

A Critical Evaluation of the Regulation of Football Spectatorship: Defining & Refining the Optimal Method of Spectator Management

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A Critical Evaluation of the Regulation of Football Spectatorship: Defining & Refining the Optimal Method of Spectator Management

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For Ted

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Abstract

The behaviour of football spectators has received significant attention in the literature in areas of psychology, criminology and law, yet there is no singular piece of research that examines the legality of the package of measures governing football spectators in England and Wales. Scholarship has noted the issues regarding the statutory framework and the treatment of football spectators but research on the creation, monitoring and alternative preventative measures that can be used remains absent. Although the issues regarding football-related violence and disorder are not as prevalent as that witnessed over 30 years ago, the problem still exists. The thesis examines with a doctrinal methodology, that Football Banning Orders on conviction and complaint held in s 14A and s 14B of the Football Spectators Act 1989, respectively, are no longer fit for purpose in their current form. Analysis of the historical roots of Football Banning Orders provides that there was no sound evidential basis for their creation and in turn, has caused numerous inconsistencies in the interpretation and application of s 14. Observation of the Home Office statistics that monitor football-related arrests and the number of Football Banning Orders served each football season has illustrated that the statistics are unreliable and the methodology underpinning the capturing of the data is not sound. Finally, by evaluating the use of the alternative option to the statutory Football Banning Order, stadium/club bans, it has demonstrated that the current processes adopted do not provide a spectator with the right to a fair hearing and could leave clubs open to legal proceedings. The thesis recommends that the current package of measures adopted by Parliament, the courts, football clubs and the police need a radical overhaul to provide a proportionate, fair and reliable system that governs football spectators.

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Chapter One: Introduction to the Thesis

1.1 Introduction

Over a considerable period of time, certain sections of football spectators have engaged in high-profile incidents of violence and disorder. Parliament has intervened on several occasions to try to prevent such behaviour. However, whatever has been posed or implemented, there appears to be no single panacea, meaning violence and disorder continues to occur in England and Wales. One measure that has been implemented in attempt to curb such behaviour is the use of the Football Banning Order (FBO). As stated by the former Secretary of State, William Hague, these Orders are seen as the highly effective cornerstone of the Government's preventative strategy in tackling football disorder.¹ The current framework of FBOs was introduced by the Football Disorder Act 2000 (FDA 2000), amending the Football Spectators Act 1989 (FSA 1989). Before their creation, there were two mechanisms in place to prohibit individuals from attending football matches in England and Wales and overseas, notably in the form of Exclusion and Restriction Orders.² Specific mechanisms that were intended to catch those that instigate football-related violence and disorder and subsequently prohibit them from attending football matches. Something that has been a problematic area for Parliament over the last 50 years.

Numerous debates including the commissioning of Working Parties, governmental reports and the introduction and subsequent amendments to various pieces of legislation have led to wide-ranging powers and responsibilities being placed upon the judiciary, the governing bodies of the sport, the police and the football clubs. Parliament has always acknowledged football misbehaviour as a serious problem, but it was asserted that it would remain a fact that the 'responsibility for public order is that of the management of the football club and that the matter does not call for direct action by the Government'.³ The thesis will address and analyse the historical roots of parliamentary intervention and governance of football spectators before the creation

¹ HC Deb 13th May 2013, vol 564, col 332.

² Exclusion Orders were introduced by Public Order Act 1986 and Restriction Orders were introduced by the FSA 1989.

³ HC Deb 27 April 1967, vol 745, col 1803.

of FBOs to demonstrate whether the current statutory framework is fit for purpose. It will illustrate the inadequacy of Parliamentary scrutiny and the swift passage of legislative provisions stems from a panicked response to fear that the reputation of England and Wales would be tarnished by 'rowdy English thugs' when travelling abroad to watch their respective teams.⁴

The result of this panic legislation is the current framework of FBOs introduced by the FDA 2000 - FBOs on conviction of a football-related offence and a FBO on complaint,⁵ an Order that allows the police to apply to the magistrates' if an individual 'has at any time caused or contributed to any violence or disorder in the United Kingdom or elsewhere'.⁶ The purpose of both Orders is to 'help prevent violence or disorder at or in connection with any regulated football matches'. The Orders are monitored by the Home Office, which release statistics on football-related arrests and FBOs in connection with regulated international and domestic football matches involving English and Welsh clubs, and the respective national teams after the end of a football season.⁷ These statistics on football-related arrests and FBOs are used to inform the general public, inform government policy and operational decisions by the police, demonstrate the scale of football disorder, and aid the police and Crown Prosecution Service (CPS) activities in creating the reduction of football violence and disorder.⁸

There is no evidence to support that FBOs work to reduce football-related disorder, despite the annual production of these statistics and Home Office funding to secure

⁴ Jack de Menezes, 'England Fans Condemned for 'Appalling' Behaviour in Amsterdam after more than 100 Supporters Arrested' *The Guardian* (London, 24 March 2018) <<https://www.independent.co.uk/sport/football/international/england-fans-video-arrested-violence-amsterdam-supporters-holland-netherlands-police-violent-clashes-a8272156.html>> Accessed 4 April 2018.

⁵ Amended the FSA 1989.

⁶ s 14B(2) FSA 1989.

⁷ Article 3 of the [Football Spectators \(Prescription\) Order 2004 \(as amended\)](#) describes a regulated match for the purposes of the FSA 1989. Previously, the 'Football-related arrests and banning orders statistics, England and Wales publications were prepared and published by Home Office policy officials. In 2015, responsibility of the publication process, including the preparation of the final accompanying data tables was transferred to Home Office statisticians who prepared the 2014 to 2015 publication and the publication for this season. UKFPU continues to receive and collate information submitted by police forces including BTP, the Courts and the CPS.

⁸ Using the standard categorisation for official statistics as shown in the UK Statistics Authority, 'Monitoring Brief 6/2010: The Uses Made of Official Statistics (uksa.gov.uk, 19 October 2010) <<https://uksa.statisticsauthority.gov.uk/wp-content/uploads/2010/10/monitoring-brief-6-2010-the-use-made-of-official-statistics.pdf>> accessed 28 October 2017. See also, Home Office, 'Football-related Arrests and Banning Order Statistics, England and Wales: Season 2017 to 2018 Data Table (2018)' (gov.uk, 15 November 2018) <<https://www.gov.uk/government/statistics/football-related-arrests-and-banning-orders-england-and-wales-season-2017-to-2018>> accessed 23 November 2018.

FBOs on complaint.⁹ The statistics illustrate that the number of FBOs served to individuals is increasing in the lower levels of the Football League over a seven-year period, although they are decreasing in the higher levels of the Football League and the English Premier League.¹⁰ These statistics are compiled at the end of each football season with the information provided by the United Kingdom Football Policing Unit (UKPFU). The UKPFU collect data from the 43 police forces in England and Wales, alongside the British Transport Police (BTP)¹¹ on the number of football-related arrests and collects information on FBOs from the Football Banning Order Authority's (FBOA) records.¹² After submitting and analysing several Freedom of Information requests regarding statistical data on football-related offences and arrests, it is apparent that there is an inconsistent approach to capturing the data that is needed to comply with the FBO statistics.¹³ The Home Office statistics on football disorder will be evaluated throughout the thesis to highlight whether FBOs are satisfying their original purpose; decreasing football-related violence and disorder and capturing those that are involved in serious disorder and football-related crime. Alongside this, the methodological underpinning of capturing the data for the Home Office statistics will also be discussed. This will highlight whether the inconsistent approach adopted by the various police constabularies across England and Wales is impacting the Home Office data, and, therefore, does not reflect the true situation regarding FBOs and football-related disorder.

The fundamental process of securing a FBO remains with the courts in England and Wales. The courts have to be satisfied that there are 'reasonable grounds that serving a FBO will prevent violence and disorder in the future'.¹⁴ The interpretation of what constitutes 'reasonable grounds' for s 14A and s 14B, has caused the judiciary considerable confusion with the Court of Appeal noting that the legislation is too

⁹ See, Amanda Jacks, 'Guide to Football Banning Orders' (*fsf.org*, 9 March 2016) <<http://www.fsf.org.uk/blog/view/an-idiots-guide-to-football-banning-order-france-euro-2016-hooligans>> accessed 29 October 2017 and Geoff Pearson, 'Thirty Years of Football Banning Orders have Eroded Fans Freedoms' (*wsc.co.uk*, 25 November 2016) <<http://www.wsc.co.uk/features/13593-thirty-years-of-football-banning-orders-have-eroded-fans-freedoms>> accessed 29 October 2017.

¹⁰ Home Office (n 8). Based on Home Office Football Banning Order statistics from the 2010-11 season to 2017-18 season new Banning Orders have increased by 24% in the Football Conference League.

¹¹ Prior to the 2012-13 season, BTP released their own statistics.

¹² Part of the UKPFU.

¹³ See Chapter Five for analysis regarding the methodological approach and data presented regarding FBOs and arrests.

¹⁴ s 14A(2) and s 14B(2) FSA 1989.

'complex'¹⁵ with many 'anomalies'.¹⁶ As the judiciary illustrates the difficulty of interpreting the law with respect of satisfying whether reasonable grounds exist to issue a FBO, this represents a need for s 14 of the FSA 1989 to be revisited. As a result of this, the police are liaising with football clubs to impose club bans on individuals suspected of being involved with football-related disorder instead of utilising FBOs. The imposition and procedure of issuing a club/stadium ban provide the football club with the opportunity under the terms and conditions of the ticket and contract with the club, not by court order, as per a FBO. The accessibility of a club ban provides an easier solution for football clubs to prohibit individuals from the stadium as it does not require an individual to appear in court. Therefore they are not bound by the usual rules of evidence. The thesis will illustrate whether the nature and interpretation of the wording in s 14A and s 14B is hindering or assisting the prevention of football-related violence and disorder. Alongside this, an exploration of whether there is an increased usage in club bans due to the accessibility and flexibility associated with serving a club/stadium ban because of the statutory framework not being fit for purpose.

1.2 Thesis Hypothesis

FBOs are seen as highly effective measures and remain part of the Government's preventative strategy in tackling football disorder.¹⁷ Nevertheless, there is no evidence to support that FBOs work to reduce football-related violence and disorder, despite the annual production of Home Office statistics and funding.¹⁸ Therefore, it needs to be established whether the current statutory framework is fit for purpose in its current form. Separate figures compiled by police forces for the top five leagues in English football illustrate that incidents of disorder are on the rise both inside and outside football grounds.¹⁹ Although the number of FBOs served to individuals is relatively low in comparison to the number of individuals that attend football matches, the imposition of a FBO, or the possible threat of being issued a FBO is not acting as a deterrent and

¹⁵ *R v Doyle (Ciaran) and Others* [2012] EWCA Crim 995.

¹⁶ *R v Boggild and Others* [2011] EWCA Crim 1928.

¹⁷ HC Deb (n 1).

¹⁸ Jacks (n 9) and Pearson (n 9).

¹⁹ Kate Kopczyk, 'Football Violence: National Police Lead for Football Warns Disorder Will Continue to Rise at Grounds' *BBC News* (London, 26 February 2018) <<https://www.bbc.co.uk/sport/football/43140824>> accessed 13 March 2018.

not stopping football-related violence and disorder. Indeed, FBOs are needed for those that engage in serious violence and disorder. However, the purpose of introducing the Orders was to catch those that organise and instigate violence, and that very issue is still prevalent in national and international football, with a dramatic rise in violent incidents of well-organised hooliganism in England and Wales.²⁰

The justification for implementing FBOs and their predecessors, Exclusion Orders and Restriction Orders, was 'distorted by the media' through the misleading use of the language of violence causing 'moral panics' amongst the general public and authorities.²¹ Numerous government reports failed to recognise or implement codified measures to decrease disorder, noting that any 'solutions of the problems of hooliganism in the football stadium are ultimately the responsibility of individual clubs'.²² The evidential basis for implementing the use of FBOs was to combine the worst elements of gesture politics and rushed emergency legislation in an attempt to reinstate the reputation of the country overseas and catch those that instigated such behaviour.²³ Each civil order created by the Government targeting football-related violence and disorder has been implemented following disturbances at international and/or European tournaments overseas. The brief debates and lack of Parliamentary scrutiny have, therefore, created issues regarding implementing, interpreting and monitoring FBOs.

As the Home Office states that caution should be taken when making season-on-season comparisons with regard to the statistics on new FBOs. The authorities should not allow the statistics to influence how the police and other authorities test whether or not these preventative measures are an effective means for preventing football-related violence and disorder.²⁴ The nature of FBOs should be enough to act as a

²⁰ *ibid.* See also, Nick Tilley, 'Problem-oriented Policing, Intelligence-led Policing and the National Intelligence Model' (*ucl.ac.uk*, 2003)

<http://www.ucl.ac.uk/jdi/downloads/publications/crime_science_short_reports/problem_oriented_policing> accessed 9 May 2017; David Stead and Joel Rookwood, 'Responding to Football Disorder, Policing the British Football Fan' (2007) 1 *Journal of Qualitative Research in Sports Studies* 33 and Helena Bengtsson, 'Football Violence on the Rise Again: UEFA Disciplinary Actions up 64% in Two years' *The Guardian* (London, 18 June 2016)

<<https://www.theguardian.com/football/datablog/2016/jun/18/football-violence-on-the-rise-again-uefa-disciplinary-actions-up-64-in-two-years>> Accessed 10 December 2018.

²¹ Stanley Cohen, *Folk Devils and Moral Panics* (MacGibbon and Kee Ltd 1972).

²² John Harrington, *Soccer Hooliganism: A Preliminary Report* (John Wright & Sons 1968).

²³ HC Deb 20 June 2000, vol 352, col 187.

²⁴ Home Office, 'User Guide to Football-related Arrests and Banning Order Statistics, England and Wales, 2015 to 2016 Season (2016)' (*gov.uk*, November 2016)

deterrent to those football spectators that attend football matches regularly. However, with the authorities becoming less tolerant of anti-social behaviour inside the football stadium, considerable pressure has been placed on the police to combat the violence and disorder, although this has often proven counter-productive.²⁵ Police intervention is considered necessary; providing assistance to policing football matches and events, being responsible for supporting football clubs in preventing and detecting crime and disorder and securing funding to apply for s 14B FBOs. Although the police serve a purpose in relation to their partnerships with football clubs and engaging with football spectators. It is also thought to have created more problems, such as increasing disorder due to the heavy-handed approach that some police officers take against football spectators, and in respect of the funding concerning s 14B FBOs. Thus, creating a FBO-led policing mentality.²⁶ As disorder is increasing in the lower football leagues, the police's approach to tackling football-related violence and disorder is not working; they are either targeting the wrong individuals, or FBOs are simply not acting as a deterrent to those that persist in partaking in disorder. For that reason, the imposition of a FBO does not appear to be satisfying its aims of reducing football-related violence and disorder. The package of measures to combat football-related disorder is lacking coherence. The cross-authority mix of policing tactics, club bans and civil orders does not appear to be working in its current form. It is, therefore, posed whether the original aim of the FSA 1989 to introduce such preventative measures to stop those instigating football-related violence and disorder is fit for purpose. If the imposition of a FBO is not deemed to be satisfactory in curtailing and preventing football-related violence and disorder, a more effective package of measures needs to be introduced. The thesis will provide critical analysis of whether the current legal framework for preventing football-related disorder using FBOs is indeed, fit for purpose.

<https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/571068/user-guide-football-related-arrests-statistics.pdf> accessed 25 October 2017; and Home Office, Football Disorder Act 2000: Report to Parliament (Her Majesty's Stationary Office 2005) states that 'comprehensive data [banning order statistics] on football-related arrests and banning orders ... is included to help relate the impact of the banning order measures on current trends in football 'hooliganism'.

²⁵ Carlton Brick, 'Taking Offence: Modern Moralities and the Perception of the Football Fan' (2000) 1 Soccer and Society 158 and Clifford Stott, 'Police Expectations and the Control of English Soccer Fans at Euro2000' (2003) 26 Policing: An International Journal of Police Strategies and Management 640.

²⁶ Stead and Rookwood (n 20).

1.3 Aim of the Thesis

The thesis has one overall aim:

To illustrate whether there is a sufficiently robust evidence base for retaining the current framework that is available to monitor and govern football spectators in England and Wales under the FSA 1989, by highlighting whether it is fit for purpose.

The thesis will critically analyse the current statutory framework by examining the wording and interpretation of s 14 of the FSA 1989. The legal analysis will be provided alongside the evidence available to monitor the use of FBOs. In doing so, this will provide options for future reform and development on the legality of managing football spectators in England and Wales. To fully address the aim of this thesis, several objectives must be analysed and evaluated.

1. To achieve the overall aim of the thesis, it is necessary to establish why FBOs were introduced, how the statutory framework is used by the courts to serve FBOs and how FBOs are then monitored. This will establish whether the Orders are decreasing football-related violence and disorder and if not, are there any alternative mechanisms that can be utilised. To achieve this, firstly, there needs to be a critical evaluation of why the package of legislative mechanisms governing football spectator behaviour was introduced in England and Wales. This appraisal will include an examination of the historical development of the legislation and whether there was a legitimate need for their introduction. In doing so, this will examine the government reports, Parliamentary publications and evidence used to underpin the necessity of creating these civil orders. Evidence from the National Archives will be used to demonstrate the lack of scrutiny provided on the area. This will highlight any discrepancies in the Parliamentary debate and procedure to address whether, initially, there was a need for the statutory framework and whether it is fit for purpose.
2. Moving on from the creation of the package of measures, the monitoring of FBOs needs to be addressed to establish whether there is sufficient evidence to support that there is a need for FBOs to be used as a preventative measure.

To assess whether FBOs are fit for purpose, the methodology used by the Home Office, the FBOA and police constabularies to obtain the data will be examined to highlight any deficiencies that subsequently impact the publication of the final FBO statistics at the end of each football season. This in turn will reflect the true nature of whether football-related violence and disorder is still a problem. The content of the statistics will be observed, rather than using a quantitative, time-series analysis to draw inferences. The statistics will be used to provide context around the nature of the offences committed and the number of recorded FBOs that are served each football season. This data is the only regularly published evidence by which the authorities measure whether the Orders are necessary. As there are no other mechanisms, or publications by the Home Office, police, or CPS, to assess the efficacy of FBO, the statistics need to be observed to highlight whether violence and disorder in football is increasing or decreasing. This will address whether FBOs are fit for purpose in their current form and enables the application of the law to achieve its aim of decreasing football-related disorder.

3. From the creation of the statutory framework and the monitoring of FBOs, the interpretation and wording of s 14A and s 14B of the FSA 1989 will be discussed to highlight whether this allows for a broad amount of discretion to be applied when serving a FBO. The interpretation of the statute will impact the overall FBO statistics at the end of each football season, therefore, an exposition of the legality and interpretation of the statutory framework through reported cases needs to be addressed. This will provide context as to how the law has been interpreted/defined to evaluate whether it enables the parliamentary aims of decreasing football disorder through the use of FBOs. A crucial factor that needs to be considered in light of the statutory framework is the interpretation and use of s 14B. Although the final decision as to whether an individual should be served a FBO is with the courts, s 14B is a mechanism that is used by the police and as such, their applications are funded to help secure the Order. By dissecting and analysing the statutory framework, it will establish whether the construction of the wording is clear enough to interpret in a proportionate manner and if it is identified that the statutory interpretation of s 14A and s 14B

is disproportionate or unreasonable, then can the package of measures available, be fit for purpose.

4. If it is established from the assessment of the objectives noted above that the current package of measures is not fit for purpose, it is necessary to identify whether an alternative preventative mechanism that will replace FBOs is currently available to be used by the authorities. A measure that has been available before the creation of any legislative provisions under the FSA 1989, the use of stadium/club bans issued by individual clubs, will be highlighted throughout this thesis as a mechanism that can be used to supplement the statutory framework.

1.4 Methodology

A distinction must be drawn between the effectiveness of the English legal system to provide a particular methodological approach to answering the aim of this research. Legal systems ultimately regulate and order people's behaviour and whether a specific legal provision successfully contributes to the aim of this theses is dependent on two distinct sets of effectiveness, the internal and the external effectiveness.²⁷ Firstly, the internal effectiveness of a legal system refers to the consistency and coherency of the legal norms and their definitions.²⁸ Secondly, the external effectiveness measures whether a legal norm is effective in real life, so it concerns the law in action.²⁹ The thesis aims to address whether there is a genuine need for FBOs as a preventative measure in decreasing football-related violence and disorder. Therefore, it is necessary to find legal answers based on the legal data available meaning an external non-legal perspective is not required.³⁰ The factors surrounding this field are purely legal issues which can only be answered based on the legal data and legal standards.³¹

²⁷ URM de Vries and Lyna Francot, 'The Legal Method Reconsidered' in Maria Karanik Murray & Rolf Wiesemes (eds), *Exploring Avenues to Interdisciplinary Research, From Cross to Multi to Interdisciplinarity* (Nottingham University Press 2009) 169.

²⁸ Jack Balkin, 'Understanding Legal Understanding: The Legal Subject and the Problem of Legal Coherence' (1993) 103 *The Yale Law Journal* 105.

²⁹ *ibid.*

³⁰ Wendy Schrama, 'How to Carry out Interdisciplinary Legal Research: Some Experiences with an Interdisciplinary Research Method' (2011) 7 *Utrecht Law Review* 1.

³¹ Lee Epstein and Gary King, 'Rules of Inference' (2002) 69 *University of Chicago Law Review* 1.

In a modern interdisciplinary framework, where the research is being directed, read and more importantly 'judged' by those outside a narrow legally trained discipline, articulation of the chosen method for this thesis is vital.³² To conduct the research for this thesis and address the aims and objectives posed, it will involve a rigorous analysis and creative synthesis of the legal principles regarding football spectatorship. This will involve the making of connections between disparate strands of the legislative provisions governing football spectatorship and the extracting of the general principles from an inchoate mass of primary materials linked to spectatorship management. To address whether FBOs are fit for purpose, the primary sources of law must be intensively evaluated to highlight 'the adequacy of existing rules which recommends changes to any rules found wanting'.³³

This doctrinal methodology that will be adopted is normally a two-part process that involves, firstly locating the sources of the law and then secondly, interpreting and analysing the text. The first step is illustrated as an attempt to determine an 'objective reality', that is, a statement of the law encapsulated in legislation or an entrenched common law principle.³⁴ Section 14A and s 14B of the FSA 1989 makes explicit reference to the purpose of a FBO, that being to 'help prevent violence or disorder at or in connection with any regulated football matches'. Therefore, to test whether the Orders are achieving their purpose, a 'systematic and robust methodological framework' must be adopted to achieve the overall aim of this thesis.³⁵ The location and analysis of the associated primary documents of the law that govern football spectatorship then need to be gathered to establish the nature and parameters of the purpose of FBOs. Doctrinal research focuses on legal principles generated by the courts and the legislature, this is the internal effectiveness of the law and the overall crux of the doctrinal method that needs to be adopted to address the overall aim of this thesis.³⁶

³² Nigel Duncan and Terry Hutchinson, 'Defining and Describing what we do: Doctrinal Legal Research' (2012) 17 Deakin Law Review 8.

³³ Colin Campbell, 'Legal Thought and Juristic Values' (1974) 1 British Journal of Law and Society 13, 15.

³⁴ Christopher McCrudden, 'Legal Research and the Social Sciences' (2006) Law Quarterly Review 632, 648.

³⁵ Arlene Fink, *Conducting Research Literature Review: From the Internet to Paper* (2nd edn, Sage Publications 2005) and Michael McConville and Wing Hong Chui, *Research Methods for Law* (Edinburgh University Press 2007) 22–3.

³⁶ Susan Bartie, 'The Lingering Core of Legal Scholarship' (2010) 30(3) Legal Studies 350 and Terry Hutchinson, *Researching and Writing in Law* (3rd edn, Reuters Thomson 2010) 7.

To address the research objectives, 'the legal system itself functions as a theoretical framework that selects facts and highlights them as legally relevant ones'.³⁷ The essential feature of doctrinal scholarship involves 'a critical conceptual analysis of all relevant legislation and case law to reveal a statement of the law relevant to the matter under investigation'.³⁸ This 'conceptual analysis critique' is based on an understanding of the rules of precedent between the court jurisdictions, the rules of statutory interpretation, the tacit discipline knowledge such as the difference between civil and criminal jurisdictions, various tests of liability, along with the acknowledged reasoning methods, borrowed from philosophy and logic, such as induction and deduction.³⁹ Firstly, by organising and reorganising the relevant cases into coherent elements, categories, and concepts, the thesis will illustrate any discrepancies in the interpretation and use of s 14 of the FSA 1989. Secondly, there is a need to expose unstated assumptions, patterns or results, internally inconsistent structures, or other tensions within the body of law.⁴⁰ Therefore, a more content-based analysis needs to be adopted. Content analysis includes the process of reading judgments, legislation and policy documents as text rather than reading for the substance of the 'law' and legal reasoning.⁴¹ Using Parliamentary debates and reports throughout the thesis will 'seek to quantify content in a systematic and replicable manner' alongside the primary legal principles.⁴² In doing so, this will highlight the tensions and/or contradictions to the social, or philosophic difficulties of the purpose of creating legislation.⁴³ It is to be noted that the Parliamentary debates are preparatory and contextually important documents for understanding Parliament's legislative intent from a statutory interpretation perspective; there is no need for the thesis to engage further in the associated socio-political or theoretical debates. The Parliamentary materials that will be used are integral to this holistic, doctrinal analysis as it is the only source of

³⁷ Pauline Westerman, 'Open or Autonomous? The Debate on Legal Methodology as a Reflection of the Debate on Law' in Mark Van Hoecke (eds), *Methodologies of Legal Research Which Kind of Method for What Kind of Discipline?* (Hart Publishing 2011) 5.

³⁸ Terry Hutchinson, 'Valé Bunny Watson? Law Librarians, Law Libraries and Legal Research in the Post-Internet Era' (2014) 106(4) *Law Library Journal* 584.

³⁹ Terry Hutchinson, 'The Doctrinal Method: Incorporating Interdisciplinary Methods in Reforming the Law' (2015) 3 *Erasmus Law Review* 130.

⁴⁰ Martha Minow, 'Archetypal Legal Scholarship – A Field Guide' (*aals.org*, 2006) <<http://www.aals.org/documents/2006nlt/nltworkbook06.pdf>> accessed 1 May 2018.

⁴¹ Alan Bryman, *Social Research Methods* (3rd edn, OUP 2008) 697.

⁴² *ibid* 692.

⁴³ Minow (n 40).

information available that provides an indication of Parliament's intent when creating the FBO framework.

Similarly, a key factor of the thesis and the materials that can be used to establish the intent of Parliament is the use of the Home Office Banning Order statistics. The statistics provide the trends of FBOs served and the number of arrests each football season and can be seen as an external factor to measure the effectiveness of this area of law. Although the statistics will be used to address the aim of the thesis, the statistics will not be used to answer questions on relationships within measurable variables to explain, predict and control a phenomenon; to increase or decrease football disorder.⁴⁴ Using this type of quantitative method to deal with the FBO and arrest statistics would be advantageous to provide a systematic way of investigating football violence and disorder by identifying trends and patterns. Nevertheless, the Home Office statistics in themselves are not sound.⁴⁵ The Home Office note that:

[C]aution should be taken when making season-on-season comparisons with regards to the statistics on new FBOs, as the period covering each data extraction varied from year to year, and when comparing small differences between time periods the figures are not necessarily accurate to the last digit.⁴⁶

For that reason, a quantitative, time series analysis that uses statistical techniques designed to capture the patterns observed over time in one or more data series with the intention to strengthen the evidence or clarify details of the association of this study, would not be appropriate.⁴⁷ For that reason, the statistical data will be observed as a **value of something of interest**, particularly how the statistical data is gathered and used as an influential factor to inform governmental policy, policing strategies and Parliament's intent to keep the FBO framework.⁴⁸

By examining the primary sources of football spectator management to draw logical conclusions about the law, there are instances where it is not immediately self-evident

⁴⁴ Paul Leedy, *Practical Research: Planning and Design* (Prentice-Hall 1993).

⁴⁵ Kenneth Bailey, *Methods of Social Research* (3rd edn, The Free Press 1978).

⁴⁶ Home Office, 'User Guide to Football-Related Arrests and Banning Order Statistics, England and Wales, 2017 to 2018 Season (2018)' (*gov.uk*, 15 November 2018)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/756379/football-related-arrests-banning-orders-1718-hosb2818.pdf> accessed 20 November 2018.

⁴⁷ Deepesh Machiwal and Madan Kumar Jha, *Methods for Time Series Analysis' in Hydrologic Time Series Analysis: Theory and Practice* (Springer 2012).

⁴⁸ Home Office (n 46).

from sources such as legislation and case law. The majority of contemporary legal researchers acknowledge that it is important to build on doctrinal research conclusions by using sociological or other 'outsider' perspectives.⁴⁹ The dichotomy that can exist between the study of legal doctrine and actual legal behaviour means legal research must entail a sociological understanding of law.⁵⁰ The aforementioned content analysis will provide this 'outsider perspective' by identifying patterns in text, the themes in bodies of documents and the gathering of information through methods such as Freedom of Information Requests (FOI). The Freedom of Information Act 2000 (FOIA 2000) is a powerful tool for social researchers. The legislation serves as a means for citizens to obtain information from public authorities on a variety of different topics impacting their daily lives. Freedom of information requests are sui generis research tools, with the potential to produce data which does not easily fit into existing classification of primary or secondary and qualitative or quantitative. By stretching these boundaries, FOI requests pose great potential in addressing the aim of the thesis.⁵¹

FOI requests have potential on both theoretical and practical levels. Practically, FOIs allow researchers to access data that they wish to subject to analysis. Theoretically, data obtained through requests can be seen as a powerful tool for democratising the research process.⁵² Publicly available data concerning FBOs is screened, and often presented in the form of amalgamated ratings that combine different pieces of information. To access the raw data and uncover the interconnections between the phenomena of football-related violence and disorder, it is necessary to utilise a freedom of information mechanism to obtain the underlying data.⁵³ As the FOI mechanism allows requests to be tailored to the research, the requests fall outside the traditional dichotomy between primary and secondary research, which is often used to identify the ethical issues that are raised by research. The information gained through FOIA is publicly available but is only made so in response to a request submitted by the researcher. Therefore, any data provided in response to a FOI

⁴⁹ Duncan and Hutchinson (n 32).

⁵⁰ Roger Cotterrell, 'Why Must Legal Ideas be Interpreted Sociologically?' (1998) 25(2) *Journal of Law and Society* 171.

⁵¹ Ashley Savage and Richard Hyde, 'Using Freedom of Information Requests to Facilitate Research' (2014) 17(3) [International Journal of Social Research Methodology](#) 317.

⁵² Raymond Lee, 'The UK Freedom of Information Act and Social Research' (2005) 8 *International Journal of Social Research Methodology* 1.

⁵³ Savage and Hyde (n 51).

request should not contain information that would breach any regulation under the General Data Protection Regulations.⁵⁴ The research conducted through the FOI requests for this thesis will not pose ethical issues in the same way as research where data is gathered directly by the researcher under other methods of quantitative research.

The FOIA request may not provide complete answers to why the authorities make decisions. Therefore, it is necessary to use other data collection methods in conjunction with information received in response to FOIA request in order to answer the research questions posed by this thesis.⁵⁵ The data obtained will complement and contextualise data obtained using the other collection methods stated above. This will enrich and add validity to the conclusions that can be drawn from this piece of research.⁵⁶ The FOI requests will offer a way of deconstructing the legal text, rather than reading and synthesising meaning from the text. It is the process of quantifying the use of words and then examining the language, and not simply what is being said or the meaning of the words in the first instance.⁵⁷ The FOI responses, alongside the use of the Parliamentary materials, will help to illustrate whether or not there is a genuine need for the package of measures in place to satisfy the purpose of their creation in decreasing football-related violence and disorder.

1.5 Proposed Outcome

The thesis will propose that FBOs in their current form are no longer fit for purpose. It is recommended that the current package of measures adopted by Parliament, the courts, football clubs and the police need a radical overhaul to provide a proportionate, fair and reliable system that governs football spectators. The issues that will be highlighted throughout the thesis are spread amongst those regulating football spectators. Suggesting change to only one area will not have a significant impact, and any amendment that will result in a fairer and more proportionate system needs to

⁵⁴ Council Regulation 2016/679 of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data (General Data Protection Regulation) [2016] OJ L119/1 and Data Protection Act 2018.

⁵⁵ Peter Carey and Marcus Turle, *Freedom of Information Handbook* (Law Society 2008).

⁵⁶ James Wilson, 'Freedom of Information and Research Data' (2011) 7 Research Ethics 3.

⁵⁷ Alan Bryman, *Quantity and Quality in Social Research* (Routledge 1988) 697.

derive from all those associated with the regulation of football spectators in England and Wales. It will be suggested that a hierarchical framework is introduced to allow the authorities to differentiate between those individuals that engage in sub-criminal, anti-social behaviour and those that commit more serious disorder and crime. It is only possible to introduce such a framework by adopting the following recommendations. Firstly, the thesis will propose an amendment to s 14 of the FSA 1989. Changing the statutory framework will reflect the current position concerning football-related violence and disorder. This will not only provide a more proportionate response to those spectators that may be subject to legal proceedings but it will also aid the courts in interpreting and applying the legislation. Amending s 14 of the FSA 1989 will also prompt necessary changes to monitoring FBOs. For that reason, the second recommendation proposed by this thesis is to improve the collection and presentation of the annual Home Office statistics. As this data is currently the only evidence regarding the level of football-related violence and disorder in England and Wales that is used to inform policy and decision-making, it needs to be reliable. With changes to the statutory framework and the monitoring of spectator behaviour, the third recommendation proposed by the thesis is to ensure that the alternative mechanism to the statutory FBO, a club ban, is a proportionate and fair. Recommending changes to the statutory framework will mean a heavier reliance on the use of club bans. The current processes adopted by football clubs, therefore, must be regulated and a standardised system introduced. Finally, the thesis will recommend that any police involvement with football spectators should be fair and consistent. Emphasis should be drawn to improving the liaison-based approach that is currently adopted by most constabularies. By implementing these recommendations, the thesis proposes that the regulation of football spectators will become fit for purpose.

1.6 Contribution to Knowledge

The belief that the law governing football spectators needs to be revised has been posed by academics and individuals involved in football.⁵⁸ However, there is no literature exploring and analysing the overall package of measures available to the

⁵⁸ Arfon Jones, 'Police Boss Calling for New Laws to Stop Football Fans being Victimised' (*northwales.pcc*, 27 April 2018) <<http://www.northwales-pcc.gov.uk/en/News/News/Police-boss-calling-for-new-laws-to-stop-football-fans-being-victimised.aspx>> accessed 1 May 2018.

relevant authorities that monitor and govern football spectators. There is no single documented piece of work that addresses whether FBOs are fit for purpose and more importantly, whether there is a genuine need for them. Academics have explored the mechanics of FBOs and how they could be reinvented,⁵⁹ policing models, how to deal with crowds en masse,⁶⁰ and analysis and evaluation of the behaviour of football spectators.⁶¹ However, no work tests the existing literature by evaluating whether the creation and use of FBOs are satisfying their designated purpose of reducing football-related disorder. This thesis is, therefore, the first existential analysis of the underpinning justification for the FBO framework. It demonstrates the lack of the evidence-based justification for the introduction of FBOs in the first place and their many amendments over time. Thus, rendering them not fit for the actual purpose that they were introduced; to break the link between the hooligan ringleaders and those engaging in football-related disorder.

The lack of justification coupled with a self-serving evidential feedback loop, means that FBOs have become a self-perpetuating industry. The thesis does not need to analyse the legal implications of the application of FBOs, instead the thesis analyses their very existence. For that reason, the thesis establishes three specific and original contributions to knowledge. Firstly, analysis of the methodological deficiencies of the Home Office statistics and how the data is collected, alongside the information obtained from the FOI responses presented in Chapter Five. This analysis has never been conducted and it indicates that there is no standardised means of collecting the data. This data is supposed to feed into the Home Office statistics to help determine whether FBOs are decreasing football-related violence and disorder. There are various deficiencies such as no data code to tag that an arrest is football-related and no specific Home Office Counting Rules for football-related offences. Without this standardisation, the Home Office statistics are meaningless. Secondly, the analysis of the legality of and the legal issues relating to club bans in Chapter Six has not been undertaken by anyone else. Problems surrounding club bans are a new and emerging

⁵⁹ See, Mark James and Geoff Pearson, 'Football Banning Orders: Analysing their Use in Court' (2006) 70 *Journal of Criminal Law* 509 and Mark James and Geoff Pearson, '[30 Years of Hurt: The Evolution of Civil Preventive Orders, Hybrid Law, and the Emergence of the Super-Football Banning Order](#)' (2018) 1 *Public Law* 44.

⁶⁰ Clifford Stott and Otto Adang, 'Crowd Dynamics, Policing and 'Hooliganism' at Euro 2004' (000-23-0617, ESRC 2005).

⁶¹ University of Leicester, 'Fact Sheets' (*furd.org*, 2002) <<http://www.furd.org/resources/fs2.pdf>> accessed 12 June 2017.

area and the issues are only starting to become apparent due to spectator complaints to the Football Supporters Association (FSA) and the Independent Football Ombudsman (IFO). Finally, the proposals for reform in the conclusion will provide a way in which the law and its application to football fans can be developed more effectively. A proposal for a new framework for the regulation and punishment of football-related disorder has not been suggested by anyone else, including Parliament since the creation of FBOs.

Chapter Two: Literature Review & Critical Timeline

2.1 Introduction

The literature review has been described as ‘the foundation and inspiration for substantial, useful research’.⁶² The purpose of this literature review is to identify commentary that provides the justification for the creation of and the subsequent use of FBOs. The review will support the identification of the problems associated with FBOs and illustrate that there is a gap in previous research that needs to be filled. To do this, this literature review will not only refer to the existing body of literature but also the relevant legal documentation. As research and analysis have not previously been undertaken in relation to the original purpose of FBOs, the traditional sources of literature that would ordinarily be included in a literature review are sparse. A more creative approach needs to be taken that will enable a thematic analysis of not only the academic literature but also governmental reports, debates, policy documents and National Archive information. In doing so, the chapter will build on the existing literature and demonstrate that this thesis poses an important and original contribution to knowledge.

The purpose of the literature review for this thesis is, therefore, three-fold. Firstly, it will provide an examination of existing pieces of research that is as a starting point in identifying information and terminology relevant to FBOs to become familiar with the subject area.⁶³ This will be presented as a critical timeline, focusing on the statutory and policy development, rather than focusing on the other authors in this field of research. Secondly, it will draw on and critically evaluate the quality of existing scholarly writings to identify the best research techniques and practices.⁶⁴ This will aid in demonstrating how their findings fit into the discussions regarding this area. It will put into context and identify how this thesis differs from that of other scholars, thus, making it an original contribution to knowledge. This chapter will set out the conceptual

⁶²David Boote and Penny Beile, ‘Scholars before Researchers: On the Centrality of the Dissertation Literature Review in Research Preparation’ (2005) 36 Educational Researcher 3.

⁶³ David Thomas and Ian Hodges, *Doing a Literature Review in Designing and Managing your Research Project* (Sage 2010) 105.

⁶⁴ *ibid.*

framework for identifying the main themes of the thesis. The research undertaken by other scholars will be analysed and engaged with throughout the chapter to provide a foundation for framing the research questions for this thesis. The importance of identifying a working understanding and demonstrating a critical appraisal of the body of existing literature are the key indicators in answering the following questions throughout this chapter:

1. Who are the prominent academics in this field?
2. What literature is available that provides enough evidence that FBOs reduce disorder?
3. What legal and policy documents can be used to provide a critical timeline of the creation FBOs?
4. What theories and propositions have been postulated as to whether FBOs should be replaced by a new preventative mechanism to reduce football disorder?

These questions will aid in answering the overarching aim of the thesis; whether FBOs are fit for purpose. The thesis outlines several ways in which FBOs will be examined however, the literature review will highlight the gaps in the existing literature by discussing three distinct areas: Firstly, by highlighting the evidential basis for the creation of FBOs and whether there is justification for their creation. Secondly, analyse the wording of s 14A and s 14B of the FSA 1989 to highlight the legality of their use. Thirdly, how their effectiveness is measured and monitored. Collectively, these questions will demonstrate whether there is a genuine need for FBOs in their current form and provide the basis for a more critical appraisal of FBOs in the subsequent chapters.

To address the aims of the literature review alluded to above, a synthesis of the existing literature is needed. Extracting and synthesising the main points, issues, findings, and research methods which emerge from a critical review of the literature will aid in addressing the research aim.⁶⁵ Namely, what has already been written on the subject and where the thesis falls in the broader context of the subject area. This

⁶⁵ See, David Nunan, *Research Methods in Language Learning* (Cambridge University Press 1992) 217 and Dean Fixsen, Sandra Naoom, Karen Blase, Robert Friedman and Frances Wallace, *Implementation Research: A Synthesis of the Literature* (University of South Florida 2005).

will involve identifying key terminology and gaining a historical understanding of the subject area. These materials will then be critically evaluated to assess their ambiguities and whether they support the research aim of the thesis, or present an opposing viewpoint.⁶⁶ Furthermore, it is necessary to look at the methodology and techniques used by other scholars in this area. As there is an array of quantitative and qualitative data that is potentially inherent in all areas of research, every literature review lends itself simultaneously to the analysis of quantitative and qualitative information.⁶⁷ It is essential to assess the varying methodological approaches to research involving FBOs to identify whether these methodologies were able to support the research outcomes. Finally, the literature review will identify the significance of the work produced by other scholars in the subject area and demonstrate how this thesis will differ from the existing literature and provide an original contribution to knowledge.⁶⁸

2.2 Research Proposition

FBOs are an essential part of the Government's preventative strategy in the management of football-related violence and disorder.⁶⁹ A package of measures including football-specific policing tactics, governmental policy, legislative provisions and football club stadium bans are available to help reduce violence and disorder associated with football spectators. It is apparent that there is a lack of evidence underpinning their initial creation by Parliament and a lack of evidence justifying both their continued use and their continuing evolution. The monitoring of FBOs through the annual production of statistics influences how the police and other authorities test whether or not these preventative measures are an effective means for preventing football disorder.⁷⁰ Although the Home Office note that caution should be taken when making season-on-season comparisons with regards to the statistics on new FBOs.⁷¹

⁶⁶ Harris Cooper, Larry Hedges and Jeffery Valentine, *The Handbook of Research Synthesis and Meta-Analysis* (2nd edn, Russell Sage Foundation 2009).

⁶⁷ Anthony Onwuegbuzie and Rebecca Frels, *Seven Steps to a Comprehensive Literature Review* (Sage 2016).

⁶⁸ Thomas and Hodges (n 64) 105.

⁶⁹ HC Deb (n 1) 332W.

⁷⁰ Home Office (n 24) states that 'comprehensive data [Banning Order statistics] on football-related arrests and Banning Orders ... is included to help relate the impact of the Banning Order measures on current trends in football 'hooliganism'.

⁷¹ Home Office (n 24).

Therefore, the methodology underpinning the production of the statistics demonstrates they are unsound and reliance on them as an indicator of the levels of violence and disorder at football matches should be taken with care.⁷²

2.3 Central Themes

The thesis has identified several themes as noted above and these will be further examined and critically analysed in the subsequent chapters. For this chapter, the literature review will identify and discuss these themes with a view of using governmental reports, policy documentation and archival information to highlight an understanding of the connections and relationships between the chosen sources and ideas. This thematic approach in the form of a critical timeline will demonstrate the original contribution of the thesis by recognising gaps in the existing ideas and concepts regarding FBOs to highlight they are not fit for purpose in their current form.

2.4 The Lack of Evidence for the Creation of Civil Measures in Respect of Football Spectators

Literature on the implementation of FBOs in their current and original form is sparse. Commentators have focused on what is wrong with the FBO framework, rather than that there is no justification for enacting it. The purpose of this section of the literature review is to discuss the available governmental reports highlighting the problem of football violence and disorder pre-FBO implementation. It will be illustrated that these reports have not previously been scrutinised to the extent of establishing whether FBOs are fit for purpose in their current form and that they provided no valuable solutions to football-related violence and disorder. Reference will be made to the governmental scrutiny, archival documentation, Parliamentary debates, and the law itself in the creation of the previous and current football spectator framework to then enable discussion on the available scholarly literature on the legality of FBOs. This will provide the basis by which it will be demonstrated that there was little to no evidence collected by the Government to justify the creation of the FBO regime. Previous governments had primarily focused on other football-related issues and the ultimate

⁷² Discussion regarding the production and monitoring of FBO statistics is analysed in more detail in Chapter Five.

introduction of the legislation was a panicked response to media portrayals of spectator behaviour.

The notion of football disorder has been illustrated by Harrington as an 'aggressive affair' that has been apparent for many years.⁷³ Contrary to popular belief, forms of football disorder have been a frequent accompaniment of association football in England and Wales since the 1870s, the period when the game emerged in a recognisably modern form.⁷⁴ Crucially, the Football Association (FA) did not see football disorder as their problem, as the spectators causing disorder were affiliated to specific clubs, and the Government stating that any intervention on the matter should be left to the clubs.⁷⁵ No management strategies or preventative measures to control football spectators were created until the 1980s when a media-orchestrated panic swept through the UK driving Parliament to legislate on the area. This demonstrates a lack of responsibility to provide a well-thought, evidence-based framework to tackle the issue, despite knowing there was a problem. Throughout this period of no football-specific legal governance, the emergence of football-related disorder or more commonly coined as 'football hooliganism' became, quite suddenly, a cause for major concern in Britain in the 1960s.⁷⁶ Awareness of this was acknowledged by Parliament as a serious problem, but it remained a fact that the 'responsibility for public order is that of the management of the football club and that the matter does not call for direct action by the Government'.⁷⁷ Demonstrating a lack of responsibility on behalf of the Government to provide a suitable framework to prevent these issues when it had been ongoing for over 70 years. This theme shall be discussed in more detail in Chapter Three by demonstrating the absence of any engagement, or responsibility by both the footballing authorities and the Government to highlight that the introduction of FBOs in the 1980s was a panicked, unjustifiable response.

As Parliament deflected any involvement in the management of football spectators, it instead, suggested that joint committees of the local police, the supporters' clubs and

⁷³ Harrington (n 22) 4.

⁷⁴ Eric Dunning, Patrick Murphy and John Williams, *The Roots of Football Hooliganism: An Historical and Sociological Study* (Routledge and Keegan 1988) 1.

⁷⁵ Department of Education and Science, *Sir Norman Chester Report of the Committee on Football* (Her Majesty's Stationary Office 1968) 5.

⁷⁶ Giovanni Carnibella, 'Football Violence in Europe: A Report to the Amsterdam Group' (Social Issues Research Centre, 1996).

⁷⁷ HC Deb (n 3).

the club management at a local level should determine how to resolve the issues.⁷⁸ Despite Parliament suggesting this cross-authority intervention and management, it never came to fruition as expected because of an absent legal framework, or a sufficient evidence base to introduce a coherent framework or preventative measures to hinder football violence and disorder. In contrast to the cross-authority management of football spectators nowadays, it will be demonstrated throughout the thesis that the intervention of numerous authorities has impacted the creation of the current legal framework.⁷⁹ One prominent issue with the current framework rests with the scrutiny involved in the creation of FBOs to prevent football disorder. FBOs were created on the backdrop of disorderly spectators overseas and those that instigated football-related violence and disorder. Therefore their purpose was to prevent individuals from travelling to international football matches and tarnishing England's reputation as a perceived powerful nation.⁸⁰ This change in attitude was not a result of carefully considered evidence, but due to the media coverage of football-specific violence and disorder overseas that was deemed to impact the good reputation of the country [England].⁸¹ It is implied that the relaying of this spectator behaviour was 'distorted by the media' through the misleading use of the language of violence causing 'moral panics' amongst the general public and authorities.⁸² The authorities leaned towards this speculation rather than gathering sufficient evidence themselves. The absence of evidence before the implementation of FBOs, and the underpinning justification for introducing the measures provide difficulty in being able to secure and monitor these preventative orders. Demonstrating that FBOs are not fit for purpose in their current form.⁸³

Interestingly, the Government panic that ensued in response to the disorder overseas resulted in numerous governmental reports being commissioned, although these were not commissioned by the Home Office, the department that is responsible for reducing and preventing crime, or the Foreign and Commonwealth Office which is responsible,

⁷⁸ HC Deb 15 October 1969, vol 788, col 562.

⁷⁹ Further discussion regarding this will be in Chapter Four.

⁸⁰ John Lichfield, 'Little Britain: How the Rest of the World Sees Us' *Independent* (London, 23 October 2011) <<https://www.independent.co.uk/news/uk/this-britain/little-britain-how-rest-world-sees-us-2043190.html>> accessed 18 November 2018.

⁸¹ Cohen (n 21).

⁸² Cohen (n 21).

