the order.

Of course, the evidence has to be treated with a high degree of caution, though there is a suggestion that the impact of orders on hooliganism- at least in the domestic context- might be more limited than suggested in official circles. Indeed, research by Hopkins (2013) notes that banning orders may have the impact of making risk supporters more selective about when they turn out for violence (as indicated by the behaviour modification group). As has been witnessed in recent years, football is still an arena where opportunities for confrontation exist and certain fixtures can generate expectations of violence. Rather than take out the risk element altogether, the banning order may be part of a process that has changed patterns of football violence from the more regular occurrences witnessed in the 1980's to one where many risk supporters now only turn out occasionally and most notably for games where the expectation of violence is high.

Conclusion

The term the 'football hooligan industry' was initially used to describe the development of measures designed to control football violence by the New Right post 1979 (see Giulianotti, 1994). Our analysis suggests the industry has continued to develop as successive governments have continued to

implement control legislation targeted towards football supporters thought to be part of a 'risk' group. Dual narratives can be observed in relation to football fandom that are partially used by government, media and the police to justify the continued imposition of such control orders. On the one hand there is a narrative of 'change' where it is suggested a growing family culture exists within the game, where face-painted fans, wearing club football shirts, singing non-sectarian, non-racist, non-aggressive songs support their football team. On the other hand a narrative of 'continuation' exists where it is suggested a hooligan or risk-element still lurk in the background- confrontational, nationalistic and considered by the government, media and police as relics from bygone era when football hooliganism was at its peak. Repressive forms of legislation have been implemented in order to prevent hooliganism domestically and abroad, justified in official circles by the suggestion that football violence remains a persistent threat (or that sectarianism remains a persistent threat in Scotland). In both jurisdictions, the suggestion that hooliganism is a persistent threat is serviced by occasional outbreaks of disorder (or sectarian unrest) at matches that are commonly subjected to an amplification process by the media. This in turn, reinforces the perception that more restrictive controls- such as FBOs- are necessary to control the problem.

The FBO legislation is hybrid in that restrictions can be imposed on conviction or compliant. As alluded to by Stott & Pearson (2006, 2008) this creates a moral dilemma - whether human rights should pervade over the threats posed by football 'risk' supporters. Although legal judgements have been passed on the extent violence needs to be related to football and that restrictions imposed need to justify the end goal of preventing violence, in practice the process of implementation appears to vary from area to area and concerns have been raised over the unfair imposition upon some supporters. Moreover, a perception exists among some groups that FBO's give the police too much power and on occasion normal passionate fan behaviour gets criminalised (FSF, 2013). This perception is particularly acute in Scotland, where displays of fan rivalry, that might be deemed banal in most jurisdictions (e.g. singing and displaying banners), are officially viewed as sectarian and thereby inherently liable to provoke disorder, justifying in turn, police intervention. As Waiton (2013) asserts questions need to be asked about the extent that fan behaviours are now being criminalised. In their classic study of the behaviours of football supporters, Marsh, Rosser & Harré (1979) claimed there are rules of disorder where much non-contact ritualised aggression occurs between football supporters. It has been suggested throughout this chapter that many forms of behaviour that once would not have attracted police attention may now result in restrictive measures being imposed. One might conclude that the increased use of restrictive and repressive powers allows for greater monitoring/ surveillance of what the government, media and police consider to be unacceptable behaviours/fandom or unacceptable groups. Thus, risk groups as they are labelled become subject to a form of tribal stigma as identified by Goffman, (1963) where deviations from what is considered to be the prevailing normative behaviour is stigmatised. Thus, wearing certain types of clothing, saying certain things, being with certain people and waving certain flags can stimulate police attention and ultimately a control order.

Despite the absence of any independent evaluation of the impact of orders on the behaviour of risk supporters, a surprising degree of confidence exists in official circles about their efficacy. At an international level, our analysis suggests disorder has declined in relation to the England football team since the widespread imposition of orders, though when the correct chemistries for violence are in place (mass numbers of supporters, European location, high alcohol consumption, aggressive policing) disorder may still occur. Moreover, our online survey indicates the receipt of a banning

order encouraged less than a third of respondents to desist completely from hooliganism; whereas others either modified their behaviour to enable them to continue to participate in hooliganism or continued their hooligan activities.

Whether banning orders can be central to a long-term strategy to prevent football violence or sectarianism remains unclear. Efforts to target 'risk groups' may yield short-term benefits in curtailing the activities of some of the main hooligans associated with firms. However, recent events at Wembley and Newcastle highlight that football still attracts a risk element prepared to engage in disorder. Also, evidence of the emergence of new 'youth firms' illustrates that some younger supporters are keen to engage in 'casual subcultures' (Hopkins, 2013). The recent renewed government commitment to the use of banning orders to prevent disorder and also to target homophobic chanting (see ACPO & CPS, 2013) during these times of relative calm in world of English and Scottish football violence suggests (1) both governments have faith in efficacy of these measures and (2) criticisms over the more draconian aspects of the legislation are of little concern. However, if the banning order has helped to assure the future of the football hooliganism industry, it remains to be seen if this industry represents value for money in these times of austerity.