⁸³ This will be discussed in more detail in Chapters Three and Four.

in the broadest sense, for Britain's reputation overseas.⁸⁴ The Reports not only focused on the behaviour of football spectators against the increasing levels of disorder in England and overseas but examined the state of English football as a whole. The reports provided several recommendations, such as an increase in stewarding, increased police presence and the financial regulation of clubs needed to be improved.⁸⁵ Nevertheless, there was no reference to the introduction of preventative measures such as FBOs. These recommendations will be discussed in detail throughout Chapter Three. The chapter will highlight the recommendations that have been implemented and are still in use, such as the relationship between a football club and the police, the changing attitudes and responses to football-related violence and disorder, and a football club's responsibility concerning its spectators have shifted but the legislation has not changed. Those recommendations that have been implemented are funnelled into the FBO process and the current legal framework, particularly with problems of violence and disorder inside the football stadium. Recommendations that were made, stated that it was that the responsibility of spectators is that of individual clubs and not the Government; a more active role in trying to control spectators in the stadium was needed rather than relying on legislative intervention.⁸⁶ This approach, as will be discussed in detail in Chapter Six, demonstrates that FBOs are not fit for purpose in their current form. FBOs are now being served for sub-criminal or anti-social offences; offences that can be dealt with through a potential breach of the ticketing terms and conditions and/or ground regulations. Football clubs are actively encouraged and legally obliged under their contractual obligations, to ban spectators from their stadiums, and this mechanism is seen to be more favourable than FBOs. This process is quicker and more readily available than the legislative procedure for FBOs. Those involved in disorder in football stadiums in England and Wales were said to have no inclination to travel overseas to cause trouble or be classified as ringleaders of football-related violence and disorder.⁸⁷

⁸⁴ See, Harrington (n 22); Department of Education and Science (n 75); Ministry of Housing and Local Government, *Report of the Working Party on Crowd Behaviour at Football Matches* (Her Majesty's Stationary Office 1969) and Home Office, 'About Us' (gov.uk) <<https://www.gov.uk/government/organisations/home-office/about>> accessed 27 October 2017.

⁸⁵ These recommendations will be compared against the current legal framework to demonstrate the inconsistencies in the cross-authority management of football spectators in Chapter Three.

⁸⁶ Harrington (n 22) 4.

⁸⁷ HL Deb 09 March 1977, vol 380, col 1030.

Despite the Government stating that they deeply deplored the behaviour of football supporters who misbehave abroad, it was consistently noted by the Minister of State, Lord Harris, that 'football-disorder was not a matter for Her Majesty's Government'.⁸⁸ This may have been a result of the government reports not providing solutions to the problems, as there was no sufficiently cogent evidence to justify legislating on the area. With no evidence to introduce a preventative measure such as the FBO, increasing issues around football-related disorder prevailed. Partially due to the footballing authority's reluctance to adopt their measures and Parliament's reluctance to become involved in the area. A 'moral panic' as alluded to by Cohen, was highlighted by the Government's increasing concern of the reputation of the country overseas.⁸⁹ The Government highlighted that they needed punishment; 'it should be stiff, it should last and be supported by public opinion'.⁹⁰ Alluding to their own inability to adopt a framework to manage football spectators, Frank McElhone's Working Party in 1977 was commissioned to examine crowd control problems.⁹¹ The evidence presented to previous governments before this report was primarily based on the aftermath of stadium disasters or discussions into the financial aspects of the sport as a whole. Although important, there were no specific recommendations pressing the need for Parliamentary intervention, i.e., a piece of legislation governing the behaviour of football spectators.

Not surprisingly, McElhone's Report provided the same suggestions made by successive Working Party's and governments.⁹² Interestingly, the recommendations put forward by McElhone's Working Party were used in Scotland but not in England and Wales. One of the Working Party's recommendations regarding the consumption and licensing of alcohol on match days, although introduced as Scottish legislation three years later, was not incorporated into domestic legislation in England and Wales until eight years after the Report was published. This lack of Parliamentary intervention, as alluded to above and discussed in greater detail in Chapter Three, can be linked to the varying incidents and topics that were reported on previously. It was

⁸⁸ *ibid* 1029.

⁸⁹ *ibid* 1331.

⁹⁰ *ibid*.

⁹¹ Scottish Education Department, *Frank McElhone – Report of the Working Group on Football Crowd Behaviour* (Her Majesty's Stationary Office 1977).

⁹² *Ibid*.

not until the mid-80s whereby the Government's panicked response to the Heysel disaster, would a statutory, preventative measure be introduced, albeit, not in the form of a FBO. With no evidence to support any such measure being introduced, merely responding to the 'moral panic' as alluded to by Cohen, suggests that the FBO and the framework it is housed within have not been sufficiently justified. Therefore, FBOs, that have evolved from the original preventative measures are not fit for purpose.

Comments expressed by the Government in the 1980s demonstrated that they were desperate to do and be seen to be doing something in the form of tackling football disorder. However, it was apparent that they did not know what action to take or how to intervene because of the lack of cogent evidence. Chapter Three will provide a deeper analysis regarding the absent evidence and legislative suggestions, however, to provide context, some of the proposals put forward by the Government will be outlined below. One notable suggestion referred to the notion of 'banning supporters from travelling to away games' but this 'being an extreme step that must be carefully considered to ensure that mass is not punished for the misconduct of the minority'.⁹³ This is in stark contrast to FBOs that now, not only bans individuals from attending all domestic games but also international games with the requirement of surrendering a passport.⁹⁴ It is apparent that the Government, along with successive governments were not collecting the evidence necessary for a coherent management strategy. The commissioning of reports by government departments that do not specifically aid in the reduction of crime, and disregarding any recommendations put forward by Working Parties, lead to the 1980s becoming the darkest age for English football when British football hooliganism was at its peak, particularly overseas.⁹⁵ In terms of damage, unrest and upset in the domestic community, it was noted by the Home Affairs Committee on the law relating to public order, that football spectators in England and Wales were much better behaved than they had been for some time.⁹⁶ Nevertheless, the Government were persistent in their aim to eradicate the disorderly behaviour of football spectators overseas and catching those that instigate football-related violence

⁹³ HL Deb 01 March 1984, vol 448, col 1371 per Lord Chancellor, Quinton Hogg.

⁹⁴ See Chapter Four for analysis of the nature and conditions attached to a FBO.

⁹⁵ Jon Dart, 'Confessional Tales from Former Football Hooligans: A Nostalgic, Narcissistic Wallow in Football Violence' (2008) 9(1) Soccer and Society 42.

⁹⁶ Home Affairs Committee, *Fifth Report from the Home Affairs Committee. The Law Relating to Public Order* (HC 1980-81, 756) 133.

and disorder. Something that previous governments had been highlighting as an issue for twenty years yet provided no management strategy.

2.4.1 The Start of the Panicked Response to Overseas Football Violence & Disorder

There have been numerous attempts to eliminate football disorder without a great deal of success because of trying to find immediate solutions to deep-seated and complex problems. 'Successive Governments, the football authorities and the clubs had failed comprehensively to deal with it properly and there had been too many knee-jerk reactions and far too little real action.'⁹⁷ With pressure from Europe as a result of disorderly behaviour overseas, the UK Government, again, suggested that something drastic needed to be done in the way of threatening football supporters.⁹⁸ Therefore, a reassessment of the problem of public order was welcomed, as there had not been a comprehensive overhaul of public order provisions in over twenty years.⁹⁹ The Government's belief that football spectator behaviour should be classified as public order, and the measures introduced should be classified as such, is a notion that has been lost since the introduction of FBOs. The media panic classifying all football spectators as criminals, particularly those that organised football-related violence and disorder, has shifted the notion of football spectators being involved in public disorder to committing criminal law offences. Despite most disorder that occurs at football matches nowadays, being classified as low-level public order.¹⁰⁰ Suggesting that FBOs in their current form are not fit for purpose as they were originally introduced to stop and deter the more serious crimes and those that instigated disorder.

Probably more than any other single incident, it was the Heysel tragedy which took place in Brussels at the European Cup Final between Liverpool and Juventus in 1985 that fixed the idea of football hooliganism as an 'English disease'.¹⁰¹ As the

⁹⁷ HC Deb 19 April 1985, vol 77, col 594.

⁹⁸ HL Deb 01 March 1984, vol 55, col 391.

⁹⁹ HC Deb 16 May 1985, vol 79, col 510.

¹⁰⁰ This will be discussed in more detail when the FBO statistics are scrutinised in Chapter Five.

¹⁰¹ Eric Dunning, Patrick Murphy and Ivan Waddington, 'Towards a Sociological Understanding of Football Hooliganism as a World Phenomenon' (2000) 8(2) European Journal on Criminal Policy and Research 220.

Government had not implemented any specific short-term measures despite recommendations to do so by the Council of Europe, the Council illustrated that they would allow 'English football authorities the opportunity to introduce effective measures to combat violence and to convince other countries that they have done so'.¹⁰² The Government noted that they had a 'slight fear that lengthy inquiries sometimes tend to postpone the action which ought to be taken quickly'. As the reputation of the country is one of the key features of accelerating the process of codifying the provisions and measures to deal with football hooliganism, this accelerated the government's attempt to 'manage' the problems.¹⁰³ This is a significant shift in attitude from the previous discussions around legislating on the area, that it was for the 'FA is responsible for generating their rules and for setting standards of behaviour both on the pitch and elsewhere'.¹⁰⁴ It was noted by Lord Cledwyn, Shadow Leader of the House of Lords, that the Government in this instance 'had a one-sided approach to look at the effects and how they may be controlled and limited',¹⁰⁵ rather than carefully and co-operatively considering in line with the relevant authorities the measures that need to be implemented.¹⁰⁶ Therefore, any measures that would be introduced would be without a lengthy enquiry meaning there would be no sufficient evidence base.

The recommendations put forward by the Government in the aftermath of Heysel could be deemed as a panic reaction to behaviour that occurred overseas. The Government did not attempt to introduce short-term measures on prior recommendations from the European Union. Under Part IV of the Public Order Bill (HC) (1985-86) an Exclusion Order scheme, which would enable the courts to ban convicted hooligans from attending football matches was introduced. This scheme was the first legal mechanism that had been created to deal with football spectator disorder. The scheme allowed the court to decide whether serving an Order 'would help to prevent violence or disorder at or in connection with prescribed football matches'.¹⁰⁷ Although these Orders were now housed in a long-awaited statutory framework, the Government

¹⁰² HL Deb 03 June 1985, vol 464, col 502.

¹⁰³ *ibid* 506.

¹⁰⁴ HC Deb (n 97) 600.

¹⁰⁵ HL Deb (n 102) 505.

¹⁰⁶ See Chapter Three for the analysis in relation to the implementation of the various legal mechanisms aimed at football spectators.

¹⁰⁷ HL Deb 13 June 1986, vol 476, col 513 and s 30(2) POA 1986.

accepted that the Exclusion Orders could not be enforced 100 per cent effectively. The Parliamentary Under-Secretary of State highlighted that there would be grave anxiety in many cases that the Order might be thought to have been made for political reasons rather than aimed at those that instigated football-related violence and disorder or those that misbehaved overseas.¹⁰⁸ This political argument regarding the implementation of such Orders has been carried forward to the creation of FBOs; Orders that were formed with similarities to that of Exclusion Orders in terms of prohibiting an individual from entering a stadium and introduced on the backdrop of violence and disorder overseas. Ironically, because of a panicked response, the Exclusion Order scheme was not successful. The Orders were not being imposed often enough on conviction of an offence, and where they were, there was no effective means of enforcing them.¹⁰⁹ Similar to FBOs, which have not stopped the rise in football-related violence and disorder in the lower football leagues, despite being served on individuals who have either been convicted or are deemed a 'risk supporter'.¹¹⁰

Only a year after the implementation of Exclusion Orders, another package of measures was introduced which was supposed to reflect the determination of the Government, the police and the football authorities to work in partnership to tackle hooliganism in the interests of both public safety and the future wellbeing of the game.¹¹¹ The introduction of Exclusion Orders were not being used due to the absence of evidence with how they would reduce football-related violence and it was stated by Baroness Phillips:

While many people may be surprised at the introduction of the measures, it is perhaps more surprising that some approach of this kind has not been taken sooner, although we are not sure how the measures should work. It is now 22 years since Her Majesty's Chief Inspector of Constabulary first drew attention to the developing problem, when, in his Annual Report for 1967, he said 'during the year much publicity was given to outbreaks of hooliganism by certain

¹⁰⁸ *ibid* 514 per Lord Glenarthur. Also see Chapter Three for the analysis in relation to the implementation of Exclusion Orders.

¹⁰⁹ Home Office, *The Hillsborough Stadium Disaster, 15 April 1989. Inquiry by the Rt. Hon Lord Justice Taylor: Final Report* (Cmnd 962, 1990) 280.

¹¹⁰ See Chapter Four for further discussion regarding the FBO and Arrest statistics.

¹¹¹ HC Deb 25 February 1987, vol 111, col 262.

sections of football crowds, often associated with vandalism in the vicinity of the football ground and on train journeys to and from matches.¹¹²

This statement highlights the absence of any tangible discussions over a 22 years regarding excluding individuals from football stadiums. Despite numerous reports on other footballing issues, the Government were reluctant to legislate on the area as it is apparent that they did not know how to deal with such behaviour, particularly the occurrence of violence and disorder overseas and those that planned such behaviour.

The immediate background to the Government's decision to again, legislate on this subject, circulated serious incidents of violence and disorder at the end of the domestic season in May 1988, and disturbances involving England supporters in West Germany during the European championships in June 1988. Like FBOs, the introduction of Restriction Orders was created on the backdrop of the behaviour of individuals overseas and football-related violence and disorder that was premeditated. 'Sensationalised tabloid press; a media-orchestrated moral panic over football hooliganism and consequent pressure on the football authorities; the Government were pressed to take remedial action.'¹¹³ Similarly, both Orders provide the courts' powers to impose restrictions on convicted hooligans and to prevent them from travelling to English matches abroad, even if they have no affiliation to the English national team or have never watched their football club overseas.

Interestingly, as had been the case with previous measures postulated or implemented by the Government, the Restriction Order legislation was described as a 'public order bill'. Nevertheless, this Bill was sponsored not by the Home Office, but by a junior Minister in the Department of the Environment.¹¹⁴ A department that led the drive towards centralism and the undermining of local government and local law enforcement agencies.¹¹⁵ The inception of such legislation, which is the foundation of the current FBO regime has not been questioned, particularly the lack of evidence or justification that this government department had in postulating such an idea, which in turn has led to a regime that has been utilised for over thirty years. A question that

¹¹² HL Deb 02 February 1989, vol 503, col 1263.

¹¹³ *ibid* 1273 per Lord Brougham and Vaux.

¹¹⁴ *ibid* 1274. See Chapter Three for further discussion and analysis regarding the introduction of Restriction Orders.

¹¹⁵ Peter Hennessy, *Whitehall* (Pimlico 2001) 439.

was asked by Lord Graham of Edmonton at the time these Orders were first touted; what is the evidence for such a regime and is it, or has it ever been fit for purpose?¹¹⁶

There appeared to be a megalomaniacal obsession with getting the Restriction Order Bill through at all costs, irrespective of whether there was clear evidence that the Government were getting it right regarding the reduction of hooliganism.¹¹⁷

‘[T]he football hooligan begets the football hooliganism problem. The establishment of a new folk devil leads to the development of a moral panic ... Future incidents then appear within the framework of this moral panic as evidence of a trend, which is increasingly newsworthy in its own right.’¹¹⁸

This trend is something that is still apparent and the media panic that is orchestrated each time England plays in an overseas tournament. The introduction of Restriction Orders and FBOs have not curbed this moral panic, governments have not listened to the arguments and evaluated the evidence as to whether such measures are necessary, or if they in fact work. Discussions regarding the implementation of measures such as Restriction Orders were introduced on the grounds of ‘dogma, arrogance and pride that dictated the legislation should be pushed through’.¹¹⁹ This raises two separate issues; firstly, there was no evidence to justify introducing these measures in the first place and; secondly, having introduced these measures, there is no evidence to support that they work to reduce football-related disorder, or catch those planning football-related violence and disorder. Therefore, FBOs are not fit for purpose in their current form.¹²⁰

2.4.2 Political Response to Hillsborough

One event that should have curtailed, momentarily, the Government’s pursuit of Restriction Orders, was the Hillsborough disaster that occurred in May 1989. A more critical appraisal of the aftermath of Hillsborough will be discussed in Chapter Three. This will focus on the narrative surrounding football spectators and how this feeds into

¹¹⁶ HL Deb 07 March 1989, vol 504, col 1424.

¹¹⁷ HL Deb 16 June 1989, vol 508, col 1651.

¹¹⁸ Garry Whannel, ‘Television and the Transformation of Sport’ (2009) 625(1) the American Academy of Political and Social Science 205.

¹¹⁹ HC Deb 27 June 1989, vol 155, col 920.

¹²⁰ Jacks (n 9) and Pearson (n 9).

the legislative intervention introduced, namely FBOs. Hillsborough occurred during the Football Spectators Bill passing through Parliament. Instead of postponing the Bill's passage whilst the inquiry undertaken by Lord Justice Taylor was finalised, the Government continued with pushing the statutory framework through before the commencement of the next footballing season. It is nonsensical to take amendments on the Bill before Lord Justice Taylor put forward the recommendations in his report:

The Government had an opportunity arising from the tragic events at Hillsborough for mature reflection and reconsideration. They have an opportunity to consider an external and impartial judgment on their proposals through Lord Justice Taylor's inquiry. By their precipitate desire to proceed with this measure, the Government have rejected that opportunity, and the House in turn should reject the Bill.¹²¹

It was noted by John Carlisle MP, previous Chairman of the Conservative Parliamentary Committee on Sport, that whilst the Taylor inquiry was still sitting, the Bill should have been referred to the special statutory committee procedure so that witnesses could be called to give evidence and to answer questions from the Committee.¹²² Particular reference was made to the football authorities, the police and the possibility of Lord Taylor being present to comment on the Bill before it was passed. Nevertheless, the Government decided, irrationally, to move ahead with the Bill whilst the Hillsborough inquiry was still sitting. Disregarding any engagement or evidence that may be put forward by relevant authorities.¹²³ Consequently, the final report by Lord Justice Taylor was received by the Government after the Bill had received Royal Assent and any evidence provided was not taken into account in the new legislative framework. The Government had an opportunity arising from the tragic events at Hillsborough for mature reflection and reconsideration, they had an opportunity to consider an external and impartial judgment on their proposals through Lord Justice Taylor's inquiry but chose ignorance. Their precipitate desire to proceed with these Restriction Orders, the Government rejected that opportunity and subsequently dismissed any evidence that such a regime, and any future regime that would follow, such as the introduction of FBOs. Meaning any subsequent framework

¹²¹ HC Deb (n 119) 882 per Kate Hoey MP.

¹²² HC Deb (n 119) 865.

¹²³ *ibid.*

would be built on media orchestrated panic and the need to introduce any new measures would be without justification.¹²⁴

Taylor emphatically blamed police mismanagement and the unwillingness to accept their responsibility for the Hillsborough disaster.¹²⁵ In his final report, Taylor had highlighted that Exclusion Orders had not made much impact and not been greatly used by the courts as it was difficult to discover whether they are being obeyed or flouted, therefore the new Restriction Orders may be sufficient but more evidence was necessary regarding their introduction.¹²⁶ The newly created Restriction Orders were seen as an important step in preventing hooliganism at football matches outside of England and Wales. Denis Howell MP, the previous Minister for Sport, stated that the success of that provision would depend on convincing Governments abroad to prosecute English fans who misbehave at matches overseas and knowing the individuals who intend, or have travelled overseas to instigate or be involved in serious disorder.¹²⁷ It was acknowledged by Colin Moynihan, Minister for Sport, Taylor that without evidence to support the use of measures such as Restriction Orders, the Government would have the same issues as experienced with Exclusion Orders. Therefore, the FSA 1989 would not be a major contribution to breaking the link between football and hooliganism as had hoped.¹²⁸ These comments resonate with the introduction of FBOs; Exclusion Orders that have simply been renamed, and have also not broken the link between football and football-related violence and disorder with increasing levels of disorder witnessed across the lower leagues of English football over recent years. Had the recommendations put forward by Taylor in the Committee Stage of the Football Spectators Bill not been rejected by the majority of MPs; 'individuals who perhaps were not entirely cognisant of the issues in hand',¹²⁹ and had the Government waited, understood the importance of the effects that undertaking legislation in that way would have, it may have led to a very different FSA 1989 and the subsequent introduction of FBOs.¹³⁰ Once again, demonstrating that a government-commissioned report was needed, but the information and advice

¹²⁴ HC Deb 27 June 1989 vol 155, col 882 per Kate Hoey MP.

¹²⁵ Home Office (109) 280.

¹²⁶ *ibid* 321.

¹²⁷ HC Deb 30 October 1989, vol 159, col 140.

¹²⁸ HC Deb 5 December 1989, vol 163, col 119W. See Chapter Three and Four for further analysis of the FBO framework.

¹²⁹ HC Deb 29 January 1990, vol 166, col 32.

¹³⁰ *ibid*.

provided was ignored. Therefore, any legislation or measures such as FBOs that have evolved from the FSA 1989 have been enacted without a sound evidence base.

2.4.3 Lesson Learnt? The Football Banning Order Framework

After the series of disasters in the 1980s culminating in the Hillsborough tragedy, it led to clumsy attempts by the Government to police the game.¹³¹ The events at Hillsborough ought to have made the Government step aside from pre-conceptions and look afresh at how to find a better way for British football rather than pursuing the FSA 1989 without considering sufficient evidence.¹³² A sense of déjà vu some five years later, when the Labour Party in 1995, introduced a 'New Framework for Football: Labour's Charter for Football'. The Charter's purpose was to address the critical problems associated with the game and in doing so, build a framework in which football could flourish again.¹³³ It had been highlighted that trouble inside football stadiums had declined but complacency was not allowed, therefore, attention and more effective regulation was needed.¹³⁴ The review contained a wide range of factors that was highlighted as being necessary to implement fundamental change in football legislation.¹³⁵ Nevertheless, these Football Task Force Reports concentrated very much on changing the governance of football as a whole with spectator regulation and management only a small, contributing factor.

The problem once again is that having realised that a report and/or evidence was needed concerning football violence and disorder, the wrong questions were being asked, or the key answers were lost in the mass of evidence provided on other tangentially related issues. Some recommendations in relation to spectator management were put forward that intended to fill the gaps in legislation. Further detail on this will be discussed in Chapter Three. However, some examples are extending the offences already in place in specific areas such as travel restrictions, attaching

¹³¹ Andy Lyons, 'Thatcher Attacks Football -1985-1989' *The Guardian* (London, 18 May 2009) <https://www.theguardian.com/football/2009/may/18/seven-deadly-sins-thatcher-tories-football> accessed 30th August 2016.

¹³² HC Deb 17 April 1989, vol 151, cols 19-42.

¹³³ Labour Party, *A New Framework for Football: Labour's Charter for Football* (Labour Party 1995) 1.

¹³⁴ HL Deb 26 April 1995, vol 563, cols 967-1003 per Lord Donoghue.

¹³⁵ Home Office, 'Marking Hooligans out of the Game: News Release' (*gov.uk*, 27 Nov 1998) <http://hillsborough.independent.gov.uk/repository/docs/PSA000000950001.pdf> accessed 2 Feb 2016.

more conditions to a Restriction Order and the surrendering of passports. All recommendations put forward by successive governments and reports. Suggestions were put forward but with no tangible evidence as to why they should be adopted, how they would work, or how they would be monitored. A recurrent theme within the Charter, along with previous reports was the 'determination to prevent our [the UK] reputation from being tarnished' and to stop those from instigating football-related violence and disorder. The increase of European football matches meant the UK had to demonstrate that they could 'control their citizens'.¹³⁶ Lord Howell, Chair of the Foreign Affairs Select Committee stated that there needed to be a discussion regarding the Government's responsibilities which they were not discharging adequately if they were discharging them at all, as there had been a total failure to stop criminals travelling abroad, despite the introduction of orders to prevent spectators travelling overseas and stopping those that are involved or instigate serious disorder.¹³⁷ This demonstrates that not only, as previous commentators have alluded to, the legislation being flawed, but there was no justification or evidence to introduce such Orders in the first place.

Misbehaviour at the World Cup tournament in France in 1998 instigated, again, the 'moral panic' surrounding English football spectators overseas.¹³⁸ Again, suggestions were made regarding developing legislation needed to combat hooliganism.¹³⁹ The Government illustrated that they had the responsibility to make proposals aimed at ensuring that such events did not happen again, since the fact that the current position and regulations were not working effectively enough.¹⁴⁰ Although suggestions were made to introducing new measures, the Government did not provide any evidence as to why the current framework was not working nor did they provide any tangible evidence to suggest that rigorous changes were needed. Unlike in Scotland, whereby

¹³⁶ House of Commons, *The Football (Disorder) (Amendment) Bill: Report to Parliament* (Research Paper 01/73, House of Commons Library 2001).

¹³⁷ HL Deb (n 135) 981.

¹³⁸ Ben Brown, 'England Fans Booted Out' *BBC News* (London, 16 June 1998)

<<http://news.bbc.co.uk/1/hi/sport/football/113285.stm>> accessed 14 July 2016 and Andrew Buncombe, 'England Fans Battle Riot Squad' *Independent* (London, 15 June 1998)

<<https://www.independent.co.uk/news/england-fans-battle-riot-squad-1165059.html>> accessed 14 July 2016 and Christopher Clarey, 'World Cup '98; Fans Set Off Another Day of Violence' *New York Times* (New York, 16 June 1998)

<<https://www.nytimes.com/1998/06/16/sports/world-cup-98-fans-set-off-another-day-of-violence.html>> accessed 14 July 2016.

¹³⁹ Home Office (n 136).

¹⁴⁰ HC Deb 22 June 1998, vol 314, col 711.

research was commissioned by the Government into the evaluation of FBOs.¹⁴¹ The findings suggested that the broader debates regarding the acceptability of different forms of behaviour within the context of football matches are influential in advancing the effectiveness of the FBO legislation, rather than focusing on the understanding and implementation of the legislation itself. These findings were useful, particularly highlighting issues with the legislation itself, such as the fact that the legislation was not always perceived to be an example of 'Scottish solutions to Scottish problems' and the courts were wary of using it in anything other than the most serious cases. However, there was little reference to the initial purpose of the legislation; only that it was introduced to target sectarian offences and impose additional exclusions or reporting requirements. Akin to the framework in England and Wales, the justification for implementing such a wide-ranging framework aimed at specific groups of people, such as members of different denominations of faith/politics or 'ringleaders' of football-related violence and disorder, is now not the basis for the continued use of such legislation. If the direction of football spectator behaviour has shifted toward behaviour that sits on the edge of criminality, i.e., low-level public disorder, this demonstrates it is not fit for purpose in its current form.

Prior to the introduction of FBOs in England and Wales and after the disorder witnessed at the World Cup in 1998, proposals for a Football Behaviour Order were postulated via a Private Member's Bill. This Order would amend the Restriction Orders housed in the FSA 1989 and it would 'make it obligatory on the courts to grant such a Restriction Order unless there are exceptional circumstances against doing so', as evidence had suggested that the present system under the FSA 1989 was not working effectively.¹⁴² Although the Government had alluded to this being their best plan to tackle football disorder overseas, they also recognised that 'there is no way to guarantee that trouble will not take place.'¹⁴³ Failure to gather evidence as to why the current Orders were not working, gathering evidence from the courts as to why Orders were not being served to those that instigated football-related violence and disorder, did not occur. The Private Member's Bill, bills that are rarely supported by evidence in

¹⁴¹ See, Niall Hamilton-Smith, Ben Bradford, Matt Hopkins, Justin Kurland, Claire Lightowler, David McArdle and Nick Tilley, *An Evaluation of Football Banning Orders in Scotland* (Scottish Government 2011).

¹⁴² HC Deb (n 141) 713.

¹⁴³ *ibid* 728.

the form of research papers and green or white papers, surprisingly did not proceed. The Home Office then issued a consultation on football disorder, the Home Office Review of Football-Related Legislation. The review included a number of the proposals put forward by Labour's Charter for Football around preventing and minimising football hooliganism at designated football matches in England and Wales, matches overseas and dealing with the loopholes in the then-present legislation.¹⁴⁴ Again, there was no discussion as to why the current framework was not working, or what evidence they had to introduce new measures, the only intention of the Government was to introduce the widest and possibly the most draconian statutory framework to date to try and cover all aspects of managing spectator disorder and violence.¹⁴⁵

The proposals in the Home Office Review concentrated on amending the Restriction Orders housed in the FSA 1989 and Exclusions Orders held in the Public Order Act 1986 (POA 1986). With the former to be renamed International Football Banning Orders, including changes to widen the circumstances in which they could be imposed. The amendments to Exclusion Orders to prevent football hooligans from attending certain matches within England and Wales were to be renamed Domestic Football Banning Orders. Instead of a full review and justifying introducing such changes, they were simply amending the measures already in place, measures that were already not working. The Government stated that violence and disorder within domestic football grounds had been largely eliminated, however, failed to mention behaviour that occurred away from the stadium, therefore, the focus was again, on the behaviour overseas.¹⁴⁶ The introduction of the International Banning Order under the Football (Offences and Disorder) 1999 (FODA 1999) received a great deal of criticism regarding the measures being disproportionality severe given the size and nature of the problem.¹⁴⁷

We are in danger of invoking the law of unintended consequences – will have unintended consequences that may penalise not those whom we wish to

¹⁴⁴ HC Deb 30 March 1999, vol 328, col 608W. See Chapter Four for analysis regarding the statutory framework.

¹⁴⁵ HC Deb 16 April 1999, vol 329, col 525 and 504, 'we are not imposing draconian measures just for the sake of it, but we are thinking slightly more draconian laws now' per Ivor Caplin MP and David Maclean MP.

¹⁴⁶ *ibid* 483.

¹⁴⁷ *ibid* 484.

penalise but the genuine supporters who go about their lawful and genuine business of supporting their team ...I am not certain the Bill seriously addresses any of those issues.¹⁴⁸

Despite reservations and the need to introduce similar legislation, the FODA received Royal Assent in July 1999, however, the framework was not used to its full potential despite the Minister for Sport's statement that such powers were necessary.¹⁴⁹ At the Union des Associations Européennes de Football (UEFA) European Championships in Belgium in the summer of 2000, England fans were embroiled in widespread disorder and violence. Despite the introduction of International Banning Orders, a preventative measure that was deemed so desperately needed to plug the loopholes in the previous legislation. Calls for emergency legislation before the European Championships in 2000 from the FA and others were made, but were rejected by the Home Secretary.¹⁵⁰ The Government's inaction on this area was criticised and called upon to look at the sanctions that the UK could impose on hooligans, and more importantly, whether they were adequate.¹⁵¹ Again, there was no discussion regarding any evidence as to what type of measures should be introduced that focused primarily on the behaviour of spectators overseas, the impact it may have on spectators that do not travel overseas, or why the original measures were not working.

Calls from Europe including the German Interior Minister and Chief Executive of UEFA noted that 'the UK government needed to take the necessary steps as a matter of urgency.'¹⁵² UEFA threatening to ban England from further participation in Euro 2000 instigated the moral panic amongst the governing authorities in the UK that they must be seen to be doing something. Despite the introduction of International Banning Orders, these did not appear to be a sufficient mechanism to prevent individuals from travelling overseas, possibly because the review on football-related legislation did not solely focus on a root and branch appraisal of why such measures did not appear to

¹⁴⁸ *ibid* 497 per Roger Gale MP.

¹⁴⁹ HC Deb (n 23) 159. Will be discussed in more detail in Chapter Three.

¹⁵⁰ *ibid* 166.

¹⁵¹ *ibid* 168.

¹⁵² See Rajeev Syal, Andrew Alderson and Ian Cobain, 'Thugs Mar England's Night of Triumph' *Telegraph* (London, 18 June 2000)

<<https://www.telegraph.co.uk/news/worldnews/1343707/Thugs-mar-Englands-night-of-triumph.html>> accessed 13 November 2017 and David Miller, 'Face to Face: Lennart Johansson' *Telegraph* (London, 20 June 2000) <<https://www.telegraph.co.uk/sport/4751114/Face-to-face-Lennart-Johansson.html>> accessed 13 November 2017.

work in the first place. It was noted that a significant part of English hooliganism abroad is much more difficult to detect and prevent in advance because it is not organised, and nor is much of it specifically premeditated.¹⁵³ Although the purpose of such preventative measures was to catch those that instigated, organised or engaged in serious disorder. The calls from international organisations to invoke legislation to provide a mechanism that will enable the authorities to prevent individuals from travelling overseas without a criminal conviction demonstrated more reactionary behaviour from politicians. This panicked reaction would lead to individuals having passports withdrawn on the basis that there is evidence that someone who has not necessarily been convicted is a risk might offend abroad.¹⁵⁴ A new consensus, which is not liberal or progressive, but reactionary, restrictive and inhibiting, was that the Government should have responded responsibly with alternative suggestions, supported with the necessary evidence.¹⁵⁵

Combining the worst elements of gesture politics and rushed emergency legislation to reinstate the reputation of the country, the FDA 2000 amalgamated domestic and International Banning Orders.¹⁵⁶ The analysis regarding the introduction of these statutory provisions will be discussed in detail in Chapter Three, as well as an examination of the legality of the measures being evaluated throughout Chapter Four. These measures, now referred to as FBOs, allow the imposition of an Order on two separate occasions. Firstly, a FBO on conviction of a football-related offence.¹⁵⁷ Secondly, enabling the police to apply for the imposition of an Order on an individual suspected of being involved in football disorder, namely, a FBO on complaint'.¹⁵⁸ FBOs can now be imposed on those who had not been convicted of any offence but who were identified by the police as having 'caused or contributed' to violence or disorder in relation to a football match in the UK, or overseas. After a 14-month practical and legal examination of the Orders after their creation, the UK Government noted that there was compelling evidence for maintaining a s 14B FBO on the statute book.¹⁵⁹

¹⁵³ The Independent Football Commission, 'The Experience of English Supporters in European Club Competitions' (*theifo.co.uk*, 2005-2006)
<https://www.theifo.co.uk/reports/IFC_Euro_Report_2006.pdf> accessed 13 March 2018.

¹⁵⁴ HC Deb (n 23) 174-175.

¹⁵⁵ *ibid* 181.

¹⁵⁶ HC Deb (n 23).

¹⁵⁷ s 14A FSA 1989 inserted by s 1(1)(a) FDA 2000.

¹⁵⁸ s 14B FSA 1989 inserted by s 1(1)(b) FDA 2000.

¹⁵⁹ HL Deb 20 December 2001, vol 630, col 362.

Although the Government suggested there was ‘compelling evidence’, these were merely comments regarding the introduction of the legislation and observation of overseas matches, not full scrutiny of the mechanics of the legislation. It was stated by Lord Bassam, Parliamentary Under-Secretary of State for Home Affairs that:

There had been no significant disorder since Euro 2000, notwithstanding a number of potentially high-risk matches involving England and our successful club sides competing in the Champions League and in the UEFA Cup. Fan behaviour had noticeably improved. The number of troublemakers prevented from travelling to matches overseas had increased significantly. Governments across Europe had welcomed the Act as a demonstration of the commitment of the United Kingdom Government to tackle the menace of hooliganism before it left these shores. The legislative gaps exposed by the disorder during Euro 2000 had been closed; and, importantly, the Act was being applied in a targeted and proportionate way, just as the Government had intended.¹⁶⁰

The Government failed to mention that domestic football in England and Wales was in a much healthier state in large part due to the work undertaken by the Football Trust and its investment in stadia and ancillary facilities, rather than the introduction of FBOs.¹⁶¹ Nevertheless, the two new FBOs quickly become essential components of the UK’s anti-hooligan strategy. Depending on whether they are ever amended, repealed, or replaced, losing them has been noted as sending out an entirely negative message to the UK’s European partners, undermining the English and Welsh anti-hooligan strategy and weakening the power of the police and the courts to act against football hooligans.¹⁶² Nevertheless, the fundamental question of whether there is a genuine need for such Orders have not been questioned by the Government since 2006. The consultation in 2006 regarding the review of FBOs at the end of the five-year continuance has been labelled as ‘extremely tenuous’; the reflection should be on the fact that the panic which led to the Bill being rushed through in the summer of 2000 was itself an extraordinary piece of tabloid exaggeration that ought to be addressed first.¹⁶³ The consultation in 2006, was mere that, not a robust piece of

¹⁶⁰ *ibid* 360.

¹⁶¹ *ibid* 369.

¹⁶² *ibid*.

¹⁶³ *ibid* 375 per Lord Faulkner.

research that involved scrutiny of the legislation or the behaviour of spectators domestically and overseas, despite 'significant problems still occurring, with violence and disorder moving to the lower levels of the Football League'.¹⁶⁴ The thesis will illustrate that the absence of any thorough investigation, or evidence to support the introduction of FBOs and its predecessors is the reason why commentators criticise the logistics and legality of FBOs. Therefore, demonstrating that FBOs are not fit for purpose in their current form.

2.5 The Legality of Football Banning Orders

Since the creation of FBOs in 2000, the legality of these preventative measures has been questioned, albeit the literature in this, is again, limited. The most eminent authors on this area are James and Pearson, who has published in areas regarding crowd disorder and violence in English football. Analysis of the research will be provided in more detail in Chapter Four. Briefly, the focus of their research emphasises that the legislation that has been introduced is not effective, and even counterproductive in reducing football violence and disorder. This is particularly apparent when evaluating the application process of a FBO. James and Pearson analyse the legal tests applied, such as whether the correct standard of proof is being applied by the court at all stages of the application, the quality of evidence relied on by the courts and whether the use of a civil procedure can continue to be justified in light of the punitive length of and conditions attached to FBOs.¹⁶⁵ This particular research is of importance to this thesis as it will help demonstrate that due to the absence of a robust evidence base in creating the Orders, this has subsequently impacted their use and how the courts interpret the legislation. Interestingly, James and Pearson question how spectator human rights have been affected by FBOs and the FBO framework, particularly by making a comparison to how protestors are governed.¹⁶⁶ Again, this is useful, and the thesis does refer to the restriction of liberties, albeit from a different perspective. James and Pearson discuss the legality of dominant policing approaches to football crowds and the legality of FBOs under the principles

¹⁶⁴ HC Deb 29 June 2016, vol 612, cols 118-137.

¹⁶⁵ James and Pearson (n 59).

¹⁶⁶ Mark James and Geoff Pearson, 'Public Order and the Rebalancing of Football Fans' Rights: Legal Problems with Pre-emptive Policing Strategies and Banning Orders' (2015) 3 Public Law 458.

of the European Convention on Human Rights 1950 (ECHR). However, this thesis will focus on areas of natural justice and proportionality before the enactment of FBO legislation. This is particularly important as the FBO framework was enacted prior to the Human Rights Act 1998 (HRA 1998) coming into force. For that reason, the thesis will not provide a detailed discussion regarding any human rights implications with how the Orders work, as this is already a well-researched area. Instead, the thesis will focus on demonstrating the importance of understanding the evidence base and justification of creating such Orders and why this has not been fully scrutinised by Parliament.¹⁶⁷

The author does agree with James and Pearson's research, however, to question the legality of FBOs further, it is necessary to understand why and with what evidence the Orders and the statutory framework was created. The thesis will, therefore, provide a different insight into the legality of FBOs by not only exploring the wording and interpretation of the legislation but the actual legality of creating the legislative framework and subsequent FBOs. In doing so, other prominent academics in the field will be alluded to, however, their research again differs from the focus of this thesis. Matt Hopkins' research concentrates on the development, use and effectiveness of FBOs in the UK, with a focus on comparing their use in England to address issues of football 'hooliganism' with their distinct evolution in Scotland and the concerns around the sectarian disorder. The thesis will observe and refer to this literature, however, the nature of Hopkins' research means it is difficult to measure what is perceived as effective with FBOs without understanding how and why the Orders were created. The thesis will also go beyond Hopkins' research by observing the FBO statistics in greater detail to establish whether the methodological underpinning of monitoring the Orders demonstrates whether they are fit for purpose.¹⁶⁸ Like Hopkins, the work of McArdle on the evaluation of the operation and effectiveness of legislation relating to FBOs in Scotland is of importance. It is useful to highlight that such an independent evaluation, like McArdle's work, should be taking place in England and Wales. Although important

¹⁶⁷ FDA (2000) came into force in August 2000, two months prior to the coming into force of the HRA 1998 in October 2000.

¹⁶⁸ See, Matt Hopkins and Niall Hamilton-Smith, 'Football Banning Orders: The Highly Effective Cornerstone of a Preventative Strategy' in Matt Hopkins and James Treadwell (eds), *Football Hooliganism, Fan Behaviour and Crime* (Springer 2014) and Matt Hopkins, 'Ten Seasons of the Football Banning Order: Police Officer Narratives on the Operation of Banning Orders and the Impact on Behaviour of Risk Supporters' (2014) 21 *International Journal of Research and Policy* 3.

research, McArdle's work it does not provide the relevant information or analysis needed in understanding whether having the legislative framework in the first place is necessary, and subsequently whether FBOs are fit for purpose in England and Wales.¹⁶⁹ Therefore, a cross-comparison of the Scottish and England and Wales legislative systems will not be a focus of this thesis.

As literature regarding the legality of FBOs is limited, it is necessary to refer to academics from disciplines without a legal focus. Academics such as Stott and Hoggett do allude to the legality of FBOs and the legality of policing football spectators, but with a heavier focus on psychology. This perspective explores the relevance of psychological theory for models of good practice, policy-making and training for the policing of football matches in England and Wales.¹⁷⁰ This is of particular importance in understanding and demonstrating how the FBO framework is used. By discussing and analysing the strategies that are having to be introduced to combat rising football disorder that must work around the current statutory framework it will demonstrate that a review of FBOs is needed as they are no longer fit for purpose. It is apparent from reviewing the available literature on the legality of FBOs that there is a gap that needs to be filled. This thesis will plug that gap by demonstrating that the introduction, the monitoring, and the use of FBOs are not working. It will do so by reviewing literature that has not been used, such as government reports, Hansard, private documentation between government Ministers, observing the Home Office statistical data in a greater amount of detail and drawing on the academics, such as those noted above, to support the aim of this thesis.

2.6 Conclusion

The aim of this chapter is to examine whether there are gaps in the relevant literature to demonstrate if FBOs are fit for purpose. The thematic approach adopted throughout the literature review draws on a range of sources and themes regarding football

¹⁶⁹ Hamilton-Smith, Bradford, Hopkins, Kurland, Lightowler, McArdle and Tilley (n 141).

¹⁷⁰ See, Clifford Stott, James Hoggett and Geoff Pearson, 'Keeping the Peace': Social Identity, Procedural Justice and the Policing of Football Crowds' (2012) 52(2) *British Journal of Criminology* 381; Clifford Stott, Owen West and Matthew Radburn, 'Policing Football 'Risk'? A Participant Action Research Case Study of a liaison-based Approach to 'Public Order' (2018) 28 *International Journal of Research and Policy* 1 and Clifford Stott, Geoff Pearson and Owen West, 'Enabling an Evidence-Based Approach to Policing Football in the UK' (2019) 14(4) *Policing Journal of Policy and Practice* 977.

spectator management and FBOs. This critical timeline approach demonstrates an original contribution to research in this area of law. This thesis differs from existing scholarly material as nobody has adopted a holistic approach that has questioned the evidential basis of FBOs, that is their legality, their use, the monitoring, whether they work, and the fundamental question of whether there is a genuine need for them.¹⁷¹ Although there is much scholarly material relevant to football hooliganism, much of the research focuses on singular areas for examination and there is little reference to the nature and scope of FBOs. As a result of limited academic material to draw on; specifically, literature that observes FBOs from their creation to the present day, it is necessary to refer to the governmental reports, Parliamentary debates, archival documentation, and the law itself. This will illustrate and address the aim of the thesis. It is apparent from these sources that there is an absence of evidence, an absence of Parliamentary scrutiny and absence in the academic literature regarding the need for the creation of FBOs in their current form. Reviewing the literature available has demonstrated that Parliamentarians, academics and other commentators do illustrate that there are problems with the legislation and the policing of football spectators. However, there is little or no analysis regarding the implementation and creation of the legislation housing FBOs, which in turn would address whether FBOs are fit for purpose in their current form.

Existing research draws on and uses several methodological approaches ranging from doctrinal, empirical, and quantitative research involving interviews and study groups. The purpose of this thesis is to address the law from a doctrinal approach. Again, there is no literature in this area that is purely doctrinal. In adopting such a thematic approach, this chapter has introduced the evidential basis for creating FBOs and in turn addressing whether the spectator framework is fit for purpose. This will form the basis of the detail and analysis in the subsequent chapters in demonstrating that there was no cogent evidence base for the introduction of FBOs in the first place, there has been no evidence for their various amendments and no evidence that FBOs are working. Therefore, in the following chapters, the thesis will analyse the methodological approaches taken in this area of law concerning the observation of the

¹⁷¹ Based on the evaluation of the existing literature and by viewing numerous theses' on PhD theses Repositories: British Library, 'EThOS; Index to Theses' (*theses.com*) <www.theses.com/> accessed 27 October 2018.

FBO statistics. Although academics do refer to the statistics to demonstrate whether football-related violence and disorder is changing, nobody has questioned the methodological underpinning adopted by those authorities that gather and produce the annual Home Office statistics. As the thesis intends to address and observe the statistics in Chapter Five, the methodologies adopted by the relevant authorities will help to supplement the gaps in the existing literature. In doing so, alongside the analysis regarding the creation, the interpretation, and the structure of FBOs, the thesis will undertake research which has not previously been examined.

The next chapter will critically examine the history, scope, and purpose of FBOs. It will expand on, and examine, the foundational premises that structure the preventative measures in tackling football disorder. Using the critical timeline adopted in this chapter, the following chapter will provide a more comprehensive understanding of the policies and concepts of how the relevant principles were created and have evolved. This will illustrate the deficiencies in their appropriateness and ability to prevent football-related violence and disorder, particularly those that instigate such behaviour. A full evaluation of government documentation, archival documentation and Parliamentary debates will be used to address throughout the following chapter that will support the aim of the thesis. By analysing the actions of Parliament in response to football violence and disorder, it will illustrate that the haste in which the preventative mechanisms were created has negatively impacted the cross-authority participation of the management of spectators.

Chapter Three: Evolution of Football Banning Orders

3.1 Introduction

The literature review has demonstrated that there is no research into why FBOs were introduced and the rationale for their introduction has not been questioned in one singular piece of work, not by either the police, the CPS, any government or academic. This chapter will provide critical analysis of the evidential basis of FBOs, that is their legality, their use, the monitoring, whether they work, and the fundamental question of whether there is a genuine need for them. This chapter will critically examine and build on the material discussed in Chapter Two to demonstrate that the initial introduction of FBOs and every subsequent amendment has been lacking in underpinning evidence and any sort of appropriate justification. In doing so, this will address whether FBOs are fit for purpose in their current form. This chapter has relied on information retrieved from the National Archives and Royal Society. Most of this information has not been seen or read since its creation. On visiting the National Archives and the Royal Society, the last and only time that a member of the public had read parts of this documentation was in 1996; some of the others have not been read at all. These discussions extracted for this research have also not been used as evidence to support existing literature regarding the legal regulation of football spectatorship.

The chapter aims to provide a more comprehensive understanding by which to appraise the policies and concepts of how FBOs were created and have evolved to illustrate the deficiencies in their appropriateness to prevent football disorder. In doing so, this chapter will follow a similar format to Chapter Two. It is necessary to provide a clear analysis of the evolution of FBOs and this will be in the form of a critical timeline. Building on the structure adopted in Chapter Two, will provide a structured outline of the evolution of the legislation and by using the archival documentation and Parliamentary debates, will analyse how and why the legislation exists. By reviewing the inception of the FBO through the authorities' desire to eliminate football hooliganism in England and Wales in the 1980s, particularly the involvement of English football spectators in disorder overseas and those that were deemed the 'ringleaders' of such behaviour. This chapter will illustrate how the political urgency to introduce

preventative measures significantly decreased full governmental scrutiny of the creation of the package of preventative measures used for football-related violence and disorder. The chapter will demonstrate that this was a result of the absence of an evidential basis to introduce such measures; a kneejerk reaction to a social phenomenon that the Government/Parliament did not understand and did not know how to control.

For that reason, it will be illustrated that there was no suitable evidence base for the creation of FBOs; there was no thorough Parliamentary scrutiny of the legislation adopted, and no robust justification for the creation of the Orders. This cycle of no evidence and no justification for the introduction of such Orders are repeated each time the legislation is discussed or subsequently amended. In addition to this, there is no methodologically sound monitoring system to determine whether the statutory framework and FBOs are working. If Parliament or the Government had recognised that there was no sound monitoring system, this could have provided a post-hoc justification. However, the use of the Home Office FBO statistics is used to inform government policy and decision-making and is, therefore, of significant importance. As a result of such deficiencies, the problem of football-related violence and disorder is still prevalent and the number of FBOs served on individuals, alongside the increase in the number of arrests, has increased in the lower levels of the Football League over a six-year period.¹⁷² This signifies that the issue of football-related violence and disorder has not been eradicated by the availability and use of FBOs.¹⁷³ The issue appears to be that FBOs are a politically motivated intervention that is self-referential and self-perpetuating, without ever being justified objectively. Therefore, are not fit for purpose in their current form.

¹⁷² Home Office, 'Football-related Arrests and Banning Order Statistics, England and Wales: Season 2015 to 2016 Data Table (2016)' (*gov.uk*, 24 November 2016) <<https://www.gov.uk/government/statistics/football-related-arrests-and-banning-orders-england-and-wales-season-2015-to-2016>> accessed 25 October 2017.

¹⁷³ Based on Home Office Football Banning Order statistics from the 2010-11 season to 2015-16 season new Banning Orders have increased by 24% in the Football Conference League.

3.2 Emergence of Football Violence & Disorder

Historically, football games have always been ‘aggressive affairs’.¹⁷⁴ ‘Contrary to popular belief, forms of football disorder have been a frequent accompaniment of association football in England and Wales since the 1870s, the period when the game emerged in a recognisably modern form.’¹⁷⁵ With increasing popularity of the modern game, came increased attendances at football matches, thus the chances of danger among the crowds would rise.¹⁷⁶ The recording of disorder witnessed at Burnden Park in 1946 ‘was the first example in the history of football of serious casualties and fatalities inflicted by a crowd upon itself’.¹⁷⁷ Although the disorder was primarily due to crowds entering the stadium and not due to violence and disorder, in the aftermath of the incident, it was noted that the Departmental Committee reporting on Crowds in 1924 anaemically recommended that management of spectators was to be left to the governing bodies in sport.¹⁷⁸ The most important of these bodies being, of course, the FA. The FA, like what was stipulated throughout the Shortt Report in 1924, did not see crowd control as their problem as the spectators causing disorder were affiliated to specific clubs; and the Government stated that any intervention on the matter should be left to those clubs. Therefore, no management strategies or preventative measures to control football spectators were created. Although football participation and spectatorship produced the most cases of misconduct,¹⁷⁹ any public order concerns on behalf of the football club were noted that it was for the ‘management to seek the services of the police’.¹⁸⁰ However, there were no civil measures such as FBOs in place, and football clubs would not be able to prohibit football spectators from entry into the football stadium due to the deficiencies with ticketing and ineffective turnstile operations. The difficulty of attempting to prevent entry to a football ground was largely due to match tickets being sold as a cash purchase at the turnstile on the day of the football match.

¹⁷⁴ Harrington (n 22) 4.

¹⁷⁵ Dunning, Murphy and Williams (n 74) 1.

¹⁷⁶ Home Office, *Moelwyn Hughes Report on an Enquiry into the Disaster at the Bolton Wanderers Football Ground on the 9th March 1946* (Cmd 6846, 1946) 12.

¹⁷⁷ *ibid* 3.

¹⁷⁸ Home Office, *Edward Shortt Report of the Departmental Committee on Crowds* (Cd 2088, 1924).

¹⁷⁹ Department of Education and Science (n 75) 5.

¹⁸⁰ *ibid*.

In the absence of any policies or preventative mechanisms in place, the emergence of football-related disorder, or more commonly coined as 'football hooliganism' became, quite suddenly, a cause for major concern in Britain in the 1960s.¹⁸¹ Awareness of this was acknowledged by Parliament as a serious problem, but it remained a fact that the 'responsibility for public order is that of the management of the football club and that the matter does not call for direct action by the Government'.¹⁸² Nevertheless, the overall picture, albeit an increase in media attention of the reporting on football disorder, was not a bad one.¹⁸³ For that reason, without any justification or a sound evidence base to intervene, Parliament diverted any involvement in the management of football spectators, highlighting that 'stiffer penalties are not the answer in themselves, desirable though they may be'.¹⁸⁴ Instead, they suggested that joint committees of the local police, the supporters' clubs and the club management at local level should determine how to resolve the issues. Despite the suggestion of this cross-authority intervention in what can be perceived as being compelled to act due to the lack of involvement of the footballing authorities, these suggestions never came to fruition as expected and no package of preventative measures was created. To this extent Parliament was frustrated with the lack of governance concerning this area, although they were aware of the problem, they did not know how to resolve the issue and did not want to be responsible for the management of football spectators.

Despite Parliament being hesitant to become embroiled in the subject, several reports were commissioned in the 1960s to bring to light the issues of the modern game that were gathering attention in the media. The reports should have involved a cross-authority intervention, with the footballing authorities, the police, the Government, and Parliament all being involved to ensure that the responsibility for the behaviour of those football spectators that did commit or instigate incidents of violence and disorder could be managed more effectively. However, as the CPS only started operating in 1986, prior to their responsibility for all public prosecutions, it was recommended that police forces were responsible for all cases and it was their duty to set up independent

¹⁸¹ Carnibella (n 76).

¹⁸² HC Deb (n 3).

¹⁸³ HC Deb (n 78) 561.

¹⁸⁴ HC Deb (n 78).

prosecution teams.¹⁸⁵ This was not implemented by police forces due to the range of evidential offences that could be committed, rendering the police's actions as unlawful.¹⁸⁶ Therefore, Parliament had to be seen to be doing something to help rectify the problems due to the logistical issues the police would encounter. It is because of this lack of responsibility over many years that has led to panicked legislation and rushed measures such as FBOs.

For others, football hooliganism was largely a fiction generated by hysterical journalists – it was the agenda of the media rather than the behaviour of football fans.¹⁸⁷ This phenomenon had become the object of a regularly media-fuelled, moral panic alongside a subsequent claim for hardening the repression of the wrongdoers.¹⁸⁸ Reflecting what can be seen as growing concern of the Conservative Party about the working-class youth's anti-social behaviour and the Parties need to re-establish law and order.¹⁸⁹ To be seen to be doing something, the first of the numerous reports commissioned in the 1960s was the Harrington Report of 1968. This report referred to the police holding valuable information about the problem of football-related violence and disorder, and that this should be collected and shared to produce football spectator-specific data.¹⁹⁰ In turn, this would provide evidence of the scale of the problem, however, Harrington believed that 'even if there were [incident and arrest statistics available], it is doubtful that they are likely to be a true representation of the problem'.¹⁹¹ Similar to policing football spectators at present, there are often disturbances when no arrests are made, and the number of arrests tends to increase when local concern or media speculation over the problem is aroused.¹⁹²

As a result of no evidence base, it was once again stipulated that the solution to the problems of hooliganism in the football stadium is ultimately the responsibility of individual clubs. Although a few clubs were exemplary in their attitude to the problem, others were laissez-faire and needed persuasion to take a more active role in trying to

¹⁸⁵ Home Office, *Sir Henry Urmston Willink Royal Commission on the Police: 1960-1962* (Cmnd 1728, 1962).

¹⁸⁶ HC Deb 09 May 1963, vol 677, cols 680-799.

¹⁸⁷ John Williams, Eric Dunning and Patrick Murphy, *Hooligans Abroad* (2nd edn, Routledge 1989).

¹⁸⁸ Stuart Hall, Chas Critcher, Tony Jefferson, John Clarke and Brian Roberts, *Policing the Crisis. Mugging, the State and Law and Order* (Palgrave Macmillan 1978) 34-37.

¹⁸⁹ Stephen Wagg, *The Football World* (Harvester Press 1984) 212.

¹⁹⁰ Harrington (n 22).

¹⁹¹ *ibid* 5.

¹⁹² *ibid* 4.

control hooliganism in their own ground.¹⁹³ Whilst Parliament stipulated it was for the football clubs to control this behaviour, there were no actual consequences, imposed from any quarter, for a failure to either control spectators or make them safe inside the stadium. The pressing need to do something was fuelled by the public agenda to claim stricter social control and was eventually relayed and legitimised by the press through the adoption of some stereotyped modes of representing football fans. This specific representation of the issue sought to establish the introduction of a new coercive policy; the us/them dichotomy, which would eventually feed into the statutory framework governing football spectators.¹⁹⁴

With public and media pressure increasing, and no legal framework in place to manage football spectators, a further Report was commissioned under the chairmanship of Sir John Lang.¹⁹⁵ The Working Party involved in the Report illustrated that they were not successful in finding 'a single solution for a problem which is often due to a combination of factors that can arise on any occasion when large crowds assemble.'¹⁹⁶ It was far from clear how this burgeoning problem could be contained, particularly as the late 1960 and 70s saw an added political dimension to the hooligan problem with links to groups such as the National Front and the more hard-line British Movement; possibly the political impetus for tackling 'football'.¹⁹⁷ Nevertheless, the Working Party was the first to suggest a possible preventative measure to aid the police and the club operating the ground to reduce the levels of disorder. It was posed that it was of utmost importance that whenever evidence is sufficient to justify a prosecution, that prosecution should always follow'.¹⁹⁸ A further suggestion is that alongside the possibility of conviction, a form of punishment which involves reporting at some place for a period of time, particularly to cover times which would preclude an

¹⁹³ *ibid.*

¹⁹⁴ Anastassia Tsoukala, 'Constructing the Threat in a Sports Context: British Press Discourses on Football Hooliganism' in Jose Aquesolo (ed), *Violence and Sport* (University Pablo de Olavide 2006) 372-379.

¹⁹⁵ Ministry of Housing and Local Government, *Report of the Working Party on Crowd Behaviour at Football Matches: Lang Report* (Her Majesty's Stationary Office 1969).

¹⁹⁶ *ibid* 1.

¹⁹⁷ Steve Greenfield and Guy Osborn, 'Panic Law and Football Fandom' in Adam Brown (ed), *Fanatics! Power, Identity and Fandom in Football* (Routledge 1998) 236.

¹⁹⁸ Ministry of Housing and Local Government (n 195) 25.

offender attending subsequent matches - 'the principle of making the punishment fit the crime', particularly for those that planned and instigated disorder.¹⁹⁹

Interestingly, Baroness Birk, Parliamentary Under-Secretary of State for the Department of Environment, stated that the 'whole question of football disorder depends on prevention as far as possible', rather than convictions.²⁰⁰ Particularly preventing the repetition of planned football-related violence and disorder. Although these recommendations were proposed, no singular legislative framework or package was introduced to combat the growing problem of football disorder. As a result of an absence of evidence behind the Working Party's recommendations to introduce such measures, and more that the Government needed to be seen to be doing something. The Working Party's report did not provide any evidence to support that there should be maximum co-operation between a football club and the police, disregarding and ignoring that this had not happened before the report. The Report was rejected because of several shortcomings with not examining the wider social context concerning football disorder and providing no evidence to support their recommendations. Instead, the recommendations would become aspirations to best practice rather than legal requirements.²⁰¹

The Lang Report provided no evidential basis, such as statistics of data to prove their findings, with twenty-three of the twenty-four recommendations posed placing the responsibility of football spectators firmly on the football clubs. The report as a whole did not consider outside of the stadium, travelling to and from a football match, made no distinction between criminal behaviour and what could be perceived as 'footballing behaviour', and made little reference to perpetrators of those that instigate such behaviour.²⁰² The difficulty of attaching a particular theory of collective conduct to those that were involved in 'footballing behaviour' was attributed to the 'uninhibited, impulsive and/or anti-social behaviour.'²⁰³ The dynamics underlying the various behaviours of football spectators is still only partially understood despite a great

¹⁹⁹ *ibid* 29.

²⁰⁰ HL Deb 22 Sep 1975, vol 364, col 7.

²⁰¹ Mark James, *Sports Law* (2nd edn, Palgrave Macmillan 2013) 208.

²⁰² Ministry of Housing and Local Government (n 195).

²⁰³ Linda Levy, 'A Study of Sports Crowd Behaviour: The Case of the Great Pumpkin Incident' (1989) 13(2) *Journal of Sports and Social Issues* 70.

amount of theorising over the better part of eighty years.²⁰⁴ Interestingly, though, Lang suggested that this behaviour was anti-social and not criminal, behaviour that is most commonly attributed to football spectators nowadays. Although there has been a plethora of research on why football spectators become disorderly, there is little agreement as to why such behaviour has attributed itself to the sport. In the absence of any agreement and/or providing a remedy on how the disorder can be reduced effectively, it would mean that the Government would not know how to resolve the issue and did not want to be responsible for the management of football spectators. For that reason, any subsequent measures that were to be adopted, such as FBOs, would be ill-thought, rushed and without an evidential basis as there can be no singular agreement as to how to reduce disorder effectively.

3.3 1970s – Seen to Be Doing Something: Attendance and Detention Centres

Due to the lack of intervention in the 1960s, a further call for action to address the hooligan problem was brought to light in the aftermath of the disorderly behaviour of English football spectators overseas in 1975. Parliament illustrated that they had ‘no intention of relaxing their vigilance on eradicating football hooliganism’, despite not taking into account any of the recommendations from the various reports, or introducing any legislative framework or preventative mechanisms to help eradicate the problem.²⁰⁵ Parliament’s change in attitude could attach itself more to the increasing media coverage of this violence and disorder, domestically and overseas, rather than any substantial evidence to suggest that these changes were worthwhile. All three of the inquiries in the 1960s had failed to instigate any change due to a lack of evidence or lack of political will. The needed to be seen to be doing something as a result of Parliament relying on the relaying of spectator behaviour which was distorted by the media; the misleading use of language of violence that was responsible for causing ‘moral panics’ amongst the general public and authorities.²⁰⁶ Although no

²⁰⁴ See, Kurt Lang and Gladys Lang, *Collective Dynamics* (Crowell 1961); Stanley Milgram, ‘Note on the Drawing Power of Crowds of Different Size’ (1969) 13(2) *Journal of Personality and Social Psychology* 79; Ralph Turner and Lewis Killian, *Collective Behaviour* (Prentice-Hall 1957); Kimball Young, ‘Public Opinion’ in Alfred Knopf (ed), *Social Psychology: An Analysis of Social Behaviour* (NY 1930) and Geoff Pearson, *An Ethnography of English Football Fans: Cans, Cops and Carnivals* (Manchester University Press 2012).

²⁰⁵ HL Deb 16 October 1975, vol 364, col 1002.

²⁰⁶ Cohen (n 21).

legislative framework had been introduced, the political approach taken by Parliament on this area can be distinguished by the tendency to ignore the views of the football authorities, let alone fans, and promote a distinctly political agenda, possibly as a result of a misinterpretation of the situation rather than out and out panic law solutions.²⁰⁷ The Government needed to be seen to be doing something, and as the media flurried to report on increases of poor spectator behaviour, the Government responded each time in an all most grandstand approach by stating that the problem needed to be resolved, but realistically showed no real attempt to work out what the problem was, or how it could be addressed.

Parliament suggested that the use of both attendance centres and Community Service Orders would be a 'much more effective mechanism than imposing fines', although no evidence was provided to support that assumption.²⁰⁸ The use of these centres would provide facilities under supervision to a wide range of offenders on a Saturday afternoon when most football matches took place. It was particularly noted that the attendance centres would be useful as punishments for groups and individuals who instigated such behaviour, especially when magistrates' avoided pursuing time-consuming individual sentences.²⁰⁹ Despite the suggestion of these centres, Parliament also suggested that adult offenders should be brought before a Crown Court, and not simply left to lay magistrates' on a summary charge, demonstrating that Parliament categorised football disorder as a more serious offence than it had been perceived in the subsequent years.²¹⁰ Nevertheless, there was no specific research to support these suggestions, the use of attendance centres had not been alluded to by any previous governmental reports. There was also no statement regarding the division of responsibility for these attendance centres – who would be responsible and what would be the appropriate way forward for managing or legislating on these in respect of a football spectator.

Although there were already deep-seated societal issues apparent in the UK, particularly in the 1970s that has been described as a decade of decline.²¹¹ Football,

²⁰⁷ Greenfield and Osborn (n 197) 245.

²⁰⁸ HL Deb (n 200) 3.

²⁰⁹ The Magistrate' Association, 'The Magistrate' and the Association's Annual Report' (55th Report 1975).

²¹⁰ *ibid* 5.

²¹¹ Lawrence Black, 'An Enlightening Decade? New Histories of 1970s' Britain' (2012) 82 *International Labour and Working-Class History* 174.

more than any other sport or activity, has been annexed to the political cause of the 'Big Society'; a necessary response to the problems faced by the UK in the mid-1970s with football hooliganism. Parliament, attempting to illustrate that they were helping with the issue but shunning any form of responsibility, power from central government was passed to local authorities and footballing governing bodies to help professional football clubs address the football hooliganism problem.²¹² Devolving power to the local authorities and clubs appears to be counterproductive, most football clubs had still not introduced advanced ticket purchasing, the introduction of Close Circuit Television (CCTV) was only introduced in 1975 and not fully installed by most clubs until the mid-1980s. In terms of crowd management, the emphasis was entirely on public order within the stadiums and not the safety of the spectators away from the stadiums.²¹³ Despite this focus, the Government highlighted that it was not for them to 'seek to control or direct the diverse activities of people's leisure time', including the spectating of football matches.²¹⁴ A familiar pattern was beginning to emerge that the Government were reluctant to legislate on the area, instead, leaving it to the footballing authorities and clubs to manage football spectators, possibly because of not knowing how to legislate on the area, despite commissioning numerous reports. The Government stated that they deeply deplored the behaviour of football supporters who misbehave abroad, however, it was 'not actually a matter for Her Majesty's Government'.²¹⁵ If this was not a matter for Her Majesty's Government, then the necessary research and evidence gathering will not be commissioned. One possibility could be that the Government never actually intended to take any form of responsibility and the type of research that was being commissioned was not asking the right questions. Therefore, it would inevitably not provide the right answers. What is left in circumstances such as these is a vicious circle; football hooliganism was a real, social issue, but there were no real or adequate answers as to why it occurred or how to prevent or completely stop it. When a particular football-related crowd incident occurred, usually surrounded by some form of media-orchestrated panic, a report was

²¹² Alan Sanders, Belinda Heys and Neil Ravenscroft, 'Making a Difference: The Power of Football in the Community' (2014) 15(3) Soccer and Society 411.

²¹³ Jim Chalmers and Steve Frosdick, 'History of the Football Safety Officers Association (FSOA) in England Wales' (*fsoa.org*, 2013) Accessed 12 July 2019 <<https://www.fsoa.org.uk/history-fsoa-2/>> accessed 10 May 2020.

²¹⁴ Department of the Environment, *White Paper on Sport and Recreation* (White Paper, Cmnd 6200, 1975) 4.

²¹⁵ HL Deb (n 87).

commissioned. There was no division of responsibility as to who should be introducing the measures or addressing the underlying causes of football hooliganism. There was no adequate evidence and no intention to legislate, so football hooliganism continues to happen. To this day, the Government, the football authorities, and the police still do not know why it occurs or how they can stop it.

Despite the announcement of attendance centres being used as an effective mechanism to curb football-related violence and disorder, there were scantily used. Instead, there was a reliance on council byelaws; namely, the Prevention of Unruly Behaviour in Places of Public Entertainment as an established penalty for offenders of up to £20 upon summary conviction.²¹⁶ This contradicts the previous statements of the Government wishing to make the punishment fit the crime. Particularly as 'football hooligans' were seen as the folk devils of society, i.e., the threat that incites moral panic.²¹⁷ Few other groups of individuals had received such media coverage with such force and consistency; few other groups arose such strong feelings of outrage or terror, or lead to such cry for retribution.²¹⁸ Despite any prospective intervention from Parliament in the form of legislation, the increased media attention regarding football spectator behaviour was starting to create a differentiation of adversaries according to a genuinely political criteria. Namely, a strict separation of 'ours' and 'yours', or, in its most radical expression, to a strict separation between friend and enemy, i.e., football spectators v society. In doing so, when the latter occurs, politics inevitably prevails over the law.²¹⁹ The political agenda regarding football spectators in the 1970s had shifted from being 'once a reflection of British innovation and character had come to epitomise many of the ills of urban Britain'.²²⁰

The Government were aware of the 'decreasing attendances, poor behaviour on the terraces and the pitch, the growth of racism and manipulation by commercial interests being evidence of football's deteriorating health', but failed effectively to introduce measures supported by evidence.²²¹ For that reason, a Working Party in 1977 was

²¹⁶ HL Deb (n 87) 1029.

²¹⁷ Cohen (n 21).

²¹⁸ Stuart Hall, 'The Treatment of "Football Hooliganism" in the Press' in Roger Ingham (ed), *Football Hooliganism: The Wider Context* (Inter-Action Imprint 1978) 7.

²¹⁹ Miro Cerar, 'The Relationship Between Law and Politics' (2009) Annual Survey of International and Comparative Law 15.

²²⁰ Lincoln Allison, *Condition of England: Essays and Impressions* (Junction 1998) 134.

²²¹ Matthew Taylor, 'Politics and the People's Game: Football and Political Culture in Twentieth Century Britain' (2007) 40 Historical Social Research 287.

again commissioned to examine crowd control problems. Largely due to the footballing authority's reluctance to adopt their own measures, and Parliament's reluctance to find out why the measures already in place, such as the use of attendance centres, were not working. Similarly, the Party provided the same suggestions made by successive Working Party's and governments, despite having no adequate evidence to produce such recommendations and knowing these recommendations never previously came to fruition. The 1977 Report once again referred to the imposition of larger fines and that the 'courts should be making better use of attendance centres on Saturday afternoons'.²²² There were still no coherent preventative mechanisms in place codifying the behaviour of football spectators, or any suggestions for implementing such measures. Even with suggestions being laid before Parliament, the police and the footballing authorities, nobody implemented those recommendations or attempted to do anything with them. By the time these recommendations are properly acknowledged, incidents of football hooliganism get worse, or notable incidents occur within a football stadium. Therefore, Parliament had to be seen to provide action. As a result of having to move swiftly, there is not enough adequate time to review past evidence or previous recommendations on its own; Parliament will act as they see fit.

By its nature, politics is less predictable and reliable than law, and by having no legal mechanisms in place, this would continue to increase the 'ours' and 'yours', or Cohen's 'folk devil' agenda. Observation of the detention and attendance centres illustrated that they had not worked, as there was an absent national policy stating that all police forces required individuals engaged in football-related violence and disorder to attend such centres. Instead of a thorough investigation into why the centres were not working, again, Parliament stated that what was needed was punishment; 'it should be stiff, it should last and be supported by public opinion'.²²³ Any legislation that would be created under this political agenda, fuelled by the moral panic regarding football spectator behaviour would be enacted without a sound evidential base; laws that would seem legitimate on the face of it, but without the perceived threat at the centre of the moral panic, would not work.²²⁴ Creating legislation on the back of this media panic, could be perceived as a 'grandstand gesture' that Parliament were seen to be

²²² HL Deb (n 93).

²²³ HL Deb 06 April 1977, vol 929, col vol 1346.

²²⁴ Rob Steen, 'Sensationalists United? Football Hooliganism and the English Press' (2015) 19(2) Sport & Society 267.

doing something. Although they were not sure what that was meant to be as the only evidence available was being advocated by the media. Concerning the division of responsibility for dealing with this football-related violence and disorder, the Government stipulated that if it was necessary to help the police in tackling the disorder, they 'must change the law to shock the hooligans'.²²⁵ Something that the Government had shied away from in previous years, by leaving it to police and football clubs to try and eradicate the problem. Conversely, it appeared that the same Government, despite declaring they wanted to 'shock the hooligans', did not know how to change the law to achieve that aim. The Criminal Law Act 1977 was enacted to increase and rationalise a large number of maximum fines aimed at football spectators.²²⁶ An administrative sanction, which was previously alluded to by previous governments, as not being punitive in nature and, therefore, not likely to 'shock the hooligans'.

The creation of this legislation: symbolic legislation, that can demonstrate 'power on behalf of the Government was not there to solve the problem, but to acknowledge that the Government does not approve, and that are seen to be doing something'.²²⁷ Although the increase of an administrative penalty was introduced to ensure the courts had adequate powers to deal with such behaviour, the Government appeared to be wary of applying solutions to this very big problem.²²⁸ One possible reason could be how 'football hooliganism' is defined and where the boundary might be drawn between this and other kinds of violence.²²⁹ By not having a clear definition or understanding what constitutes this type of behaviour, providing any evidence to suggest why certain people behaved in this manner, introducing quasi-criminal sanctions that would likely be questioned, then the political agenda to rid society of such behaviour would collapse.²³⁰ Demonstrating that the Government were not asking the right questions and there appeared to be no real attempt to try and work out what the problem was,

²²⁵ HL Deb (n 223) 1331.

²²⁶ s 28, 'penalties on summary conviction for offences triable either way'; s 30, 'penalties (and mode of trial) for offences made triable only summarily'; s 31, 'increase of fines for certain summary offences' and s 32, 'other provisions as to maximum fines.'

²²⁷ Bart van Klink, Britta van Beers and Lonekke Poort, *Symbolic Legislation and Developments in Biolaw* (Springer 2016).

²²⁸ HC Deb 05 May 1977, vol 931, col 732.

²²⁹ Jon Garland and Michael Rowe, 'The Hooligan's Fear of the Penalty' (2000) 1(1) *Soccer & Society* 144.

²³⁰ Kate Moss, *Football Banning Orders. In: Security and Liberty. Crime Prevention and Security Management* (Palgrave Macmillan 2009) 96.

or how it could be addressed. This rhetoric of being seen to be doing something, but without adequate evidence, would transmit through to the creation of the FBO framework.

Whilst the Government recognised the main objective of keeping football hooligans away from the football stadium was by some form of detention.²³¹ They illustrated that 'banning supporters from travelling to away games was an extreme step that must be carefully considered to ensure that mass is not punished for the misconduct of the minority', despite an increase in organised football disorder.²³² All the while, the foundations of football-fan-specific stereotypes were being shaped by how the media approached its reporting of football fans behaviour. This, coupled with the legal structural inequalities that already existed, were more likely to intensify the want for more intrusive social control via methods such as over criminalisation; creating the structural inequality between law/politics and society.²³³ The pre-election rhetoric in 1974 was focused around the dissatisfaction of the Government for allowing the law to 'come under attack from football hooligans' and for not providing society with greater legal protection.²³⁴ This tough on and law approach was mere words, with politicians toying the idea of new legislation when existing provisions were available, such as the use of attendance and detention centres. For that reason, the Working Group Report of 1977 again alluded to the fact there 'is no simple solution to the problem'.²³⁵ The 'Home Office Working Party on Soccer Hooliganism also had no figures [evidence] at all to support how new proposed policies and legislation would work'.²³⁶ Therefore, the package of administrative measures continued to be adopted in England and Wales following convictions of football-related disorder, and no singular authority taking responsibility or any legislative provisions adopted to deal with the problem.

²³¹ HC Deb (n 228) 734.

²³² *ibid* 725.

²³³ See, Martin Brown and Bert Warner, 'Immigrants, Urban Politics, and Policing' (1992) 57 *American Sociology Review* 293 and George Readings Bridges, Joseph Weis and Robert Crutchfield, 'Crime, Social Structure and Criminal Punishment' (1987) 34(4) *Social Problems* 345.

²³⁴ Conservative Manifesto, 'February 1974 Conservative Party General Election Manifesto' ([conservativemanifesto.com](http://www.conservativemanifesto.com), 1974)

<<http://www.conservativemanifesto.com/1974/Feb/february-1974-conservative-manifesto.shtml>> accessed 16 July 2019.

²³⁵ Frank McElhone, *Scottish Education Department Report of Working Group on Football Crowd Behaviour* (Her Majesty's Stationary Office 1977) 1.

²³⁶ Roger Ingham, *Football Hooliganism: The Wider Context* (Inter-Action Imprint 1979) 80.

3.4 1980s – Thatcher’s Rhetoric on Unruly Football Spectators

The 1980s were destined to become the darkest decade for English football when British football hooliganism was at its peak.²³⁷ Equally, at its peak, was the sensationalist media reporting of football disorder.²³⁸ Alongside this, the newly elected Prime Minister, Margaret Thatcher, was creating her own rhetoric about being tough on law and order. More predominately, she believed all football spectators were criminals and her pronouncements on the spectating of the sport were delivered with great gravitas, but little substance.²³⁹ The behaviour of a section of English football spectators at the 1980 UEFA European Football Championship in Italy received wide publicity and a subsequent fine of £8,000 imposed by UEFA. The FA were noted for favouring a complete ban on English supporters at overseas matches if that were the price of keeping the English team in international football tournaments.²⁴⁰ The combination of banning the sale of alcohol (in Scotland), controlling ticket sales and making travel to away games inconvenient and expensive had failed to staunch football violence in Britain, despite falling attendances.²⁴¹ In terms of damage, unrest and upset in the community, it was noted by the Home Affairs Committee on the law relating to public order, that football spectators in England and Wales were much better behaved than they had been for some time.²⁴² Nevertheless, the Government were persistent in their aim to eradicate the disorderly behaviour of football spectators overseas and stop those that planned football-related violence and disorder.

This political agenda was focused around ‘Englishness’, a term that embroiled arguments around social class and being portrayed as law-abiding citizens, both in the UK and overseas. The links between football and politics in the 1980s may to some appear tenuous, but the issues go way beyond mere intrigue about back-room deals

²³⁷ Dart (n 95).

²³⁸ Hall (n 218) 15 and Emma Poulton, ‘English Media Representation of Football-Related Disorder: Brutal, Short-hand and Simplifying’ (2005) 8 *Sport in Society* 27.

²³⁹ Henry Winter, ‘Margaret Thatcher Scored a Political Own Goal with Her Attitude to Football’ *Telegraph* (London, April 2013)
<<https://www.telegraph.co.uk/sport/football/9980402/Margaret-Thatcher-scored-a-political-own-goal-with-her-attitude-to-football.html>> Accessed 15 July 2019

²⁴⁰ Martin Walker, ‘FA Favours Ban on English Fans Abroad’ *The Guardian* (London, 1 June 1981)
<<https://www.theguardian.com/global/2011/jun/01/england-football-violence-1981>> Accessed 23 Nov 2017.

²⁴¹ *ibid* and Tom de Castella, ‘The Time When Football Fans Were Hated’ *BBC News* (London, 15 September 2012) <<http://www.bbc.co.uk/news/magazine-19596766>> Accessed 27 Nov 2017.

²⁴² Home Affairs Committee (n 96).

and even criminal justice. At a time within a discourse of decline and impending crisis, at stake are issues of ideological hegemony, shifting class consciousness and acknowledging that these processes play out across all aspects of society, revealing a complex interdependence between what many continue to insist are separate spheres of politics, culture and law.²⁴³ The rhetoric regarding football spectators in the 1980s is illustrated through documents that have not been publicly available until the present day, or that have been ignored for many years. Using such government papers will demonstrate that there was no evidential basis for the introduction of preventative orders aimed at football spectators.

In the absence of football-specific legislation in England and Wales, the Council of Europe became 'gravely concerned at the occurrence of violence in modern society'.²⁴⁴ It raised concern at the growth of football-related violence, planned disorder, and notably the behaviour witnessed at the European Championships in 1984. Numerous attempts to eliminate football disorder without a great deal of success because of trying to find immediate solutions to deep-seated and complex problems. Successive Governments, the football authorities and the clubs had failed comprehensively to deal with it properly and there had been too many knee-jerk reactions and far too little real action.²⁴⁵ Again, the UK Government suggested that something drastic needed to be done in the way of threatening football supporters, most likely as a result of pressure from Europe.²⁴⁶ This also reflected the growing concern of the Conservatives about the working-class youth's anti-social behaviour and their demand to re-establish law and order over this section of society.²⁴⁷

The Conservative's claim for stricter social control was relayed and eventually legitimised by the press through the adoption of some stereotyped modes of representing football fans. This specific representation of the issue sought mainly to establish the necessary re-introduction of any new coercive policy us/them dichotomy.²⁴⁸ This authoritarian and populist law and order agenda approach led by

²⁴³ Chris Porter, 'Supporter Ownership in English Football: Class, Culture and Politics' (2019) *Sports and Recreation* 34.

²⁴⁴ Council Recommendation (EEC) 1983/963, Introducing Measures to Reduce Violence [1983] OJ C25/1, 25.

²⁴⁵ HC Deb (n 97).

²⁴⁶ HL Deb (n 98).

²⁴⁷ Hall, Critcher, Jefferson, Clarke and Roberts (n 188) and Wagg (n 189).

²⁴⁸ Tsoukala (n 194).

the Government was creating a mood of hostility between the social classes and those in power.²⁴⁹ A further reassessment of the problem of public order was pursued as it was noted that there had not been a comprehensive overhaul of public order provisions in over twenty years.²⁵⁰ Although, it was noted that ‘the Review on Public Order in England and Wales revealed no yawning gaps in the law’,²⁵¹ the publication of said Review that amalgamated the 1980 Green Paper on the Public Order Act 1936, Select Committee on Home Affairs discussions, the Scarman Report and Law Commission’s proposal for the codification of the common law public order offences, but made no reference to rectifying football disorder problems.²⁵² With the Government’s political agenda against football spectators in mind, and despite no evidential basis in doing so, it was still within the sights of the Minister for Sport, Neil Macfarlane, to ‘create a substantial package of new measures to support the new tough line that the FA and Football League needed to take to control unruly football spectators’.²⁵³

The New Right’s response to the rise of hooliganism was to develop ‘draconian proposals to control, curtail and criminalise football crowds’.²⁵⁴ This neo-liberal economic and social policy began to dominate the wider political agenda in the UK in the 1980s, by incorporating English football that had been immersed in a series of crises around stadium provision, spectator safety and hooliganism. This was indicative of a wider crisis, something that was not explored by the Government, but a number of wide-ranging and different ideas were postulated in the hope that some would eventually cover football spectators.²⁵⁵ Ideas such as stopping individuals from travelling abroad through the use of passport control.²⁵⁶ Police common law powers in relation to public order to be codified or strengthened, and the provisions in Part V of the Criminal Justice (Scotland) Act 1980 restricting the availability of alcohol at or on the way to football matches to be brought forward on similar lines for England and

²⁴⁹ Ian McDonald and Ben Carrington, ‘The Ontological Impossibility of the Black Streaker’ (American Sociological Association Annual Conference, 11-14 August 2007) 17.

²⁵⁰ HC Deb (n 99).

²⁵¹ Home Office, *Review of Public Order Law* (Cmnd 9510, 1985) 39-43. Also see, HL Deb (n 93) 1276.

²⁵² Home Office, *Review of the Public Order Act 1936 & Related Legislation* (Cmnd 7891, 1980).

²⁵³ HC Deb (n 97) 602.

²⁵⁴ McDonald and Carrington (n 249).

²⁵⁵ John Williams and Stephen Hopkins, ‘Over here’: ‘Americanisation’ and the New Politics of Football Club Ownership – the Case of Liverpool FC’ (2011) 14(2) *Sport & Society* 160.

²⁵⁶ HL Deb (n 93) 1373.

Wales.²⁵⁷ With these recommendations came a number of criticisms, not only by the opposition in Government, but also the police, as the movement of citizens was of course a legal right, and a legal right guaranteed within the European Union, Common Market.²⁵⁸ The restrictions and monitoring of passports was noted as 'requiring rather stringent changes in the English legal system to restrict the free movement of individuals in respect of football supporters', something that Government backbenchers noted as being an 'impossible task'.²⁵⁹ The police also noted that they sought 'no benefit' to the strengthening and codifying of the common law powers in relation to public order,²⁶⁰ as the offences committed by football fans 'are not classed as public order hooliganism, or football hooliganism'.²⁶¹ Again, suggesting that there had been no thorough investigation into the behaviour of football spectators which in turn, would aid in providing possible solutions regarding offences and the monitoring of football spectators. Although there is much academic literature on the topic of football hooliganism, there has never been a legal definition, nor a precise demarcation of membership regarding the term.²⁶² The label 'football hooliganism' is, in fact, a construct of the media and politicians, rather than a social scientific concept. It is often used in a 'cover-all' sense, in which various forms of minor and more serious 'violence' are grouped under the umbrella term 'football hooliganism' to refer to football fans who cause 'harm' to society.²⁶³ Although this media-fuelled label was used, Margaret Thatcher stated that 'there is no such thing as society'. One of the reasons why the Government had not enacted any legislative provisions to tackle football disorder is due to 'the people [public and football spectators] who have duties and

²⁵⁷ Home Office (n 252).

²⁵⁸ Previously guaranteed for workers under the Treaty of Rome 1957 but evolved to consider all EU citizens. Now protected by Article 45 and 46 of The Treaty on the Functioning of the European Union.

²⁵⁹ HL Deb (n 87) 1374.

²⁶⁰ Home Office (n 252) 43.

²⁶¹ Classified as assaults, criminal damage, offences against a person per s 18 and s 20 of the Offences Against the Person Act 1861. s 18, 'wounding with intent to do grievous bodily harm' and s 20, 'Inflicting bodily injury, with or without weapon'. Also see, HL Deb (n 87) 1377.

²⁶² See, Steve Frosdick and Peter Marsh, *Football Hooliganism* (Willan Publishing 2005); John Kerr, *Understanding Soccer Hooliganism* (Open University Press 1994); Clifford Stott and Geoff Pearson, *Football 'Hooliganism', Policing and the War on the 'English Disease'* (Pennant Books Ltd 2007); Ingham (n 236); Hall (n 218) and Matt Hopkins and James Treadwell, *Football Hooliganism, Fan Behaviour and Crime: Contemporary Issues* (Palgrave Macmillan 2014) and Dunning, Murphy and Waddington (n 101).

²⁶³ Ramon Spaaij, 'Football Hooliganism as a Transnational Phenomenon: Past and Present Analysis: A Critique – More Specificity and Less Generality' (2007) 24(4) *International Journal of the History of Sport* 411.

beliefs and resolve; it is those people who get things done ... we are not running away from the real decisions, practical responsibility and effective action is in their hands'.²⁶⁴

Probably more than any other single incident, it was the Heysel tragedy, which took place in Brussels at the European Cup Final between Liverpool and Juventus in 1985, that fixed the idea of football hooliganism as an 'English disease'.²⁶⁵ The incident resulted in the decision of the FA to withdraw English clubs from participation in European competitions the following season, and the subsequent decision of UEFA to ban English clubs from European competitions for an indefinite period. The Government found this withdrawal as a chance, yet again, to 'give English football authorities the opportunity to introduce effective measures to combat violence and to convince other countries that they have done so'.²⁶⁶ The Government abnegating any responsibility to regulate this problem by passing it onto the footballing authorities. Despite the reputation of the country being the key feature of accelerating the process of codifying the provisions/measures to deal with football hooliganism, this was the responsibility of the Government. Thatcher's neo-liberal mantra of individualism and lack of society unleashed forces that provoked a new type of identity, namely unruly football spectators who 'caused a blot on the UK reputation that must be eradicated'.²⁶⁷ This moral panic that feeds into Thatcher's rhetoric, can be supported using Stanley Cohen's principles:

Firstly, something or someone is perceived and defined as a threat to [social norms](#) and the interests of the community or society at large; secondly, the news media and community members depict the threat in simplistic, symbolic ways that quickly become recognisable to the greater public; thirdly, widespread public concern is aroused by the way news media portrays the symbolic representation of the threat; fourthly, the authorities and policymakers

²⁶⁴ Douglas Keay, 'Margaret Thatcher Interview for *Woman's Own*' *Woman's Own* (Somerset, 23 September 1987)

<<https://www.margaretthatcher.org/document/106689>> accessed 5 October 2019.

²⁶⁵ Dunning, Murphy and Waddington (n 101).

²⁶⁶ HL Deb (n 102).

²⁶⁷ See, Alan Black, '80s Throwback: Thatcherism, Hooliganism' (sfgate.com, 2013) <<https://www.sfgate.com/sports/article/80s-throwbacks-Thatcherism-hooliganism-4446944.php>>

accessed 16 September 2019 and Charles Moore, 'No Such Thing as Society: A Good Time to Ask What Margaret Thatcher Really Meant' *Telegraph* (London, 18 May 2013) .

<<https://www.telegraph.co.uk/comment/columnists/charlesmoore/8027552/No-Such-Thing-as-Society-a-good-time-to-ask-what-Margaret-Thatcher-really-meant.html>> Accessed 7 October 2019.

respond to the threat, be it real or perceived, with new laws or policies; and in the final stage, the moral panic and the subsequent actions of those in power lead to social change in the community.²⁶⁸

Firstly, the media played its role by breaking the news about the threat of planned and spontaneous football-related violence and disorder and continuing to report on it. Thereby setting the agenda for how it is discussed and attaching visual symbolic images to it. Secondly, the politicians, who respond to the threat and sometimes fan the flames of the panic, and the public, which develops a focused concern about the threat and demands action in response to it.²⁶⁹ Finally, the pressing need to legislate on the area as none of the other stakeholders, in football, in particular, had acted to deal with the issue. Despite no preventative measures or strategies being implemented thus far, it was highlighted as being of the utmost importance to quickly legislate on the area before the start of the next football season, despite no sound evidence or suggestions as to what those measures may be.²⁷⁰ This swift action was more of a knee-jerk reaction in light of the ban of English clubs from European competitions, the media headlines and the 'slight fear that lengthy inquiries sometimes tend to postpone the action which ought to be taken quickly'.²⁷¹ This is a significant shift in attitude from the previous discussions around legislating on the area, that the 'FA are responsible for generating their rules and for setting standards of behaviour both on the pitch and elsewhere'.²⁷² Having abdicated responsibility for spectator behaviour for so long, it appeared that the Government in this instance 'had a one-sided approach to look at the effects and how they may be controlled and limited', rather than carefully and co-operatively considering in line with the relevant authorities, the measures that need to be implemented.²⁷³ Acting in isolation, without the cooperation of the footballing authorities or the police, the Government action appeared to be a political motive in response to the moral panics instigated by the media, rather than a careful, considered evidence-based response to the real problem. Having observed the archival information regarding government discussions in the 1980s, it is apparent that there was no evidence to support their rhetoric or subsequent

²⁶⁸ Cohen (n 21).

²⁶⁹ *ibid.*

²⁷⁰ HL Deb (n 102).

²⁷¹ *ibid.*

²⁷² HC Deb (n 104).

²⁷³ HL Deb (n 105).

actions regarding spectator violence and disorder. The footballing authorities had refused to do anything to stop this, and the Government may have only felt obliged, at the end, to step up. Only by then, everything was rushed, instead of being cooperatively and sensibly developed.

The 'panic' led by the media was further fuelled in 1985 which was labelled as a 'crisis year' with regards to football disorder. The events at Heysel were not isolated, two weeks before the events in Belgium, disturbances between Birmingham City and Leeds United were witnessed, and unrelated to disorder, the deaths of 56 people following a fire at Valley Parade.²⁷⁴ The Popplewell Inquiry was established to review stadium safety following the fire at Valley Parade, but due to the other incidents, in particular the events at Heysel had its remit expanded to cover disorder. A more sensible approach would have been two separate inquiries to ensure that spectator safety and spectator behaviour were dealt with properly in two standalone investigations. Instead, the Government rushed through the recommendations regarding punishments and stalled on the issues regarding safety. The first of the recommendations put forward by the Government was to control the number of individuals attending football matches. These proposals related to public order, particularly those on assemblies in the open air which were deemed to strengthen the powers available to the police to guard against the risk of planned disorder at football. Nevertheless, in the review of public order in the United Kingdom, the Public Order White Paper made no mention of provisions relating to football spectators, particularly those that involved controlling attendance at football stadiums. Found in the archival information, within the Cabinet discussions between Giles Shaw in the Home Office and the Prime Minister, Margaret Thatcher, it was noted that there were no major flaws or lacunae in the existing law; but some changes were necessary to take into account of developments since the last Public Order Act in 1936.²⁷⁵ Although football and its spectators had been held in disdain for some years before 1985, the media portrayal of football fans post-Heysel and the events at Birmingham City appeared to panic, or possibly pressurise the Government into acting, as the public and private-public order consultations did not refer to the behaviour or controlling of football spectators. Despite

²⁷⁴ Ian Taylor, 'Putting the Boot into Working Class Sport: British soccer after Bradford' (1987) 4(1) *Sociology of Sport Journal* 171.

²⁷⁵ Cabinet Conclusions, 'Review of Public Order Law' (CC85, 10 January 1985 to 19 December 1985).

recommendations being absent from any Parliamentary reviews, or any evidence to suggest that action was necessary on the scale that had been proposed. A proposal to ban individuals from attending football matches was included in Part IV of the Public Order Bill (1985-86); an introduction of an Exclusion Order scheme, which would enable the courts to ban convicted hooligans from attending football matches and stop those planning football-related violence and disorder.

This scheme was the first to be created and included within a legislative framework to deal with football spectator disorder. Government officials had noted that there was evidence that attendance centres were not regarded as an effective deterrent in the most difficult cases, such as catching the ‘ringleaders’ of violence and disorder.²⁷⁶ The context regarding this evidence is unknown, there is no research-led evidence available to support the conclusions they were arriving at, nor is there any expansion on their remarks in the archival information. With no sound evidence base to suggest that an attendance centre was not the most effective preventative measure, the Government then also accepted that their new legislative scheme that would be introduced in the form of Exclusion Orders, could not be enforced 100 per cent effectively. Firstly, the 1986 Act offered no guidance to the courts as to what they should consider in reaching their decisions, except that making an Exclusion Order where they think that it would assist in the maintenance of public order in connection with certain football matches. Secondly, the then Prime Minister, Margaret Thatcher, was content in her choice to implement Exclusion Orders regardless of the Government’s position on the use of a club membership card.²⁷⁷ The membership card scheme was postulated by the Government prior to the enactment of the POA 1986 to regulate and hold information of football spectators and their respective clubs. The use of both Exclusion Orders and the membership card was to deny entry to troublemakers or the known ‘ringleaders’. The information about Exclusion Orders would be used by clubs to deny or withdraw membership cards; assisting with the enforcement of Exclusion Orders. The membership scheme was not implemented as the cost of the scheme would be placed on the football clubs and not the Government. Such a compulsory scheme was deemed to be impractical, likely to drive down attendances and the enforcement agencies would find difficulty in implementing the

²⁷⁶ Letter from Philip Dykins to Mark Addison (2 April 1985).

²⁷⁷ Letter from Mark Addison to Margaret Thatcher (9 December 1985).

Exclusion Order scheme.²⁷⁸ Introducing such measures without a sound evidence base, without justification that they would work, without support from the relevant authorities, highlights that there would the Orders have been made for political reasons, rather than carefully considered measures.²⁷⁹

The introduction of these Orders came at a time when legislation had been created specifically singling out football fans, namely the Sporting (Control of Alcohol etc.) Act 1985 (SCAA 1985). The legislative agenda was beginning to create a detrimental stigma attached only to football fans.²⁸⁰ A popular strand of Thatcherite Conservatism at the time was, indeed, to uphold exactly the meta-politics and causal theories that fuelled moral panics created by the media. In doing so, the 'political agenda was to attack the derogatory use of the concept [moral panic] as a symptom of being 'out of touch' with public opinion and the fears of 'ordinary people'.²⁸¹ Therefore, the political reaction to the events of 1985, and the recommendations for the reform of football in consequence, principally drew on the Conservative ideological and political commitment to the strong state:

The only solution to the increasing dissolution of social, geographical, and behavioural boundaries was the isolation of those individuals who had succumbed to their instincts. By means of the strong state, which Thatcher avowed as a method of decontaminating society of these individuals she hoped to re-inscribe the social boundaries which hold back the bestial essences within them.²⁸²

For that reason, the football milieu not only reflected social tensions occurring on local and national levels but produced its own political conflicts, prompting widespread debates about social conflict, violence and racism in British society.²⁸³ For that reason, the implementation of Exclusion Orders can only be seen as a politically-motivated desire to prevent behaviour that appeared to be football-specific, such as organised

²⁷⁸ See Chapter Four regarding the legal regulation of football spectators in England and Wales.

²⁷⁹ HL Deb (n 102) 514.

²⁸⁰ Poulton (n 238)

²⁸¹ Stanley Cohen, *Folk Devils and Moral Panics: The Creation of the Mods and Rockers* (3rd edn, Routledge 2011) xxxix.

²⁸² Anthony King, *End of the Terraces: The Transformation of English Football* (Bloomsbury 2002) 78.

²⁸³ Brett Bebb, *Violence and Racism in Football: Politics and Culture Conflict in British Football* (Routledge 2015) 2.

disorder, rather than based on evidence that they would prevent football-related violence and disorder.

3.5 1989 – Post-Hillsborough Restrictions

As Margaret Thatcher had invited the football authorities to establish a national membership scheme voluntarily and they refused, she illustrated that she would bring forward legislation to require the establishment of such a scheme, despite no support or evidential basis that this would help reduce football violence and disorder.²⁸⁴ Only a year after the implementation of Exclusion Orders, another package of measures was introduced to reflect the determination of the Government. The Government noted that they, alongside the police and the football authorities must work in partnership to tackle hooliganism in the interests of both public safety and the future wellbeing of the game.²⁸⁵ With the difficulty of implementing the domestic Exclusion Orders as a result of no sound evidence base to implement them in the first instance, a new package of measures housed in the Football Spectators Bill (HL) 1988-89 was created to deal with the problems of hooliganism associated with football, domestically and internationally. From the archival information, the immediate background to the Government's decision to legislate on this subject, again circulated serious incidents of violence and disorder at the end of the domestic season in May 1988, and overseas in the summer of 1988. Margaret Thatcher stated that this was merely the most recent episode to demonstrate the growing social evil of football hooliganism and further action was undoubtedly called for on many fronts.²⁸⁶ The rationale for such measures, again, was the behaviour of English football fans overseas, organised disorder, and the 'sensationalised tabloid press; a media-orchestrated moral panic over football hooliganism and consequent pressure on the football authorities and the Government to take remedial action'.²⁸⁷ The Government documents and correspondence from the National Archives and Royal Society, reveal how national values of middle-class propriety and classed paternalism imbued discourses about football violence. Several moral commentators, especially Ministers in charge of sport, used various rhetorical strategies to harangue against the lawlessness, improper masculine conduct and

²⁸⁴ HL Deb (n 112) 1217.

²⁸⁵ HC Deb (n 111).

²⁸⁶ Cabinet Conclusions, 'Home Affairs: Football Hooliganism' (CC88 16 June 1988).

²⁸⁷ HL Deb (n 112).

moral degeneration they perceived in outbreaks of football disorder.²⁸⁸ Football spectators were framed as groups of criminals of an animalistic nature. The Government appeared to provide the cure for the 'hooligan' disease, but without any evidence or rationale as to how they were 'managing' them.

Part II of the Football Spectators Bill would provide a mechanism that would empower the courts to impose Restriction Orders on these convicted hooligans to prevent them from travelling to English matches abroad. Alongside this, to secure the use of a Restriction Order, a statutory membership scheme was to be created by Part I of the Bill. As the Prime Minister had already invited the football authorities to establish a national membership scheme voluntarily and they refused, she illustrated that this time, 'legislation would require the establishment of such a scheme'.²⁸⁹ It was apparent that the Government were using their legislative power to support their football-specific political agenda.²⁹⁰ This scheme, has varying similarities to season cards that are issued by most football clubs at present. A scheme which only helps to identify perpetrators of violence and disorder inside of a stadium, it does not help to reduce football-related violence and disorder away from the stadium; locations where planned disorder usually takes place. This attempted total policy of containment through a national membership scheme that would apply to any football supporter, used a variety of institutional, legal and architectural means and reflected politicians' willingness to use power against its working-class citizens.²⁹¹ Demonstrating their political agenda, rather than a willingness to eradicate football-specific violence and disorder.