References

- ACPO & CPS (2013), 'Prosecution Policy for Football Related Offences'
http://www.cps.gov.uk/news/assets/uploads/files/2013_14_football_policy.pdf [accessed 28th August 2013]
- BBC News (2007) 'Caborn and Parry hit back at Uefa' – 4th June 2007-
<http://news.bbc.co.uk/sport1/hi/football/teams/l/liverpool/6717793.stm> [Accessed 3rd July 2013]
- Burdsey, D. and Chappell, R. (2001) "'And if you know your history": An examination of the formation of football clubs in Scotland and their role in the Construction of Social Identity', *The Sports Historian*, 21 (2): 94-106
- Bruce, S., Glendinning, T., Paterson, I. and Rosie, M.J. (2004) *Sectarianism in Modern Scotland*, Edinburgh: Edinburgh University Press.
- Bruce, S., Glendinning, T., Paterson, I. and Rosie, M.J. (2006) *Religious Discrimination in Scotland: Fact or Myth*, Edinburgh: Edinburgh University
- Daily Record (2013) 'Number of bans given to football hooligans triples in three years'
<http://www.dailyrecord.co.uk/news/scottish-news/number-bans-given-football-hooligans-1780273> [Accessed 17th July 2013]
- Fielding, N.; Lee, R. M.; Blank, G. (2008) *The SAGE Handbook of Online Research Methods*. London: SAGE.
- Flint, J. and Powell, R. (2011) 'They Sing That Song': Sectarianism and Conduct in the Informalised Spaces of Scottish Football', in D. Bursey (Ed.) *Race, Ethnicity and Football: Persistent Debates and Emerging Issues*, London: Routledge): 191-204.
- Flint, J. and Kelly, J. (2013) "Football and Bigotry in Scotland" in J. Flint and J. Kelly (eds.) *Bigotry, Football and Scotland*, Edinburgh: Edinburgh University Press.

Football Supporters Federation (FSF) (2013) <http://www.fsf.org.uk/latest-news/view/police-admit-unlawful-use-of-section-27-on-stoke-fan> [accessed 15th July 2013]

Frosdick, S. & Marsh, P. (2005) *Football Hooliganism*. Cullompton: Willan Publishing.

Giulianotti, R. (1994) 'Social identity and public order: Political and academic discourses on football violence'. In, R. Giulianotti., N. Bonney., and M. Hepworth. *Football, Violence and Social Identity*, London, Routledge pp. 9-36.

Giulianotti, R. (2005) 'The Sociability of Sport: Scotland Football Supporters as Interpreted through the Sociology of George Simmel' in *International Review for the Sociology of Sport*, Vol. 40, pp. 289-304.

Goffman, E. (1963) *Stigma: Notes on the Management of Spoiled Identity*. Prentice- Hall.

Gough - vs - The Chief Constable of Derbyshire (2002) Court of Appeal, England and Wales, [www.ipsofactoj.com/international/2002/Part13/int2002\(13\)-010.htm](http://www.ipsofactoj.com/international/2002/Part13/int2002(13)-010.htm) [accessed 22nd July 2011].

Gurden, A. (2012) 'An application for a football banning order is not a done deal for the police' <http://alisingurden.wordpress.com/2012/12/17/an-application-for-a-football-banning-order-is-not-a-done-deal-for-the-police-or-cps/> [accessed 13th August 2013]

Hansard

(2013)<http://www.publications.parliament.uk/pa/cm201314/cmhansrd/cm130612/text/130612w0001.htm> [accessed 15th June 2013]

Hamilton-Smith, N., Bradford, B., Hopkins, M., Kurland, J., Lightowler, C., McArdle, D. and Tilley, N. (2011) *An Evaluation of Football Banning Orders in Scotland*. Edinburgh: Scottish Government. <http://www.scotland.gov.uk/Resource/Doc/354566/0119713.pdf> (last accessed 15th July 2013)

Hamilton-Smith, N. and Hopkins, M. (2013) 'The transfer of English legislation to the Scottish context: Lessons from the implementation of the Football Banning Order in Scotland'. *Criminology and Criminal Justice*. Vol 13, No. 3, 279-297.

Hamilton-Smith N & McArdle D (2013) England's Act, Scotland's Shame and the Limits of the Law. In: Flint J, Kelly J (ed.). *Bigotry, Football and Scotland*, Edinburgh: Edinburgh University Press, pp. 130-144.