One event that should have curtailed, momentarily, the Government's pursuit of these legislative measures, was the Hillsborough disaster that occurred in May 1989. Hillsborough occurred during these measures housed in the Football Spectators Bill passing through Parliament. Instead of postponing the Bill's passage whilst the inquiry undertaken by Lord Justice Taylor was finalised, the Government continued with pushing the statutory framework through before the commencement of the next footballing season. The Government had an opportunity arising from the tragic events

²⁸⁸ Bebbier (n 283) 15.

²⁸⁹ HL Deb (n 284).

²⁹⁰ Adam Crawford, 'Appeals to Community and Crime Prevention' (1994) 22(2) Crime, Law and Social Change 98.

²⁹¹ Bebbier (n 283) 3.

at Hillsborough for mature reflection and reconsideration, to consider an external and impartial judgment on their proposals through Lord Justice Taylor's inquiry, however, by their precipitate desire to proceed with the Bill, the Government rejected that opportunity.²⁹² The Government decided, irrationally, to move ahead with the Bill whilst the Hillsborough inquiry was still sitting. Instead, they favoured the views of the police, that the disaster was caused by violence and disorder, not by football club or police mismanagement. It was documented in the Archival documentation and in Parliamentary debates that the Government believed that there was no need to delay the legislation and continued to push through their political agenda on football hooliganism.²⁹³

Much of Thatcher's career as Prime Minister was undoubtedly overshadowed by the severe public disorder. That said, during this time of public disorder and in the immediate aftermath, it was argued that the Conservative Government were making strides to strengthen areas of the criminal justice system.²⁹⁴ Concerning football spectators, from a symbolic viewpoint, the development of law can indeed bring about an illusion of toughness, a 'social symbol' if you like of a 'tough on law and order' approach.²⁹⁵ To classify a law as symbolic, it is necessary to outline some conditions that need to be met. Firstly, when there is no expectation that the law will be enforced but a government will legislate to portray themselves as favourable to the public; and secondly, when new laws created have no real impact.²⁹⁶ Part I of the FSA 1989 that was to create the National Membership Scheme, was rendered obsolete by Taylor's final report into the Hillsborough disaster, as there was grave doubts and serious misgivings about 'the potential impact on police commitments and control of spectators being too grave'.²⁹⁷ Taylor illustrated that although the legislation was in place, there was 'no scheme, not even a draft' that could be used, despite the Government illustrating that it was needed to help in securing Restriction Orders.²⁹⁸ In Taylor's final

²⁹² HC Deb (n 121).

²⁹³ *ibid.*

²⁹⁴ See, Stephen Savage, 'A War on Crime?' in Stephen Savage and Lynton Robins (eds), *Public Policy Under Thatcher* (Macmillan 1990); Peter Riddell, *The Thatcher Government* (Wiley-Blackwell 1985); and Tony Jefferson and Joanna Shapland, 'Criminal Justice and the Production of Order and Control: Criminological Research in the UK in the 1980's' (1994) 34(3) *The British Journal of Criminology* 265.

²⁹⁵ Roger Cotterrell, *The Sociology of Law* (2nd edn, Butterworths 1992).

²⁹⁶ Ryken Grattet and Valerie Jenness, 'Transforming Symbolic Law into Organizational Action: Hate Crime Policy and Law Enforcement Practice' (2008) 87(1) *Social Forces* 502.

²⁹⁷ Home Office (109) 424.

²⁹⁸ *ibid* 411.

report, he had highlighted that Exclusion Orders had not made much impact and not been greatly used by the courts as it was difficult to discover whether they are being obeyed or flouted.²⁹⁹ It was noted that without the National Membership Scheme, the Government would have the same issues as experienced with Exclusion Orders, and therefore, the FSA 1989 would not be the major contribution to break the link between football and hooliganism as had hoped.³⁰⁰ With no sound evidence base to implement the Exclusion Order scheme under the POA 1986, there was now evidence available based on Taylor's independent report. Nevertheless, they chose to ignore this and push forward with their political agenda, heightening the illusion of being 'tough on law and order' that may be seen as favourable to the public. This legislation created would underpin the concept of FBOs, highlighting that these measures would subsequently not work as expected.

The disasters of the 1980s of course created expectations and demands for action to ensure there can be no repetition. However, the extent to which expectations are fulfilled, and the force with which they are demanded, depends very much on the political circumstances of the tragedy and those affected.³⁰¹ With the arguments regarding class violence in football, not only did this reflect broader cultural struggles and fractured social relationships in the United Kingdom but created political questions. It is noted by Bebbber, that to combat the issues around football hooliganism, politicians and police authorities consistently met violence with their own repressive measures, escalating conflict and ignoring its relationship to larger social fissures.³⁰² In doing so, the state authorities developed hostile environments and employed restrictive policing measures intended to discourage partisan activities by working-class youth and sanitise a growing leisure industry. Not only would their rhetoric cause such an environment, but the authorities also failed to understand or investigate why such behaviour existed. Instead, pushed a legislative agenda that was aimed at those that instigated football-related violence and disorder, but would inevitably cast a net over all football spectators.

²⁹⁹ *ibid* 321.

³⁰⁰ HC Deb (n 128). See Chapter Four regarding the analysis of the legal regulation of football spectators and Chapter Five regarding the analysis of the FBO and arrest statistics.

³⁰¹ Bridget Hutter and Sally Lloyd-Bostock, 'The Power of Accidents: The Social and Psychological Impact of Accidents and the Enforcement of Safety Regulations' (1990) 30(4) *British Journal of Criminology* 410.

³⁰² Bebbber (n 283) 1.

The Government's choice to ignore the evidence put forward by Lord Justice Taylor, particularly involving criticism of the police, reflected the Conservative's deep political agenda. By not refuting or rejecting Taylor's comments, but by ignoring them and relying on obstacles created by the existing legal procedure to tackle football disorder, i.e., the POA 1986 and Exclusion Orders. This demonstrates how the football hooligan paradigm dominated the Government's political policy as documented in the private correspondence within the Archival documentation. This is something that came to fruition a decade later in the form of FBOs. Considering the recent events regarding the fresh inquest into the Hillsborough disaster, one of the fourteen questions for the jury to consider was whether 'any behaviour on the part of the football supporters caused or contributed to the dangerous situation at the Hillsborough stadium?' The jury unanimously agreed that there was no fault with the spectator behaviour and instead concluded that 96 people who died in the disaster were unlawfully killed.³⁰³ The Thatcher Government was built on secrecy and concerned with order, creating an autonomous institution resistant to change.³⁰⁴ The secrecy determined the political party's relationship with the 'outside' ... it defined probity amongst those privy to information and what information would be best to release that will shape the public interest.³⁰⁵ Through navigating the archival documentation, it is apparent that Thatcher and her Government chose to privatise the comments of Lord Taylor concerning the police throughout the passage of the Football Spectators Bill to push through their legislative agenda. This would support their rhetoric that all football spectators are hooligans, whilst helping to protect their autonomy and aid in demonstrating that the legislation would be the only effective measure in dealing with football hooliganism.³⁰⁶

The legislation created by the Thatcher government in the 1980s has been described as 'tough on law and order'.³⁰⁷ However, the events at Hillsborough ought to have made the Government step aside from pre-conceptions and the rhetoric of being 'tough', and look afresh at how to find a better way for British football, rather than

³⁰³ Home Office, 'Determinations and Findings of the Hillsborough Inquests' (*gov.uk*, 27 April 2016) <<https://www.gov.uk/government/speeches/determinations-and-findings-of-the-hillsborough-inquests>> accessed 14 November 2018.

³⁰⁴ David Vincent, *The Culture of Secrecy: Britain 1832-1998* (Oxford University Press 1998) 13.

³⁰⁵ *ibid* 346.

³⁰⁶ Nick Turnball, *Interpreting Governance, High Politics and Public Policy* (Routledge 2016).

³⁰⁷ Stephen Farrall, Naomi Burke and Colin Hay, 'Revisiting Margaret Thatcher's Law and Order Agenda: The Slow-Burning Fuse of Punitiveness' (2005) 11(2) *British Politics* 205.

pursuing the Restriction Orders under the FSA 1989 without considering sufficient evidence.³⁰⁸ With the proposed National Membership Scheme, the Government noted that if they did not process the scheme, their position concerning football hooliganism would, therefore, be indefensible unless a credible alternative was put forward. 'We would be defenceless if there were to be another Heysel incident, against the charge that we had neither followed Taylor's recommendations nor developed our own alternative.'³⁰⁹ After the scheme was not implemented, no credible alternative was created to support the use of the newly created Restriction Orders. With safety measures, such as the new requirement, recommended by Lord Taylor, that football stadiums needed to be all-seater unlikely to cause significant controversy, it was the attempts to regulate fans' conduct that was more problematic. Taylor did provide some alternatives in the form of new criminal offences, an extension of attendance orders and electronic tagging. Whether these were suitable alternatives is to be questioned based on the lack of evidence or scrutiny as to whether these could be used without the National Membership Scheme. These discussions regarding the political agenda, and particularly Thatcherism, will almost always be used to interpret these debates around the reformation of football from the mid-1980s to the late 1980s.

The arguments for reform were the conjunctural responses to certain organic political economic developments, which had left football's structure inadequate with respect to the level of its own political economic developments and to that of wider social developments. The crisis of the 1980s was not objectively caused by the disasters but rather the disasters exemplified a deeper problem in football. Football's real crisis was that it had not begun to transform itself in the light of emergent Thatcherite realities.³¹⁰

This rhetoric is something that has not been addressed since the implementation of the Exclusion and Restriction Order schemes. These Orders provide the foundation on which FBOs were built, and if those foundations have been built without evidence and underpinned by political rhetoric, then it supports the aim of this thesis to demonstrate that FBOs are not fit for purpose in their current form.

³⁰⁸ *HC Deb* (n 132).

³⁰⁹ Letter from Colin Moynihan to David Waddington (26 January 1990).

³¹⁰ King (n 283) 77.

3.6 1990s – International Football Banning Orders: New Order, or New Name?

The Government's rhetoric in the 1980s of revived images of empire, football hooliganism for England abroad was then, in part, about defensive patriotism in the face of wider national decline.³¹¹ Instead of the Government making a concerted effort in tackling the deeper societal issues in the UK, and understanding/reviewing the roots of football hooliganism, the use of the Restriction Orders to deal with football spectators were seen as the method to be used to make a real contribution to improving the image of the UK overseas rather than determining the cause.³¹² Only one year after the introduction of the Orders, the Home Office Affairs Committee had already recognised the inconsistencies with regard to the operation and use of such Orders. It was apparent that the police had differing approaches to dealing with football supporters, when 'acceptable behaviour at one ground could be an arrestable offence at another'; an issue that is still apparent in the use of FBOs.³¹³ Restriction Orders were being used as a catalyst to deter any form of violence in England and Wales, not catching those who instigate such behaviour, or the most serious hooligan problems associated with support for the national team.³¹⁴ Therefore, the introduction of this panic legislation demonstrates that it was not being utilised as intended. Instead, Restriction Orders were being served to any football spectators irrespective of their involvement in serious disorder. Problems involving fans of the England national team at the European Championships in Sweden in 1992 suggested that disorder involving England fans abroad had not yet disappeared despite Restriction Orders being in place.³¹⁵ As football appeared to be going through a 'social revolution' in terms of changes instigated by the FSA 1989, all that was being done in terms of breaking the hooligan cycle was a change in the geography of the stadiums; it was hoped that the

³¹¹ Sir Norman Chester Centre for Football Research, *Football and Football Hooliganism* (University of Leicester 2001) 3.7.

³¹² David Waddington, 'Football Restriction Orders' (Home Office News Release, Home Office 24 April 1990).

³¹³ Home Affairs Committee, *Policing Football Hooliganism: Second Report* (Her Majesty's Stationary Office 1991).

³¹⁴ Sir Norman Chester (n 312).

³¹⁵ Pete Davies, *All Played Out* (William Heinemann 1990) and Bill Buford, *Among the Thugs* (Secker and Warburg 1991).

removal of the squalid facilities would bring with it a demand that the poor behaviour would be eradicated.³¹⁶ This was not the case, and the FSA 1989 was either; not necessary; poorly drafted; created without a sound evidence base; being used incorrectly by not stopping the ringleaders involved in football hooliganism overseas; or, a combination of all.

With the changes to the structure of the Football League in 1992, football in England had become a global, financial platform, meaning the Government, police, authorities and media could no longer get away with the kind of attitude that fans were treated to in the 1980s.³¹⁷ For that reason, the Labour Party in 1995, introduced a 'New Framework for Football: Labour's Charter for Football'. The Charter aimed to address the critical problems associated with the game and in doing so, built a framework in which football could flourish again.³¹⁸ The Charter, along with the Football Task Force Reports concentrated very much on changing the governance of football as a whole, with spectator management only a small part of the strategy. Again, asking the wrong questions or failing to ask any questions concerning spectator management. It had been noted that trouble inside football stadiums had declined, but complacency was not allowed, therefore, attention and more effective regulation was needed.³¹⁹ The review contained a wide range of factors that would represent a fundamental change in football legislation, but there was very little research conducted, or evidence to support any recommendations put forward in relation to the legal regulation of spectator behaviour.³²⁰ The recommendations that were made, intended to fill the gaps in legislation and extend the offences already in place on specific areas such as travel restrictions, attaching more conditions to a Restriction Order and the surrendering of passports; all recommendations and measures put forward by successive governments and reports without a sound evidence base in doing so.

A recurrent theme in the discussions of spectator management that was illustrated within the Charter primarily focused on the 'determination to prevent our [the UK] reputation from being tarnished by football spectators'.³²¹ Despite the introduction of

³¹⁶ King (n 283).

³¹⁷ de Castella (n 241).

³¹⁸ Labour Party (n 133) 1.

³¹⁹ HL Deb (n 134).

³²⁰ Home Office (n 135).

³²¹ See, Home Office (n 109) and House of Commons (n 136).

the FSA 1989 three years earlier, the Charter provided that consultation on future legislation was needed, as this was the only way to ensure the whole of the football community is involved to combat hooliganism.³²² Conversely, the Reports and Charter had come at a time when domestic football has made great strides in self-regulation, resulting in a dramatic decrease in incidents of football arrests and violence both inside and away from the stadium. Better police surveillance and intelligence, the use of club stewards and the continuing trend of getting actual supporters involved with stadium policing had helped to make grounds far more welcoming places, resulting in some way, to dispel the stereotypical image of fans as hooligans and those that planned football-related violence and disorder.³²³ Having realised that a report/evidence was needed to address any ongoing issues regarding football violence and disorder, the scope of the Reports and Charter were so wide-ranging in terms of the questions asked, that the evidence gathered on issues regarding disorder and violence were not fully addressed and no legislation was adopted.

Since this rehabilitation in the early 1990s, football matches had been portrayed as being 'completely cleansed of that menace ... football was celebrated, not vilified, in the media'.³²⁴ This change in attitude illustrates that the change of perception lies with the media. The media function as magnifiers – they magnify the acts of football-related violence and disorder, and the outcome is the provocation of further acts of violence and disorder. 'The media show social problems as if under a magnifying glass. What is nasty becomes nastier because it seems to appear anonymously.'³²⁵ Misbehaviour at the World Cup tournament in France in 1998 reinstates the media's 'moral panic' surrounding English football spectators overseas.³²⁶ The Government illustrated that they had the responsibility to make proposals aimed at ensuring that such events did not happen again, since the current position and regulations regarding football violence and disorder were not working effectively enough.³²⁷ The Charter and Task

³²² Home Office (n 135).

³²³ Mike Slocombe, 'Football Fans Against the Criminal Justice Bill' (Leaflet, Urban75 1995).

³²⁴ David Conn, 'Huge Strides Have Been Made in Battle Against Violence but Sporadic Outbreaks Remain Inevitable' *The Guardian* (London, 26 August 2009) <<https://www.theguardian.com/sport/david-conn-inside-sport-blog/2009/aug/26/west-ham-millwall-hooliganism-history-violence>> Accessed 1 September 2019.

³²⁵ European Parliament, 'Committee on Civil Liberties, Justice and Home Affairs: Resolution on Hooliganism and the Free Movement of Football Spectators' (A4-0124/96, European Parliament 1996).

³²⁶ Brown (n 138); Buncombe (n 138) and Clarey (n 138).

³²⁷ HC Deb (n 140).

Force Reports in 1995-96 ought to have provided the evidence to suggest these shortcomings, particularly as it has been noted that hooliganism within and outside grounds had dramatically declined since the early 1990s. However, due to a lack of evidence, nothing was adopted.³²⁸ It was not until 1998 when the media-fuelled hysteria surrounding the behaviour of spectators in France, was a proposal put forward for a Football Behaviour Order via a Private Member's Bill in 1998. A Private Member's Bill is introduced by MPs and Lords who are not government Ministers, meaning little time has usually been spent gathering sufficient evidence due to these Bills rarely being adopted as legislation. For that reason, there was no official research or reports outlining these findings; the magistrates' were not consulted about their use of the Restriction Orders, nor the police as to why they were not able to locate and prevent the perpetrators of violence and disorder.

The proposed Football Behaviour Order would amend the Restriction Orders housed in the FSA 1989 and individuals would be served an Order:

If the court deem it necessary to prevent him disturbing good order at any designated football match outside the UK or during the period before or after any designated football match outside the UK, he may apply for a football behaviour order in respect of that person.

The Order would 'make it obligatory on the courts to grant such an Order unless there are exceptional circumstances against doing so'. Sir Norman Fowler MP had suggested that this Order was needed as the present system of Restriction Orders under the FSA 1989 was not working effectively.³²⁹ It was noted that evidence was available to support these findings, although it is unclear as to what this evidence entailed and it is not available via any Parliamentary publications, or in the supporting documentation of the Private Member's Bill; it was more an assumption based on disorder continuing after the Restriction Orders were introduced. For that reason, the proposed Football Behaviour Order was not successful as the Government ensured that Restriction Orders were their best plan to tackle football disorder overseas. Although they also recognised that 'there is no way to guarantee that trouble will not

³²⁸ Conn (n 324).

³²⁹ HC Deb (n 140) 713.

take place'.³³⁰ Football clubs and the football authorities had already addressed many of the 'blights' that disfigured the game in the 1970s and 80s, the ill-conceived government intervention of attempting to amend and create new law without justification was in fact, creating more issues.³³¹

Despite the disorder witnessed overseas in 1998, football spectators in the 1990s had come to be seen as a very different animal from that of the 1970s or 1980s; fan groups acquired more respectable media and political profiles.³³² However, the right-wing politicians between 1979 and 1992 had already promoted a negative popular history of the 1970s that legitimised a rightward shift in British politics and discredited social democratic alternatives such as football spectatorship.³³³ For that reason, recent literature has outlined that the football-specific Acts of Parliament created in the 1980s by right-wing politicians were not actually 'tough on law and order', and if anything, laid the foundations for an 'incremental drift' towards punitiveness some years later.³³⁴ Although the Government noted that 'there had been a rebuilding of football in recent years, and that most of the violence associated with football has been greatly diminished,' it was still their intention to introduce the widest and possibly the most draconian statutory framework to date.³³⁵ This is particularly notable with regard to the introduction of the International FBO by virtue of the FODA 1999, and subsequently the current FBOs.

The International FBO would prevent an individual from travelling overseas at the time of a club or national football game that involved English and Welsh teams. This would also involve surrendering a passport not more than five days before a designated match, and the duty to report to a named police station.³³⁶ It was believed that the removal of passports would only be in extreme cases, but this is in stark contrast to the debates surrounding the imposition of civil orders in the 1980s, whereby it was noted that it would not be feasible. The Government attempted to reassure by stating that there were enough checks and balances in the system for that power not to be

³³⁰ *ibid* 728.

³³¹ Greenfield and Osborn (n 197).

³³² Brick (n 25).

³³³ James Thomas, 'Bound in by History': The Winter of Discontent in British Politics, 1979-2004' (2007) 29(2) *Media, Culture & Society* 263.

³³⁴ Farral, Burke and Hay (n 307).

³³⁵ HC Deb (n 145).

³³⁶ s 3(1) (5B) FODA 1999.

abused and that there is a difference between surrender and confiscation of a passport. Surrender is when somebody voluntarily hands in the passport, and confiscation is when the passport is taken from someone, which is in fact, wholly unconstitutional.³³⁷ The requirement to surrender a passport and not for the passport to be confiscated, demonstrates this political drift towards punitiveness instilled by the right-wing governments of the 1970s and '80s. If the problem of football violence and disorder had dramatically decreased, it is questionable as to how the Government proposed to introduce measures that are not only described as unconstitutional but had no sufficient evidence to ensure that they were necessary. Particularly as their introduction received a great deal of criticism regarding the measures being disproportionality severe given the size and nature of the problem; a problem that appeared to have decreased.³³⁸

The FODA received Royal Assent in July 1999. However, the framework was not used to its full potential despite the Minister for Sport's statement that such powers were necessary.³³⁹ The UEFA European Championships in Belgium in the summer of 2000 saw England fans embroiled in widespread disorder and violence with some of it being planned by supporters before travelling overseas. These individuals that could have been subject to International Banning Orders, a preventative measure that was deemed so desperately needed to plug the loopholes in the previous legislation, were not. There were calls for emergency legislation before the European Championship from the FA and other authorities but were rejected by the Home Secretary without a specific rationale as to why it was not needed.³⁴⁰ The Government's inaction in this area was criticised and again, they were called upon to look at the sanctions that the UK could impose on hooligans, and more importantly, whether they were adequate.³⁴¹

UEFA threatened to ban England from further participation in Euro 2000 instigating the moral panic amongst the governing authorities in the UK that they must be seen to be doing something before it was too late. The absence of such a fundamental analysis of football-related violence and disorder has led to a reliance upon a media-

³³⁷ HC Deb (n 145) 477-505.

³³⁸ *ibid* 484.

³³⁹ HC Deb (n 149).

³⁴⁰ HC Deb (n 23) 166.

³⁴¹ *ibid* 168.

driven understanding of the issue, still couched in terms of 'football hooliganism' and 'the English disease'. Phrases and constructions that were applied to a very different form of football crowd disorder than exists in the present day, meaning that legislation that is created is formed on the basis of past behaviour, rather than carefully considering the current issues.³⁴² Such approaches have been criticised as they bypass traditional values of due-process and offer quick-fix, political responses where traditional values such as the presumption of innocence, proof beyond reasonable doubt and the proportionality of punishment are seen as little more than legal luxuries.³⁴³ The legitimisation of the rightward shift in politics in the 1970s and 80s, alongside the absence of evidence to introduce measures in the 1980s, laid the foundations for such Orders, of which the FODA and subsequent FBOs, is an example of 'using a sledgehammer to crack a nut'.³⁴⁴

3.7 2000 – Football Banning Orders: The Current Framework

The creation of the FBO by the FDA 2000 allows the imposition of an Order on two separate occasions. Firstly, a FBO on conviction of a football-related offence.³⁴⁵ Secondly, enabling the police to apply for the imposition of an Order on an individual suspected of being involved in football disorder, namely, a FBO on complaint'.³⁴⁶ FBOs can be imposed on those who have not been convicted of a criminal offence, but who are identified by the police as having 'caused or contributed' to violence or disorder in relation to a football match in the UK, or overseas. The purpose of this was to catch those organising and instigating football-related violence and disorder. This was a radical step in the legislative campaign to control football-related disorder, as again, there had been no evidence to suggest that these Orders were going to work. If the new FBOs were needed so urgently in light of the disorder witnessed in Belgium, then it is questionable as to why the 1999 Act was not utilised, or why the Home Secretary in May 2000 rejected calls for emergency legislation ahead of the Fédération

³⁴² Philip Cornwall, 'When Saturday Comes' (wsc.co.uk, 21 August 2004) <https://www.wsc.co.uk/index.php?option=com_content&view=article&id=1996/29&catid=> Accessed 12 October 2019.

³⁴³ Michael Ignatieff, *The Lesser Evil: Political Ethics in an Age of Terror* (Edinburgh University Press 2004).

³⁴⁴ HL Deb (n 112) 1286 per Lord Mountevans.

³⁴⁵ s 14A FSA 1989 inserted by s 1(1)(a) FDA 2000.

³⁴⁶ s 14B FSA 1989 inserted by s 1(1)(b) FDA 2000.

Internationale de Football Association (FIFA) Club World Championship.³⁴⁷ Interestingly, politicians highlighted that they did not think this new measure under the 2000 Act actually provided all the answers, but it was a declaration of intent on behalf of the Government.³⁴⁸ The panic regarding the disorder overseas and the impact this would have on the reputation of the country, the Government were focusing on one particular event, but not discussing the real issue, i.e. why is football-related violence and disorder still occurring. It can be said that politicians were in fact, leaping on a passing bandwagon and ignoring their wider responsibility to investigate and provide real solutions to problems of football disorder.³⁴⁹

The issue of football violence and disorder would not be able to be rectified exclusively through new legislation and there will be no single remedy to tackling the problems associated with it. What was needed was a series of measures, rather than a single piece of legislation that was created without sufficient evidence.³⁵⁰ The physical dislocation of incidents that occur away from football stadiums, such as planned disorder, raises several issues for the police and other authorities. It is extremely difficult to predict where unrest might occur, and where the boundary between 'football hooliganism' is drawn with other kinds of violence, such as that which 'occurs relatively routinely in and around pubs and nightclubs'.³⁵¹ The 2000 Act did nothing to address these wider societal problems, the legislation was created under a political agenda to stop all individuals involved in, or suspected of being involved in violence and disorder, from travelling overseas. Forgetting that planned football-related violence and disorder occurs domestically, too. The aforementioned metaphor of 'using a sledgehammer to crack a nut' is seemingly apparent with these measures and is further supported by the political impetus provided by the UK Football Policing Unit (UKFPU), which both provides funding for police areas to actively pursue s 14B FBOs on complaint and ensures that each area achieves a required number of Orders per season. This political drive to pursue FBOs marked a shift in the way that football hooliganism is managed; from the creation of FBOs based upon 'crowd management' and 'reaction', to an approach that has become more 'proactive' in pursuing all individuals, not just

³⁴⁷ HC Deb (n 340).

³⁴⁸ HL Deb 15 July 1999, vol 604, col 609.

³⁴⁹ HC Deb (n 340) 177.

³⁵⁰ *ibid* 190.

³⁵¹ Garland and Rowe (n 229).

those that plan such disorder, but those that commit sub-criminal or anti-social offences.³⁵²

Pressure from the media amplifying the need for the Government to react to the violence and disorder overseas meant that after the creation of FBOs. The '14-month practical and legal examination' of the Orders as alluded to in Chapter Two, showed there was 'compelling evidence' for maintaining the new preventative measures on the statute book, in particular, s 14B FBOs.³⁵³ This examination was undertaken by a Working Group chaired by Lord Bassam, which was set up in the wake of events during Euro 2000 and then throughout the introduction of the new FBOs. The aim was to examine the dynamics of football disorder; identify the measures necessary at all levels of the game to improve the image of English football.³⁵⁴ The focus of the report was not primarily focused on what was necessary; whether the legislative provisions introduced were effective and if they were working to reduce violence and disorder, but the state of football as a whole. A brief report was laid before Parliament on 20th June 2001 to provide an assessment of the impact of the FDA 2000 covering the period of 28th August 2000 to 11th June 2001.³⁵⁵ The report illustrated that spectator behaviour had improved and that governments across Europe had welcomed the 2000 Act as a demonstration of the commitment of the UK Government to tackle the menace of hooliganism before individuals could travel abroad.³⁵⁶ The Report merely provided tables of statistics based on the number of Orders served over one year. This was the Government's only 'evidence' that disorder had decreased, instead of carefully considering the logistics of such measures, and whether they could work over a longer period. The Government summarised the findings of the Report by stating that FBOs needed to remain on the statute books and without them, it would be seen as an 'encouragement to hooligans to resume the pattern of repeat offending overseas at a time when England is preparing to embark on its European Championship campaign in 2004'.³⁵⁷ For that reason, the operation of FBOs was to be monitored under a five-

³⁵² Matt Hopkins, 'The Football Banning Order: A Sheep in Wolf's Clothing' (*le.ac.uk*, 2012) <https://le.ac.uk/bitstream/2381/11075/4/The_Football_Banning_Order.pdf> Accessed 12 Sep 2019.

³⁵³ HL Deb (n 159).

³⁵⁴ Home Office Working Group on Football Disorder, *Report and Recommendations* (Her Majesty's Stationary Office 2001).

³⁵⁵ House of Commons (n 136).

³⁵⁶ HL Deb (n 159) 359.

³⁵⁷ *ibid* 363.

year sunset clause. The evidence produced by the Government to support a five-year continuance appeared to be extremely tenuous, it was noted that ‘in the first place, one has to reflect on the fact that the panic which led to the Bill being rushed through in the summer of 2000 was itself an extraordinary piece of tabloid exaggeration and so is this five-year sunset clause’.³⁵⁸

The two new measures quickly become essential components of the UK’s anti-hooligan strategy. Their original purpose was to catch the ringleaders of football-related violence and disorder. However, there is no mention of this limitation in the Act, now, any person who has caused or contributed is caught, not just those who have orchestrated and/or organised football-related violence and disorder. To lose such Orders has been noted as sending out an entirely negative message to the UK’s European partners, undermining the English and Welsh anti-hooligan strategy and weakening the power of the police and the courts to act against football hooligans.³⁵⁹

The fundamental question of whether there is a genuine need for them has not been questioned by the Government since 2006; a brief Government consultation on the issues regarding spectator behaviour was raised after disorder ensued in France throughout the 2006 World Cup tournament. This consultation did not involve any extensive evidence or research to highlight whether FBOs were needed if they were working in their current form and if planned bouts of violence and disorder were still occurring. The conclusions of the consultation did note that ‘a strong message needs to be sent out that the Act cannot be considered as a stand-alone measure, it will need a great deal of thoughtful action taken by many different bodies as well as by individuals with real responsibility in this area’.³⁶⁰ The consultation did not elaborate on who the different bodies are, or who the individuals were that are responsible for the specific areas dealing with football-related violence and disorder. With no actual clarification or evidence gathering to support the removal of the sunset clause, it can be perceived as an assumption that FBOs were working and should be kept on the statute books. Now, FBOs remain the only legislative measure used to prevent football violence and disorder, Despite ‘significant problems still occurring, with violence and

³⁵⁸ HL Deb (n 164) and House of Commons (n 136).

³⁵⁹ HL Deb (n 159).

³⁶⁰ HL Deb 21 January 2002 vol 630, col 1339.

disorder moving to the lower levels of the Football League and no real evidence to suggest the problems have been eradicated elsewhere.³⁶¹

The complacency of elected governments since the 2000 Act in assuming that this legislative framework is working, without thorough evidence or research, means there has been an emergence of a new generation of hooligans where football violence and disorder is more focused on the lower leagues; where there are fewer resources to control matches.³⁶² People are engaging in football disorder who perhaps were not around in the heyday of football violence 20-30 years ago. Therefore, the Orders are targeting a different section of society, not those that once planned violence and disorder before football matches and away from the stadiums. It demonstrates that these Orders are not acting as a deterrent. It is recognised by the football authorities and police as a problem that will never be eradicated, and that FBOs in themselves cannot change the culture among football hooligans.³⁶³ However, there needs to be a full reassessment of FBOs that considers their creation, use and monitoring, to highlight that they are no longer fit for purpose. It is, therefore, necessary to adopt measures that can be used against the new generation of football disorder. The thesis will argue throughout the remaining chapters that the creation of these Orders, particularly s 14B needs to be reconsidered due to several mitigating factors such as their legality, their use and their funding.³⁶⁴

3.8 Conclusion

The objective of this chapter is to *examine whether there was a sound evidential basis, as opposed to a politically motivated decision, for the introduction of FBOs. The chapter aimed to provide an appraisal of the policies, governmental reports and Parliamentary discussions regarding the inception and evolution of civil preventative measures that led to the creation of FBOs. In doing so, this would allow to draw out any deficiencies, particularly by referring to whether the law was defined appropriately in the first place, and whether the subsequent amendments and creation of the FBO*

³⁶¹ HC Deb (n 164).

³⁶² Rowan Bridge, 'Increase in Young Football Hooligans, Say Police' *BBC News* (London, 8 October 2010) < <https://www.bbc.co.uk/news/uk-11473191> > Accessed 13 October 2019.

³⁶³ HC Deb (n 164) 118.

³⁶⁴ See Chapter Four regarding the legality of FBOs and Chapter Five and the analysis of the FBO statistics and its methodological underpinning.

is fit for purpose. If there is no evidential basis, only a politically motivated desire to curb this deviant behaviour, then their amendment, reinforcement and, potentially, their removal, can only be justified on political grounds.

This chapter, and the archival information retrieved, provides, with great authority, that there was no evidential basis for the creation of FBOs and their predecessors. The documentation highlights that all governments that have attempted to deal with issues regarding football violence and disorder, have admitted to their being problems with the football-specific measures and legislation introduced, but with no evidence for their introduction. Any opposition to the measures, mostly by those that recognised the issues, was shut down and effectively ignored. Legislation that has passed, was a panicked response and rushed through Parliament without a sound evidence base or justification. This attitude towards football spectators and football-specific legislation illustrates that the foundations are built on political dogma. If there is no evidential proof in the creation of these regulations, such as FBOs, then it is likely that they will not work in preventing football-related violence and disorder.

The relationship between notions of deviance and fandom that is reflected in the various government publications and the subsequent legislative and discursive regulation of football spectatorship have created expectations and demands for action to ensure there can be no repetition.³⁶⁵ State actors have always operated in an evidential vacuum with issues regarding football-related violence and disorder, from the earliest Parliamentary discussions alluded to at the beginning of this chapter, to most recent Parliamentary debates. There has never been any attempt to collect any appropriate evidence to support the use of FBOs. After the introduction of FBOs, the Government stated that there would be an analysis of the use of the Orders after the first year of operation; this was merely a production of statistics that provided no real substance. There was no evidence of whether incidents of disorder had reduced, or whether the ringleaders had been caught using FBOs; a recurring theme throughout the introduction of all measures governing football spectators. It appears that football-related legislation, particularly FBOs, has led to a form of regulation that is neither dependent on, nor constrained by, the formal demands of scrutiny and legislative and

³⁶⁵ Daniel Fitzpatrick, 'The Politics of Football in an Era of Regulatory 'Crisis': The Last Bastion of 'Club-Regulation' (2015) 16(2) Soccer & Society 307.

legal frameworks.³⁶⁶ It is for that reason, that FBOs are not fit for purpose and need reform.

As this chapter has analysed the political construction of FBOs and the lack of evidence for their inception. It is then necessary to analyse their practical application, or the legality of FBOs using the findings from this chapter to demonstrate that FBOs are not fit for purpose. The next chapter will analyse and evaluate the legal interpretation of FBOs. The objective of this chapter is to demonstrate that the moral panic surrounding the introduction of the FSA 1989 and the FDA 2000 has created difficulty, and loopholes in the interpretation of the relevant sections of the legislation concerning the serving of FBOs. The chapter will discuss the logistics of both s 14A and s 14B FBOs with a focus on the offences that are classified as being football-related per Schedule One of the FSA. These offences are now far-reaching in terms of the original, football-related offences that focused heavily on the organisation and acts of serious crime and disorder. The chapter will then evaluate whether there were justifications for the extension of these offences to demonstrate that way FBOs are currently utilised is a different framework from what was originally envisaged, becoming more punitive. The chapter will conclude that because of the rushed construction of the FSA 1989, by using the rules of statutory interpretation, s 14A and s 14B in their current form, is disproportionate and unreasonable and cannot be fit for purpose.

³⁶⁶ Brick (n 25).

Chapter Four: Legal Interpretation of Football Banning Orders

4.1 Introduction

As illustrated in the previous chapter all parties involved in the regulation of football spectators have operated in an evidential vacuum. The political construction of FBOs and the lack of evidence for their inception has demonstrated that FBOs are not fit for purpose and need reform. It appears that football-related legislation, particularly FBOs, has led to a form of regulation that is neither dependent on, nor constrained by, the formal demands of scrutiny and legislative and legal frameworks. For that reason, this chapter will analyse and evaluate the legal interpretation of FBOs. The objective of this chapter is to demonstrate that the moral panic surrounding the introduction of the FSA 1989 and the FDA 2000 has created difficulty, and possible loopholes in the interpretation of the relevant sections of the legislation in relation to the serving of FBO. The chapter will demonstrate that the original purpose for such Orders, to catch those instigating football disorder, i.e., the ringleaders, is no longer the driving force behind its application and development. In doing so, particular attention needs to be paid to the wording of s 14A and s 14B of the FSA 1989, to highlight whether this allows for a broad amount of discretion applied when serving a FBO in court, and the use of the relevant sections by the police in applying for a FBO. The chapter will illustrate that there is no evidential basis for the widening of the key principles within these sections, therefore an exposition of the legality and interpretation of the statutory framework through reported cases needs to be highlighted to evaluate whether it enables the parliamentary aims of decreasing football disorder using FBOs. The evaluation of the cases will demonstrate the construction of the wording of s 14A and s 14B causes difficulty in interpreting the statute, leading to disproportionate outcomes and the unreasonable serving of FBOs. The type of and the extension of the conditions that can be attached to a FBO will be explored to demonstrate that they are not justified, as they have become a punitive, rather than a preventative measure. By exploring these factors in s 14A and s 14B, it will illustrate that FBOs are not fit for purpose in their current form.

Several key factors need to be dissected and analysed to highlight this unreasonableness and difficulty of the legal interpretation of FBOs. Firstly, this chapter will discuss the perception of FBOs. FBOs are described as preventative orders, however, it can be argued that their reach and impact are more punitive due to the way they have evolved. Throughout the chapter, the various elements that comprise the structure of both s 14A and s 14B FBOs will be evaluated to clarify whether the justifications for the extension of FBOs are legitimate, or whether FBOs have evolved into a different framework than was originally envisaged. By further incorporating a discussion regarding the logistics of both s 14A and s 14B FBOs, it will provide the basis for understanding their function and classification as a civil order. This will be broken into several elements, such as discussing the designation of football matches to serve FBOs. This will demonstrate that the interpretation of the classification of football matches is ambiguous and goes beyond the scope of regulated football matches from when the legislation was first created. Secondly, the chapter will discuss the problems regarding s 14A. The offences that are classified as being football-related per Schedule One of the FSA 1989 will be discussed to highlight that they are now far-reaching in terms of the anti-social behaviour that can be captured in comparison to the original, football-related offences that were first included in the 1989 Act. By discussing the varying offences now used, the chapter will also illustrate that in interpreting the legislation and serving FBOs to those convicted of football-related offences, the courts are inconsistent in their approach. The inconsistency regarding the interpretation of s 14 lays primarily with the construction of the statute and the lack of clarity regarding 'football-related'. Thirdly, the chapter will move on to the textual analysis and examination of the mechanism that is used by the police to secure a FBO on complaint under s 14B. This civil order is not without controversy, particularly in terms of its wide-ranging ability to secure a preventative order without a conviction. This chapter will analyse the logistics and interpretation of s 14B alongside who this Order is aimed at. It will address whether the Orders are being used to prevent those that are deemed as being a 'risk' from attending football matches, or if the Orders are being used in a manner that allows the police to capture individuals that would not ordinarily be classified as 'risk'. Identifying and evaluating the statutory interpretation of s 14A and s 14B will establish that in their current form, they are disproportionate and unreasonable, therefore, the package of measures cannot be fit for purpose.

4.2 Football Banning Orders: Preventative or Punitive?

The FSA 1989, as amended by the FODA 1999 and the FDA 2000, removed the formerly known Restriction Orders and Exclusion Orders held in the POA 1986 and now allows for the imposition of a FBO in two situations. Firstly, under s 14A of the FSA 1989 which provides an obligation of a magistrates' court or Crown Court to serve a FBO on a convicted person if two conditions are met; if both these conditions are met, the making of the Order is mandatory. The first condition under s 14A(1) stipulates that there must be a conviction of a relevant offence as listed in Schedule One of the FSA 1989. The second condition under s 14A(2) states that the judge must be satisfied that there are 'reasonable grounds to believe that making a banning order would help prevent violence or disorder at or in connection with any regulated football matches'. If the court is not satisfied as to the second condition, then it cannot impose a FBO and explanation must be given as to why they have chosen not to do so.³⁶⁷ Requiring a court to provide an explanation as to why they are not making an Order would suggest, as Parliament stipulated; 'requiring courts to make a presumption in favour of imposing an Order in all cases'.³⁶⁸ The FBO on conviction is the only civil preventative measure that, if the court is not satisfied with serving an Order, that they must in open court state that fact and give its reasons, meaning the court has no discretion in imposing the FBO.³⁶⁹ An explanation for this is that in fact, s 14A is a penalty fixed by law on those that are convicted of a football-related offence, like the mandatory life sentence for murder.³⁷⁰ The courts have acknowledged that there is no single criterion can be determinative of whether FBOs are a penalty or not.³⁷¹ This,

³⁶⁷ FSA 1989 s 14A(3).

³⁶⁸ HC Deb (n 145) 492.

³⁶⁹ See, Criminal Behaviour Orders - Anti-Social Behaviour, Crime and Policing Act 2014, s 22; Terrorism Prevention and Investigation Measures (TPIMs) - Terrorism Prevention and Investigation Measures Act 2011; Premises Closure Orders - Anti-Social Behaviour, Crime and Policing Act 2014, s 80; Gang Injunctions - Serious Crime Act 2015, s 51; Foreign Travel Orders - Anti-Social Behaviour, Crime and Policing Act 2014, s 185; Serious Crime Prevention Orders - Serious Crime Act 2007, s 1; Violent Offender Orders - Criminal Justice and Immigration Act 2008, s 98; Parenting Orders - Crime and Disorder Act 1998, s 8; Drinking Banning Orders - Magistrates' Courts (Drinking Banning Orders) Rules 2009.

³⁷⁰ James and Pearson (n 59).

³⁷¹ *Gough & Anor v Chief Constable of Derbyshire* [2002] EWCA Civ 351.

therefore, blurs the lines as to whether an individual served a FBO under s 14A is essentially being punished twice.

Secondly, the serving of the controversial FBO on complaint under s 14B of the FSA 1989. Two conditions also need to be met, and if both of these conditions are met, the making of the Order is mandatory. Section 14B(2) provides magistrates' with the power to impose FBOs following an application by the relevant Chief Constable where it is believed that 'the respondent has at any time caused or contributed to any violence or disorder in the United Kingdom or elsewhere'. The second condition under s 14B(4)(b) states that if 'the court is satisfied that there are reasonable grounds to believe that making a banning order would help to prevent violence or disorder at or in connection with any regulated football matches'. This Order stipulates that it is not necessary for an individual to have a charge for or conviction of, a criminal offence. When these civil orders were created, the legislature noted that a FBO needed to be connected in some way to football hooliganism and not just arbitrarily imposed.³⁷² However, what was not fully addressed was how to manage those who have not been the subject of football-related convictions but who have other convictions of violence.³⁷³ For that reason, individuals who have never been convicted of an offence of violence or disorder in connection with a football match can have an FBO imposed on them under s 14B. If they breach that Order, they commit an offence which must result in an FBO being imposed on them under s 14A. Again, the subject of the Order will not be that they have been found guilty of an offence of violence or disorder in connection to a football match but will be banned as though they have been.³⁷⁴ By having a civil order served that is based on no conviction, this is essentially turning the justice system on its head and presuming somebody is guilty until proven innocent; an individualised area of criminal law. Parliament noted that they must carefully think through the consequences of doing so, although s 14B of the FSA 1989 remains on the statute books and an over-used tool for anti-social behaviour.³⁷⁵ Neither s 14A nor s 14B has been discussed, debated, or amended since 2006 and the nature of their use has changed dramatically within the time that has elapsed since their introduction.

³⁷² *HL Deb 25 July 2000, vol 616, cols 299-368.*

³⁷³ *HC Deb (n 154) 174.*

³⁷⁴ *James and Pearson (n 59).*

³⁷⁵ *HC Deb (n 145) 498.*

In either situation, the Home Office, as well as Parliament, note that a FBO is a preventative measure designed to prohibit the individual subject to it, from attending any regulated football match anywhere in the UK and overseas for the duration of the Order. Although it is a civil application applied for by the prosecution at the end of a trial and is in addition to a sentence imposed in respect of the relevant offence if served a FBO under s 14A, a FBO appears to be an integral part of the sentencing procedure when dealing with football-related violence and disorder.³⁷⁶ The Orders are so closely related to sentencing that discussions naturally form part of the trial; the sentencing and the Order should actually be considered separately. The default position is that they must be imposed unless stated in open court there are reasons not to. As with all civil preventative orders, breach of an FBO's conditions is a criminal offence that can lead to a custodial sentence. There is no specific mention in the FSA 1989 or antecedent legislation about the procedure that should be followed when applying for a FBO. Therefore, it has been assumed by the courts that because the Order is imposed in addition to the normal sentence, it should follow the civil procedure.³⁷⁷

As the courts presume to follow the civil procedure when imposing a FBO, its aim is to be a preventative measure rather than punitive.³⁷⁸ As a FBO is held not to be a punishment,³⁷⁹ the courts have accepted that the 'serious consequences' of being the subject of a FBO, meaning the applicant must discharge a higher standard of proof, approaching that applicable in a criminal trial, than would normally be required in a civil application.³⁸⁰ As will be discussed throughout this chapter and after analysing in more depth the specific nature of s 14A & B, FBOs are no longer the same Orders as first created and are more of a punitive sanction served on football spectators. Therefore, the courts are now empowered to create a personalised criminal law for the respondent, by delegating wide rule-making discretion to the courts through the imposition of conditions contained in the FBO.³⁸¹ Thus, the effect of the imposition of

³⁷⁶ James and Pearson (n 59).

³⁷⁷ FSA 1989.

³⁷⁸ Home Office, *2010 to 2015 Government Policy: Crime Prevention* (Policy Paper, Home Office 2015).

³⁷⁹ *Gough* (n 372).

³⁸⁰ *ibid* 90.

³⁸¹ See, MJ Smith, 'Anti-social Behaviour Order: Whether Proceedings Civil or Criminal in Nature' (2003) *Criminal Law Review* 269, 271 and Liz Campbell, Andrew Ashworth and Mike Redmayne, *The Criminal Process* (5th edn, OUP 2019) 407.

a FBO is that the respondent owes duties to the state that are not owed by the general population.³⁸²

This particular type of Order, in light of the possibility of a custodial sentence as a result of a breach, can also be described as a 'hybrid order' or a 'two step provision'.³⁸³ FBOs are not considered by Parliament or the courts to be punishments and at all stages of the applications, the police and magistrates' are keen to avoid the phraseology of criminal litigation, such as 'prosecute,' 'punish' and 'guilty', although they are not always successful on this count.³⁸⁴ These types of Orders have been criticised for subverting the normal criminal process by criminalising the breach of the order rather than the original behaviour.³⁸⁵ This is most notable with FBOs where the punishment for the breach is usually greater than that for the original crime.³⁸⁶ A person guilty of a breach is liable on summary conviction to imprisonment for a term not exceeding six months.³⁸⁷ This is in stark contrast to some of the football-related offences such as, being drunk inside of the football stadium, possession of alcohol, throwing a missile, indecent or racist chanting and encroaching onto the football pitch that are subject to an administrative fine only.³⁸⁸ This invariably has several implications for the criminal process and for the rights of football spectators, as the evolution of the original FBO has grown into more of a punitive measure that is rarely utilised against those who orchestrate football-related violence, and goes far beyond what is necessary to prevent low-level football disorder.³⁸⁹ For that reason, it is questionable as to whether or not this particular civil procedure can continue to be

³⁸² James and Pearson (n 167).

³⁸³ See, Andrew Ashworth, 'Four Threats to the Presumption of Innocence' (2006) 10(4) International Journal of Evidence and Proof 241; R.A. Duff and Sarah Marshall, 'How offensive can you be?' in Andrew Von Hirsch and Andrew Simester (eds), *Incivilities: Regulating Offensive Behaviour* (Oxford: Hart Publishing 2006) Chapter 2; John Gardiner, Andrew Von Hirsch, ATH Smith, Andrew Ashworth, Martin Wasik, 'Clause I — The Hybrid Law from Hell?' (1998) 31 Criminal Justice Matters 25 and Helen Wright and Tracey Sagar, 'Out of Sight, Out of Mind' (2000) New Law Journal 1792.

³⁸⁴ James and Pearson (n 59).

³⁸⁵ *ibid.*

³⁸⁶ See, Simester and von Hirsch (n 384) Chapter 7; Andrew Ashworth and Lucia Zedner, 'Prevention Orders' in R.A. Duff and Sarah Marshall (eds), *The Boundaries of the Criminal Law* (Oxford University Press 2010) and Ashworth and Redmayne (n 382) Chapter 13.

³⁸⁷ s 14J(2) FSA 1989.

³⁸⁸ SCAA 1985, s 2(2) and s 2(1) and FOA 1991 s 2, s3 and s 4. Also see, Sentencing Council, 'Football-Related Offences Sentencing Guidelines' (sentencingcouncil.org, 24 April 2017)

<<https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/football-related-offences-revised-2017/>> Accessed 20 October 2019.

³⁸⁹ See, Ashworth and Redmayne (n 382) and James and Pearson (n 59).

justified in the light of the length and conditions that can be attached, as they are considerably different to those that were first introduced. FBOs no longer look like a purely preventive measure designed to stop the repetition of specifically alleged mischief that may be analogous to a civil injunction.³⁹⁰ Although technically a civil order, a FBO performs a criminal law function, is initiated and enforced by the police and supported by criminal law sanctions in the event of a breach. For that reason, FBOs are punitive, rather than preventative as first claimed.

What makes the FBO such an effective tool in preventing those banned from attending matches or leaving the country is its hybrid character.³⁹¹ FBOs belong to a broader family of legislative innovations that emerged in the UK in the late 1990s. The evolution of the FBO, however, stemmed from its predecessors, the Exclusion and Restriction Orders first introduced in the 1980s. The concept and functions of FBOs are the first hybrid order of its kind introduced in the UK. Subsequent civil orders such as the Anti-Social Behaviour Order (ASBO) and Criminal Behaviour Orders (CBO) which are also hybrid in nature, receive the same criticisms as FBOs. All hybrid orders have been introduced to tackle criminal and sub-criminal behaviour. The expansive interpretation of what is meant to be football-related violence and disorder, what behaviour can be deemed as football-related, the avoidance of due process protections, the extensive restrictions that respondents may face and the likely impact of its use on younger people, is something that is yet to be addressed fully in relation to any hybrid order.³⁹² These issues are all apparent when the courts serve a s 14A and s 14B FBO, and the hybrid nature has led to a series of legal problems. For example, what standard of proof should be used when deciding whether a FBO will help to prevent future football-related violence or disorder, should the courts follow a civil or criminal procedure when determining what evidence should be accepted, is the criminal conviction enough to deter an individual, or is the FBO mandatory, and, finally, how do the courts establish what is classified as football-related if an offence happened away from a football stadium and is not housed in Schedule One of the FSA 1989.

The targeting of football spectators involved in low-level public order and low levels of anti-social behaviour sits below the normal threshold of the criminal law. There is a

³⁹⁰ *R (McCann) v Crown Court at Manchester* [2001] 1 WLR 1084, 39.

³⁹¹ See, Kate Moss, *Security & Liberty* (Palgrave 2009) and Lucia Zedner, *Security* (Routledge 2009).

³⁹² Kevin Brown, 'Replacing the ASBO with the Injunction to Prevent Nuisance and Annoyance: A Plea for Legislative Scrutiny and Amendment' (2013) 8 Criminal Law Review 623.

possibility that the interpretation of such football-related behaviour contravenes the rule-of-law principles of certainty and fair warning, particularly, because of the conditions imposed that can be wide-ranging and disproportionate. The hybrid nature of the procedure treats the two elements, the imposition, and the breach, as entirely separate, when in fact they are not; defendants should be entitled to the same safeguards as in criminal proceedings. If a government is unsure as to whether or not they should legislate on a particular area, most notably in this instance, if there is a doubt about whether to take away people's liberties, their passports, their right to go abroad, or their ability to be detained or to walk free, then it is clear that the implementation, interpretation and process of using these Orders is clouded with uncertainty. Although the Government, police and other focus groups are keen to stress that the purpose of FBOs is preventative rather than punitive, they have conceded that those subject to FBOs experienced them as punitive and indeed their effectiveness in part depended on them being punitive. For a measure that is coined as being purely civil, many of the criticisms raised and the potential misuse of FBOs are centred around arguments regarding criminal law and remain largely unaddressed.

4.3 Section 14A and Section 14B

Though the law appears to be straightforward in terms of the provisions set out in the legal framework of the FSA 1989, several serious problems, both theoretical and practical, have arisen from the introduction of FBOs. These Orders have been described as 'non-controversial' since they will always follow a conviction or served on an individual who is deemed as a risk supporter.³⁹³ The original intention of the FBO framework was to identify and exclude hooligan 'ringleaders'.³⁹⁴ The ringleaders of football violence and disorder were difficult to capture, therefore, it was difficult to obtain convictions, particularly around offences of conspiracy. Individuals tended to avoid being the subject of the former Exclusion and Restriction Orders, for the simple reason that they were not committing the acts of violence or disorder, the disorder was spontaneous rather than organised, or they were simply better at avoiding the police.

³⁹³ HC Deb 17 July 2000, vol 354, col 156.

³⁹⁴ See, House of Commons, *The Football (Offences and Disorder) Bill* (Research Paper 99/41, House of Commons Library 1999) and comments of the Parliamentary Under-Secretary of State for the Home Department in House of Commons Standing Committee, *Football (Offences and Disorder) Bill* (HC 1998-99).

The newly created FBOs were seen as a way to bring those people within the ambit of the law, particularly as a FBO can be made after conviction in England and Wales, regardless of nationality or permanent residence.³⁹⁵ Nevertheless, it was highlighted by the House of Lords that the test in s 14A is met by over half the young white males who attend football matches overseas, though not nearly that number will be picked up by the relevant authorities; the individuals who are to be caught by the 1989 Act will be chosen arbitrarily by the police based on what they wish to do, usually under the remit of s 14B.³⁹⁶ The inability to catch the ringleaders has led to the police and courts relying on a series of generalisations based on wider characteristics of an individual. This indicates a failure by the police to understand football fan culture, which can in turn lead to the indiscriminate use of their powers against groups of otherwise orderly fans.³⁹⁷

In December 2012, the Draft Anti-Social Behaviour Bill was published following a Home Office consultation and White Paper on reforming the framework for dealing with anti-social behaviour.³⁹⁸ Neither s 14A nor s 14B FBOs was discussed in this White Paper, despite the Orders having the ability to capture an extensive variety of anti-social behaviour offences. It was noted that FBOs are aimed at a different type of behaviour, i.e., football-related disorder, and not anti-social behaviour.³⁹⁹ As will be discussed in more detail below, as well as Chapter Five, the majority of offences and arrests at football matches are low-level public order, or anti-social behaviour, for that reason, FBOs are being aimed at the wrong individuals. The landscape regarding football violence and disorder has inevitably changed over the last twenty years and the legislation has not been reviewed or amended to complement these changes. The wide-ranging discretion afforded to the judiciary in establishing the relevancy of a potential offence as being classified as 'football-related', is also extended to the exhaustive list of offences available to the judiciary in determining their relevancy. It

³⁹⁵ HC Deb 11 June 1999, vol 332, col 935.

³⁹⁶ HL Deb 26 July 2000, vol 616, col 479.

³⁹⁷ This contrasts with the Core Principles of impartiality and proportionality that underpin the Authorised Professional Practice Framework. See, College of Policing, 'Core Principles and Legislation' ([app.college.police.uk](http://www.app.college.police.uk), 2014)

<<http://www.app.college.police.uk/app-content/public-order/core-principles-and-legislation/>> Accessed 25 June 2019.

³⁹⁸ Home Office, *Putting Victims First: More Effective Responses to Anti-Social Behaviour* (Cm8367, 2012).

³⁹⁹ *ibid* A5.

appears that the ever-growing list of relevant offences, particularly the new additions which are low-level public order and those that can be described as anti-social behaviour, are likely to feature more prominently in the serving of FBOs under s 14A. Alongside this, the wide-ranging discretion that is afforded to the judiciary in determining whether the past behaviour of an individual is sufficient to prohibit an individual from attending regulated football matches under s 14B. behaviour that was not meant to be captured under the FBO regime, and individuals who are most likely not be ringleaders of serious football-related violence and disorder.

4.3.1 Standard of Proof

It is quite wrong for legislators to argue that it is increasingly justifiable to use the powers of the Executive to reassure the mass of people that individuals will be restricted from committing future wrongdoings. That easy and seductive argument has been used to justify many things, but Parliament's attitude, historically, has been that the individual should be given the benefit of the doubt until due process has demonstrated that he should not.⁴⁰⁰ If both conditions under s 14A and s 14B of the FSA 1989 are satisfied, the criminal standard of proof ought to apply, the burden will then be on the prosecution to prove both conditions beyond all reasonable doubt. Nevertheless, if those conditions cannot be satisfied, the civil burden of proof ought to apply, it is then the burden on the prosecution to prove on the balance of probabilities. Conversely, the FSA 1989 does not state whether or not an Order should be made on the balance of probabilities or beyond all reasonable doubt, therefore it is unreasonable not to have a criteria that can be used in order to define the process, especially when an Order does not follow conviction.⁴⁰¹ It has been noted that the civil standard of proof was seen as flexible and reflective of the consequences that follow if the case for a FBO was made out, although, in practice, 'it is hard to distinguish from the criminal standard'.⁴⁰² One clear consequence of this is that matters under a s 14B FBO, that might otherwise be dealt with as a criminal offence, may now be treated as a breach of the Order, and may even result in the imposition of a more severe sentence

⁴⁰⁰ HC Deb (n 396) 902.

⁴⁰¹ Rupert Myers, 'Football Banning Orders are Out of Control' *The Guardian* (London, 17 June 2010) <<http://www.theguardian.com/commentisfree/libertycentral/2010/jun/17/football-hooliganism-laws>> accessed 27 November 2019.

⁴⁰² *Gough and Smith v Chief Constable of Derbyshire* [2002] EWCA Civ 351 90.

than would have been possible for the alleged offence itself.⁴⁰³ This in itself is closely aligned to the criminal standard of proof.⁴⁰³ The two ingredients in s 14B(a) provide that the application can be made to a magistrates' court only if 'it is proved on the application that the condition in subsection (2) above is met. The condition of s 14B(2) is that the 'respondent has been guilty of violence or disorder'. The standard of proof required for s 14B(4) is that the court is satisfied that there are reasonable grounds to believe that making a Banning Order would help to prevent violence or disorder at or in connection with any regulated football matches and is practically indistinguishable from the criminal standard.⁴⁰⁴

There is a big danger that we will catch not just people who have caused trouble at home or abroad, but those against whom the evidence has never been tested to a satisfactory conclusion ... we do not think that we should move in one leap from people with convictions for football-related offences, past people with convictions for all violence-related offences, to people with no convictions at all.⁴⁰⁵

This raises genuine civil libertarian and human rights concerns as individuals should simply not be subjected to such serious restrictions on their freedoms without any evidence that the measures in question achieve their aims or are proportionate in doing so. Not only is this applicable for those individuals that receive Banning Orders on complaint, but this can equally apply to those Orders following conviction. A powerful basis for the objection of, in particular, a s 14B Banning Order on complaint, is that non-criminal proceedings should not be used to circumvent the criminal trial if the outcome can be a significant penalty, especially if it may entail a loss of liberty.⁴⁰⁶ For that reason, from a procedural and interpretative perspective, both s 14A and s 14B need to be revisited as they are not fit for purpose in their current form.

4.3.2 Regulated Football Matches

⁴⁰³ Simester and von Hirsch (n 384).

⁴⁰⁴ *Gough & Smith v Chief Constable of Derbyshire* [2001] EWHC Admin 554.

⁴⁰⁵ HC Deb (n 394) 172 per Anne Widdicombe MP.

⁴⁰⁶ See, *R v Braxton (No2)* [2005] 1 Cr App R (S) 167 for guidance on breach of an ASBO; Andreas von Hirsch, Anthony Bottoms, Elizabeth Burney and Per-Olof Wikstrom, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Hart Publishing 1999) and Simester & von Hirsch (n 384).

Football disorder, the FSA 1989 and most notably FBOs apply to what is termed in law as being assigned to a 'regulated' and 'designated' football match. To be served both a FBO on conviction and a FBO on complaint, there must always be 'reasonable grounds to believe that making a Banning Order would help prevent violence or disorder at or in connection with any regulated football matches'. A regulated football match for the purpose of using the FSA 1989 is set out in the Football Spectators (Prescription) Order 2004 and refers to matches in England and Wales consisting of any association football match in which:

One or both participating teams represents a club which is for the time being a member (whether a full or associate member) of the Football League, the Football Association Premier League, the Football Conference or the League of Wales, or represents a country or territory.⁴⁰⁷

It extends and prescribes to football matches outside England and Wales which are regulated football matches for the purpose of Part II of the 1989 Act; these are association football matches involving a national team appointed by the FA to represent England or the FA of Wales to represent Wales, or a team representing a club which is, at the time the match is played, a member of (whether full or associate member) of the Football League, Football Association Premier League, Football Conference or League of Wales.⁴⁰⁸

When the FSA 1989 and the formally known Restriction Orders were first introduced, the element signifying 'regulated football matches' only applied to those matches played in a football ground / stadium designated under the Safety at Sports Ground Act 1975.⁴⁰⁹ Now, this is not relevant and the term 'regulated football match' covers every basis of a football team representing England or Wales on an international basis, a team representing a club who is either a full or associate member of the respective football leagues in England, Scotland and Wales, and finally, a team representing a

⁴⁰⁷ Article 3(2) as amended by the Football Spectators (Prescription) (Amendment) Order 2006, the Football Spectators (Prescription) (Amendment) Order 2010 and the Football Spectators (Prescription) (Amendment) Order 2013.

⁴⁰⁸ Article 4 The Football Spectators (Prescription) Order 2004.

⁴⁰⁹ The Secretary of State may designate any sports ground which has accommodation for more than 10,000 spectators – 5,000 in the case of Premiership or Football League grounds in England and Wales. FSA 1989, s 1(2) 'Designated football match' means any such match of a description for the time being designated for the purposes of this Part by order made by the Secretary of State or a particular such match so designated.

club which is for the time being a member, whether a full or associate member of, or affiliated to, a national football association which is a member of FIFA.⁴¹⁰ The previous definitions of 'regulated matches' reflected the position prior to the Football Conference (now a three-division feeder league to the Football League) being expanded and refined to provide automatic promotion / relegation between its top division and the Football League. One consequence of this development was that individuals subject to FBOs, who associate themselves with clubs relegated to the Football Conference, were able to attend some matches in the Football Conference and minor cup competitions. Another was that offences committed in connection with these matches could not be classified as football-related, as they were not covered by Schedule One (as amended) by the FSA 1989, and the courts could not impose FBOs under s 14A for such offences. To signify a particular match as being 'regulated', it must now be prescribed by an Order made by the Secretary of State in the exercise of the powers conferred upon him by s 14(2) and s 19(1)&(2) of the FSA 1989.⁴¹¹ These powers are to ensure that the matches played are assigned to the preventative measures housed in the FSA 1989, meaning offences committed at any football match regardless of which league the match was associated, therefore, any individual can be subject to a FBO and subject to a breach of the respective FBO.

When the formally known Restriction and Exclusion Orders were first created, these Orders did not need to be applied to 'regulated matches'. All matches were 'designated', meaning 'any such match of a description for the time being designated by order made by the Secretary of State.'⁴¹² Now, the term 'designated' can be described as:

An association football match in which one or both of the participating teams represents a club which is for the time being a member (whether a full or associate member) of the Football League, the Football Association Premier

⁴¹⁰ These provisions also extend to a) a team representing any country or territory whose football association is for the time being a member of FIFA, where b) the match is part of a competition or tournament organised by, or under the authority of, FIFA or UEFA, and c) the competition or tournament is one in which a team is eligible to participate or has participated d) the match is part of a competition or tournament organised by, or under the authority of, FIFA or UEFA, and e) the competition or tournament is one in which a club is eligible to participate or has participated.

⁴¹¹ s 14(2) FSA 1989 states a 'regulated football match' means an association football match (whether in the United Kingdom or elsewhere) which is a prescribed match or a match of a prescribed description and s 19(1) & (2) FSA 1989 in relation to control periods before and after a 'regulated' football match.

⁴¹² s 14(2) FSA 1989 as it was created, and this section was in force until 2000 when Football Banning Orders came into force in their current form.

League or the Football Conference, or represents a club from outside England and Wales, or represents a country or territory; or registered with the Football League or the Football Association Premier League as the home ground of a club which is a member of the Football League or the Football Association Premier League at the time the match is played.⁴¹³

The term designated, therefore, extends to any football stadia that is being used where one of the football teams is a full or associate member of the English football leagues. The term 'representing a football club' is very unclear in respect of what is stipulated in the relevant legislation. There is no clear definition or subsequent commentary regarding what is meant by 'represent'. The Under 21s Premier League is increasingly popular, and some under 21 teams play in specific tournaments against football league opposition. Establishing how this can be interpreted using the rules of statutory interpretation, there are varying outcomes as to what 'represent' could mean.

Under the literal rule of statutory interpretation, the word of the statute is given its natural and ordinary meaning and applied without the court seeking to embellish the word or seek to make sense of the statute itself. Therefore, 'representing a club' would not apply to a football spectator watching an under 21 game. On observing the words of Article 3 of The Football Spectators (Prescription) Order 2004 for the purpose of defining 'regulated matches' for the application of a FBO, it would not apply to teams which are not part of the leagues mentioned. The under 21 leagues are not highlighted as being one of the leagues that are 'regulated'. Complimenting the literal rule, is the golden rule of statutory interpretation. This rule allows the court to depart from the normal or literal meaning of a word if it bears an absurd result, i.e., to bring common sense to the law to provide justice. The football-specific legislation is littered with inconsistencies, therefore, the court may feel as though they need to provide clarity and indeed state that for the purpose of stopping future violence and disorder at football matches, this includes any football match that represents a specific football club, so 'representing a club', could indeed refer to the under 21 team. In relation to the third rule of statutory interpretation, the mischief rule, this is applied where there is ambiguity in the statute – to suppress the mischief the Act is aimed at and advances the remedy. There is a strict criterion set out in *Heydon's Case* (1584) that states:

⁴¹³ The Football (Offences) Designation of Football Matches) Order 2004.

What was the common law before the making of the Act; what was the mischief and defect for which the common law did not provide; what remedy Parliament hath resolved and appointed to cure the disease of the Commonwealth; and finally, the true reason of the remedy.⁴¹⁴

Previously the legislation, not common law, as this did not apply, included all matches played at the home ground of a Club which is a member of one of the football leagues, but this was changed in 2004 to the Article 3 definition. It could be argued that this change in definition means that Parliament no longer intended for all games played in these grounds to be included, therefore, excluding the under 21 teams from its new definition. This can also be supported by the final rule of statutory interpretation, the purposive approach, which seeks to determine Parliament's intentions when passing an Act of Parliament. Under 21, or reserve teams of football clubs were in existence before 2004 when the new Order was created. Therefore, if Parliament intended to include all matches played by any team that represents a football club at any level, then this would have been stipulated in the legislation.

The likelihood is, that interpreting 'represent' alongside the purpose of a FBO, which is to prevent a fan from attending football stadiums and mixing with other home and away spectators, is that the courts will find in favour of an under 21 game falling within the term 'represent'. This can also be extended to women's football that is not included in the Article 3 definition, particularly the Women's FA Cup as it is affiliated to a particular football governing body by name. The change in 2004 regarding the definitions confuses the interpretation of s 14A and s 14B for the purpose of serving a FBO. It demonstrates that Parliament's intention may have changed, but the FSA 1989 and FBOs have not evolved alongside this, illustrating that they are not fit for purpose in their current form.

4.4 Problems with Section 14A: Relevant Offences

Most offences that are deemed to be football-related will be covered by Schedule One of the FSA 1989. Section 14A(1) stipulates that a person must be convicted of a 'relevant offence'. The exhaustive list of offences in Schedule One and the courts'

⁴¹⁴ EWHC Exch J36.

ability to declare any offence to be relevant for serving a FBO, leaves a large amount of discretion for judges to decide what can be classified as a 'relevant offence'. It raises the question as to what can be interpreted as being a 'relevant offence', particularly as any statute-specific guidance is absent as to how the court should decide on what can be relevant. The only statutory definition of a 'relevant offence' for serving a FBO is held in s 14(8) of the FSA 1989 which states, 'an offence to which Schedule One to this Act applies'. The definition of a relevant offence in the FSA 1989 is also different from, and narrower than, the definition that the police use for recording and arresting purposes.⁴¹⁵ The courts have also held back from providing any kind of definition, on the basis that Parliament had deliberately refrained from doing so. Therefore, the decision is one of fact for the trial judge.⁴¹⁶ The problem regarding the term 'relevant offence' is that the definition is wider than Schedule One which houses the relevant offences. Schedule One has been extended on numerous occasions to encourage the imposition of more Orders by moving away from the serious criminal offences that were once thought to be specific to football, to the more low-level public order offences.⁴¹⁷ The offences that are not included specifically in Schedule One are primarily those linked to being of anti-social behaviour, or offences whereby the courts deem the type of conduct that is prevalent only at association football matches. Therefore, the offences are not a range of criminal or public order offences, they are offences concerned only with the behaviour of football fans.⁴¹⁸ Applying the literal rule of statutory interpretation, it can be deemed to be inappropriate to ascribe any meaning to the phrase 'relevant offence' other than its ordinary meaning and reasonably apply that meaning in practice.⁴¹⁹ As Schedule One has been updated on numerous occasions, the purposive approach, which seeks to determine Parliament's intentions when passing the Act, would allow discretion to add sufficiently similar offences, but not listed, or which occur in the same context [a football match]. However, if Parliament had intended for anti-social behaviour to be classified as 'relevant' for the purpose of serving a FBO, then it ought to have been included in Schedule One when it was updated.

⁴¹⁵ HC Deb (n 140) 735.

⁴¹⁶ Tony Storey, 'When are Offences "Related to Football Matches"?' (2012) 176 Criminal Law and Justice Weekly 361.

⁴¹⁷ FODA 1999 s 3.

⁴¹⁸ HC Deb 20 April 1989, vol 151, cols 464-72.

⁴¹⁹ *DPP v Beaumont* [2008] EWHC 523 (Admin).

Once it is shown that the offence before the court is within Schedule One, it is unlikely that the court will not serve a FBO.⁴²⁰ The offences concerned are usually those which occurred when the accused was on his or her way to or from a match. In such cases, there may be room for doubt as to whether the offence concerned is relevant to football as highlighted above when they are not housed in Schedule One. Declaring an offence as relevant to football, there should be sufficient evidence to prove relevance to a particular football match and not just limiting incidents arising at or near a football stadium as being 'relevant' because of the proximity to the stadium. The evidence that can be used can range from holding match tickets, fanzines, programmes, football paraphernalia and the wearing of football strips. The courts have stated that it is a matter of judgment whether any of the offences are 'related to football matches'. It is possible for the alleged behaviour to include incidents some considerable distance away from the ground, where the offender is not even a supporter of either team playing.⁴²¹ Parliament has also not made it a condition of the imposition of a FBO that those involved in the offence, or those who committed the offence, were supporters of a particular team, meaning they could attribute the behaviour to an individual who is not a football fan.⁴²² This raises the question whether FBO are fit for purpose, as their original purpose was to target those individuals instigating premeditated football disorder, now, any individual can be caught by the provision 'relevant' and 'football-related'.

As there is an absence of a statutory definition of what constitutes being 'football-related', the courts' have sporadically relied on the term 'spark' to establish a football-related connection to serve a FBO. The courts' have noted that 'if a football-related 'spark' is present, then it likely to lead to the conclusion that the offence was related to football matches'.⁴²³ Nevertheless, in cases where the courts' have discussed this requirement, it has involved violent offences, not those that could be classified as anti-social behaviour, the 'spark' for offences of violence may sometimes be illusory, or minimal, or simply irrelevant.⁴²⁴ However, the courts' have illustrated that the fact that

⁴²⁰ *R v Allen* [2011] EWCA Crim 3076.

⁴²¹ *Doyle (n 15)*.

⁴²² *R v Elliott* [2007] EWCA Crim 1002.

⁴²³ *Doyle (n 15)*.

⁴²⁴ Robert Banks, *Banks on Sentence*, vol1 (Lexis Nexis 2012) 72.

the 'spark' for the violence is something which is not intrinsically football-related, does not of itself mean that the offence is not related to a football match.⁴²⁵ This is a precarious position to take concerning an individual whose violence may not be an aggravating factor of being football-related. This is particularly so given the 'relevant period' of 24 hours after a match in relation to violent offences. It is questionable whether a violent offence committed up to a day after the end of a football match should be considered to be sufficiently related to that match for a FBO to be imposed.⁴²⁶ The quality of evidence that is needed if an offence is spatially and temporally close to a football match, is easier to prove than if it occurs, for example, 23 hours after its conclusion elsewhere in the same city. The courts' do note the use of determining what can constitute the 'spark' is not taken as a substitute test to determine what is football-related, and should not be a prerequisite to creating a football-related offence.⁴²⁷ The statutory provisions related to FBOs have been 'amended many times and as a result, have reached a point or near incomprehensibility'.⁴²⁸ Therefore, using the term 'spark' to decide whether an offence is football-related must, in the long term, feed into an ineffective means of helping to reduce football-related violence. Anti-social behaviour and lower-level public order offences are the most common offences that are deemed 'football-related', and this is moving beyond the purpose of why FBOs were first introduced.⁴²⁹ There is no doubt that the cases of *Boggild* and *Doyle* are playing a leading role in terms of s 14A; they point out omissions and inaccuracies of the law. For that reason, it is difficult to see the courts not continuing to adopt the 'spark' approach as there are no statutory guidelines, and those that are available, are difficult to interpret, or so wide-ranging that it leaves the courts with too much discretion to decide. The ability to declare any offence as being relevant, and to state the wide-ranging offences available as being football-related, will be a continuing trend unless FBOs in their current form are revisited.

⁴²⁵ *Elliott* (n 423) 21.

⁴²⁶ See, Stefan Fafinski, 'Football Banning Orders' (2009) 73(2) *Journal of Criminal Law* 130 and *R v Arbery (Mark)* [2008] EWCA Crim 702. The FSA 1989 Schedule One, s 4(2)(a) - (b) 1989 states the relevant period of 24 hours to which the relevant offences apply.

⁴²⁷ *Storey* (n 417).

⁴²⁸ David Thomas, 'Sentencing Banning Orders – Football Spectators Act 1989 – Appeal by Prosecutor Against Refusal of Crown Court to Make Order' (2012) 1 *Criminal Law Review* 48.

⁴²⁹ See Football Banning Order and arrest statistics from the 2010-11 season to 2018-19 season – outlining the nature of offences – these offences are lower-level public order offences and anti-social behaviour such as alcohol offences, public disorder and pitch incursions.

4.4.1 Section 14A: Increase in Relevant Offences

Parliament originally wanted to introduce a mandatory punishment for anyone who was convicted of a football-related offence; those who are convicted and sent to prison would receive a longer punishment, and possibly a shorter time for those who are not imprisoned on conviction. The intention was to differentiate between the seriousness of crimes and the subsequent punishment that ensues following football-related violence and disorder.⁴³⁰ The discretion afforded to the judiciary in establishing the relevancy of an offence is also extended to the exhaustive list of possible offences available to the judiciary in determining their relevancy. The offences housed in Schedule One of the FSA 1989 includes, but is not limited to, entering a stadium when drunk or in possession of alcohol, throwing any objects at or towards the pitch, possessing fireworks, indecent or racist chanting and entering the pitch without lawful excuse, public order offences, criminal damage, offences against the person, pitch incursions and ticket touting.⁴³¹ Before the introduction of the FDA 2000, the Exclusion Order scheme stipulated that to be served an Order an individual must have been convicted of a relevant offence. The offences were not as extensive as they are today, and mainly covered possession of alcohol, fireworks, and some public order offences, it was noted that those offences ‘themselves are not classed as hooliganism, or football hooliganism, but are actually classed as assaults, criminal damage and offences against the person’ that are more likely to be related to those that organise and instigate serious disorder.⁴³² The focus of those relevant offences were around violent acts and not the lower-level public order offences witnessed today, as the ‘police were reluctant to deal with minor acts of hooliganism, and they did not wish to over-react to such incidents by charging such an offence with a disproportionately high maximum penalty’.⁴³³ Since the first iteration of Schedule One, s 5 of the POA 1986 has been included, targeting those individuals who harass, alarm or cause distress others. The issue now, is that those guilty of minor public order offences are being targeted, instead of using the POA to support the original purpose of the FBO scheme, in excluding the troublemakers and especially the ringleaders who instigate much of

⁴³⁰ HC Deb (n 23) 199.

⁴³¹ The offences are housed in the SCAA 1985; FOA1991; POA 1986; Offences Against the Person Act 1861; Criminal Justice and Public Order Act 1994 and Criminal Damage Act 1971.

⁴³² HL Deb (n 73).

⁴³³ Home Office (n 251).

the violence. The original offences housed in the POA 1986 which were poised by the Home Secretary, Douglas Hurd, as preventing and prosecuting those involved in such football-related behaviour, rather than those that may be involved in misdemeanours, have now turned on its head, shifting the original focus of FBOs.⁴³⁴

The distinction between meaningful and senseless misbehaviour is difficult to justify in with football spectators. The offences that were housed in the POA 1986 and subsequent legislation cover a wide variety of heterogeneous offences and other forms of misbehaviour.⁴³⁵ The offences that one can commit in relation to football were once centred round 'public order', because the legislation was not a palliative for crimes of dishonesty or for individual assaults.⁴³⁶ Nevertheless, the introduction of a schedule of offences that can be classified as being 'relevant', is actually a prolongation of the reliance of the police and the courts upon unspecified and, really, inchoate offences, as juries are often extremely reluctant to convict of such offences.⁴³⁷ It was noted that the lower-level of public order offences could actually be achieved through local preventative approaches, rather than statutory governance.⁴³⁸ With the introduction of Restriction Orders, the full schedule was updated to include a wide range of minor offences and not only those of violence.⁴³⁹ The extension of the offences that were re-housed in the FSA 1989 is sometimes described as being implemented to answer populist will, rather than to answer a real need.⁴⁴⁰ The creation of more football-related criminal offences will not solve the problem of hooliganism, instead, what it will do, is criminalise football supporters and place them at risk, making them more confused and concerned about the possibility of committing offences through no fault of their own, i.e. being in the wrong place at the wrong time. For that

⁴³⁴ HC Deb 13 January 1986, vol 89, col 798.

⁴³⁵ See, Eugene Trivizas, 'Sentencing the 'Football Hooligan' (1981) 21 British Journal of Criminology 349 and Eugene Trivizas, 'Offences and Offenders in Football Crowd Disorders' (1980) 23(1) British Journal of Criminology 276.

⁴³⁶ HC Deb (n 435) 840.

⁴³⁷ *ibid* 848.

⁴³⁸ HC Deb 16 February 1988, vol 127, col 541.

⁴³⁹ HL Deb 13 April 1989, vol 506, col 466.

⁴⁴⁰ Frostdick and Marsh (n 263) 125–37 and 170–2. Frostdick and Marsh mention in support of the prohibition of alcohol in stadiums (whose negative effect is exaggerated), the creation of specific football offences (already covered by the general legislation) and the banning orders (most of the disorder being due to 'unknown' hooligans). See Simon Gardiner, Roger Welch, Simon Boyes and Urvasi Naidoo, *Sports Law* (4th edn, Routledge 2012) 576; Ian Warren, *Football, Crowds and Cultures: Comparing English and Australian Law and Enforcement Trends* (Australian Society for Sports History 2003) 73 and Christopher Stoner, 'Controlling the Hooligans' (1998) 5(4) Sports Law Administration and Practice 11, 12 and Stott and Pearson (n 263) 339.

reason, it creates a greater burden on both the police and the courts to ensure that football spectators are 'behaving'.⁴⁴¹

With the creation of the Football Offences Act in 1991 (FOA 1991), the Government noted that the introduction of specific offences would be more of an effective deterrent.⁴⁴² Nevertheless, these specific offences only apply to incidents inside of the stadium, such as throwing of missiles, indecent or racist chanting and encroaching onto the pitch.⁴⁴³ The Home Affairs Select Committee had highlighted that troublemakers, standing in mass terracing, can easily move around and incite others to commit offences and cause trouble, however, the purpose of the preventative orders was to stop those committing offences outside and away from the stadium.⁴⁴⁴ Although the new offences housed in the FOA 1991 were needed for incidents inside of the stadium, it appears counterproductive in terms of what the Government were seeking to achieve through preventative measures to stop and deter football-related violence and disorder. For that reason, from 1992-1998 only 71 Restriction Orders had been served to individuals, demonstrating the ineffectiveness of the preventative system.⁴⁴⁵ Similarly, the FDA 2000, again, increased the array of 'relevant offences' for which the newly created FBOs applies, and this now includes conduct not immediately related to football, such as transit to and from the game. The vast array of offences now predominately covers anti-social or sub-criminal behaviour, moving away from the original introduction of football-specific offences that targeted the ringleaders. By giving the police extreme powers and not merely football-related hooligan offences, but football-related offences, it is easy to wonder where it will stop.⁴⁴⁶ Football-related offences for which FBOs are deemed appropriate are commonly linked to anti-social behaviour and public order offences and are usually seen in around 70% of cases.⁴⁴⁷ These offences usual include, but are not limited to, causing fear or, to provoke, immediate violence, intentionally causing harassment, alarm or distress and threatening or abusive words or behaviour.⁴⁴⁸ These lower-level public order offences also sit alongside a high percentage of alcohol offences, both of which are not focused

⁴⁴¹ HC Deb (n 127) 30.

⁴⁴² HL Deb 09 May 1991, vol 528, col 1273.

⁴⁴³ s 2-4 FOA 1991.

⁴⁴⁴ Home Affairs Select Committee, *Home Affairs – Third Report* (HC 1997-98, 1063).

⁴⁴⁵ HC Deb (n 140) 709.

⁴⁴⁶ *ibid* 717.

⁴⁴⁷ Ian Warren (n 441) 131.

⁴⁴⁸ s 4, 4A and 5 POA 1986.

on the violent offences that were established as being the focal point of introducing FBOs, Restriction and Exclusion Orders.

It has been noted that there should be a distinction drawn between violence arising directly from the football and violence or disorder carried out by those who follow football, and whether such behaviour would have occurred, despite the fact the individuals are football supporters.⁴⁴⁹ The scale of the disorder has to be considered, as well as the effect on the public; individual roles have to be looked at in the context of general disorder.⁴⁵⁰ The courts have stated that a public order offence under the POA 1986 which was committed during a period relevant to a football match was a 'relevant offence' for the purpose of the 1989 Act.⁴⁵¹ Therefore, even if a defendant is not a habitual offender at football matches does not make a FBO inappropriate, if the effect of the Order on other potential offenders may be to deter them from committing similar offences, then the court will issue an Order for anti-social behaviour.⁴⁵² Questions were asked in the creation of FBOs as to whether the law 'goes slightly too far' in terms of confusing crime and disorder at football matches, in proportion to crime and disorder in everyday life.⁴⁵³ If there is an increase in arrests for public order offences, it may be that it has nothing to do with a resurgence of football violence and disorder, but stems from the inability to deal with such problems and understanding the scope of the legislation.⁴⁵⁴ The wide-ranging offences now available at the discretion of the courts mean FBOs can be more widely imposed; this is not the original purpose of these preventative Orders. Therefore, the legislative framework needs to be revisited to determine the scope and need for FBOs in a society that has changed some twenty years after their introduction.

⁴⁴⁹ See, *R v Morgan* [2012] EWCA Crim 1390; *R v O'Keefe* [2003] EWCA Crim 2629 and *R v Mabee* [2007] EWCA Crim 3230.

⁴⁵⁰ *ibid Morgan*.

⁴⁵¹ *ibid O'Keefe*.

⁴⁵² See, David Thomas, 'Sentencing: Football Spectators Act 1989 – Banning Order made on Conviction for Offence' (2008) 7 Criminal Law Review 575 and *R (on the Application of White) v Blackfriars Crown Court* [2008] EWHC 510.

⁴⁵³ HC Deb (n 145) 501 and 520.

⁴⁵⁴ *ibid* 895.

4.5 Section 14B Football Banning Orders: A Step Too Far?

Section 14B Banning Orders on complaint are both radical and tough.⁴⁵⁵ An application for this Order must demonstrate that the respondent has been involved with violence or disorder, i.e., the respondent has engaged in some identifiable criminal conduct in the UK or elsewhere. FBOs on complaint are like the formally known ASBOs, in that they allow bans/constraints on individuals based on criminal law, but crucially do not require subjects to be guilty of a criminal offence. Individuals will not have been found guilty of a football-related offence but will be served a FBOs as though they have been. Before the introduction of s 14B FBOs, only individuals could be served a preventative order if there was a previous football-related conviction, the Government believed that they would be able to catch more people if the range of activity is extended to include people who have no convictions.⁴⁵⁶ Particularly the 'hooligans' who had travelled to the matches with the intention and ability to 'orchestrate' riots.⁴⁵⁷ The Government believed that they had to toughen up considerably on the football-specific preventative measures, as they have not been used by the courts as often as they might have been. The introduction of this type of Order meant the police would not just be targeting football hooligans, but any individual that may have been in the wrong place at the wrong time. This is apparent today when FBOs on complaint are being issued when football hooliganism is in decline. This suggests that they are now being imposed arbitrarily and disproportionately for sub-criminal and anti-social behaviour, and, therefore, are not fit for purpose in their current form.

Despite its original aim, s 14B is rarely used against the ringleaders or those that 'orchestrate riots'.⁴⁵⁸ There has been a significant expansion in the type of supporters against whom FBOs are sought, and a reduction in the seriousness of the behaviour triggering applications.⁴⁵⁹ This can lend itself to the Government's intention when the Orders were first introduced, that it is only in exceptional circumstances that s 14B

⁴⁵⁵ Home Office (n 24).

⁴⁵⁶ HC Deb (n 393) 170.

⁴⁵⁷ Clifford Stott and Geoff Pearson, 'Football Banning Orders, Proportionality and Public Order' (2006) 45(3) *Howard Journal of Criminal Justice* 241. The authors are extremely critical of this explanation for the disorder that occurred.

⁴⁵⁸ James and Pearson (n 59).

⁴⁵⁹ *ibid.*

Banning Orders should not be used.⁴⁶⁰ Conversely, this preventative Order was illustrated as not being designed to punish past misconduct, but to prevent the 'future evils of football hooliganism'.⁴⁶¹ The submission of first-hand and / or video evidence showing the respondent engaging in incidents of violence or disorder from the range of offences now available, or by adducing evidence of previous convictions for offences of violence, whether or not the incidents from which they arose were actually football-related, can now be used in an application for a s 14B Order. This broad range of powers that infer measures of comparable severity imposed on un-convicted persons that operate outside the national security field, also confers extensive powers on the courts and police.⁴⁶²

The arbitrariness of this Order 'gives far too much power to individual police officers and yet the Government hold that very feature of the Act as a virtue'.⁴⁶³ The very essence of the measure is too widely drawn, finding individuals without previous conviction and using a plethora of evidence that can be adduced in order to prohibit an individual from attending a football match, is a step too far.⁴⁶⁴ The urge to combat hooliganism has resulted in the adoption of harsh policy such as covert surveillance of oblivious persons who may have never been engaged in football-related offences in the past, to now overt operations.⁴⁶⁵ There are those individuals with previous convictions for violence, but no evidence of these being football-related, and those with clear evidence of engaging in violence and disorder, but who are not prosecuted. The common element is that these individuals are considered to be a risk or a threat. Therefore, pre-emptive action is taken, regardless of whether they are ringleaders of football-related violence and disorder. The involvement in irrelevant past incidents should not automatically lead to the presumption of future malfeasance. The principle of proportionality is raised in opposition to this measure, and, when balanced with the

⁴⁶⁰ HC Deb (n 393) 176.

⁴⁶¹ *Gough* (n 404) 3-5.

⁴⁶² David Anderson, *Control Orders in 2011: Final Report of the Independent Reviewer on the Prevention of Terrorism Act 2005* (Stationary Office 2012).

⁴⁶³ HL Deb (n 159) 373.

⁴⁶⁴ *ibid* 374.

⁴⁶⁵ Harry Stopes, 'Police 'Paid' to Seek Football Banning Orders' *Independent* (London, 17 August 2013)

<<https://www.independent.co.uk/news/uk/crime/police-paid-seek-football-banning-orders-8772746.html>> accessed 15 October 2019.

effectiveness of the Order, demonstrates that s 14B is far removed from its original purpose.

What is essential is that preventative measures themselves are proportionate to the threat, objective in their criteria, respectful of all applicable rights and, on each application, justified and relevant.⁴⁶⁶ The multiplication of these preventative Orders and the intention to protect not just specific individuals, but entire communities inevitably result in a very broad, and occasionally, excessive range of behaviour falling within their scope.⁴⁶⁷ As the determination of what constitutes anti-social behaviour becomes conditional on the subjective views of any given collective, this is particularly apparent with football-related offences. Likewise, with the formally known ASBOs, it would appear that their purpose is more to reassure the public that something is being done, than the actual prevention of the anti-social behaviour itself.⁴⁶⁸ In terms of a s 14B Banning Order, it is key to address whether the imposition of 'serious restraints of freedom' upon defendants with no conviction of a relevant offence, is, in fact, a proportionate response.⁴⁶⁹ Notably, the power to confiscate passports and impose other conditions such as being prevented from leaving the country, or even placed under house arrest for the duration of a particular match or tournament.⁴⁷⁰ The doctrine of proportionality is a flexible principle which is used in different contexts to protect different interests, and entails varying degrees of judicial scrutiny.⁴⁷¹ At its most basic level, the test has two branches; 'suitability', i.e. is the state response under scrutiny likely to achieve its objectives, and 'necessity', are the consequences justified in view of the importance of the objective pursued.⁴⁷² Using this and applying it to the newly created CBOs can help to clarify the situation in relation to FBOs and the doctrine of proportionality, particularly as it is contended that the Court of Appeal

⁴⁶⁶ Council of Europe, 'Report by Mr Alvaro Gil-Robles on his Visit to the United Kingdom 4th-12th November 2004' (Comm DH (2005) 6, 2005).

⁴⁶⁷ *ibid* 110.

⁴⁶⁸ *ibid* 111.

⁴⁶⁹ *Gough* (n 371) 90.

⁴⁷⁰ s 14E(3) and s 14G FSA 1989.

⁴⁷¹ Takis Tridimas, 'Proportionality in Community Law: Searching for the Appropriate Standard of Scrutiny' in Evelyn Ellis (ed), *The Principle of Proportionality in the Laws of Europe* (1999 Hart) 69.

⁴⁷² *ibid* 76.

in Gough, failed to properly apply the test of proportionality to these football specific measures.⁴⁷³

The test for a CBO, replaces the more stringent 'necessity' test that was utilised for serving ASBOs, and the test now used is comparable to that of a 'helpfulness' test as seen with FBOs, i.e. making an Order will help in preventing further offences.⁴⁷⁴ Despite the absent 'necessity' component, a court can still refuse to impose a CBO on the grounds it is disproportionate.⁴⁷⁵ Interestingly, this has very rarely been discussed in relation to FBOs, and more importantly, concerning s 14B Banning Orders. Nevertheless, in *Boggild* it was held that the defendant's pre-trial bail conditions were like the concept and conditions of a FBO, and on conviction, the judge refused to impose a FBO, instead banning the offenders from all matches except Everton home games. This was justified on the basis that as the offenders had complied with their bail conditions, they should be given a chance to go back to their football club's home stadium. Although this demonstrates that the court can carefully consider the merits of a case in respect of the conditions attached to a FBO, it was not discussed in terms of proportionality. Therefore, it is questionable as to whether the FBO, is proportionate, or whether a FBO with only select conditions is proportionate; banning an individual from all regulated football matches is the purpose of the Order but are all the other conditions a necessary and proportionate response.

In *Bank Mellat v Her Majesty's Treasury (No2)* [2013] the Supreme Court proposed four factors to establish proportionality:

(1) whether the objective of the relevant measure is sufficiently important to justify the limitation of a protected right, (2) whether the measure is rationally connected to the objective, (3) whether a less intrusive measure could have been used without unacceptably compromising the achievement of the objective, and (4) whether, balancing the severity of the measure's effects on the rights of the persons to whom it applies against the importance of the

⁴⁷³ Geoff Pearson, 'Qualifying for Europe? The Legitimacy of Football Banning Orders 'On Complaint' Under the Principle of Proportionality (2005) 3 Entertainment and Sports Law Journal 1.

⁴⁷⁴ Crown Prosecution Service, 'Criminal Behaviour Orders' ([cps.gov.uk](https://www.cps.gov.uk), 13 May 2020) <<https://www.cps.gov.uk/legal-guidance/criminal-behaviour-orders>> Accessed 19 October 2019.

⁴⁷⁵ *ibid.*

objective, to the extent that the measure will contribute to its achievement, the former outweighs the latter.⁴⁷⁶

Although this test was developed after the introduction of FBOs, it aids in demonstrating that if this had been applied to the creation of FBOs on complaint and the legislative framework as a whole, it is clear that the creation was not a proportionate response.⁴⁷⁷ Although Parliament did allude to the principle of proportionality by raising concerns that s 14B is a sledgehammer to crack a nut, and that it may be a disproportionate response to the mischief being created.⁴⁷⁸ It would be useful to use the *Bank Mellat* framework to test the current regime, or at least elements of it, to highlight whether s 14B is, in fact, a proportionate response to the issues regarding football-related violence and disorder. It is not consistent with the British tradition, nor is it appropriate or proportional to legislate to take from people without convictions, the right to travel.⁴⁷⁹ The lack of scrutiny and absence of evidence when creating the FBO framework, a Bill that spent two days being debated in the House of Commons, has created an unjustified leap with the consequences of the conditions that can be attached to FBOs. The legislation had no chance to be assessed externally, therefore, it is not acceptable or proportionate to introduce such a preventative measure on the 'basis of thin, arguable and marginal evidence'.⁴⁸⁰ Moving forward after the implementation of s 14B, the Government believed that these Orders were a tailored, proportionate and effective response to English football disorder abroad, and that they have undergone a thorough practical and legal examination in the 18 months from their inception.⁴⁸¹ The total number of s 14B FBOs that were issued in the 18 months after their inception saw 93 Orders being issued, and this was the only the evidence that the Government had to suggest that these Orders were a proportionate response.⁴⁸² The use of, and, interpretation of, s 14B is now completely different to when the Orders were first introduced.⁴⁸³ They have been criticised for infringing the fundamental rights of supporters who have not been convicted of any offence, and as such they are only justifiable under EU law and the

⁴⁷⁶ UKSC 39.

⁴⁷⁷ Pearson (n 474).

⁴⁷⁸ HC Deb (n 395) 889.

⁴⁷⁹ HC Deb (n 23) col 173.

⁴⁸⁰ HC Deb (n 405).

⁴⁸¹ HL Deb 21 January 2002, vol 630, col 1335.

⁴⁸² HL Deb (n 159) 361.

⁴⁸³ James and Pearson (n 59).

ECHR if they are proven to be a proportionate response to the problem.⁴⁸⁴ It is now appropriate to revisit FBOs and reassess the proportionality of the current regime in comparison to that which was originally enacted.

Interestingly, s 14B orders are resource intensive and intelligence conducted to aid in the production of evidence does not guarantee to provide a result.⁴⁸⁵ In terms of proportionality, not only from the individual subject to the Order but the actual logistics of the Order, it is questionable as to whether there is a genuine need for s 14B. The policing of football has continued to be funded by the Home Office for the cost of preparing applications for FBOs under s 14B, as there is no set amount of funding and only necessary and relevant costs are covered, the amount of funding provided fluctuates.⁴⁸⁶ Recently, there has been a large increase in funding away from the football stadium to reduce football disorder, however, the production of the annual statistics illustrate that football violence and disorder is was decreasing before the increase in funding.⁴⁸⁷ Therefore, it is unclear as to why the police would need increased funding to secure s 14B Banning Orders if such behaviour is no longer as prevalent. One possible suggestion could be that police tactics are driven by fiscal pragmatism rather than proper intelligence.⁴⁸⁸ Particularly as there is no evidence to support that FBOs work to reduce football-related disorder.⁴⁸⁹ Twenty years since their inception, the legislative framework, particularly s 14B needs to be revisited to determine whether it is proportionate and whether it is indeed, fit for purpose.

4.5.1 Section 14B: Risk Fans

⁴⁸⁴ Pearson (n 474).

⁴⁸⁵ Mark James and Geoff Pearson, 'Regulating Anti-Social Behaviour and Disorder Among Football Spectators' in Sarah Pickard (ed), *Anti-social Behaviour in Britain: Victorian and Contemporary Perspectives* (Palgrave MacMillan 2014) 299.

⁴⁸⁶ Home Office, 'Home Office Funding of Police Operations to Obtain Football Banning Orders' (*gov.uk*, 24 September 2017)

<<https://www.gov.uk/government/publications/home-office-funding-of-police-operations-to-obtain-football-banning-orders/home-office-funding-of-police-operations-to-obtain-football-banning-orders>> accessed 27 October 2017.

⁴⁸⁷ Figures obtained illustrate a considerable increase in policing costs of football matches away from the stadium. Found at, Andrew Dismore, 'Stop this Farce: Londoner's still Sougning up Millions to Police Football Matches' (*AndrewDismore.org*, 31 July 2017)

<<http://www.andrewdismore.org.uk/home/?s=football+police>> accessed 21 October 2017.

⁴⁸⁸ James and Pearson (n 486) 299.

⁴⁸⁹ Jacks (n 9) and Pearson (n 9).

When an application for a FBO on complaint is made, the evidence used can be centred around individuals that can be considered as a ‘risk supporter’; those that are vulnerable to cause or contribute to violence and disorder. A risk supporter was first defined by the European Union Council Resolution OJC/322 as ‘a person, known or not, who can be regarded as posing a possible risk to public order or antisocial behaviour, whether planned or spontaneous, at or in connection with a football event’.⁴⁹⁰ In reality, this means that any individual travelling in a large group to or from a football match, individuals singing football songs, or individuals gathering in pubs before or after a football match, can easily fall under this definition, despite not being directly involved in any football-related violence or disorder. Section 14B applications are often based on generalisations and assumptions about how a person will act because of their age and gender, how they dress, the songs they sing, the company they keep, and their alcohol consumption, rather than on intelligence of actual engagement in violence or disorder.⁴⁹¹ Football supporters rarely constitute a standardised group of people, with many subtle and distinctly nuanced sub-cultures on display simultaneously.⁴⁹² For that reason, the policing of football supporters as an homogenous group has the potential to infringe, disproportionately, the rights of ‘non-hooligan’ fans.⁴⁹³

The Association of Chief Police Officers (ACPO) stipulate that the ‘risk’ must be ‘quantifiable and dynamically assessed’.⁴⁹⁴ **Therefore, describing an individual or a group as ‘risk’ is not sufficient on its own, there must be a specific reference to the actual risk posed by individuals or groups, i.e., a supporter who has been involved with identifiably risk behaviour.** ACPO have compiled a ‘Risk Assessment Checklist’ that provides three specific categories, public order, public safety, and criminal activity that are then further subdivided to give a specific indication of the risk posed. Some of the factors that are highlighted within the checklist are supporters who are known to the police and pose a threat to rival supporters, spectator behaviour,

⁴⁹⁰ Adopted by the Association of Chief Police Officers in England and Wales.