Hopkins, M. (2013) 'Ten Seasons of the Football Banning Order: Police Officer Narratives on the Operation of Banning Orders and the Impact on the Behaviour of 'Risk Supporters''. *Policing and Society* prepublished 9th April, 2013.

Hopkins-Burke, R. (2009) *An Introduction to Criminological Theory*, 3rd Edition. Oxon: Willan.

Home Office (2013) 'Football Banning Orders' <http://205.139.89.196/crime/football-banning-orders/> [accessed 23rd July 2013].

Ignatieff, M. (2004) *The Lesser Evil: Political Ethics in an Age of Terror*, Edinburgh: Edinburgh University Press.

James, M. & Pearson, G. (2006) 'Football Banning Orders: Analysing Their Use in Court', *Journal of Criminal Law*, 70 (6): 509-530.

Law Gazette (1990) World cup legal fall-out, Wednesday 11 July 1990
<http://www.lawgazette.co.uk/news/world-cup-legal-fall-out> [accessed 6th July 2013]

Marsh, P., Rosser, E., & Harré, R. (1979) *The Rules of Disorder*. London: Routledge.

McArdle, D. (2000) *Football Society and the Law*. London: Routledge.

NPIA (2010). *Guidance on Policing Football*. London: National Policing Improvement Agency.

Pearson, G. (2002) A Cure Worse than the Disease? Reflections on *Gough and Smith v. Chief Constable of Derbyshire*. *Entertainment Law*, Vol. 1, No. 2, 92-102.

Pearson, G. (2006) Qualifying for Europe? The Legitimacy of Football Banning Orders 'On Compliant' under the principle of Proportionality, *Entertainment and Sports Law*, Vol 3, no 1. Online <http://www2.warwick.ac.uk/fac/soc/law/elj/eslj/issues/volume3/number1/pearson/> [accessed 6th July 2013]

Scottish Executive (2006) *Sectarianism: Action Plan on Tackling Sectarianism in Scotland*, Edinburgh: Scottish Executive.

Scottish Government (2013) 'Football banning orders'
<http://www.scotland.gov.uk/Topics/ArtsCultureSport/Sport/SafetyIssues/football-banning-orders>
[accessed 8th July 2013]

Stott, C. & Pearson, G. (2006) 'Football Banning Orders, Proportionality & Public Order Policing', *Howard Journal of Criminal Justice*. 45 (3): 241-254.

Stott, C & Pearson, G. (2008) *Football "Hooliganism", Policing and the War on the "English Disease"*. London: Pennant Books.

Stott, C.J., Adang, O.M., Livingstone, A., & Schreiber, M. (2008) Tackling Football Hooliganism: A Quantitative Study of Public Order, Policing and Crowd Psychology. *Psychology Public Policy and Law*. Vol. 14, No. 2, 115–141.

Stott C; Hoggett J and Pearson G (2011) 'Keeping the Peace': Social Identity, Procedural Justice and the Policing of Football Crowds. *British Journal of Criminology* 52 (2). pp. 381-399.

Waiton, S. (2012) *Snob's Law: Criminalising Football Fans in an Age of Intolerance*, East Lothian, Scotprint.

Watson, L. and Brooke, C. (2013) '29 football fans arrested after hooligans run wild at Newcastle derby as police post happy snap of Bud the horse who was PUNCHED by a yob', Mail Online 14th April, <http://www.dailymail.co.uk/news/article-2308933/29-football-fans-arrested-hooligans-run-wild-Newcastle-derby.html> [accessed 15th June 2013]

Zedner (L). (2009) *Security*. Oxon: Routledge.

Appendix A: Examples of websites approached for online survey

Birmingham City Zulu:

<https://www.facebook.com/pages/Birmingham-Zulus/144473835566717>

Cardiff Soul Crew:

<https://en-gb.facebook.com/pages/Cardiff-City-Soul-Crew-are-the-hardest-football-firm-in-Britain/263330993680421>

Derby Lunatic Fringe:

<http://www.network54.com/Forum/337244/>

Forest Executive Crew:

<https://www.facebook.com/pages/FEC-FOREST-EXECUTIVE-CREW/218498430959>

Leeds Service Crew:

<http://www.network54.com/Forum/283664/>

Owls Crime Squad:

<https://www.facebook.com/media/set/?set=a.10151611406954728.1073741846.175974659727&type=3>

Newcastle Gremlins:

<https://www.facebook.com/pages/Newcastle-Gremlins/108241589218692>

Southampton Casuals:

<http://www.network54.com/Forum/474836/>

Stoke Naughty Forty

<https://www.facebook.com/pages/Stoke-Naughty-40/261969827151433>