⁴⁹¹ James and Pearson (n 59).

⁴⁹² See, King (n 282); Pearson (n 204) and Joel Rookwood, *Fan Perspectives on Football Hooliganism: Defining, Analysing and Responding to the British Phenomenon* (VDM Verlag 2009).

⁴⁹³ James and Pearson (n 59).

⁴⁹⁴ College of Policing, ‘Public Order: Policing Football’ (app.college.police.uk, 23 October 2013) <<https://www.app.college.police.uk/app-content/public-order/policing-football/>> Accessed 14 June 2016.

motivation and intention of the spectators, history of the spectators from a specific football team, and any circumstances that may impact the behaviour of the spectators. This template is used in the compilation of pre-match intelligence reports so that informed decisions can be made in the planning process before a football match.⁴⁹⁵ This demonstrates a changing emphasis on security and the pro-active management of risk and away from the more traditional criminal law response to wrongdoing.⁴⁹⁶

The inclusion of 'anti-social behaviour' means it is possible that any fan who engages in conduct that could be perceived as being rowdy at a football match, could then be deemed a risk supporter, even though they pose no risk of disorder or violence. Here, a potential problem arises when Football Intelligence Officers on the ground identify fans as risk supporters because they perceive they may engage in anti-social behaviour. When the FBO application is then made, 'anti-social behaviour' is the evidence in court that an individual should be served with a s 14B FBO to prevent them from engaging in football-related violence and disorder.⁴⁹⁷ The 'risk supporter' is being used as a means of determining police operational tactics and FBO applications but is given a different meaning for both. The broad and encompassing definition of a risk fan, therefore, underpins a policing approach concentrated on the identification, exclusion and control of 'risk' fans, primarily through the use of surveillance, intelligence gathering, coercion and s 14B FBOs.⁴⁹⁸ What s 14B actually does is have the potential to punish the serious, loyal spectators who attend home and away matches, those who may well unknowingly fraternise with 'risk fans', may offer them lifts, share train carriages with them, or speak to them in the pub, but will never be involved in football-related violence and disorder that the Act originally intended to capture. If an individual was to make a single mistake which allows the police to draw the inference that these 'risk' fans are acting together to encourage each other into further acts of violence and disorder, then it is the discretion of the courts to impose

⁴⁹⁵ Association of Chief Police Officers, 'Risk Assessment Checklist' (*college.police.uk*, 2011) <<http://library.college.police.uk/docs/APPref/Risk-Supporter-Checklist.pdf>> Accessed 12 Dec 2013.

⁴⁹⁶ See, David Garland, *The Culture of Control: Crime and Social Order in Contemporary Society* (University of Chicago Press 2002) and Zedner (n 391).

⁴⁹⁷ See, *Chief Constable of West Yorkshire v Nye*, unreported June 21, 2010, Leeds Magistrates' Court; *Chief Constable of Greater Manchester v Messer* (unreported) Manchester City Magistrates' Court 16 December 2012 and *Chief Constable of Greater Manchester v Oldland* (unreported) Manchester City Magistrates' Court 17 December 2012.

⁴⁹⁸ Stott, West and Radburn (n 170).

the limitations and conditions on these fans.⁴⁹⁹ Again, demonstrating whether the response is indeed proportionate to any risk that may be posed.

Within the UK, the task of identifying 'risk' fans is an assignment undertaken primarily by Football Intelligence Officers and Football 'spotters'. These specialist police officers, who are part of Football Intelligence Units within each police constabulary, focus on the fan groups of specific clubs within their force jurisdiction. The officers are usually deployed to monitor pubs, travel hubs and other places where fans will gather on a match day. The Metropolitan Police Service is currently the leading law enforcement agency for providing intelligence that has been acquired using Covert Human Intelligence Sources to the UKFPU. The UKFPU are then responsible for collating and disseminating information and intelligence on UK-based football risk groups back to the football clubs in England and Wales and their counterparts overseas. Football supporters are categorised as; A, a peaceful supporter, no risk of disorder; B, possible risk of disorder, particularly as a result of alcohol offences; C, violent supporters or organisers of football-related violence.⁵⁰⁰ Where an individual has been known to the Intelligence Officers and Spotters for a period of time and is perceived to be a 'risk', usually a category B or C, the police will most likely offer evidence of their 'profile' as part of an application for a s 14B Banning Order. Concerning the application, hindsight can be used a predictor for future risks; people's previous good behaviour is an unreliable guarantee about their future good behaviour.⁵⁰¹ Similarly, people's previous bad behaviour may have been a one-off and does not necessarily mean they will behave that way again.

The National Police Chief's Council has noted that risk fans are a group of individuals who wish to engage in disorder with other like-minded groups of supporters. These are usually from rival football clubs and that the risk element is how they tend to maintain contact with each other to arrange disorder. Many of the risk elements consume alcohol to excess and are known to be involved in the recreational use of drugs such as cocaine, with a tendency to be responsible for serious disorder, criminal

⁴⁹⁹ Myers (n 401).

⁴⁹⁹ Frosdick and Marsh (n 263).

⁵⁰⁰ Frosdick and Marsh (n 263).

⁵⁰¹ *ibid.*

damage, assaults and intimidation at football fixtures.⁵⁰² However, evidence that can be used when applying for a s 14B FBO can range from reports of the respondent being involved in a fight, to circumstantial evidence, such as the respondent being seen sitting with other suspected hooligans.⁵⁰³ For that reason, the latter evidence does not correspond with the description of a 'risk fan' as alluded to by the National Police Chief's Council. This, therefore, poses the question, are the police targeting the correct individuals, or is s 14B so widely drawn that it is no longer fit for purpose, particularly if football violence and disorder is decreasing and offences are more sub-criminal and anti-social.

The evidence compiled by the Football Intelligence Units is prepared in the form of a 'profile' of those individuals perceived to be a risk. The profiles contain the basic personal details of the respondent, and a log of all incidents of football-related violence or disorder with which the individual had some connection. This is usually a result of evidence gathered under section 60 of the Criminal Justice and Public Order Act 1994, although this specifically deals with serious violence and carrying offensive weapons, not anti-social behaviour. In order to log said incidents, it is noted that police tend to focus their attention on gathering intelligence in relation to football supporters that are labelled as 'casuals' or wear certain items of clothing.⁵⁰⁴ More fraught views claim that even shouting and chanting could suffice for disorder.⁵⁰⁵ In *Chief Constable of Greater Manchester v Davies* in the absence of sufficient evidence, just the retrospective opinion of an officer was enough.⁵⁰⁶ Even 'guilt by association' or 'presence and tacit support' has been used to could justify the imposition of a FBO.⁵⁰⁷ 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 that actually posed little threat.⁵⁰⁸ Therefore, there appears to be significant variation in practice of monitoring 'risk' fans,

⁵⁰² National Police Chief's Council, 'National Policing Guidelines on Charging for Police Services: FCC 2018/19 Annual Charging Amendments' (*npcc.police.uk*, Jan 2018) <<https://www.npcc.police.uk/2018%20FOI/NPCC%20Misc/032%2018%20January%202018%20CCC%20Papers%20Part%202.pdf>> Accessed 7 October 2019.

⁵⁰³ James and Pearson (n 59).

⁵⁰⁴ Hopkins (n 169).

⁵⁰⁵ John Beggs, George Thomas and Susanna Rickard, *Public Order: Law and Practice* (OUP 2012) 330.

⁵⁰⁶ Trafford Magistrates' Court, 16 February 2006.

⁵⁰⁷ See, *Chief Constable of Greater Manchester v Sutton*, Trafford Magistrates' Court, 13 February 2006; *Chief Constable of Greater Manchester v Clarke*, Trafford Magistrates' Court, 14 February 2006 and *Davies* (n 316).

⁵⁰⁸ Hopkins (n 169).

most notably, evidence suggests that s 14B Banning Orders had been imposed purely because supporters had been in the wrong place at the wrong time.⁵⁰⁹

To supplement s 14B Banning Orders, s 21 of the FSA 1989 empowers the police to detain an individual for up to four hours, six with the authorisation of an inspector, where a police officer has reasonable grounds for suspecting that a particular person has caused or contributed to any violence or disorder in the UK or elsewhere and believing that imposing a s 14B Order on that person will help to prevent violence or disorder at or in connection with any regulated matches. Sections 21A and 21B provide a different route to seeking a s 14B Banning Order during ‘control periods’ – that is the five-day period prior to an overseas match involving the England or Wales national team, or an English or Welsh football club. This power essentially enables police to trawl ports and airports in the immediate run-up to an international fixture to ensure that they have secured FBOs against all of those suspected of being involved with football-related disorder.⁵¹⁰ The purpose of the detention is to ‘enable the police to decide whether to issue a s 21B notice’.⁵¹¹ A s 21B notice requires the individual to appear before a magistrates’ court within 24 hours and, in the meantime, the individual is prevented from leaving England and Wales. The magistrates’ court will then treat the notice as an application for a s 14B Banning Order on complaint.

One year after the implementation of these provisions, only 63 Orders had been issued under s 21A and 21B, and 24 had been refused; around 40% were deemed unnecessary by the magistrates’ courts. Ministers questioned, after the twelve-month probationary period of the new legislation, that it is highly unlikely that any other criminal prosecution has such a high failure rate.⁵¹² Numerous concerns have been expressed about the means the police use to collect evidence and the reliability and efficacy of such evidence utilised for these notices.⁵¹³ The courts usually rely on such evidence which has many times proved to be highly contentious or of dubious value.⁵¹⁴ The police must have evidence and proof of the circumstances, they cannot simply have something mentioned in passing, it must be established. Most Ministers believed

⁵⁰⁹ See, Hopkins (n 169) and Hopkins and Treadwell (n 263).

⁵¹⁰ James and Pearson (n 59).

⁵¹¹ HL Deb (n 159) 358.

⁵¹² HC Deb (n 164).

⁵¹³ James (n 201) 228.

⁵¹⁴ Geoff Pearson, ‘A Cure Worse than the Disease? Reflections on Gough and Smith v Chief Constable of Derbyshire’ (2002) Entertainment and Sports Law Journal 98.

that the evidence must be established to the criminal standard of proof, however, the legislation and subsequent case law is silent on this matter.⁵¹⁵ When deciding to issue a FBO, the court, as well as knowing the history of previous activity, must be 'satisfied that there are reasonable grounds to believe that making a FBO would help to prevent violence or disorder at or in connection with any regulated football matches'. The combination of what is satisfactory evidence to establish reasonable grounds leaves it unclear what the balance of proof must be. The question posed by Parliament was whether a previous conviction alone is the only test, and the only evidence relevant to making a s 14B Banning Order, or whether there is a wider test to be used.⁵¹⁶

A specific test is yet to be established some twenty years later, and the police still 'cherry pick' the evidence to be used in support of a s 14B Banning Order application, despite the court acknowledging the danger of doing so.⁵¹⁷ Having a civil order served that is based on no conviction or 'cherry picked' evidence, the court is also entitled to take account of the effect of such an Order on persons other than the defendant. The fact that the defendant is not a habitual offender at football matches does not make a s 14B Banning Order inappropriate, if the effect of the Order on other potential offenders may be to deter them from committing similar offences.⁵¹⁸ Not only is this essentially turning the justice system on its head and presuming somebody is guilty until proven innocent, but it is also punishing an individual who has not been convicted of an offence, based on being a deterrent for others. It is well established that the courts should measure the criminality of acts not only by their objective but their subjective qualities as well as assessing punishment according to the true responsibility of the offender, i.e. the punishment must fit the crime.⁵¹⁹ Therefore, attention needs to be paid to the draconian powers imposed by s 14 and s 21 as this is 'hybrid legislation'.⁵²⁰ The statutory framework needs to be revisited to establish whether these specific preventative measures are fit for purpose some twenty years after their introduction.

⁵¹⁵ HC Deb (n 405).

⁵¹⁶ HC Deb (n 393) 169.

⁵¹⁷ *Newman v Commissioner of Police for the Metropolis* [2009] EWHC 1462 (Admin).

⁵¹⁸ *White* (n 452).

⁵¹⁹ Edward Meek, 'Should the Punishment Fit the Crime or the Criminal?' (1922) 8 American Bar Association Journal 4.

⁵²⁰ HL Deb (n 159) 381.

4.6 Conclusion

The purpose of this chapter was to analyse and evaluate the legal interpretation of FBOs to demonstrate the moral panic surrounding the introduction of the FSA 1989 and the FDA 2000 and in turn, how this has created difficulty in the interpretation of the relevant sections of the legislation concerning the serving of FBOs. The original purpose for such Orders, to catch those instigating football disorder, i.e., the ringleaders, is no longer the driving force behind its application and development. Instead, FBOs have evolved into a measure this can be disproportionality used against football spectators. When civil orders such as FBOs are allowed to develop over three decades to serve policing strategies instead of fulfilling their original aims, they can evolve into something that is significantly more restrictive and punitive than was originally provided for.⁵²¹ The objective of the chapter was to evaluate the structure and justification of both s 14 A and s 14B FBOs to determine whether they are a legitimate framework that is utilised to stop and deter football-related violence and disorder in England and Wales.

The chapter has illustrated that with every aspect of the legal structure of FBOs there are inherent issues. By building on the existing literature that has already analysed various aspects of FBOs, the chapter highlights what the law states and how it is applied. The ambiguity regarding the hybrid nature of a FBO is demonstrated through the length and conditions that can be attached to the Order, as they are considerably different to those that were first introduced. The nature of those conditions coupled with the types of disorder now captured are disproportionate to the initial justification for the introduction of FBOs. The use of FBOs against those involved in low-level public order offences is now more commonplace and is rarely used against those who orchestrate football-related violence; therefore, the Orders go far beyond what is necessary to prevent low-level football disorder. There is now a broader and more fluid interpretation of the 1989 Act as any anti-social behaviour can be captured, and one plausible reason for this is that in interpreting the legislation and serving FBOs to those convicted of football-related offences, the courts are inconsistent in their approach. The inconsistency regarding the interpretation of s 14 lays primarily with the

⁵²¹ James and Pearson (n 59).

construction of the statute and the lack of clarity regarding what behaviour can be classified as 'football-related'. Using the doctrinal methodology, examination and textual analysis of the statute has allowed the thesis to highlight how the changes made to FBOs from they were first implemented provide difficulty in their interpretation. This is particularly notable in relation to the designation of football matches for the purpose of serving FBOs. The interpretation of the classification of football matches is ambiguous and goes beyond the scope of regulated football matches from when the legislation was first created.

The controversial mechanism that is used by the police to secure a FBO on complaint under s 14B is wide-ranging in its ability to secure a preventative order without a conviction. The chapter has demonstrated that the Orders are not being used to prevent those that are deemed as being a 'risk' from attending football matches, instead, allowing the police to capture individuals that would not ordinarily be classified as 'risk'. This is an individual who is being served a punitive sanction and has not been convicted of an offence, purely on the basis that it may function as a deterrent for others. It is frankly a problem that the police cannot solve on their own and Parliament must look at revisiting the legislation to ensure it is fit for purpose.⁵²² The chapter has highlighted that a contributing factor to not reducing the levels of football-related violence and disorder is how the various amendments to the legislative framework cause confusion and difficulty in interpreting what is meant, or what Parliament's intention was. These amendments and the extension of the various football-related offences can be described as disproportionate and unreasonable, the threshold for when a FBO can be imposed should be raised substantially. By identifying and evaluating s 14A and s 14B in their current form, the inconsistencies highlighted in this chapter mean the Orders cannot be fit for purpose and must be revisited.

As this chapter has analysed the legal interpretation and the logistics of s 14A and s 14B FBOs to highlight that the Orders are being used in a manner that is different from when they were first introduced. It is then necessary to *examine how FBOs are monitored* to establish whether there is sufficient evidence to support that there is a need for FBOs to be used as a preventative measure. The Home Office produce annual statistics to provide trends of FBOs served and the number of arrests

⁵²² HC Deb (n 164) 118.

conducted each football season. The monitoring of FBOs is an external factor that is used to measure the effectiveness of this area of law and its data is used to inform government policy and policing strategies. As this chapter has highlighted the discrepancies with the statutory framework, the statistics will be observed, these are the only regularly published evidence by which the authorities measure whether the Orders are reducing football-related violence and disorder. A critical appraisal of their purpose and use needs to be used to assess whether FBOs are fit for purpose. To achieve this, the chapter will discuss the varying statistics with the types of offences committed, observe the number of FBOs being served and analyse the methodology underpinning the capturing of the data. Furthermore, the chapter will rely on the use of FOI requests to access the raw data in relation to football-related offences and arrests to uncover any anomalies between the information the police hold and the publicly available data such as the Home Office FBO statistics. The chapter will conclude that on observation of the FBO statistics and the information obtained by the number of FOI requests, the data is not sound and cannot be relied on as a means for monitoring the effectiveness of FBOs. As a result of the anomalies and ambiguity surrounding FBOs that have already been discussed throughout this thesis, the next chapter will demonstrate that there needs to be a better methodology underpinning the capturing of the data to present reliable findings in a way that aid the authorities in evaluating whether or not FBOs are indeed, fit for purpose.

Chapter Five: Football Banning Order & Arrest Statistics

5.1 Introduction

As discussed in the previous chapter, the original purpose for FBOs, to catch those instigating football disorder, i.e., the ringleaders, is no longer the driving force behind its application and development. Instead, FBOs have evolved into a measure this can be disproportionality used against football spectators. The previous chapter established through examination and textual analysis of the FSA 1989, that the various amendments made to the legislative framework provide difficulty and confusion in the interpretation of FBOs. Due to the hybrid nature of FBOs, the conditions that can be attached to an Order, the duration of an Order, the types of disorder that can now be captured, and that an Order can be served to an individual without a conviction, highlight that they are disproportionate to the initial justification for the introduction of FBOs. The inconsistencies illustrated throughout Chapter Four provides justification that FBOs cannot be fit for purpose in their current form and must be revisited. To establish why governments continue to use FBOs, it is necessary to examine how FBOs are monitored to establish whether there is sufficient evidence to support that there is a need for FBOs to be used as a preventative measure. The monitoring of FBOs is an external factor in the form of statistical information and it is used to measure the effectiveness of this area of law, and its data is used to inform government policy and policing strategies.

The monitoring of FBOs by the Home Office is used to inform the general public, inform government policy and operational decisions by the police, demonstrate the scale of football disorder, and aid the police and CPS activities in creating the reduction of

football violence and disorder.⁵²³ Yet, there is no evidence to support that FBOs work to reduce football-related disorder, despite the annual production of these statistics and Home Office funding to secure FBOs on complaint.⁵²⁴ The statistics provide the trends of FBOs served and the number of arrests each football season. The monitoring of FBOs is an external factor that is used to measure the effectiveness of this particular area of law, therefore, this chapter will demonstrate whether the observation of the statistical data as a **value of something of interest**, particularly how the statistical data is gathered and used as an influential factor to inform government policy and policing strategies.⁵²⁵ As the statistics are the only regularly published evidence by which the authorities measure whether or not the Orders are reducing football-related violence and disorder, a critical appraisal of their purpose needs to be utilised to test whether or not FBOs are fit for purpose.

To address the aim of the thesis, this chapter will firstly examine the content of the statistics. The statistics will be observed, rather than using a quantitative, time-series analysis to draw inferences. Traditionally, a statistical analysis will involve collecting, exploring and presenting large amounts of data to discover underlying patterns and trends.⁵²⁶ Using a time-series analysis is a systematic approach by which one goes about answering the mathematical and statistical questions posed by time correlations.⁵²⁷ In this instance, this would be the season-on-season comparison of the FBO and arrests statistics, however, as the chapter will demonstrate, the Home Office statistics are inherently unreliable, and that a time series analysis, or even a traditional statistical analysis, is not possible. Instead, the statistics will be used to provide context around the nature of the offences committed, the number of recorded FBOs that are served each football season and whether FBOs are being served to individuals that have been involved in violence or disorder. To understand the statistical data, the methodology used by the Home Office, the FBOA and police constabularies used to obtain the data must also be analysed. This will highlight any deficiencies and inconsistencies in the approach taken to collate the data that

⁵²³ See, UK Statistics Authority (n 8) and Home Office (n 46).

⁵²⁴ Jacks (n 9) and Pearson (n 9).

⁵²⁵ Home Office (n 46).

⁵²⁶ Zainudin Awang, *Research Methodology and Data Analysis* (2nd edn, UiTM Press 2012).

⁵²⁷ Robert Shumway and David Stoffer, *Time Series Analysis and its Applications* (Springer 2017).

subsequently impact the publication of the final FBO statistics at the end of each football season.

In doing so, this chapter will also focus on the use of gathering information through the method of FOI requests. Freedom of information requests are *sui generis* research tools, with the potential to produce data which does not easily fit into the existing classification of primary or secondary and qualitative or quantitative. By stretching these boundaries, FOI requests pose great potential in being able to address the aim of this thesis.⁵²⁸ As there are no specific mechanisms, or publications by the Home Office, police, or CPS other than the production of the annual statistics to assess the efficacy of FBO, the methodological underpinning of capturing the data must be analysed. Whilst the football-specific Home Office data has been increasingly opened and made available to the public; the data lacks variables or characteristics that are essential to understanding whether FBOs are fit for purpose. Therefore, as this is the only data available, this causes difficulty in establishing the efficacy of FBOs and whether any other relevant characteristics need to be explored to establish whether FBOs are fit for purpose in their current form.⁵²⁹

5.2 Overview of Football Banning Order Statistics

FBOs and the FBO statistics are principal factors of the Government's preventative strategy and the package of measures adopted to tackle football disorder.⁵³⁰ This package of measures includes football-specific policing tactics, governmental policy, legislative provisions and club/stadium bans that are available to help reduce violence and disorder. The statistics are compiled at the end of each football season with the information provided by the UKPFU. Previously, the football-related arrests and Banning Order statistics were prepared and published by Home Office policy officials, but in 2015, the responsibility of the publication process, including the preparation of the final accompanying data tables, was transferred to Home Office statisticians. The UKPFU collect data from the 43 police forces in England and Wales, alongside the

⁵²⁸ Savage and Hyde (n 51).

⁵²⁹ See, Stephen Machin, Oliver Marie and Sunčica Vujić, 'The Crime Reducing Effect of Education' (2011) 121 *The Economic Journal* 463 and Brian Bell, Laura Jaitman, and Stephen Machin, 'Crime Deterrence: Evidence from the London 2011 Riots' (2014) 12(576) *The Economic Journal* 480.

⁵³⁰ HC Deb 12th June 2013 vol 564, col 332W.

BTP, the courts and the CPS on the number of football-related arrests and collect further information on FBOs from the FBOA's records.⁵³¹ Football-related arrests are those to which Schedule One of the FSA 1989 (as amended) applies, and this includes football-specific offences such as encroaching onto the pitch and a range of generic criminal and public order offences committed in connection with a football match, or at any place within 24 hours either side of a football match. These statistics influence how the police and other authorities assess whether these preventative measures are an effective means for preventing football disorder.⁵³² Firstly, the statistics are used by national and local media to report the behaviour of football supporters. Secondly, the data informs governmental policy and operational decisions by the police to mitigate the risk of future football-related disorder. Thirdly, the statistics are seen as a resource for central and local government to demonstrate the activities of the police and the CPS regarding tackling the scale of football disorder.⁵³³ However, there is no evidence outside of the availability of the Home Office statistics to support that FBOs work to reduce football-related disorder.⁵³⁴

Before the introduction of FBOs in 2000 and the compilation of the statistics in their current form, the National Criminal Intelligence Service (NCIS) set up in 1992 collated the data in relation to football-related arrests, Exclusion and Restriction Orders. The primary function of NCIS was to gather and provide criminal intelligence to combat serious and organised crime. The football-specific section of NCIS was created as an independent body in 1989 alongside the introduction of the FSA 1989. However, later moved and became a part of NCIS when it was formed in 1992. NCIS used Football Disorder Logs compiled from the post-match reports submitted by Police Intelligence Officers and compiled from post-match reports recorded by Ground Safety Officers held in a private database by the Football Safety Officers Association to build their statistics. The NCIS, now the National Crime Agency (NCA), still deals with football violence using a specific database, despite the primary function of compiling statistics now rests with the Home Office statisticians. The NCA football section's database contains the details of persons involved or suspected of being involved in football-related disorder.

⁵³¹ Part of the UKFPU. Prior to the 2012-13 season the BTP released their own statistics.

⁵³² Home Office (n 24).

⁵³³ Home Office (n 46).

⁵³⁴ Jacks (n 9) and Pearson (n 9).

The UKPFU is accountable to the Home Office and ACPO, therefore, it is inevitable that their policies and strategies concerning football-related violence and disorder will be influenced by the production of the Home Office Statistics. Nonetheless, the statistics provide only the quantitative data that can be used to assess the severity of the problem; the difficulties arise when the numbers are used to try and demonstrate the severity of a social problem rather than merely to identify fluctuations in police, CPS and intelligence strategies implemented by the UKPFU and the NCA.⁵³⁵ The statistics are more of a reflection of policing operations than of the extent of football-related violence and disorder.⁵³⁶ Both the NCIS and the Home Office have acknowledged that the figures are an unreliable indicator of the extent of football violence and disorder.⁵³⁷ Therefore, it is necessary to explore whether or not these statistics should be used to inform governmental policy, policing strategies and the law relating to FBOs and in turn, this will demonstrate whether FBOs are fit for purpose in their current form.

5.3. The Statistics – What Do They Illustrate?

The statistics illustrate that the number of FBOs served to individuals is increasing in the lower levels of the Football League over a ten-year period, although they are decreasing in the higher levels of the Football League and the English Premier League.⁵³⁸ It is important to note that the 2019-20 season was postponed in March 2020 due to the Covid-19 pandemic, therefore, the data presented will be significantly lower for this football season. The Home Office statistics appear to demonstrate that there has been a fall in the overall arrest and FBO figures over a ten-year period, most notably a 25% decrease in the number of FBOs from 2015 and a 25% decrease in the number of new FBOs issued.⁵³⁹ The number of arrests across all football leagues since the 2000-01 season has decreased by 61%. Nevertheless, the statistics from the 2011-12 season to the 2019-20 season demonstrate that FBOs have increased

⁵³⁵ Pearson (n 473).

⁵³⁶ Chalmers and Frosdick (n 213) 82.

⁵³⁷ Steve Frosdick and Peter Marsh, *Football Hooliganism* (Routledge 2013) 78.

⁵³⁸ Home Office, 'Football-related Arrests and Banning Order Statistics, England and Wales: Season 2019 to 2020 Data Table (2020)' (*gov.uk*, 24 September 2020)

<<https://www.gov.uk/government/statistics/football-related-arrests-and-banning-orders-england-and-wales-2019-to-2020-season>> accessed 23 November 2020

⁵³⁹ *ibid.*

by 63% in League One, 18% in League Two and by 67% in the National League between the 2018-19 to 2019-20 season.

League	11/1 2	12/1 3	13/1 4	14/1 5	15/1 6	16/1 7	17/1 8	18/1 9	19/2 0
Total new FBOs	493	471	678	484	542	517	460	549	360
Premier League clubs	185	139	256	166	124	155	95	116	92
Championship clubs	169	124	148	121	150	171	165	199	75
League One clubs	52	90	120	70	134	100	61	98	85
League Two clubs	57	75	77	47	82	72	90	100	67
National League (National Division) clubs	28	33	66	65	27	12	41	15	25
Other clubs	2	10	11	15	25	7	8	21	16

Figure 1: Home Office Football Banning Order Statistical Data from 2019-20 Season⁵⁴⁰

A cause of this increase could be that there are more professional or larger football clubs are in the lower leagues, including the National League's, Northern and Southern Leagues. Clubs that have traditionally played in the Premier League or Championship have now found themselves in the lower leagues, and what comes with this move, are

⁵⁴⁰ ibid.

larger fan bases and larger groups of spectators attending matches. Within these larger fan groups, there are well-known football hooligan firms that were established in the 1960s, 70s and 80s and there is an increasing likelihood that these groups will meet on a more regular basis, old rivalries are ignited, or new rivalries are created.⁵⁴¹

Separate figures have also been compiled by police forces on the Premier League and English Football League which were given to the BBC, illustrate incidents of disorder, both inside and outside of football grounds is increasing.⁵⁴² Disorder inside football stadiums has risen by 45% from 2017, with overall incidents, cases of serious disorder and assaults on stewards also increasing.⁵⁴³ Before the restrictions placed on the football authorities due to the Covid-19 pandemic, in the 2018-19 season, there were incidents reported at 33% of 3,022 fixtures, and for the 2019-20 season, there were incidents reported at 36% of the 2,663 regulated fixtures.⁵⁴⁴ This suggests that there may have been an increase in incidents, in arrests and subsequently, FBOs, had the Covid-19 restrictions not been implemented. Though the arrest rates have decreased across the football leagues, the trends in the statistics demonstrate that the highest arrest rates have grown in the lower levels of the Football League, and the Championship having the most arrests per league for four consecutive seasons. Interestingly, there is starting to be an increase in the number of arrests in the Premier League. The fluctuation in the figures, mainly an increase in the number of FBOs, usually occurs before an international tournament such as the World Cup or European Championship. For example, in the 2013/14 football season, prior to the World Cup in the summer of 2014, there were 678 FBOs served, this is a 48% increase from the previous season. In the 2014/15 season, there was a notable dip as there was no planned international tournament in the summer of 2015, then what is observed, is a

⁵⁴¹ For example, well-known hooligan firms are attached to the following clubs: Blackpool FC – The Muckers; Bradford City FC – The Ointment; Coventry City – The Legion; Derby County – Derby Lunatic Fringe; Luton Town – The MIGs; Millwall – Bushwackers (previously F-Troop); Shrewsbury Town FC – English Border Front; Portsmouth – 6.57 Crew; and Sunderland AFC – Seaburn Casuals.

⁵⁴² Kopczyk (n 19)

⁵⁴³ Jack Pitt-Brooke, 'Football's Cocaine Problem; 'Strong Evidence' to Link Increase in Disorder at Games to Drug Use Says Top Police Officer' *Independent* (London, 13 March 2019).

<<https://www.independent.co.uk/sport/football/premier-league/football-cocaine-premier-league-jack-grealish-arsenal-man-united-a8819366.html>> Accessed 1 May 2019.

⁵⁴⁴ Richard Parry, 'Racist and Indecent Chanting Increases Despite 546 Football Matches Being Cancelled or Played Without Fans' *Evening Standard* (London, 24 September 2020) <<https://www.standard.co.uk/sport/football-racist-indecnt-chanting-increase-201920-season-despite-coronavirus-a4555241.html>> Accessed 20 November 2020).

12% increase in the number of FBOs served in the 2015/16 season ahead of the European Championships in the summer of 2016.

There is an apparent difference in these statistics provided by the Home Office and those statistics given to the BBC from the police constabularies. Worryingly, the annual production of the Home Office statistics includes the information from those constabularies, therefore, the data should be alike. It is therefore questionable as to whether the statistics is a reliable source to be used in assessing the effectiveness and use of FBOs each football season, due to the variance in the numerical statistics, something that is also apparent in the voice of senior police officers. The officers claim that the decrease in football-related incidents and subsequent FBOs is due to fewer officers being deployed to football matches, and the actual incidents of disorder are increasing.⁵⁴⁵ This demonstrates that official data may not be sufficient on its own to interpret the overall scale of football disorder and the serving of FBOs. With the statistics being a major influence in the resource allocation for the police and CPS activities, it is concerning that the activities of these public authorities are based on statistics that are not reliable. If the incidence of football disorder is much higher than is being reported, then this demonstrates that FBOs are not working, and something needs to change. Alternatively, it could illustrate that FBOs are working, but this cannot effectively be proven because of the problems and reliability of the statistics.

5.3.1 Capturing the Data: Methodological Problems

Throughout the season, football-related arrests and FBO data is collected and submitted to the UKFBU by police forces in England and Wales and the BTP. FBOs are submitted to the FBOA as the enforcing authority, by courts in England and Wales or the CPS. Following the court serving a FBO, it is required to notify the FBOA, who then administers FBO. Once all data has been received and collated by UKFPU, officials conduct a sense check and query any outliers or anomalies with the respective Dedicated Football Officer (DFO). The data is then supplied to Home Office statisticians by UKFPU. Following this, the data undergoes further scrutiny by Home Office statisticians, including validation and variance checks as part of their quality

⁵⁴⁵ Kopczyk (n 19). Chapter Six will discuss the use of club bans in place of FBOs.

assurance process, for example, to ensure that the number of FBOs issued in the 2019 to 2020 season does not exceed the total number of FBOs at the 1 August 2020. Data points which are still outliers or anomalies are sent to UKFPU for further investigation and where necessary, are followed up with the relevant DFO. Data is provided unrounded in the accompanying data tables of 'Football-related Arrests and Banning Orders, England and Wales' publications, this is to promote transparency and allow users to exploit the data further. However, caution should be taken when comparing slight differences between time periods as figures are not necessarily accurate to the last digit.⁵⁴⁶

Not only is there an issue with the figures not being 'accurate to the last digit', but it is also problematic to compare these figures on a season-to-season basis, as the start and end dates differ year-to-year. Although this may appear to be a small issue with how the data is presented, once added to the various other issues with the Home Office data, its cumulative impact demonstrates the lack of reliability of these statistics. Problems with differing end dates can also mean that there may have been some double counting in previous seasons; resulting in an erroneous number of events or occurrences which is higher than the true result. For example, the end dates for the 2010-11 to 2019-20 seasons are as follows; 29 November 2011; 9 November 2012; 20 September 2013; 3 September 2014; 8 September 2015; 1 August 2016; 7 August 2017; 1 August 2018, 1 August 2019, and 1 August 2020. When producers of statistics and data amend their methods, advance notice of the changes, along with an explanation of why the changes are being made should be provided to the public. A consistent time series should be produced, with back series provided where possible; users should be made aware of the nature and extent of the change.⁵⁴⁷ The producers need to be transparent about the methods used, giving the reasons for their

⁵⁴⁶ Unless specified within the notes for the table, percentages in the release are rounded to the nearest per cent using the round-half-away-from-zero method. For example, 23.5 per cent will be rounded to 24 per cent, and -23.5 per cent will be rounded to -24 per cent. Where data are rounded, they may not sum to the totals shown, or, in the case of percentages, to 100% because they have been rounded independently. See also, Home Office, Football-related Arrests and Banning Order Statistics, England and Wales: Season 2019 to 2020 Data Collection (2020)' (*gov.uk*, November 2020)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/920624/football-related-arrests-banning-orders-1920-hosb2720.pdf> accessed 11 January 2021.

⁵⁴⁷ UK Statistics Authority, 'Code of Practice for Statistics: Code Q2.5' (*statisticsauthority.gov.uk*, 2015) <<https://code.statisticsauthority.gov.uk/the-code/quality/q2-sound-methods/>> accessed 9 January 2021.

selection.⁵⁴⁸ Nevertheless, there was no indication, or pre-publication by the Home Office as to why they had chosen to decrease the timeframe for counting football-related arrests and FBOs.⁵⁴⁹ Without clear and transparent communication in relation to changes such as these, it is questionable as to how these statistics can be utilised to inform policy and demonstrate the scale of football-related violence and disorder.

The quality of the statistics and data, including their accuracy and reliability, coherence and comparability, and timeliness and punctuality, should be monitored and reported regularly. Statistics should be validated through comparison with other relevant statistics and data sources.⁵⁵⁰ The data used for these football-related statistics are an amalgamation of information from the BTP, police constabularies, DFOs, courts and the FBOA. The same data sources have been used since the creation of the annual statistical reports on football-related arrest and FBOs.⁵⁵¹ Nevertheless, the Home Office have introduced 'experimental statistics' into the 2018-19 annual report. Experimental statistics are meant to be a 'subset of newly developed or innovative official statistics undergoing evaluation ... to involve users and stakeholders in the assessment of their suitability and quality at an early stage'.⁵⁵² These newly created statistics include information obtained from partner organisations such as the FA and Kick It Out to demonstrate the number of football-related incidents that are occurring. This newly created section in the annual report is welcomed, as this may help to demonstrate the scale of the problem. Particularly, as the data that is periodically released for football is an unreliable indicator of the overall crime problem.⁵⁵³ However, the new figures that are presented **relate only to the number of football fixtures where an incident was reported to have occurred, and not the number of individual incidents**. Therefore, the Home Office data collection still cannot provide any indication about the scale of this problem; another small anomaly that is

⁵⁴⁸ *ibid* Code Q2.3.

⁵⁴⁹ Home Office, 'Football-related Arrests and Banning Order Statistics, England & Wales: Season 2012 to 2013 Data Collection (2013)' (*gov.uk*, November 2013) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/248740/Football_Arrest_BO_Statistics_2012-13.pdf> accessed 11 January 2021.

⁵⁵⁰ UK Statistics Authority (n 547) Code Q3.3.

⁵⁵¹ Excluding the BTP statistics that were introduced and combined with the overall statistics starting in the 2012-13 annual report.

⁵⁵² UK Statistics Authority, 'Code of Practice for Statistics' (*statisticsauthority.gov.uk*, 2015) <<https://code.statisticsauthority.gov.uk/wp-content/uploads/2018/02/Code-of-Practice-for-Statistics.pdf>> accessed 10 January 2021.

⁵⁵³ Frosdick and Marsh (n 263) 37.

cumulative to the wider issue regarding the lack of reliability of these statistics. The UKFPU and Home Office must ensure a more robust method of collecting data on football hooliganism involving FBOs, arrests and disorder incidents in the officially released data. The Home Office, or perhaps more specifically the UKFPU, is not actively mining data in relation to the number of FBOs, arrests and incidents and not applying any form of analysis to understand this data.⁵⁵⁴ The Home Office statistics do not go beyond mere simple analysis; that being, the season-on-season comparison of the annual statistics, although, contradictorily, they state that caution should be taken when comparing this data. The Home Office, the UKFPU and the FBOA are not searching the large stores of data to discover patterns and trends to predict outcomes, merely comparing unreliable data.

Another notable anomaly in the Home Office statistics is the attendance statistics. Again, this may appear to be a small issue, however, the attendance figures included in the Home Office data highlight the number of football-related arrests per 100,000 attendees by competition in England and Wales.⁵⁵⁵ Therefore, it is incredibly important that the attendance figures are correct. All attendance figures for the Home Office data for the 2019/20 season were obtained from Transfermarkt and the Entertainment and Sports Programming Network (ESPN), with attendance figures before 2019/20 being obtained from 'The Football Yearbook'. Transfermarkt is a German-based website that houses footballing information, such as scores, results, statistics, transfer news, fixtures, attendance figures and football-related rumours. The website is open to the public to register and subsequently post and change the statistics that are provided. The content is not checked by Transfermarkt before being placed on one or all of its sister websites and does not reflect the actual views of Transfermarkt as an organisation.⁵⁵⁶ Likewise, with ESPN and its Statistics and Information Group, this American multinational sports entertainment brand, highlights that it combines the best-in-the-industry data with advanced mathematics and statistical modelling to provide information regarding statistics, scores, results and attendance figures. The information that ESPN receive on attendance statistics will be those that are provided

⁵⁵⁴ Richard Hester and Nick Pamment, 'It's Become Fashionable': Practitioner Perspectives on Football Hooliganism Involving Young People' (2020) 22(4) International Journal of Police Science and Management 366.

⁵⁵⁵ Since the 2001-02 football season.

⁵⁵⁶ Transfermarkt, 'Terms of Use: 4.1' (*transfermarkt.com*, 2021)
<<https://www.transfermarkt.com/intern/anb>> accessed 22 January 2021.

by the individual club during, or just after the football match. Nevertheless, it has been revealed that the figure announced at matches, published in on-the-whistle match reports, and gathered on football websites such as ESPN are, in fact, wrong.⁵⁵⁷

Attendance figures are of importance to not only the Home Office data on football-related arrests and FBOs, but for the police and local councils in monitoring the crowds during and after a football match. The Safety of Sports Grounds Act 1975, s 2(3) states:

That conditions [on a football club] that records shall be kept of (i) attendance of spectators at the ground' is, by law, needed for the purpose of being issued a safety certificate. It is accepted that official attendance that is publicised on a match day is based on how many tickets are sold, rather than the number of people actually in the stadium.⁵⁵⁸

Therefore, football clubs are not breaking the law and going against what is stipulated in s 2(3) by doing this, as the purpose of s 2(3) is to know the number of people attending each game in advance to plan for the number of expected attendees. Conversely, what this means in terms of gathering data for the arrest statistics, is that the attendance figures are not accurate. Tickets sold do not always equate to the actual number of spectators in the stadium it is likely that season ticket holders will not attend, and complimentary and hospitality tickets are often not used. This means there should be more accurate data available to the Home Office when they are compiling their annual statistics on football-related incidents, arrests and FBOs. The authorities, including the Home Office, broadly accept there is sometimes a difference between publicised attendance figures and those retained by the football club after final counting, nevertheless, there are still issues regarding the accuracy of attendance counting in the lower leagues.⁵⁵⁹ This is evident in the fact that the majority of tickets

⁵⁵⁷ James Rodger, 'This is Why Football Attendance Figures are So Inaccurate' *Birmingham Mail* (Birmingham, 11 November 2016) <<https://www.birminghammail.co.uk/sport/football/football-news/football-attendance-figures-inaccurate-12160375>> accessed 28 January 2021.

⁵⁵⁸ Alistair Magowan, 'Football Club Attendances: Are Fans Getting the Full Picture?' *BBC News* (London, 12 September 2018) <<https://www.bbc.co.uk/sport/football/45158878>> accessed 23 January 2021. The BBC sent Freedom of Information requests to the relevant police forces and local councils for all 20 Premier League teams, asking whether they had figures for the actual number of people in the stadium for each game last season and the figures provided were different to the figures publicised by each football club on a weekly basis.

⁵⁵⁹ *ibid.*

are paid for in cash on the turnstile and the reliance is on each ticket-seller to precisely monitor the number of tickets sold. At a football stadium, this can equate to around 20-30 individuals logging attendance manually, and for that reason, the attendance statistics in the Home Office reports are not wholly reliable; more accurate data is needed to demonstrate the true scale of football-related violence and disorder and the serving of FBOs. The over-inflated attendance figures are not providing a true representation of the number of arrests that are occurring per 100,000 spectators.

5.3.2 Attendance v Disorder and Occurrence

The police have described a 'steady and worrying' increase in the type of football spectator behaviour seen in the 1970s and 80s, with football disorder starting to rise again across England and Wales.⁵⁶⁰ Over the 2017-18 and 2018-19 seasons, incidents were reported at more than 1,000 fixtures, and 'worryingly, this is said to be becoming the new normality'.⁵⁶¹ However, qualitative ethnographic studies into football supporters suggest that football-related violence and disorder is not as widespread as suggested by the police or media.⁵⁶² If there is an increase in the number of incidents, particularly if they are noted as being 'violent', this could be as a result of how some supporters are defined as 'risk'. As discussed in Chapter Four, to be identified as a 'risk supporter', the risk must be quantifiable and dynamically assessed. There must be a specific reference to the actual risk posed under one of three categories: public order, public safety and/or criminal activity. The broad and encompassing definition of a risk fan, now includes what would be regarded as sub-criminal, anti-social behaviour.⁵⁶³ Those areas were not included in the introduction of risk assessments, only individuals who are vulnerable to cause or contribute to violence, i.e., 'hooliganism'. Most football matches pass without violent behaviour occurring with many fans having never witnessed such incidents first-hand.⁵⁶⁴

⁵⁶⁰ Tom Ball, 'Rise of Football Hooliganism Sees Return to 1980s Violence' *The Times* (London, 20 August 2019) < <https://www.thetimes.co.uk/article/rise-of-football-hooliganism-sees-return-to-1980s-violence-bdk6xvcr>> accessed 27 January 2020.

⁵⁶¹ Sky Sports, 'Hate Crime and Banning Orders Rise at Football' *Sky News* (London, 19 September 2019) <<https://www.skysports.com/football/news/11095/11813798/hate-crime-and-banning-orders-at-football-rise>> accessed 3 August 2020.

⁵⁶² Gary Armstrong, *Football Hooligans: Knowing the Score* (Berg 1998) 312 and Pearson (n 204) 12.

⁵⁶³ Pearson (n 473).

⁵⁶⁴ Lucy Strang, Garrett Baker, Jack Pollard and Joanna Hofman, *Violent and Antisocial Behaviours at Football Events and Factors Associated with these Behaviours: A Rapid Evidence Assessment* (Rand

Therefore, if ‘risk behaviour’, or sub-criminal, anti-social behaviour is being logged as ‘violence and disorder’, there will be an inaccurate picture of the type and prevalence of football-related disorder in the Home Office statistics. The attendance statistics suggest that 48% of the entire population of England and Wales attended a football match in the 2018-19 season, with the majority of the attendance figures being gathered in the English football leagues.⁵⁶⁵ With such a large proportion of society attending football matches weekly, and the mixed messages with the level of violence and disorder, it is an issue that needs to be better understood and subsequently managed.

Season	Premier League	Championship	League One	League Two	National League	Total
2019/20	11,322,736	8,278,684	3,497,951	2,055,567	979,582	25,154,938
2018/19	14,511,485	11,104,802	4,792,139	2,461,703	1,088,081	33,958,210
2017/18	14,544,093	11,303,278	4,265,020	2,475,037	1,128,864	33,716,292
2016/17	13,605,946	11,105,919	4,385,538	2,623,082	1,033,864	32,754,349
2015/16	13,855,299	9,705,635	3,954,183	2,694,378	1,049,617	31,259,112
2014/15	13,746,844	9,834,157	3,879,150	2,574,253	1,023,239	31,057,643
2013/14	13,929,810	9,168,218	4,120,004	2,401,870	1,029,463	30,649,365
2012/13	13,650,012	9,656,222	3,484,290	2,422,904	1,040,932	30,254,360
2011/12	13,149,676	9,791,150	4,070,897	2,429,429	1,122,931	30,564,083
2010/11	13,405,128	9,597,186	4,150,619	2,305,959	1,121,159	30,580,051

Figure 2: Attendance Figures for English Football Leagues⁵⁶⁶

In the 1990s and early 2000s, it was alleged that individuals would avoid football matches due to fear of violence and disorder, with many large clubs building new

Corporation 2018) 3 and Michael Ostrowsky, ‘The Social Psychology of Alcohol Use and Violent Behaviour Among Sports Spectators’ (2014) 19(4) *Aggression and Violent Behaviour* 303.

⁵⁶⁵ Office of National Statistics, ‘Population Statistics: Population Estimates’ ([ons.gov.uk](https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates), 2020) <<https://www.ons.gov.uk/peoplepopulationandcommunity/populationandmigration/populationestimates>> Accessed 21 January 2021. As of February 2019, England population is 67.61 million and Wales 3.15 million.

⁵⁶⁶ See data collection from 11v11, ‘International Football History and Statistics’ (11v11.com) <www.11v11.com/> accessed 26 November 2020. Website is maintained by the Association of Football Statisticians. Also see, James Reade, [Football Attendance Over the Centuries](#) (University of Reading 2020) .

stadia, and extending or remodelling their existing infrastructure which resulted in a decline in attendances and revenues.⁵⁶⁷ Between 1990 and 2000 the collection of football-related statistics was not readily available in the same format as they are at the present day. Particularly, the comparing and contrasting of attendance v disorder/violence data. At this time, when attendances were low, came the introduction of football-related legislation and FBOs. Therefore, the necessity of the attendance data as a tool to assess levels of football violence and disorder is questionable if the current legislation was introduced at a time when attendance was not seen as a contributing factor. This data is not a true representation of the level of violence and disorder, as disorder or violence away from a football stadium is not included in an attendance figure, and it does not consider the number of arrests as a proportion of the clubs' fanbases. Football-related legislation was created at a time when attendances across England and Wales was low, attendances have been increasing in the Football League over the last decade and the Home Office statistics illustrate that attendance versus violence/disorder at football matches is decreasing. Conversely, the police and other authorities state that disorder, particularly that away from the football stadiums is increasing. Anecdotal evidence suggests that CCTV installation and improved spectator safety have reduced football hooliganism within and outside the parameters of football stadiums.⁵⁶⁸ With alcohol prohibition inside the stadium, this has increased the probability of incidents of violence and disorder outside of the stadium, such as city centres and train stations. Attributing this to a 'waterbed effect'; attempting to eliminate alcohol-related problems within the stadium will invariably cause those issues to pop up elsewhere.⁵⁶⁹ For that reason, these statistics do not highlight the overall representation of football violence and disorder in England and Wales.

The attendance figures are used together with information on the arrests carried out inside and outside of a football stadium. The statistics do not consider those arrests that have taken place away from the stadium, nor those that have occurred more than

⁵⁶⁷ Stephen Dobson and John Goddard, *The Economics of Football* (Cambridge University Press 2011).

⁵⁶⁸ Jan C van Ours, 'Common International Trends in Football Stadium Attendance' (2021) 16 *PLoS ONE* 3.

⁵⁶⁹ Dorian Schaap, Marteen Postma, Lisanne Jansen and Jochem Tolsma, 'Combating Hooliganism: An Evaluation of Measures to Combat Hooliganism with Longitudinal Registration Data' (2015) 21 *European Journal on Criminal Policy and Research* 83.

24 hours before or after a designated football match.⁵⁷⁰ Although the Home Office publications refer to the number of arrests made by the BTP, these arrests that will occur away from a football stadium are not included in the overall total for each football season. Although the BTP arrests are relatively low in comparison to the arrests made by the national police constabularies, including them would provide a better insight into where the majority of violence and disorder is occurring, particularly as the Home Office provide the attendance data in the form of a ratio, i.e. arrests per 100,000 spectators.⁵⁷¹ This demonstrates that the attendance data is not wholly necessary to establish and assess whether football violence and disorder is still an issue when incidents are still taking place away from a football stadium.

	10/11	11/12	12/13	13/14	14/15	15/16	16/17	17/18	18/19	19/20
Total Arrests (Including BTP)	N/A	N/A	2772	2598	2200	2244	1781	1663	1536	1203
BTP Arrests	N/A	N/A	316	325	327	349	143	121	155	114
Police Arrests	3,089	2,363	2,456	2,273	1,873	1,895	1,638	1,542	1,381	1,089
Premier League	1,191	814	722	596	580	431	389	288	304	328
Championship	676	495	621	561	538	470	455	530	421	286
League One	208	227	231	283	218	263	260	195	197	170
League Two	188	164	188	159	158	207	184	214	120	78
National League	72	70	160	94	76	61	33	39	34	43
Other	754	593	534	580	303	463	317	276	305	184

Figure 3: Arrest Figures for English Football Leagues⁵⁷²

⁵⁷⁰ FSA 1989 Schedule One, s 4(2)(1)(a)(i) and Schedule One, s 4(2)(1)(b)(i)-(ii) - in the case of a match which takes place on the day on which it is advertised to take place, the period - (i) beginning 24 hours before whichever is the earlier of the start of the match and the time at which it was advertised to start; and (ii) ending 24 hours after it ends; (b) in the case of a match which does not take place on the day on which it was advertised to take place, the period - (i) beginning 24 hours before the time at which it was advertised to start on that day; and (ii) ending 24 hours after that time.

⁵⁷¹ Home Office (n 546).

⁵⁷² *ibid.*

The vagueness of the arrest statistics is further illustrated in understanding the context of the arrests. The Home Office does not provide information of when the arrests took place. Therefore, one fixture could result in a large number of arrests and the remaining football fixtures for the football season could be low, for example, a local derby match between Sunderland and Newcastle. Although the statistics do illustrate the offences that have led to arrests, some of the specific types of offences are not specified. Across the publications of the football-related statistics, it is highlighted that public order offences constitute the majority of the overall arrest totals by offence; the Home Office's press release at the end of each football season focuses heavily on these 'public disorder' offences, however, there is no indication as to what these offences are. Several low-level public order offences can constitute the category of 'public disorder', namely, fear or provocation of violence, intentional or non-intentional harassment, alarm or distress, drunk and disorderly, public nuisance and breach of the peace.⁵⁷³ However, these offences are enshrined under the categories of 'Other' and 'Alcohol Offences' per the football-related offences. The rebranding of these offences as 'public disorder' as a way of making these offences seem like there is 'violence and disorder' taking place is potentially dangerous for football fans. The type of behaviour captured by s 4, 4A, 5 of the POA 1986 and public nuisance is usually, at worst, disorderly and more commonly merely anti-social. This is not the sort of behaviour that the original legislation sought to capture. By calling it 'public disorder' this creates an illusion that the behaviour is worse than it is. The offences under s 4, 4A and s 5 of the POA 1986 were not considered potential offences for serving a FBO when the legislation was first created. For that reason, if 'public disorder' were broken down into its constituent offences, with examples, then it is likely that most of this group of arrests would have to be removed from the statistics. Therefore, it is questionable as to what offences constitute as 'public disorder' and how, if they are classified as a 'public nuisance', or relatively low levels of disorder, they, as the highest percentage of the offences, are the evidence that is utilised as the basis for the ongoing use of FBOs and the monitoring of football violence.

⁵⁷³ s 4, 4A & 5 of the POA 1986 and s 91(1) Criminal Justice Act 1967. See also, common law offence of 'public nuisance' per *Attorney General v PYA Quarries* [1957] 1 All ER 894 and the common law offence of 'breach of the peace' per *R v Howell* [1982] QB 416.

Offence type	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15	2015 -16	2016 -17	2017 -18	2018 -19	2019 -20
Violent Disorder	332	273	554 (31)	356 (44)	294 (78)	369 (57)	337 (30)	303 (27)	260 (41)	285 (36)
Public Disorder	1,076	765	791 (214)	705 (213)	635 (174)	583 (210)	505 (82)	549 (68)	524 (77)	372 (36)
Throwing Missiles	64	53	62 (0)	57 (1)	52 (0)	59 (1)	91 (2)	125 (0)	113 (0)	72 (0)
Racist and Indecent Chanting	44	23	42 (0)	21 (0)	33 (0)	17 (0)	7 (1)	15 (0)	14 (0)	35 (0)
Pitch Incursion	240	177	155	174	179	188	204	191	158	86
Alcohol Offences/ Influence of Drugs	1,041	800	549 (61)	572 (59)	405 (63)	373 (71)	266 (27)	164 (24)	153 (33)	116 (31)
Ticket Touting	102	107	92 (1)	104 (0)	56 (1)	40 (0)	49 (0)	23 (0)	17 (1)	28 (0)
Possession of an Offensive Weapon	38	13	17 (3)	13 (1)	7 (1)	17 (0)	14 (0)	10 (0)	10 (0)	5 (0)
Possession of Pyrotechnics	8	32	76 (0)	188 (0)	120 (1)	141 (2)	111 (0)	96 (0)	82 (1)	60 (1)
Breach of FBO	74	58	58 (2)	42 (5)	43 (4)	36 (4)	19 (1)	21 (0)	20 (1)	15 (0)
Criminal Damage/Offences Against Property	70	62	60 (4)	41 (2)	49 (5)	72 (3)	35 (0)	45 (2)	30 (1)	15 (3)
Total Football- Related Arrests*	3089	2363	2456 (316)	2273 (325)	1873 (327)	1895 (348)	1638 (143)	1542 (121)	1381 (155)	1089 (114)

Figure 4: Football-related Offence Statistics⁵⁷⁴

*BTP figures in brackets

⁵⁷⁴ Home Office (n 546).

5.3.3 Offences Recorded

As already discussed, there is a lack of clarity regarding the type of offences that are used throughout the statistics, although the arrest data underpins the ongoing monitoring of football violence and disorder in England and Wales. The offences recorded, as highlighted in **Figure 4**, cover the more serious offences such as violent disorder and riot, to the minor offences such as encroaching onto the field playing field and being drunk whilst attending a football match.⁵⁷⁵ The statistics only provide the number of arrests that have occurred, there is no statistical data to illustrate whether an offence has been committed, led to a conviction or, subsequently, a FBO. There is no evidence to suggest that criminality occurred, demonstrating yet another issue with the Home Office statistics. The CPS note that where there is sufficient evidence, it would normally be preferable to charge one of the offences under more general legislation, as the football-specific offences housed in the SCAA 1985, the FOA 1991, and the Criminal Justice and Public Order Act 1994 are summary only and non-imprisonable, thereby limiting the court's sentencing powers. Although these offences do occur, it does raise the question as to why the Government introduced football-related offences to hinder violence and disorder if an individual cannot be criminally punished under the remit of the football-specific legislation noted above. Instead, the courts are advised to charge one of the offences under more general legislation whereby their powers are not as limited. For that reason, do those specific offences demonstrate the genuine issues regarding football violence and disorder, or do the issues lay elsewhere? Again, the offence statistics do not provide this clarification, therefore, it is arguable that the data and the way it is presented to the public is futile.

Ethnographic researchers believe that there is a selective recording of offences that these official statistics are based on.⁵⁷⁶ It raises questions as to the overall consistency in how, if at all, arrests are recorded, as some arrests are ignored, other fans given verbal warnings, and some just ejected from the stadium. Although the ethnographic research makes these suggestions, it is not illustrated how this links to the monitoring of football violence and disorder, namely the publishing of the Home Office statistics.

⁵⁷⁵ s 1 and 2 of the POA 1986; s 4 FOA 1991; and s 2(2) SCAA 1985.

⁵⁷⁶ See, Frostdick and Marsh (n 263); Jon Garland, Dominic Malcolm and Mike Rowe, *The Future of Football: Challenges for the Twenty-first Century* (Routledge 2000) and Pearson (n 204).

The offences of public disorder, which are a mixture of general legislation and common law provisions are, as stated by the National Police Chief's Council, minor offences. These offences rank as some of the lowest in terms of the seriousness, or gravity of an individual offence. Usually, these offences are dealt with by the use of an Out of Court disposal, not a FBO.⁵⁷⁷ Again, the Home Office Statistics do not illustrate how many of these Out of Court disposals, such as Adult Conditional Cautions or Community Resolutions have been applied to the offences of public disorder.⁵⁷⁸ Similarly, offences involving public disorder are deemed to be a precursor to, or part of, the commission of other offences.⁵⁷⁹ The statistics, again, do not distinguish between these offences and it is unknown as to whether or not one individual could be responsible for two or more of the offences listed, and if, a conviction arises, what the individual was convicted of, and if a FBO was served. As noted, public disorder is the most frequently occurring group of football-related offences. However, other offences, which could be the 'precursor' of public disorder have sat at a constant level over the last five to six years.

Offence type	2010 -11	2011 -12	2012 -13	2013 -14	2014 -15	2015 -16	2016 -17	2017 -18	2018 -19	2019 -20
Violent Disorder	332	273	554 (31)	356 (44)	294 (78)	369 (57)	337 (30)	303 (27)	260 (41)	285 (36)
Public Disorder	1,076	765	791 (214)	705 (213)	635 (174)	583 (210)	505 (82)	549 (68)	524 (77)	372 (36)
Alcohol Offences/Driving under Influence of Drugs	1,041	800	549 (61)	572 (59)	405 (63)	373 (71)	266 (27)	164 (24)	153 (33)	116 (31)

⁵⁷⁷ National Police Chiefs' Council, 'Gravity Matrix' ([npcc.police.uk](https://www.npcc.police.uk), Dec 2019) <<https://www.npcc.police.uk/2019%20FOI/061%2019%20Gravity%20Matrix.pdf>> accessed 12 March 2021.

⁵⁷⁸ A Conditional Caution requires an offender to comply with conditions, as an alternative to prosecution per Criminal Justice Act 2003 s 22. A Community Resolution is an informal non-statutory disposal used for dealing with less serious crime and anti-social behaviour where the offender accepts responsibility.

⁵⁷⁹ Crown Prosecution Service, 'Public Order Offences Incorporating the Charging Standard: Legal Guidance' ([cps.gov.uk](https://www.cps.gov.uk), 23 September 2019) <<https://www.cps.gov.uk/legal-guidance/public-order-offences-incorporating-charging-standard>> accessed 1 March 2021.

Possession of Pyrotechnics	8	32	76 (0)	188 (0)	120 (1)	141 (2)	111 (0)	96 (0)	82 (1)	60 (1)
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Figure 5: Football Offence Statistics⁵⁸⁰

*BTP figures in brackets

One notable example is the use or possession of pyrotechnics. This offence is perceived as an aggravating factor to be taken into account in the presentation of a case of public disorder, and is governed by section 2A of the SCAA 1985.⁵⁸¹ This specific football-related offence was introduced as it was recognised that there was a misuse of pyrotechnic articles in crowded football stadia in the 1980s which posed a specific public order risk.⁵⁸² Nevertheless, the use of flares and smoke bombs is more commonly associated with overseas football stadiums, with the use of pyrotechnics being a relatively new phenomenon in English football, despite it being on the statute books since 1986. As highlighted in **Figure 5**, police had reported an increase of 150% in the use of pyrotechnics in 2013, however, the sharp rise can attribute itself to the fact that the number of incidents had previously been so low.⁵⁸³ The Home Office statistics demonstrate that the number of arrests for misuse of pyrotechnics is primarily by spectators watching English Football League matches. Again, the statistics do not correlate with the number of arrests that have subsequently led to FBOS, or the number of actual incidents that have taken place involving pyrotechnics. The English Football League (EFL) clubs have noted that many stadium bans have already been issued, including an increase in club bans for away supporters because of the issue.⁵⁸⁴ This data is not relatively available, therefore, the Home Office statistics do not provide a comprehensive overview of whether this offence is an ongoing issue, or whether the English Football League Club Charter on Pyrotechnics has helped resolve their

⁵⁸⁰ Home Office (n 546).

⁵⁸¹ s 2A inserted into the POA 1986 s 40(1). Also see, Crown Prosecution Service (n 579).

⁵⁸² HL Deb 9 Nov 2016, vol 776, col 1170.

⁵⁸³ See, BBC Sport, 'Premier League: Banning Orders or Prison Warning for Fans with Flares' BBC Sport (London, 31 October 2013) <<https://www.bbc.co.uk/sport/football/24754903>> accessed 1 March 2021; Ball (n 56) and David Ornstein, 'Fears Someone Will Die Due to Rising Use of Flares in Stadiums' BBC News (London, 2 December 2013)

< <https://www.bbc.co.uk/sport/football/25183301>> accessed 25 February 2021.

⁵⁸⁴ Grimsby Town Football Club, 'Town Reaffirm Commitment to EFL's Club Charter on Pyrotechnics' (*Grimsby-townfc.co.uk*, 4 November 2019)

<<https://www.grimsby-townfc.co.uk/news/2019/november/pyrotechnics-reminder/>> accessed 1 March 2020.

misuse.⁵⁸⁵ Perhaps, it was an issue that, although serious, was a phase whereby the football authorities were seen to be doing something, as the media hysteria regarding the use of pyrotechnics has been absent since around 2017.

Observing numerical data such as the arrest and FBO statistics that are released by the Home Office, which is misleading – purposeful or not - will inevitably mean that the receiver will believe something, even if he or she does not have the full data picture. On observation of the Home Office statistics, one may perceive that either a) football-related violence and disorder are still apparent, or b) that football-related violence and disorder has decreased. However, the data does not provide enough information to arrive at either conclusion, as there is no context provided, concerning incidents that take place that does not lead to an arrest or a FBO. As noted by Sawka:

Persuasive powers of quantitative data, especially the use of statistical analysis, to bolster weak, or perhaps, invalid arguments ... the implication being that numbers can be manipulated to lend credence to virtually any argument and are a tool ... to attempt to justify arguments not arrived at by valid reasoning but offered instead to promote a particular agenda.⁵⁸⁶

The Home Office press release that presents the official statistics on football-related arrests and FBOs displays a fragmented data set; a blurred overview of the arrest and FBO numbers that do not provide full context. 'The criminal statistics as currently collated do not differentiate between offence and type of offender and/or venue', therefore, are not reliable.⁵⁸⁷ Although the statistics now include experimental data on reported incidents of football-related anti-social behaviour and violence and disorder, these really demonstrate that football-related-incidents occur at 36% of football fixtures each season; a figure that has been stagnant since the introduction of the experimental data.⁵⁸⁸ As will be outlined below, the methodological underpinning of capturing this data is also unsound, the data excludes international away fixtures, European away fixtures, BTP figures and pre-season overseas away games; all

⁵⁸⁵ English Football League, 'EFL Statement: Clubs United as EFL Tackles Football's Pyrotechnic Problem' (*EFL.com*, 4 November 2017) <<https://www.efl.com/news/2017/november/efl-statement-clubs-united-as-efl-tackles-footballs-pyrotechnic-problem/>> accessed 1 March 2021.

⁵⁸⁶ Kenneth Sawka, 'The Use and Misuse of Statistics' in Craig Gruber (ed), *The Theory of Statistics in Psychology: Applications, Use and Misunderstandings* (Springer 2020) 95.

⁵⁸⁷ Letter from J. M. Goose to Mr Belfall (25 March 1985).

⁵⁸⁸ Home Office (n 546).

football matches that were the primary focus of the introduction of the package of measures for football violence and disorder. The data is extracted from the Home Office's football database and derived from reports of incidents submitted by DFOs, and other sources such as the FA; but not the individual police constabularies that log incidents, which would demonstrate that football-related incidents are more widespread than the Home Office suggests. Therefore, the statistics do not provide a comprehensive overview of whether football-related violence and disorder is an issue, and subsequently, whether FBOs are fit for purpose in their current form.

5.3.3.1 Individuals Involved in Disorder

As the Home Office statistics suggest that low-level public disorder is the dominant group of offences recorded within the 24-hour period of a football match, it is necessary to explore the individuals who engage in football-related violence and disorder. As discussed in Chapter Three, the introduction of this package of measures to curb football hooliganism was seen as pivotal to stopping football disorder overseas, particularly those individuals that organise or instigate football-related violence and disorder. The Home Office statistics do categorise the number of FBOs that have been served to individuals by age and gender, however, there are no arrest statistics that are categorised by offender age or gender. Concerning gender, there is much discussion regarding the male-dominated subculture of football hooliganism in academia and the media over the last several decades.⁵⁸⁹ These discussions provide numerous factors that are essential to understanding the nature and dynamics of spectator disorder at football matches, such as the features and mechanisms that are central to expressions of football-related violence.⁵⁹⁰ The focus of this thesis is not to understand this phenomenon by investigating the behavioural and cultural context of why spectator violence and disorder exists, the gender-specific statistics will be

⁵⁸⁹ See, Thomas Schachtebeck, *Football Hooligans in England: A Subculture Struggling for Power, Respect and Male Identity* (Grin 2007); Anthony King, 'The Postmodernity of Football Hooliganism' (1997) 48(4) *British Journal of Sociology* 576; Dunning, Murphy and Williams (n 74); [Ramón Spaaij](#), 'Men Like Us, Boys Like Them: Violence, Masculinity, and Collective Identity in Football Hooliganism' (2008) 32(4) *Journal of Sport and Social Issues* 369; Emma Poulton, 'If You Had Balls, You'd Be One of Us!' *Doing Gendered Research: Methodological Reflections on Being a Female Academic Researcher in the Hyper-Masculine Subculture of 'Football Hooliganism'* (2013) 17 *Sociological Research Online* 4 and John Clarke, *Football Hooliganism and The Skinheads* (University of Birmingham 1973).

⁵⁹⁰ *ibid* [Spaaij](#).

observed, however, the aim is to illustrate that the original objective of a FBO to target football hooligan ringleaders is no longer evident. Therefore, suggesting that FBOs are no longer fit for purpose in their current form.

It is thought that the 'stereotypical' football hooligan is a working-class youth of limited educational background, doing an unskilled or semi-skilled job. The individual will be of direct descendant from individuals who attend football matches to get into a fight, and not from any genuine interest in the game itself; his violence and disorder is most like premeditated and irrational.⁵⁹¹ These individuals were classified as 'ringleaders', 'generals' or 'core hooligans', usually being arrested and charged for conspiracy to cause an affray or to commit violence as there was seldom sufficient evidence to link the individuals to specific crimes.⁵⁹² Similarly, in modern-day policing of such individuals, the distinction is now between hooligans or ringleaders and those that are classified as 'ordinary supporters', or - as now dominates policing handbooks and guidance in Europe – 'risk' and 'non-risk' supporters.⁵⁹³ Risk supporters, as they are officially called, have been noted as considering themselves tribal families who pass on the taste for fighting to their sons and grandsons, and will probably never be removed despite the continuing efforts of the Government, police and football authorities.⁵⁹⁴

⁵⁹¹ Clarke (n 590).

⁵⁹² Dick Hobbs, 'Going Rogue: The Normalisation of Under Cover Policing' (1995) 20(1) Criminal Justice Matters 5.

⁵⁹³ See Richard Giulianotti, *Football: A Sociology of the Global Game* (Polity Press 1999) and Geoff Pearson and Clifford Stott, 'Farewell to the Hooligan? Modern Developments in Football Crowd Management' in Nico Schulenkorf and Stephen Frawley (eds), *Critical Issues in Global Sport Management* (Routledge 2016).

⁵⁹⁴ Jamie Jackson, 'The Hooligan Problem and Football Violence That Just Won't Go Away' *The Guardian* (London, 22 August 2010) < <https://www.theguardian.com/football/2010/aug/22/football-violence-hooligans> > accessed 1 March 2021.

	Total FBOs						Male FBOs						Female FBOs					
	> 10	10 - 17	18- 34	35- 49	50- 64	65 +	> 10	10 - 17	18- 34	35- 49	50- 64	65 +	> 10	10 - 17	18 - 34	35 - 49	50 - 64	65+
1 Aug 19	0	52	1298	283	133	5	0	52	1297	278	133	5	0	0	1	5	0	0
1 Aug 20	0	43	1162	282	127	7	0	43	1159	276	127	7	0	0	3	6	0	0

Figure 6: Football Banning Orders by Person's Age & Perceived Gender⁵⁹⁵

The 'youth' factor that lends itself to the traditional definition of a football hooligan is still a focal point of the Home Office statistics. In the newly released experimental statistics, the focus of public disorder is primarily focused on the younger generation. It is noted that there were 246 matches where public order or anti-social behaviour incidents, not incidents of violence and disorder, occurred involving youth risk supporters (a supporter aged 25 or under); these include planned or spontaneous incidents at or in connection with a football event.⁵⁹⁶ The experimental statistics do not highlight how many outbreaks of public disorder occurred involving those risk supporters that are over the age of 25, and this could be as a result of the statistics highlighting that the majority of FBOs in force are served to supporters that are aged between 18-34. However, there is no further breakdown as to whether these supporters are aged between 18-25, therefore satisfying the criteria of a 'youth risk supporter'. For that reason, this traditional definition of the football hooligan has now been blurred with 'generalisations based on wider characteristics'.⁵⁹⁷ These generalisations and assumptions are based on how a person will act because of their age and gender, how they dress, the songs they sing, the company they keep, and

⁵⁹⁵ Home Office (n 546).

⁵⁹⁶ *ibid.*

⁵⁹⁷ This contrasts with the Core Principles of impartiality and proportionality that underpin the Authorised Professional Practice Framework Guidance on Public Order Policing: College of Policing, 'Core Principles and Legislation, ([app.college.police.uk](http://www.app.college.police.uk), 2014) <<http://www.app.college.police.uk/app-content/public-order/coreprinciples-and-legislation/>> accessed 2 March 2021.

their alcohol consumption, rather than on intelligence of actual engagement in violence or disorder.⁵⁹⁸

The College of Policing states that it is essential that the risk concerning individuals and groups is quantifiable and dynamically assessed; the description of a group or individual as 'risk' is not sufficient on its own, there must be a specific reference to the actual risk posed – satisfying the checklist criteria.⁵⁹⁹ Their checklist does not refer to age, choice of clothing, alcohol consumption or whom an individual befriends, indicating a failure by the police to understand fan culture, which can, in turn, lead to the indiscriminate use of their powers against groups of otherwise orderly fans and subsequent serving of FBOs'.⁶⁰⁰ For that reason, the statistical data that is categorised by age, does not provide any context regarding the capturing of the ringleaders, or those who pose an actual risk by differentiating between FBOs served under s 14A and s 14B.

The Home Office statistics do not provide the context that is included in the database housed by the UKFBOA. The database contains the details of individuals involved or suspected of being involved in football-related violence and disorder. The 'risk supporters' are categorised (A, B and C), according to their degree of dangerousness.⁶⁰¹ This degree of danger does not transpire into the annual production of the Home Office statistics whereby many arrests and offences that do occur, are low levels of public disorder:

Those individuals that are coined 'ringleaders' or 'core hooligans' are merely distinguished from others only by greater dedication to football and their club; they had a potentiality for violence but only of the low-level kind that many

⁵⁹⁸ James and Pearson (n 59).

⁵⁹⁹ See, College of Policing, 'Public Order Policing: Policing Football – Risk Supporter Checklist' (app.college.police.uk, 2020) <<https://www.app.college.police.uk/app-content/public-order/policing-football/#definitions-of-risk-and-non-risk-supporters>> accessed 13 May 2020 and Authorised Professional Practice Framework Guidance on Public Order Policing: College of Policing, College of Policing, 'Core Principles and Legislation', (app.college.police.uk, 2014) <<http://www.app.college.police.uk/app-content/public-order/coreprinciples-and-legislation/>> accessed 2 March 2021.

⁶⁰⁰ James and Pearson (n 167).

⁶⁰¹ Frosdick and Marsh (n 263) 166.

others shared; they were more often involved simply because they went to more matches; they lacked organization resulting in low levels of disorder.⁶⁰²

This raises three uncertainties with FBOs and the annual production of the statistics. Firstly, the ringleaders of football violence and disorder, if these individuals are not involved in violent disorder, then the data being captured and the purpose of FBOs is questionable. Secondly, if the 'core hooligans' are not the individuals responsible for the more violent football-related offences, then the data being presented and the serving of both s 14A and s 14B FBOs are not being used in a way in which they were first intended. Finally, individuals that are involved in football-related violence and disorder, particularly disorder that is arranged at non-football locations, demonstrates that the issue of football 'hooliganism' has not gone away.⁶⁰³ This type of behaviour may sometimes be captured by the Home Office statistics, however, the inconsistency and lack of transparency with what occurs away from the football stadium aids in highlighting the issues with the statistics. These issues, together, demonstrate that the methodological underpinning of capturing the data that monitors the levels of football-related violence and disorder is not reliable. In turn, the preventative mechanism of a FBO to hinder such behaviour is not working in its current form if football disorder is still occurring, albeit at a lower level of public disorder than that witnessed in the 1970s and 80s.

5.4 Statistics v Freedom of Information

The Home Office statistics on football-related violence, disorder and FBOs is the only method that monitors the level of disorder and the effectiveness of FBOs. These social statistics are, nevertheless, a key tool for understanding football spectators and the change, if any, in the behaviour of the spectators. The purpose of social statistics is to compare data from before and after a policy intervention; in this case, the introduction of FBOs.⁶⁰⁴ This data, or the concept of this data, suggests that the information that is

⁶⁰² Gary Armstrong and Rosemary Harris, 'Football Hooligans: Theory and Evidence' (1991) 39(3) *Sociological Review* 427.

⁶⁰³ See, Richard Giulianotti and Gary Armstrong, *Avenues of Contestation: Football Hooligans Running and Ruling Urban Spaces* (Cambridge University Press 2002) and Jackson (n 595).

⁶⁰⁴ United Nations, 'Statistics Division: 'Methodology: Data Quality' ([un.org](https://unstats.un.org/unsd/methodology/dataquality/), 2012) <<https://unstats.un.org/unsd/methodology/dataquality/>> accessed 12 February 2021.

used to compile the annual production of the football season's arrests and FBOs has been through some kind of process and has a clear, aligned structure.⁶⁰⁵ However, as discussed, these statistics are unreliable and should not be used to make a season-on-season comparison of the numbers associated with football-related violence and disorder. For that reason, there needs to be a further investigation into the methodological underpinning of capturing the data. To reflect the true situation regarding FBOs and football-related arrests, a FOI request was submitted to each police constabulary in England. Motivated by the objective of whether FBOs are fit for purpose, this section of the chapter will focus on this important source of self-generated data that has not been exploited to address this area of law. This method is accessible and has significant capacity to generate new and important research data that can aid in evaluating whether FBOs are indeed fit for purpose.

There is a growing awareness that there is a strong public interest in the publication of datasets so that these can be validated and built on by other researchers.⁶⁰⁶ FOI requests have potential on both theoretical and practical levels. Practically, FOIs allow researchers to access data that they wish to subject to analysis. Theoretically, data obtained through requests can be seen as a powerful tool for democratising the research process.⁶⁰⁷ Publicly available data, such as the Home Office FBO statistics is screened, and presented in the form of amalgamated rankings which combine different pieces of information. To access the raw data and uncover the interconnections between phenomena, it is necessary to use a FOI request and to obtain the underlying data.⁶⁰⁸ It is important to use FOI requests to help understand and contextualise the overall package of the FBO statistics. The FOI responses will add validity to the overall aim of the thesis, namely whether or not FBOs are fit for purpose in their current form and enables the application of the law to achieve its aim of decreasing football-related disorder.⁶⁰⁹ The FOI requests allow the examination of government practices and process, notably, the influence the statistics have on the legal regulation of FBOs. These FOI requests are essential to exposing information

⁶⁰⁵ *ibid.*

⁶⁰⁶ Ben Worthy, 'More Open but Not More Trusted? The Effect of the Freedom of Information Act 2000 on the United Kingdom Central Government' (2010) 23(4) *Governance* 576.

⁶⁰⁷ Lee (n 52).

⁶⁰⁸ Savage and Hyde (n 51).

⁶⁰⁹ Wilson (n 56).

about the workings and internal data flows of public bodies, by giving an individual the entitlement to request information that would not ordinarily be available in the public sphere.⁶¹⁰ The FOI requests that are utilised for this thesis will highlight the fundamental differences in the recording of football-related violence and disorder by the police constabularies, and of those statistics that are provided by the Home Office; statistical information that should be similar. The FOI requests will also highlight the problems regarding the recording of football-related incidents and offences at a constabulary level. This, in turn, emphasises the difficulty in relying on the Home Office statistics as the only mechanism to monitor whether the application of the law is decreasing football-related disorder.

5.5 Overview of the FOI Requests

To achieve this aim of the thesis, the observation of the statistics was needed to highlight whether violence and disorder in football is increasing or decreasing. On observing the statistics, numerous issues were highlighted, such as the offences recorded and the lack of context regarding the information provided. It was, therefore, necessary to investigate the origins of the statistics to demonstrate whether the numerical data that is gathered by the FBOA and the Home Office correlates with the data that is provided to the public on an annual basis. If the numerical data did differ, whether this would provide the context needed to highlight the statistics are unreliable as means to assess whether football-related disorder is increasing or decreasing.

In August 2018, shortly after the FIFA World Cup tournament had ended, a FOI request was submitted to the 43 police constabularies in England, Wales was excluded from the FOI requests as the national football team had not qualified for the FIFA World Cup. The purpose of the FOI requests sent to each police force was to provide information regarding football-related incidents and football-related offences that had occurred or been recorded in England throughout the FIFA World Cup tournament that was held in Russia. The submitted FOI requests to each police force were identical and were worded as follows:

⁶¹⁰ Benjamin Worthy and Robert Hazell, 'The Impact of the Freedom of Information Act in the UK' in James Hamilton and David Levy (eds), *Transparency in Politics and the Media: Accountability and Open Government* (LB Tauris 2013).

1. From the 14th June – 15th July 2018 during the period of the FIFA World Cup, how many football-related incidents were recorded by your constabulary?

By incidents, this could relate to needing police presence due to violent or disorderly behaviour because of an individual, or individuals preparing to watch, watching, or have watched a World Cup match.

2. From the 14th June – 15th July 2018 during the period of the FIFA World Cup, how many football-related offences were recorded by your constabulary?

By football-related offences, this means an offence by virtue of Schedule One of the Football Spectators Act 1989.

Specifically, the response rate was 70%, with 13 police constabularies not replying. The FOI request was completed on average within 20 days, the timeframe within which public bodies are obliged to respond, however, in 16% (6) of cases, the request was completed late. The police constabularies responded in three ways; firstly, by refusing to share any information due to the data not being held in any readily extractable format - this was 30% (9) of the responses; secondly, by providing minimal data; and thirdly, by providing full data with extra information. When an FOI request was refused, or there was only partial information returned, it was typically justified by stating that there was no easily retrievable system to extract the requested information; the data would have to be reviewed on an individual basis which would be time-consuming, or the cost of complying with the request would exceed the appropriate limit.⁶¹¹ Among some of the successful responses, some of the data provided was not actually in accordance with the FOI request asked, for example, one constabulary provided football-related data, but not within the timeframe requested.

The main factors contributing to partial or no response to the FOI requests was that the constabularies noted that could not provide the information requested due to their systems not logging football-related incidents, or crimes specific under Sch.1 FSA 1989, i.e., a football-related offence. Some of the constabularies that did not respond with figures on football-related incidents could not narrow the search to be specific as

⁶¹¹ FOIA 2000 s 9 - charges on a FOI request. A request can be refused if the cost of releasing the data exceeds £600 for central government, Parliament and the armed forces, and £450 for other public authorities. This threshold is based on a standard rate of £25 per person per hour, meaning that a request can be refused if more than 18 hours are needed to complete it; and, s 17 - refusal to respond as information is not held.

to whether these incidents involved violence or disorder. From the FOI request, a summary of the 30 responses from the English police constabularies is as follows:

1. From the 14th June – 15th July 2018 during the period of the FIFA World Cup, how many football-related incidents were recorded by your constabulary?

Unfortunately, an exact breakdown in relation to incidents that involved violence and those that involved public disorder cannot be provided as some of the FOI responses did not include this detailed information. However, the overall total from the figures provided in the responses to this question was 2,826 incidents across a period of 32 days.

2. From the 14th June – 15th July 2018 during the period of the FIFA World Cup, how many football-related offences were recorded by your constabulary?

From the police constabularies that were able to extract the data from their recording systems, a total of 77 offences were recorded across a 32-day period that would fall under Schedule One of the FSA 1989.

The response to the FOI requests highlights football-related incidents that occurred in England at the time the national football team participated in a tournament overseas can be considered as high. Particularly, if compared with the experimental incident data provided in the Home Office statistics that are based across a whole football season. These figures and the characteristics of the responses are provided in more detail below.

5.6 FOI Request Responses

The responses to the FOI requests were varied. Although police constabularies did respond, it was unfortunate that various forces were unable to retrieve the data requested. If the police are unable to retrieve the data, then this raises the question as to what data are they providing to the Home Office to compile the annual statistics. The statistics are an amalgamation of information provided also from BTP, the courts and the CPS, the data from the police is extracted from the Home Office's football database and derived from information submitted by the 43 police forces in England

and Wales to the UKFPU.⁶¹² Therefore, if the police are unable to accurately retrieve the information that was requested for this research, all of the information needed to feed into the Home Office statistics are not being passed to the UKFBU at all, or incorrectly. This demonstrates that the annual production of statistics is not providing a complete representation of the levels of football-related violence and disorder in England and Wales, and for that reason, there can be no tangible evidence or certainty that FBOs reduce and deter football violence and disorder. Nonetheless, the responses that were received, provided valuable statistical information concerning football-related violence and disorder. The additional information provided by the constabularies regarding how the data is stored and collected was also significant in helping to understand the composition of the Home Office statistics.

As highlighted below in **Figure 7** the data provided in relation to incidents recorded throughout the FIFA World Cup ranged from 2 to 832, with a total of 2,862 recorded. These figures suggest that football-related incidents do occur, even when not attending a football match or in the vicinity of a football stadium. The recorded incidents provided by the FOI responses, illustrate an interesting, but worrying comparison to the data provided by the Home Office. The annual statistics state that there has been an average of 1000 recorded incidents each season since the experimental statistics were created at the start of the 2018 football season; this is 1000 incidents across the entire football leagues in England and Wales.⁶¹³ This figure, in comparison to the figures provided by the police constabularies in their responses to the FOI requests does not appear to be consistent, i.e., 1000 incidents across a nine-month period and 2,826 incidents across 32 days. Within the 2,862 figure provided by the FOI responses, 387 incidents occurred on a single day.⁶¹⁴ The National Police Chiefs' Council also stated that there had been 1,086 football-related incidents throughout the first half of the World Cup tournament.⁶¹⁵ What does appear to be consistent is the volume of incidents that occur that involves elements of public order or anti-social

⁶¹² Gov.uk, 'Football-related Arrests and Banning Order Statistics' (*gov.uk*, 24 September 2020) <<https://www.gov.uk/government/collections/football-banning-orders>> accessed 11 January 2021.

⁶¹³ Home Office (n 546).

⁶¹⁴ Vikram Dodd, 'Police Warn About Fans' Behaviour in England During World Cup' *The Guardian* (London, 9 July 2018) <<https://www.theguardian.com/uk-news/2018/jul/09/police-warn-about-fans-behaviour-in-england-during-world-cup>> accessed 13 March 2021.

⁶¹⁵ Sky News, 'England Fans Warned Against 'Senseless Behaviour' Ahead of World Cup Semi-Final' *Sky News* (London, 10 July 2018) < <https://news.sky.com/story/england-fans-warned-against-senseless-behaviour-ahead-of-world-cup-semi-final-11431587>> accessed 10 March 2021.

behaviour, yet very few offences were recorded. In the Home Office statistics that equates to 246 matches across the football season. As will be discussed below, most of the incidents recorded by the police constabularies from the data extracted from the FOI request involved this level of behaviour, too.

Constabulary	Incidents	Offences
Avon & Somerset Police	21	0
City of London Police	2	2
Cleveland Police	3	3
Cumbria	24	31
Derbyshire Constabulary	5	4
Devon & Cornwall Police	359	0
Dorset Police	6	1
Humberside Police	4	12
Kent Police	555	0
Lancashire Police	31	0
Leicestershire Police	81	0
Lincolnshire Police	8	2
Norfolk Police	47	0
Northamptonshire Police	23	13
Northumbria Police	9	0
North Yorkshire Police	6	0
Nottinghamshire Police	13	<i>No Answer</i>
South Yorkshire Police	377	0
Suffolk Police	7	0
Surrey Police	355	0
Warwickshire Police	5	2
West Mercia Police	53	7
West Yorkshire Police	832	<i>No Answer</i>

Table 7: Responses to Freedom of Information Request (with data)

Whilst observing the incident data and the constabularies that did respond, it would be easy to assume that some of the low incident figures provided could correlate with those forces that are smaller in jurisdiction, or those forces that house fewer Football League clubs. Nevertheless, this is not apparent as some of the higher incident figures provided, particularly in counties such as Surrey, do not have any Football League clubs, demonstrating that football-related violence and disorder can occur inconsistently and without justification. Therefore, it was interesting to receive additional information from some of the constabularies as to the incidents that did occur, particularly as the football supporters had not travelled overseas to support the English national team. The assumption of violent behaviour was not apparent in the FOI request responses, the most commonly recorded incidents were anti-social behaviour, low-level public order offences and drunk and disorderly.⁶¹⁶ The stereotypical 'core hooligan' whom is perceived to be more interested in fighting or 'looking for trouble' did not materialise according to this information provided by the FOI request responses.⁶¹⁷ It is likely that heavy drinking and drinking offences which also figure strongly in national football incident and the Home Office arrest statistics in England and Wales was the origin of the majority of incidents.⁶¹⁸ This was evident in the police response to incidents that occurred throughout the period of the World Cup, whereby it was noted that there was a 'worrying level of mostly alcohol-related disorder'.⁶¹⁹ Although these incidents can be of public annoyance and in some occasions can lead to violence, the information provided is consistent with the Home Office statistics released each football season; that the incidents and arrests that do occur in relation to football, are not serious offences.

From those incidents that did occur, the FOI request asked how many football-related offences were recorded by the constabulary. It was important to ask about the nature of the football-related offences that had occurred as this in turn, can lead to a FBO if the individual was to be convicted. In comparison to the incidents that were recorded, the number of offences was low, at 77. Only 21 constabularies were able to provide

⁶¹⁶ Based on incidents such as Anti-social behaviour, public order, drunk and disorderly, the following constabularies that provided extra information stated the following: West Mercia Police recorded 35 incidents; Warwickshire recorded 25; Norfolk and Suffolk recorded 10; Lincolnshire recorded 7; Avon and Somerset recorded 6; Nottinghamshire recorded 10. These incidents recorded comprised the full total of incidents recorded for each constabulary.

⁶¹⁷ Peter Marsh, Elisabeth Rosser and Rom Harré, *The Rules of Disorder* (Routledge 1978) 141.

⁶¹⁸ Sir Norman Chester (n 311) 6.

⁶¹⁹ Dodd (n 615).

data regarding football-related offences. From those responses, three police forces, Warwickshire Police, West Mercia Police and Dorset Police were able to provide the specific offences that occurred. These offences were affray, assault and criminal damage and were deemed to be 'football-related'. Unfortunately, what is not clear is the interpretation of the offences being 'football-related'. South Yorkshire Police stated that the only offences or statutory provisions that could be relevant to the duration of the World Cup tournament are; FBOs outside England and Wales; admitting football spectators to unlicensed premises; attempted admission of football spectators to unlicensed premises, and; FBOs made on Complaint or by Notice.⁶²⁰ Therefore, it would be interesting to know how the offences that did occur, could be deemed to be 'football-related' as most of the incidents that occurred in England throughout the World Cup were alcohol-fuelled and the relevant football-specific legislation governing the consumption of alcohol would not apply in these circumstances.⁶²¹ Overall, the FOI response data has aided in providing some consistency about the types of offences that do occur in relation to football. It has also demonstrated that the real numerical data illustrates that football-related incidents occur on a greater scale than those noted in the Home Office statistics. For that reason, it is apparent that the current statistical information provided by the Home Office needs to be more reliable to provide a true reflection of the position of football-related disorder in England and Wales, and whether FBOs in their current form are fit for purpose.

Although it was disappointing that most of the police constabularies were unable to provide statistical information. The justification in the responses for doing so provided crucial information concerning the methodological underpinning of capturing the data; data that is used to create the Home Office statistics. The most common response was that there was 'no easily retrievable system to extract the information', that there is no 'football-related incident log', or 'no marker to flag football-related or football spectator'.⁶²² It can be appreciated that the police constabularies across England and Wales log thousands of incidents per day; every operational incident reported to the

⁶²⁰ s 22 FSA 1989; s 9 FSA 1989 and s 14B and s 21B FSA 1989.

⁶²¹ The SCAA 1985 creates a number of statutory offences, but this only applies to alcohol at football matches.

⁶²² Cheshire Police, Durham Constabulary, Hampshire Constabulary, Merseyside Police, Metropolitan Police, Staffordshire Police, Thames Valley Police and West Midlands Police responses.

police is 'logged' on a computer as a unique record of that event.⁶²³ However, not all incidents are 'flagged' to a particular offence per the Home Office Counting Rules, and although this is acceptable in terms of the type of incident that is reported, the data that is then released each football season is going to be almost entirely incorrect. If police constabularies are unable to retrieve data regarding football-related offences and football-related incidents, then how is the Home Office efficiently gathering the data for their football-related arrest and FBO statistics. Interestingly, the police constabularies that deal with football-related incidents and high-profile football matches in England, such as West Midlands Police and the Metropolitan Police were unable to provide any football-specific data. This finding is alarming, particularly as the Metropolitan Police Service is the lead law enforcement agency for providing information, such as intelligence to the UKFPU.⁶²⁴

Some police forces were forthcoming as to how they were able to obtain the data requested, demonstrating that being able to hold and extract the data is achievable. The constabularies that provided the most helpful overview of how they were able to fulfil the FOI request were Dorset Police, Lancashire Constabulary and Cumbria Constabulary. It was noted that they were able to use keywords such as 'football and 'World Cup'. Lancashire Constabulary stated that they had created a specific tag between 14/06/2018 and 15/07/2018 to denote an incident that can be related to the World Cup. This demonstrates that a 'flag' or 'marker' can be used to categorise and easily navigate the police incident logs to obtain football-specific data. Interestingly, Cumbria Constabulary provided a brief overview of how they were able to extract information about the offences recorded. It must be noted that there are two forms of offence for police logs; a notifiable offence, this is any offence under the law of England and Wales where the police must inform the Home Office who uses the statistics to compile crime statistics; and, a recordable offence, whereby the police must keep a record of convictions and offenders on the Police National Computer. Cumbria stated that they were only able to check those offences that would be 'notifiable' and those offences were checked against the FSA 1989 as the FSA 1989 houses the list of 'relevant offences', however, they derive from numerous other Acts of Parliament.

⁶²³ Ask The Police, 'What Is A Police Log?' (*askthe.police.uk*) <<https://www.askthe.police.uk/content/Q571.htm>> accessed 21 March 2021.

⁶²⁴ British Police History, 'UK Football Policing Unit' (*British-police-history.uk*, 2021) <<https://british-police-history.uk/f/football>> accessed 23 January 2021.

Worryingly, Merseyside Police stated there is no specific Home Office offence code which covers football-related offences that can fall generically under the Schedule One of the FSA 1989, demonstrating that the capturing of the football-related data that is used to compile the Home Office data is unreliable. Hundreds of incidents and offences must be missed each football season if the data is not in an easily retrievable format, or, not logged as a 'notifiable offence', even though detailed aggregate crime statistics are publicly available. The individual level crime data for football, notably the offences attached to a particular FBO are not publicly available, differentiating between whether a s 14A or s 14B FBOs have been served, or whether there is a pattern of repeat offending by some football spectators. For that reason, the scale of football-related disorder is distorted through this unreliable statistical information. The problem does still exist on a scale larger than what is reported, albeit the disorder that does occur is not of the gravity as once seen. It highlights that the current preventative mechanisms in FBOs are not fit for purpose in their current form.

5.7 Police Databases & Home Office Counting Rules

As the police must inform the Home Office in relation to notifiable offences that are logged on their systems, they do so by the Home Office Counting Rules.⁶²⁵ The purpose of the Rules is to 'inform the development of government policy to reduce crime and to establish whether those policies are effective'.⁶²⁶ The Home Office state that 'all police forces in England and Wales have the best crime recording system in the world: one that is consistently applied; delivers accurate statistics that are trusted by the public and puts the needs of victims at its core'.⁶²⁷ Yet, as discussed above, the data capturing of football-related disorder and the responses from the police constabularies appears to suggest otherwise. The Crime Recording System is essential to the proper implementation of the National Crime Recording Standard. Ideally, there will be an automatic link between incident recording and crime recording

⁶²⁵ Crimes committed in locations under the jurisdiction of the BTP, must be recorded by them and not by the Home Office force in whose area the crime was committed. The locations under BTP jurisdiction are as described in Home Office Circular from Police Resources Unit to All Chief Officers of Police of England and Wales (3 May 2002).

⁶²⁶ Gov.uk, 'Counting Rules for Recorded Crime' (*gov.uk*, 1 December 2020)

<<https://www.gov.uk/government/publications/counting-rules-for-recorded-crime>> accessed 12 May 2020.

⁶²⁷ *ibid.*

systems.⁶²⁸ The Home Office state that the football arrest and FBO statistics inform the development of governmental policy, but more importantly, they highlight whether football-related violence and disorder are still a matter of concern in England and Wales. However, there is only one specific football-related offence that has a specific Counting Rule code; admitting football spectators to unlicensed premises, the relevant offences housed in Schedule One of the FSA 1989 that are used for compiling the arrest and FBO statistics do not have a specific code that links the offences specifically to football.⁶²⁹ Therefore, how is the Home Office and the UKFPU accurately providing details of football-related violence and disorder that effectively underpins the current regime for governing football spectators in England and Wales.

The majority of the offences housed in Schedule One have specific Home Office Counting Rule Codes, such as, violent disorder; affray; and, public, fear alarm or distress, however, there is no indication there should be a specific 'flag' indicating that these offences are 'football-related'.⁶³⁰ There is a crime flag for 'alcohol-related crime'; where alcohol is an aggravating factor to the crime.⁶³¹ This specific flag provides the numbers of crimes directly attributable to alcohol via the Home Office Data Hub, which assists in assessing the impact of alcohol on crime and policing, improves transparency and provides improved information for the public on the scale of the problem.⁶³² Interestingly, from the FOI request responses and the Home Office statistics on football-related arrests and FBOs, alcohol offences at football matches are still apparent, along with the lower-level public order offences being the most reported arrests at football matches, but if there is no specific 'football' marker, or tag, how do the constabularies and subsequently, the Home Office know that these are football-related alcohol offences. In the case of a public order incident where on the arrival of the police there is no continuing disorder and no specific intended victim, the

⁶²⁸ Gov.uk, 'Home Office Counting Rules for Recorded Crime: Crime Recording General Rules' (*gov.uk*, April 2020) <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/940262/count-general-nov-2020.pdf> accessed 1 May 2020.

⁶²⁹ Home Office Counting Rule Code 66/5. Offences governed by Section 9 Football Spectators Act 1989.

⁶³⁰ Home Office Counting Rule Code 62A now covers violent disorder and affray; Code 9A.

⁶³¹ Home Office Counting Rule Code F7.

⁶³² Gov.uk (n 628).

incident will not be routinely recorded as a crime.⁶³³ Therefore, incidents at football matches, or away from the football stadium may not be recorded and subsequently, this will not be included in the football arrest and FBO statistics and may not be included in the new experimental statistics. Where police arrive at a scene and witness disorder, where notifiable offences are apparent, such as harassment, alarm or distress under section 5 of the POA 1986, there is an exception that a warning from an officer is sufficient to stop the unlawful behaviour, then a crime is not recorded.⁶³⁴ Otherwise, a public order incident must be recorded as a crime per the Home Office Counting Rules. Again, suggesting that multiple incidents concerning football-related disorder are not recorded and, therefore, the Home Office statistics are an unreliable mechanism to monitor football violence and disorder.

5.8 Conclusion

The purpose of this chapter was to provide a critical appraisal of the Home Office FBO and arrest statistics to assess whether or not FBOs are fit for purpose. The Home Office statistics are inherently unreliable and by observing the publicly available statistics, this chapter has been able to provide context around the nature of the offences committed, the number of recorded FBOs that are served each football season and whether FBOs are being served to individuals that have been involved in violence or disorder. To understand this statistical data, the methodology used by the Home Office, UKFBOA and police constabularies to obtain the data has also been analysed. This has highlighted numerous deficiencies and inconsistencies that have impacted the publication of the final FBO and arrest statistics at the end of each football season. Therefore, as this is the only data available to monitor football-related violence and disorder, this causes difficulty in establishing the efficacy of FBOs. The range of anomalies in the data, although may appear small, cumulatively, have a larger impact as these statistics inform policy and law-making. For that reason, if the statistics are littered with inconsistencies, and how the data is captured is incorrect, then any assessment as to whether football-related violence and disorder are decreasing

⁶³³ *ibid* Rule 3.9.

⁶³⁴ *ibid* Rule 3.10.

cannot be valid and the subsequent regime that is used to curb such behaviour, namely FBOs, cannot be fit for purpose in their current form.

Although the Home Office do state that caution should be taken when making season-on-season comparisons of the FBO and arrest statistics. The statistics do show that there has been a considerable increase in the number of new FBOs issued in the lower football leagues, demonstrating that the issues regarding football-related violence and disorder are not decreasing as expected with the use of FBOs. Aside from this broad overview of the current landscape of football spectator behaviour, the number of arrests and the number of FBOs being served, the statistics are littered with inconsistencies and provide information that comes from so many different angles that it is difficult, for a lay person, to understand what specifically the issue is if there is an issue. The chapter has established that incorporating incorrect attendance data which is used to highlight the number of football-related arrests per 100,000 attendees by competition does not accurately demonstrate the true scale of football-related violence and disorder and the serving of FBOs. Attendance figures are of importance to not only the Home Office data on football-related arrests and FBOs, but for the police and local councils in monitoring the crowds during and after a football match. The statistics do not consider those arrests that have taken place away from the stadium, nor those that have occurred more than 24 hours before or after a designated football match.

Furthermore, there is no statistical data to illustrate whether an offence has been committed, led to a conviction or, subsequently, a FBO. There is no evidence to suggest that criminality occurred, merely a statistic to state that an individual has been arrested. The vagueness of the arrest statistics is further illustrated in understanding the context of the arrests, and although the statistics do illustrate the offences that have led to arrests, some of the specific types of offences are not specified. The Home Office's press release at the end of each football season focuses heavily on 'public disorder' offences, however, there is no indication as to what these offences are. As several low-level public order offences can constitute the category of 'public disorder'. Therefore, if 'risk behaviour', or sub-criminal, anti-social behaviour is being logged as 'violence and disorder', there will be an inaccurate picture of the type and prevalence of football-related disorder in the Home Office statistics. This sub-criminal behaviour was not the intention when creating FBOs; FBOs were created with the intent of catching the ringleaders of organised and premeditated football violence and disorder.

The Home Office statistics do categorise the number of FBOs that have been served to individuals by age and gender, however, there is no categorisation of FBOs that have been served for FBOs on conviction or on complaint, nor any indication of whether the police are catching the ringleaders, risk, or non-risk supporters. For that reason, observing this numerical data proves that it is misleading and does not support the need for the current FBO regime.

There is a possibility that the statistics may work in providing a better picture of the landscape regarding football spectator behaviour if they were recorded correctly. Considering the inconsistencies found with the statistics themselves, one of the fundamental issues is how the data is captured. From the FOI requests, it is obvious that there is not a singular approach to logging data in relation to football-related incidents, arrests, or offences. It is quite alarming that there is not a consistent approach to logging these incidents across the 43 police constabularies. If the information were logged correctly, with a standardised set of Home Office Counting Rules that were specific to football-related offences, it would reflect the true nature of football spectator behaviour in England and Wales; that football violence and disorder are still prevalent and FBOs, in their current form, are not fit for purpose.

The following chapter will focus on the use of stadium bans and public order policing that are used to support the function of the FSA 1989. The Government's attitude toward managing football spectators has always been that responsibility for public order and safety at a football ground rests with the management of the football club concerned. It is important to highlight the application of stadium and club bans in comparison to the statutory FBO issued by the courts. These measures all have the primary function of prohibiting an individual from attending a football stadium. Therefore, it is necessary to discuss and evaluate the implementation and process of being served a stadium ban to demonstrate whether there is evidence that suggests that there is a need for retaining the current statutory framework under the FSA 1989, or if there is an alternative mechanism, such as keeping the club ban only.

Chapter Six: Football Banning Orders v Club Bans

6.1 Introduction

The overall aim of the thesis is to illustrate whether FBOs, in their current form, are fit for purpose. As established in Chapter Five there are numerous deficiencies and inconsistencies within the Home Office FBO and arrest statistics that are released at the end of each football season. As this is the only data available to monitor football-related violence and disorder, this causes difficulty in establishing the efficacy of FBOs. Although the range of anomalies in the data may appear small, cumulatively, they have a much larger impact as these statistics inform policy and law-making. With

such unreliable data, due to the methodology underpinning their collection, this annual assessment as to whether football-related violence and disorder are decreasing cannot be valid. What the statistics do show is that there has been a considerable increase in the number of new FBOs issued in the lower football leagues, demonstrating that the issues regarding football-related violence and disorder are not decreasing as expected with the use of FBOs. Therefore, as a package, including the reporting and monitoring of arrests and FBOs, it can be illustrated that these Orders cannot be fit for purpose in their current form.

To further address this issue and the aim of the thesis, this chapter will focus on one specific element of the overall package of measures that are used to prevent the occurrence of football violence and disorder within a football stadium. Although the statutory framework is the primary source for governing football spectators, other important components such as the use of stadium and club bans are employed to support the function of the FSA 1989. Literature on club bans is sparse and the issues surrounding these bans are only emerging due to spectators requiring legal advice regarding being served such a ban. As discussed in the previous chapters of the thesis, the Government's attitude toward managing football spectators has always been that responsibility for public order and safety at a football ground rests with the management of the football club concerned and that it is for the management to seek the services of the police, if required.⁶³⁵ Therefore, this chapter will discuss and evaluate the legality of club bans issued by individual football clubs, including the procedures adopted and the practicality of such bans.

Club bans have been available before the creation of any legislative provisions under the FSA 1989, and it is important to note that this measure that is available to football clubs can apply to the home stadium, as well the spectator travelling to watch their football club. Firstly, an individual can be served a club ban, this involves a spectator being banned from both home and away games. Secondly, a stadium ban can be served, and this involves the spectator being banned only from the home stadium. In both instances, it involves being banned from the home stadium, and it is deemed that the responsibility of the occupier of a football club is to ensure proper conduct on the part of the members of the public who go there, not that of the police or the

⁶³⁵ HC Deb (n 3).

Government; it is for them to decide who shall or shall not be admitted to their premises, and who shall or shall not be permitted to stay there.⁶³⁶ It is important to highlight the application of stadium bans in comparison to the statutory FBO issued by the courts as both measures have the primary function of prohibiting an individual from attending a football stadium and the generic term 'Banning Order' is often used interchangeably in the media, when in fact a spectator has been served a club ban. The mechanics of the club ban will be discussed and evaluated, with a particular focus on the process of a club ban and how the bans are implemented. The chapter will analyse the legality and proportionality of a club ban by referring to the appeals procedures in place by various football clubs. By providing this analysis, it will demonstrate whether there is evidence to suggest that there is a need for retaining some of the current statutory framework under the FSA 1989, or if the alternative mechanism of a club ban should replace or continue to co-exist alongside FBOs.

6.2 Responsibility of Spectators Inside the Stadium

The responsibility for spectators at football stadiums rests with the respective football club. In the early 1980s, government Ministers reminded football clubs that the provisions of the FA Rules make them responsible for the behaviour of their supporters and failure to do so could put a club at risk of financial penalties.⁶³⁷ This passing of responsibility for football spectator behaviour is still in existence under the new FA Rules. The Rules state that each affiliated association, competition, and club shall be responsible for the conduct of its club's spectators:

That its directors, players, officials, employees, servants, representatives, spectators, and all persons purporting to be its supporters or followers, conduct themselves in an orderly fashion and refrain from any one or combination of the following: improper, violent, threatening, abusive, indecent, insulting or provocative words or behaviour, (including, without limitation, where any such conduct, words or behaviour includes a reference, whether express or implied, to any one or more of ethnic origin, colour, race, nationality, religion or belief,

⁶³⁶ HL Deb (n 112) 1265. The FA Rules also state that club's will be sanctioned for misbehaviour on behalf of its own spectators.

⁶³⁷ Letters from Sir Harold Thompson to H.N. Bird (20 January 1981) and Letter from Mark Addison to Andrew Allberry (1 April 1985).

gender, gender reassignment, sexual orientation or disability) whilst attending at or taking part in a Match in which it is involved, whether on its own ground or elsewhere; and (b) that no spectators or unauthorised persons are permitted to encroach onto the pitch area, save for reasons of crowd safety, or to throw missiles, bottles or other potentially harmful or dangerous objects at or on to the pitch.⁶³⁸

Any club that fails effectively to discharge its said responsibility in any respect whatsoever shall be guilty of misconduct. Furthermore, when a football club hits a certain threshold of offences during a season, they may also receive a financial penalty under FA Rule E20. It shall be a defence in respect of charges against a club for misconduct by spectators and all persons purporting to be supporters or followers of the club if it can show that all events, incidents or occurrences complained of were the result of circumstances over which it had no control, or for reasons of crowd safety, and that its responsible officers or agents had used all due diligence to ensure that its said responsibility was discharged.⁶³⁹

Any individual referred to in Rule E20 may be removed from any ground, and such force used as may be necessary for effecting such removal. If a club is found guilty of misconduct, a sanction of penalty points, an administrative fine or disqualification from a competition may be served. It is thought that penalising clubs' points for the behaviour of their spectators will make football clubs take their FA-imposed seriously. however, it has also been noted as unfair, yet justified to root them [hooligans] out.⁶⁴⁰ Even if it can be argued that collective punishment is unfair, the fact is that it very often works. On a practical level, when football violence and disorder occur on such a large scale, it is difficult to identify all individuals involved and for that reason, more often than not, those involved in the disorder remain unknown.⁶⁴¹ Sanctions served to a football club for their fans' behaviour is a measure which is used sparingly in England and Wales, the FA have consistently taken the line that this is something for the

⁶³⁸ The Football Association, 'FA Rule E20-22: The FA Handbook 2020-21' (*thefa.com*, 2020) <<https://www.thefa.com/football-rules-governance/lawsandrules/fa-handbook>> accessed 1 March 2021.

⁶³⁹ *ibid* Rule E21.

⁶⁴⁰ Rosmarijn van Kleef, 'Liability of Football Clubs for Supporters' Misconduct. A Study into the Interaction between Disciplinary Regulations of Sports Organisations and Civil Law' (PhD thesis, University of Neuchâtel 2016).

⁶⁴¹ Matthew Handley, 'When It's Right to Punish Football Clubs for Their Fans' Behaviour' *Huffington Post* (New York, 24 May 2012) <https://www.huffingtonpost.co.uk/matthew-handley/egypt-football-riots-when-its-right-to-punish-clubs_b_1376918.html> accessed 29 January 2021.

Government, not them or the clubs to put right.⁶⁴² Although football clubs have resisted notions that there may be some role for them in addressing football-related violence and disorder with most believing it is simply a problem for the police.⁶⁴³ Government Ministers have also taken the same approach by stating that the 'Home Office have a great responsibility on this score' as it is a 'matter of criminality and public order, and that responsibility lies with the Home Office and the police'.⁶⁴⁴ This merry-go-round of rejecting any form of responsibility in relation to spectator behaviour is primarily one of the reasons as to why football disorder and violence still exists.

The solution to football-related crime and disorder problems cannot really lie solely with the police or the football clubs. National police officers specialising in hooliganism have for many years recommended the use of stadium bans rather than the statutory FBO.⁶⁴⁵ Arfon Jones, the Police and Crime Commissioner for North Wales states that 'football fans are automatically tarred with being hooligans and they are governed like the 1980s in 2020'.⁶⁴⁶ As there has been no full parliamentary investigation or debate regarding the efficacy of FBOs or the logistics of the UKFPO for over 20 years, it is the opinion of the football clubs and the police that the existence of a club ban is viewed as a better option to stop the criminalisation of football spectators and for those fans that breach the ticket's general terms and conditions. Nevertheless, as will be outlined throughout this chapter, the concept of a club ban, like the concept of a s 14B FBO on complaint, is also controversial in terms of its structure and use. Issues regarding the collection of evidence, the process by which a club ban is imposed and the absence of a thorough appeals process, the thesis will demonstrate that it is problematic to illustrate which of the preventative measures is the best course of action when dealing with football-related violence and disorder.

6.3 Club/Stadium Bans

⁶⁴² Letter from Lord N Gordon Lennox to Mr Brind (22 October 1982).

⁶⁴³ Hopkins and Treadwell (n 263) 41.

⁶⁴⁴ See, HC Deb (n 228) 777 and HC Deb 08 May 1990, vol 172, col 26.

⁶⁴⁵ Stefan de Vreese, 'Hooliganism Under the Statistical Magnifying Glass' (2000) *European Journal on Criminal Policy and Research* 8, 201.

⁶⁴⁶ Melissa Reddy, 'Leading Officers Demand 'Root-and-Branch Review' Into How Football is Policed to Stop 'Criminalising' of Fans' *Independent* (London, 4 November 2020) <<https://www.independent.co.uk/sport/football/news/police-football-fans-stadiums-uk-b1583830.html>> accessed 30 November 2020.

The rights of the owner of a football stadium are permitted to accept or deny a spectator entry into a football stadium, there are also rights deriving from the agreement set out in the contractual terms and conditions concerning the purchase of a ticket. The football club and the purchaser of the ticket will have entered into a legal contract due to acceptance of the club's terms and conditions at the time of the purchase of the ticket, thus, establishing a legal, contractual relationship between the parties. A football club has a specific set of stadium regulations and terms and conditions to selling tickets. There are many general terms and conditions that the purchaser will be subject to, whereby an individual may not be provided access to the stadium or asked to leave the stadium, for example; if they are noticeably under the influence of alcohol; the person is behaving, or is likely to behave, violently, harmfully or in a manner which is liable to disrupt public order or cause a nuisance to the other ticket holders; using foul, obscene, abusive, racist language and/or gestures; throwing any object which may cause injury or damage to people or property; unauthorised sale or transfer of any ticket to any person; misuse of the ticket; and, if inside the stadium, persistent standing in seated areas or gangways whilst the match is in progress.

Under s 10 of the FSA 1989, the Sports Ground Safety Authority (SGSA) can grant a licence to admit spectators to any premises for the purpose of watching any designated football match played at those premises.⁶⁴⁷ Only after a licence has been granted, a football club retains the right to deny entry or to remove an individual from their premises (the stadium) per the ticket's terms and conditions as discussed above. A ticket can be described as a personal revocable licence issued on those terms and conditions contained in the ticketing contract. As a football stadium is classified as being a private premise, the landlord, who can be a person, ownership group, property investors, private holding companies or public-funded local councils has rights in relation to admitting football spectators. As the licensee/landowner/landlord of the premises, they reserve the right to allow and refuse entry to whomever they wish. Usually, entry is refused from a breach of the ticketing terms and conditions and, or ground regulations, and or illegality on the part of the spectator.

The licence is granted by the SGSA under s 10 of the FSA 1989, it must 'have regard' to any guidance issued by the Secretary of State under s 182 of the Licensing Act

⁶⁴⁷ The SGSA, previously the Football Licensing Authority, created in 1985 to implement the Football membership Scheme proposed by Margaret Thatcher in response to the Heysel Stadium disaster.

2003.⁶⁴⁸ Therefore, this guidance is binding on all licensing authorities to that extent, including the SGSA.⁶⁴⁹ This licensing guidance refers to four key objectives which include promoting the prevention of crime and disorder, public safety, the prevention of public nuisance and the protection of children from harm.⁶⁵⁰ Whilst spectators are admitted onto these premises, the landlord also has the right to regulate the behaviour of those entering the premises. Entry to the football stadium is expressly subject to acceptance by the visitor of the ground regulations. Most English football clubs will have a standard set of ground regulations governing the types of objects and spectator behaviour that will and will not be tolerated in the ground on a match day. It is up to the clubs to make their own rules, however, all football clubs likely adopt similar regulations that incorporate the rules and regulations of FIFA, UEFA, the FA, the Premier League, and the English Football League in respect of the relevant competition alongside any statutory requirements in England and Wales.

Each party, i.e., the football spectator and the football club, are entitled to expect the performance of the contract which has been agreed. From the perspective of the football club, this is that the behaviour or actions of the football spectator do not contravene the terms and conditions of the sale of the ticket. From the perspective of the football spectator, this would be being kept safe, gaining entry, and staying for the duration of the football match without being subject to any wrongful behaviour on behalf of the football club. There is a breach of the contract when one of the parties fails to uphold the conditions or terms of the contract. In terms of a football spectator, this form of breach is likely due to a defective performance; where the contract is partly performed but not to the standard required by the contract, i.e. a breach of one or possibly more of the ticketing terms and conditions which includes the stadium regulations.⁶⁵¹ It is, therefore, the club's right in the case of any serious or persistent breach of the contractual terms and conditions of entry, to prohibit future entry to the stadium and other stadiums, eject a spectator from the stadium, cancel and withdraw any ticket issued to the purchaser, as well as prohibiting any future sale of a ticket.

⁶⁴⁸ s 4 Licensing Act 2003 – 'A licensing authority must carry out its functions under this Act ("licensing functions") with a view to promoting the licensing objectives'.

⁶⁴⁹ Home Office, 'Revised Guidance Issued Under Section 182 of the Licensing Act 2003' (*gov.uk*, April 2018)<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/705588/Revised_guidance_issued_under_section_182_of_the_Licensing_Act_2003__April_2018_.pdf> accessed 15 June 2021.

⁶⁵⁰ Licensing Act 2003 s 4(22)(a)-(d).

⁶⁵¹ *Halsbury's Laws: Contract* (2019) vol 22, para 345.

Usually, this is enforced through both a physical (club) ban and a ban on purchasing tickets; the withdrawal of any ticket will usually be without reimbursement. These rights are not comparable to any other contract ticketing terms and conditions, for example, entertainment ticketing, such as those for music venues.

Football clubs also reserve the right to exclude a spectator from any club membership scheme maintained or organised by the football club and/or to disqualify the spectator from applying for any match ticket and/or season ticket at its discretion. Where a spectator has a ticket for a home match withdrawn or cancelled following a breach of the terms and conditions, football clubs will also notify the Premier League and all other football clubs in the Premier League to ensure that all such clubs enforce the applicable sanction.⁶⁵² Therefore, the ban on future ticket purchasing, also extends to prohibiting individuals from purchasing away tickets. As such, a spectator is banned from purchasing tickets/attending all matches played by that club. This is a similar approach to statutory FBOs, although more limited as it only extends to games involving a specific club, and not all designated football matches. What this does demonstrate is the scope of the ticketing terms and conditions, as well as the discretion and power a football club possess without any accessible regulations.

It is noted that FBOs have certainly done a lot to reduce outright violence, although anti-social behaviour remains, as the Home Office statistics demonstrate. However, as noted above, national police officers prefer the use of a club ban. The bans, whether served for a breach of the contractual obligations, or because of a breach of the terms of the personal licence granted to enter the ground, are not without similar issues, akin to those Orders made under s 14 of the FSA 1989. The potential problems that exist are primarily procedural, although the justification for issuing club bans is very questionable in some respects. The primary focus of club bans is around capturing the lower level, anti-social behaviour, although the more serious criminal offences can also be subject to a club ban alongside the imposition of a FBO. This highlights that a club ban would be more appropriate to those individuals involved in the lower-level public order and anti-social offences, than a FBO. As with all football clubs, the discretion is solely on the respective club to impose a ban depending on the circumstances e.g.,

⁶⁵² Aston Villa Football Club, 'Aston Villa Football Club ("Club") Terms and Conditions' ([avfc.co.uk](https://tickets.avfc.co.uk/screenloader.aspx?type=include&page=custom/documents/html/tandc.html#matchtickets), 2021)
<<https://tickets.avfc.co.uk/screenloader.aspx?type=include&page=custom/documents/html/tandc.html#matchtickets>> accessed 12 July 2021.

the severity of the offence, the level of proof or the evidence available, although reasonable suspicion of an offence may be sufficient for the club to impose a sanction, like those individuals that may be served a statutory s 14B FBO.

A few football clubs have documented information concerning 'club bans' through their websites, such as Manchester United, Liverpool FC and Tottenham Hotspur. Although the information provided is detailed in parts, the level of information is still deficient in outlining the key factors of the club ban procedure and the scope of the ticketing terms and conditions. Most football clubs have failed to provide any outline regarding the full purpose and scope of the procedure and sanctions that can be served on spectators. More importantly, most football clubs have failed to provide policies that outline an effective appeals process. Without such policies in place, football spectators can find themselves punished at the whim of club officials. The following sections will break down the various issues and provide analysis to determine whether the existence of a club ban is viewed as a more effective means of reducing football-related disorder. In turn, this will aid in determining whether FBOs are fit for purpose in their current form. Using Manchester United and Liverpool FC as the main sources that provide a satisfactory level of information that is available to football spectators regarding such proceedings. These clubs will be used to illustrate what should be done to improve the procedural irregularities that exist in the use of club bans.

Over the years, the FSA has advised hundreds of supporters who have found themselves the subject of club bans that range from a one-game suspension to a lifetime ban.⁶⁵³ Likewise, the IFO, an Alternative Dispute Resolution Body that undertakes an impartial assessment and review of procedures, has seen an increase in the number of club ban complaints since 2009.⁶⁵⁴ The reason for these complaints lay primarily with the procedures that have been adopted when the individual was served a club ban. It has also been suggested that 'clubs impose this type of punitive measure on their fans for no other reason than they can and that the mindset of club officials is nearly exclusively focused on punishment' rather than being a preventative,

⁶⁵³ Football Supporters Association, 'FSA Faircop: We Need to Talk About Club Bans' (*thefsa.org.uk*, 21 January 2020) < <https://thefsa.org.uk/news/fsa-faircop-we-need-to-talk-about-club-bans/> > accessed 24 March 2020.

⁶⁵⁴ See the Independent Football Ombudsman Adjudication List at Independent Football Ombudsman, 'Adjudication' (*theifo.co.uk*) < <https://www.theifo.co.uk/adjudications.html> > accessed 1 March 2021.

or reflective behavioural mechanism.⁶⁵⁵ Football fans often argue that the duration of their sanctions does not correspond with the type of offence committed, or that there is no justification for their ban, particularly if an offence has not been committed. Unlike the judicial procedure that is adopted in the serving of statutory FBOs, the procedure that needs to be adopted to establish whether there are reasonable grounds to serve a stadium ban currently differs from club to club.

At present, there is no legislative provision that outlines how a football club shall investigate and decide whether an individual shall be served a ban despite such terms being expressly granted by the ticketing terms and conditions. As governments have alluded to the fact that football clubs should regulate themselves, it is unlikely that any provisions will be introduced any time soon. Therefore, the English FA (which will include the Premier League and English Football League) and the Welsh FA need to provide a standardised procedure that outlines the investigative and sanctioning procedure regarding the issuing of club bans. Something that can be incorporated into the ticketing terms and conditions, too. This should be explained in detail by each football club in the form of a policy; a written operational statement of intent explaining the clubs' position in relation to football-related violence and disorder.⁶⁵⁶ Alongside a policy, a full procedure needs to be available. A written set of instructions that describe the approved steps that follow a particular act or sequence of events. This will supplement the club ban policy and describe how it will be implemented and met, i.e., step-by-step instructions.⁶⁵⁷

As noted above, Liverpool FC does provide, albeit brief, overview of the course of action that the club take with respect to an initial complaint or an alleged offence. On researching the websites of the 92 Premier League and Football League Clubs, this information is not provided to the public in a great amount of detail. Five clubs; Manchester United, Liverpool FC, Tottenham Hotspur, West Ham Utd and Sheffield United FC, do refer to a club ban procedure that is easy to find on their websites. However, the information is not explicit or detailed enough to understand the full

⁶⁵⁵ Football Supporters Association (n 654).

⁶⁵⁶ Michael Hallsworth, Simon Parker and Jill Rutter, 'Institute for Government: Policy Making in the Real World' (Institute for Government 2011) 16.

⁶⁵⁷ Brid Boyce, 'Developing Policies, Procedures, Protocols and Guidelines (PPPGs) 2016' (*hse.ie*, July 2019) <<https://www.hse.ie/eng/about/who/qid/use-of-improvement-methods/nationalframeworkdevelopingpolicies/1-presentation-part-1-july-2019.pdf>> accessed 21 June 2021.

procedure, what it entails and what a supporter can do, or expect if they appeal a decision. The other 87 football clubs have a 'Club Charter' on their website but finding any reference to a club ban procedure is difficult, absent, or not clear or transparent enough for the general public to understand the specifics of the process and what it would entail if they were to ever be subject to such proceedings. This could lead to significant problems for football clubs. Operating in this way is likely to be counterproductive either in terms of the negative publicity that banning a supporter can create or because of the possibility of a legal challenge being brought to these procedures.⁶⁵⁸

As is the case with all terms and conditions which are agreed unilaterally and which affect the rights of consumers, the Consumer Rights Act 2015 comes into play to protect the rights of consumers. This can protect consumers from terms that reduce their statutory or common law rights and that seek to impose unfair burdens on the consumer. As football clubs frequently remind supporters in the letters that are sent, a contract has been created due to the purchasing of a ticket and transparency regarding that contract is fundamental to fairness in terms of the football club's procedures. The 2015 Act requires that a written term in a consumer contract is expressed in plain and intelligible language and is legible. This sits alongside a more general requirement that consumers are given a real chance, before entering a contract, to see and understand all operative terms. Therefore, contractual documentation needs to be drafted to put consumers into a position where they can make an informed choice of whether to enter into a contract.⁶⁵⁹ The failings of football clubs to explicitly highlight the relevant procedures concerning the expulsion of spectators in their terms and conditions and the far-reaching restrictions, such as banning an individual from another football stadium, could leave football clubs falling foul to the principles of transparency in contract law.

The express or imposed terms within the contract, i.e., the terms laid out referring to the ground regulations and any disciplinary procedures are not unreasonable or unenforceable in themselves. However, the lack of transparency that these terms pose can render them unfair. As a starting point, when assessing fairness, it is useful to ask whether the wording places the consumer in a legal position less favourable than that

⁶⁵⁸ Mark James, *Sports Law* (3rd edn, Bloomsbury 2017) 46.

⁶⁵⁹ Competition & Markets Authority, 'Unfair Contract Terms' (CMA37, UK Government 2015).

which is otherwise provided for by the law.⁶⁶⁰ Comparing FBOs and club bans, a FBO is a blanket approach, and a spectator will be excluded from all football stadiums. Nevertheless, their positions are remarkably similar in that they both exclude an individual from entering a football stadium. It can be argued in this instance that a club ban could be considered to be more proportionate than an FBO as it only targets one football club, i.e., the football club supported. The *Commissioner of Police of The Metropolis v Thorpe* [2015] demonstrates the inflexibility of FBOs and how they must be applied to all regulated football matches in England and Wales, and overseas for the duration of the Order.⁶⁶¹ In *Thorpe*, the spectator was notified that he should ‘not enter any premises for the purpose of attending any football matches in the United Kingdom ... in relation to matches between Fulham and either Brentford FC or Chelsea FC whether at home or away’. The effect of this is that the individual is free to attend all other regulated football matches which do not involve the three named clubs. There is no scope within the 1989 Act to impose a prohibition limited in this way. If the court had found that the spectator only presented a risk at certain matches, it should be disproportionate and therefore unlawful to impose a ban which prevents him from attending any other matches. However, the construction of the 1989 Act creates a narrow and tailored jurisdiction, unlike other behaviour Orders that enable a court to exercise discretion to make a very wide variety of different orders tailored to different factual situations. Similar to the purpose of a club ban, this is tailored to a specific football club and the duration of the ban is decided on a case-by-case basis. Having such flexibility can suggest that a more proportionate response to some levels of disorderly behaviour will be a club ban. If the perceived ‘risk’ is low, then it is not commensurable to prohibit a spectator to attend all regulated football matches in England and Wales and overseas.

The position of a football ticket within consumer and contract law is unusual in that they do contain these punitive elements, such as the club ban. Interestingly, they have never been challenged as being unreasonable, and there is a limited route to challenge any punitive sanctions. Therefore, what FBOs do provide is an opportunity to be heard and to appeal a decision; this not being the case for the club ban procedure. The wording, or lack thereof, in the terms and conditions of a ticketing

⁶⁶⁰ *ibid* 26.

⁶⁶¹ EWHC 3339 (Admin).

contract between the spectator and the football club in relation to being able to have an initial hearing or an appeal, is placing the spectator in a position that is less favourable than that which is otherwise protected by the law. The club procedure should have similar protections as would be seen in both a s14B application, and a breach of contract case. Nevertheless, failing this transparency test does not make a term or notice unenforceable against the consumer independently of the fairness test. Therefore, other issues such as when the terms permit the business to impose disproportionately severe sanctions for breach of contract are likely to be unfair as the supporter should have a right to answer in their own defence.⁶⁶² The terms that could allow the business to impose sanctions on consumers for what it chooses to regard as their breaches, whether the law would regard the consumer as being in breach or not is also unfair.⁶⁶³ The lack of an appropriate hearing and appeals process, and the opportunity for disproportionate or arbitrary punishments to be handed down, results in inherent unfairness to the supporter. The terms may be less likely to be considered unfair if the spectator has been given a proper opportunity to examine them before entering into the contract. To meet this requirement, efforts should be made to draw the consumer's attention to and explain, those provisions which are of particular importance. By providing further explanation of what constitutes a breach of the terms and conditions or the ground regulations, the procedures that will follow and the range of potential punishments, the problems that do exist can be rectified. Demonstrating that there needs to be a standardised approach to the information/terms provided in the ticketing contract to ensure that the football club must act fairly.

6.3.1 The Procedure: Initial Stages

The club instigates the initial stages of the club ban procedure when they suspect that an individual has breached the ground regulations or terms and conditions of the ticketing arrangements. These breaches are varied and the clubs that do provide this information on their website, usually categorise the list of breaches from minor to what the club deem to be the more serious. What is notable about these breaches is that they are comparable to those specific offences contained in the FOA 1991, such as

⁶⁶² *ibid* 56.

⁶⁶³ *ibid* 71.

pitch encroachment, throwing of missiles and racist or indecent chanting, as well as specific offences regarding ticketing touting under s 166 of the Criminal Justice and Public Order Act 1994.⁶⁶⁴ Each of these offences can result in an individual being prosecuted and subsequently served a FBO for a minimum period of three years.⁶⁶⁵ As can be seen in **Figure 1** below, football clubs are at liberty to decide the seriousness of these breaches and often they are categorised as ‘lower-level offences’ despite on most occasions having no police involvement, no criminal proceedings or prosecution for the said football-related offences. Individuals who do commit these breaches, are committing criminal offences that could result in a FBO, rather than a club ban, demonstrating that FBOs may not be necessary for these lower-level offences.

Manchester United		Liverpool FC	
Breach / Offence	Sanction	Breach / Offence	Sanction
Level One Drinking alcohol in view of the pitch Drunkenness in/around the stadium Persistent standing Smoking (inc. e-cigarettes) inside the stadium Advertising tickets for sale at, or below, ‘face-value’	Written or Verbal Warning	Group A Drinking alcohol in view of the pitch Drunkenness in/around the stadium Persistent standing Smoking (inc. e-cigarettes) inside the stadium Advertising tickets for sale at, or below, ‘face-value’	Written or Verbal Warning
Level Two Abusive, foul, or aggressive language/behaviour Damaging property Disorderly behaviour Use of any prohibited item(s) Misuse of tickets Repetition of a Level 1 offence <i>Minor breach of the Covid-19 Code of Conduct</i>	1-6 Game Suspension	Group B Abusive, foul, or aggressive language/behaviour Damaging property Disorderly behaviour Use of any prohibited item(s) Misuse of tickets Repetition of a Level 1 offence Minor breach of the Covid-19 Code of Conduct	Written Warning through to Indefinite Suspension

⁶⁶⁴ The Ticket Touting (Designation of Football Matches) Order 2007 was introduced to increase the definition of regulated football matches to supplement the Criminal Justice and Public Order Act 1994.

⁶⁶⁵ s 14F(4) FSA 1989.

Level Three Repetition of a Level 1-2 offence Ticket touting e.g., tickets are, or are suspected of, being transferred or re-sold (or advertised or offered for re-sale) above 'face-value'	1 Year Suspension	Group C Repetition of a Level 1-2 offence Ticket touting e.g., tickets are, or are suspected of, being transferred or re-sold (or advertised or offered for re-sale) above 'face-value'	1 Year Suspension through to an Official Club Lifetime Ban
Level Four Missile throwing Pitch encroachment (actual or intended) Racist, homophobic or discriminatory language/behaviour (including sexual harassment) Use or possession of 'pyrotechnics' Repetition of a Level 1-3 offence Arrested at a home match	3 Year Suspension	Group D & E Missile throwing Pitch encroachment (actual or intended) Racist, homophobic or discriminatory language/behaviour (including sexual harassment) Use or possession of 'pyrotechnics' Repetition of a Level 1-3 offence Arrested at a home match <i>Use of any other prohibited item(s) which are set out in the Ground regulations</i> <i>Material breach of Covid-19 Code of Conduct</i>	1-3 Match Suspension through to an Official Club Lifetime Ban
Level Five Abusive or aggressive behaviour towards staff, Police or anyone else in a working capacity Any other criminal activity Repetition of, or where a lower-level offence has been committed to a more severe degree	Indefinite Suspension (Sanctions may range depending on severity of offence)	Group F Abusive or aggressive behaviour towards staff, Police or anyone else in a working capacity Any other criminal activity Repetition of, or where a lower-level offence has been committed to a more severe degree Any incident that occurs at a fixture away from the home stadium involving the football club, including but limited to any behaviour that brings the Club's reputation into disrepute	Reviewed on an Individual Basis
Other A Police sanction at a home or away match, any other offence, or a	Reviewed on an	Other A Police sanction at a home or away match, any other offence, or a breach	Reviewed on an

breach of applicable Terms and Conditions, Supporters' Code of Conduct, or Ground Regulations	Individual Basis	of applicable Terms and Conditions, Supporters' Code of Conduct, or Ground Regulations	Individual Basis
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Figure 1: Club Sanctions: Manchester United Football Club and Liverpool Football Club⁶⁶⁶

Usually, as is the same with all clubs, a supporter will be sent a letter outlining the outcome of an internal investigation concerning the breaches stated above for which the ban has been imposed, confirmation of details for any action required at the end of the club ban and, sometimes, a possible appeal procedure but no option for the spectator to speak with the club in the initial stages.⁶⁶⁷ Therefore, the sequence that the club adopts is, reviewing evidence of the alleged breach followed by banning the supporter, then offers an appeal. The sequence or process that should be adopted is that the club reviews the evidence and presents its case to the spectator who is then offered the opportunity to defend themselves and offer a rebuttal. If banned, there should be a right to appeal to an independent body such as the FA or an Ombudsman. However, the current process means a spectator is banned automatically before being given a chance to respond to any allegations.

The first issue to highlight here is those that arise in relation to the content of these letters; issues that are usually centred around the language and terminology used. The following problems are not an exhaustive list but do provide an insight into the mistakes football clubs are making with informing spectators of their rights. For example, the letters can sometimes refer to the club bans as the statutory FBOs. Very rarely is the word 'alleged' used to refer to the offence or breach of ground regulations in question. Furthermore, there is often an absence of information and advice in regarding the club's appeal procedure/process. The legal information provided, such as reference to potential offences on breaching the club ban, for example, 'trespass'

⁶⁶⁶ See, Manchester United, 'Club Sanctions' (*manutd.com*) <<https://www.manutd.com/en/tickets-and-hospitality/match-tickets/club-sanctions#>> accessed 21 Jan 2019 and Liverpool Football Club, 'The Sanction Process' (*liverpoolfc.com*) <<https://www.liverpoolfc.com/corporate/official-sanctions-process>> accessed 14 May 2020.

⁶⁶⁷ Darlington Football Club, 'Club Policy on Ejections and Club Bans' (*darlingtonfc.co.uk*) <<https://darlingtonfc.co.uk/about/club-policy-on-ejections-and-club-bans>> accessed 1 February 2021.

and potential ‘custodial sentences’ is often incorrect.⁶⁶⁸ Finally, if the supporter’s data is being shared with the local police constabulary, this information is also usually absent from the letter. Although many spectators are aware that ejection and exclusion from the stadium can occur if there is a breach of ground regulations, the availability of the depth of information regarding the terms and conditions of said breaches and how the club have gathered the evidence differs from club to club. Again, this highlights that the footballing authorities need to take the lead on a standardised approach to club bans.

The second issue that needs to be highlighted with the initial stages is the internal investigation and the evidence used by the football club to ban a spectator from the stadium. The investigation will draw on a range of evidence sources, including but not exclusively, steward incident reports, witness statements, control room radio logs, CCTV footage, and other video/audio recordings.⁶⁶⁹ Football clubs may also receive information in relation to a fan that has been invited to attend a voluntary police interview and this may also be used as evidence.⁶⁷⁰ Similar to a FBO under s 14B of the FSA 1989, reasonable suspicion, but in respect of a club, reasonable suspicion of a breach of contract/ground regulations may be sufficient to impose a sanction. Reasonable suspicion, according to Sheffield United Football Club can be construed as ‘constituting a source of danger, nuisance or annoyance to any other person.’⁶⁷¹ Nevertheless, there is no suggestion by any football club as to how they measure or define ‘reasonable suspicion’. Therefore, any decision needs to be proportionate; what has the spectator done, and what is the sanction being imposed.

⁶⁶⁸ See, West Ham United Independent Supporters Association, WHUISA Work with FSA to Overturn ‘Indefinite Ban’ (*whuisa.org*, 12 April 2018) <<https://whuisa.org/news/2018/4/12/whuisa-work-with-fsa-to-overturn-stadium-ban>> accessed 21 May 2021; Dan Pellegrini, ‘Arsenal Have Decided to Ban Any Supporters That Show Abusive Behaviour on Twitter’ *The Sun* (London, 8 July 2016) <<https://www.thesun.co.uk/sport/1413531/arsenal-have-decided-to-ban-any-supporters-that-show-abusive-behaviour-on-twitter/>> accessed 23 May 2021 and Amanda Jacks, ‘Inciting the Crowd’ (*Twitter*, 4 February 2020) <https://twitter.com/faircop_/status/1224716725129793542> accessed 19 May 2021.

⁶⁶⁹ Tottenham Hotspur, ‘Ask Spurs: Sanction and Banning Policy’ (*tottenhamhotspur.com*) <<https://ask.tottenhamhotspur.com/hc/en-us/articles/360011038339-Sanctions-and-Banning-Policy>> accessed 12 January 2021.

⁶⁷⁰ Football Supporters Association (n 654).

⁶⁷¹ Sheffield United, ‘Spectator Suspension and Banning Policy’ (*sufc.co.uk*, 1 August 2019) <<https://www.sufc.co.uk/news/2019/august/suspension-and-banning-policy/>> accessed 29 November 2020.

⁶⁷¹ Liverpool Football Club (n 667).

Evidence that will amount to reasonable suspicion will be that of stewards, witness statements and audio/video recordings. Consideration is also said to be given but not limited to, any previous offence committed by the supporter, any sanctions that have been applied by other football clubs, the age of the supporter, whether multiple offences were committed in one incident, the safety risk to others and the supporter's intent.⁶⁷² Unlike the police who will need to discharge a higher standard of proof, football clubs will not have to adhere to the definition of 'reasonable suspicion' contained in the Police and Criminal Evidence Act 1984, which excludes 'generalisations or stereotypical images of certain groups or categories of people who are more likely to be involved in criminal activity'. Instead, the club need to consider the importance of 'intelligence' and the 'specific behaviour of the person concerned'.⁶⁷³ If any reasonable suspicion amounts or the club have sufficient evidence that a spectator has breached the ground rules, or has committed an offence concerning football-related violence and/or disorder, the risk assessment is likely to illustrate that club have reasonably concluded that their presence poses a risk or threat to the safety of others or simply a repeat of their conduct. Therefore, a sanction is appropriate, but it must be proportionate, an issue that is frequently raised by football spectators when contacting the FSA or the IFO.

Sometimes, evidence provided by the police will be of insufficient quality or probative value on which to base a prosecution or application for a FBO but is passed to the football club with a view that a club ban will be imposed.⁶⁷⁴ Evidence that the club have gathered can also be passed to the police via data sharing agreements. Therefore, any 'new and compelling' evidence that was not available to the police at the original application for a s 14A FBO, could be used by the police to apply for a FBO under s 14B. This places the football club and the police in a position whereby a cycle of punishment, evidence and surveillance is readily available to use at their discretion. If the police could not secure a FBO on the original evidence, they should not be able to use proof of a club sanction to apply for a s 14B FBO, particularly if a club may consider a club ban for the remaining part of the season to be appropriate. This should not allow the police to apply for an additional three-year FBO. For that reason, a supporter must

⁶⁷² *ibid.*

⁶⁷³ Code of Practice: *Police and Criminal Evidence Act 1984: Code A* (Her Majesty's Stationary Office 2010) 2.2.

⁶⁷⁴ James (n 659) 46.

then be offered the opportunity to request the evidence on which the football club has based its decision to ban the supporter and appeal any decision made. Nevertheless, imposing a club ban, especially without recourse to a meaningful initial hearing is an issue that arises across the football leagues.⁶⁷⁵

6.3.2 The Procedure: Sanctions Imposed

Observing **Figure 1**, it can be illustrated that there is no consistency regarding the breaches and the sanctions that will be imposed. The sanctions vary in their duration and differ from club to club. The principle of proportionality goes to the root of law, which is the balancing of competing rights and interests. When proportionality is one of the general principles which govern contractual relations, it can be expected that it is an underlying principle when resolving contractual disputes.⁶⁷⁶ If the club ban is an option that is available to all 92 Premier League and Football League clubs, there ought to be consistent and proportionate decision making. Again, this illustrates that there needs to be a standardised procedure leading to a standardised punishment tariff.

If the question is how much discretion is too much, the only legal tool available for resolving it is a proportionality test which, unlike the test of legality, is a question of degree.⁶⁷⁷ Nevertheless, there is no single replicable model of proportionality that is consistently applied by the courts in England and Wales. The most commonly cited proportionality test is that of Lord Reed JSC in *Bank Mellat* which provides the assessment of whether the impact of the infringement of the right/s is disproportionate to the likely benefit of the impugned measure.⁶⁷⁸ A more appropriate test of proportionality that can be utilised in respect of club bans can be found in the case of *Internationale Handelsgesellschaft*.⁶⁷⁹ A test that focuses on a less common function of proportionality – the aim to ‘smoke out’ illicit motives. This test underpins the notion of proportionality in EU Law, specifically concerning contract law and disciplinary proceedings. However, it is also used by the courts in England and Wales. Its aim is ‘to try and identify and prevent administrative or legislative acts that follow a motivation

⁶⁷⁵ Football Supporters Association (n 654).

⁶⁷⁶ Caroline Kaufmann, ‘The Principle of Proportionality and European Contract Law’ (Working Paper 2013/5, Maastricht European Private Law Institute 2013).

⁶⁷⁷ *Knowles v Miller and Others* [2020] EWHC 225 (Admin).

⁶⁷⁸ *Bank Mellat* (n 477).

⁶⁷⁹ (Case 11/70) ECR 1125.

that is not covered by the official reasoning and that normatively or legally dubious'⁶⁸⁰
This test comprises of three elements:

Suitability, necessity, and proportionality *sensu stricto*. The suitability test requires that the measure is suitable to reach the desired, legitimate end. The necessity test questions whether the measure is necessary to reach the desired aim, whether there was no less restrictive measure that would equally serve the desired aim. The proportionality test *sensu stricto* evaluates the balance between the measure and the restrictions it involves.⁶⁸¹

With the contractual relations that underpin the issuing of a club ban, what matters in terms of proportionality is whether the policy or decision is objectively justifiable, i.e., the club sanction is balanced against the breach of the ground regulations. Reasons must be given as part of the rules of natural justice and, if the punishment cannot be justified by those reasons, the penalty is disproportionate and/or ultra vires. According to **Figure 1**, a football spectator at Liverpool FC can be subject to a lifetime ban for pitch encroachment. However, if the spectator was charged with this offence under s 4 of the Football Offences Act 1991 and subsequently served a FBO. The maximum duration of the FBO would be five years. For that reason, football clubs are not considering or exercising proportionality in their decision-making.

The sanctions that are provided by those clubs that have provided the relevant club ban information via their websites state that they are a guide only. The clubs retain discretion to impose alternative sanctions depending on the circumstances of an alleged breach of the ground regulations. The sanctions are also independent of any other investigation and/or sanctions that may be imposed by third parties, for example, the police. Liverpool FC also states that in extreme circumstances, a 'Temporary Sanction' may be applied. In these circumstances, if the club 'reasonably believes that there is a genuine risk of reoffending and/or any health or safety risk to supporters, staff or members of the police then the club reserves the right to impose a temporary

⁶⁸⁰ Niels Petersen and Konstantin Chatziathanasiou, 'Balancing Competences? Proportionality as an Instrument to Regulate the Exercise of Competences after the PSPP Judgment of the Bundesverfassungsgericht' (2021) 17(2) European Constitutional Law Review 314, 315.

⁶⁸¹ Paul Craig and Gráinne De Búrca, *EU Law, Text, Cases, and Materials* (7th edn, Oxford University Press 2011) 526.

sanction before making any further decisions'.⁶⁸² The 'further decisions' that a club may have to make do not initially allude to speaking with the spectator to gather alternative information. What this does imply is that a full initial investigation has not taken place. Although a temporary sanction is permissible, again, clarity is needed in the ticketing terms and conditions that this may be applicable. Furthermore, the temporary sanction must be proportionate. If there is little evidence, or a full initial investigation has not taken place, then is it proportionate to ban a spectator from a stadium or is it only justifiable before a formal hearing, like imposing bail conditions? This demonstrates the importance of creating a standardised step-by-step procedure that football clubs need to adopt.

Interestingly, if a temporary sanction is issued, Liverpool FC state that 'if the facts require further investigation, the supporter will be contacted and a response that outlines their own evidence is to be submitted within 14 days'.⁶⁸³ Once a response is received, the supporter will be provided with a dedicated case worker who will provide further information in connection with the sanction process and the progress of their case. This situation only applies to those spectators that have received a temporary sanction and it begs the question as to why. This approach should be taken for all alleged breaches and stadium bans. In doing so, it would allow a spectator to provide their own evidence which can be used in deciding the level of sanction, if any, to be issued. Sheffield United do lead the way in respect of their transparency and process in relation to club sanctions. The spectator under investigation, if appropriate, will be invited to a meeting with the club's safety officer and a disciplinary panel. The meeting will consist of the following:

- Introductions
- Allegations will be put to the person under investigation
- Chance to reply to the allegation
- Evidence will be shown to the person under investigation (if appropriate)
- The disciplinary panel will then be allowed to question the person under investigation
- The Safety Officer will provide a summary of the incident.⁶⁸⁴

⁶⁸² Liverpool Football Club (n 667).

⁶⁸³ *ibid.*

⁶⁸⁴ Sheffield United (n 672).

This approach is a step in the right direction, however, Sheffield United states, 'if appropriate' in respect of sharing the evidence with the spectator, they do not define what may not be appropriate. Again, this is something that should be offered to all spectators throughout the sanction process.

In contrast to Sheffield United, Liverpool FC state that they do have a 'Sanction Panel'; a cross-section of club employees who will review all the facts surrounding the allegation, including but limited to any response of the supporter.⁶⁸⁵ The leading employee involved in the process will be the Club's Safety Officer. Safety officers have a range of previous experience, with some being retired police officers. However, it is noted that a person will be regarded as occupationally competent for the role of safety officer when he or she has sufficient training, experience, and knowledge. It is recommended that a safety officer, following the recommendations of the fifth edition of the Guide for Safety of Sports Grounds, possess or be working towards a NVQ Level 4 in Spectator Safety Management.⁶⁸⁶ Therefore, this requires no specific legal training, and the Officer may possess bias in terms of their decision-making as their role is to ensure safety within the stadium. Not only should a spectator have the right to a fair hearing, but the right to be heard by an impartial panel throughout all stages of the club ban process.

6.3.3 The Procedure: Appeals

The boundaries of the concept of justice are wider than the framework of legal systems. Justice relates to and includes much broader parameters of what is morally and socially correct.⁶⁸⁷ In sport, the standard of procedural justice has changed since the 1980s when their failure to adhere to the basic requirements was most apparent. Nowadays, many sporting tribunals are adjudicating on issues that could be heard before national courts, demonstrating a formalisation of their procedures and regulations concerning disputes. One notable exception to these changes is the club ban procedure. Unlike in other situations in which a punishment is imposed in respect of sporting misconduct, banning a football spectator is generally, though not

⁶⁸⁵ Liverpool Football Club (n 667).

⁶⁸⁶ Football Safety Officers Association, 'Training' ([fsoa.org.uk](http://79.170.44.122/fsoa.org.uk/training/)) <<http://79.170.44.122/fsoa.org.uk/training/>> accessed 20 April 2021.

⁶⁸⁷ Francis Keenan, 'Justice in Sport' (2013) 2(1) *Journal of the Philosophy of Sport* 111.

universally, a unilateral decision taken by a football club with none of the safeguards that would usually be expected from a disciplinary procedure.⁶⁸⁸ The FSA recognise that clubs have every right to refuse admission to supporters, but feel such a drastic step should only be taken after both sides have been heard – a transparent banning process that gives a supporter the chance to have their say should be implemented to advocate fairness and transparency.⁶⁸⁹ All sanctions, including written warnings issued by a football club, should be subject to an appeals process. Access to a fair and impartial appeals process demonstrates and underpins the rules of natural justice.

As football clubs are not classified as public bodies and the disciplinary procedures do not fall within the remit of the sporting governing bodies, it is difficult to determine who a spectator may rely on to ensure that any decision made by a football club has not wielded power in an arbitrary way. One route could be to appeal to the inherent jurisdiction of the High Court, like other sporting disciplinary cases. Although it may not be successful, it would enable a football spectator to demonstrate that the rules of natural justice are not being followed.⁶⁹⁰ Ordinarily, natural justice arguments arise in judicial review proceedings against public bodies when those bodies are exercising a statutory power. However, the rules of natural justice can equally apply to a private body in its relations with individuals when it has acted unlawfully by making decisions in a procedurally unfair manner.⁶⁹¹ The courts in *McInnes v Onslow-Fane* [1978] and *Nagle v Feilden* [1966] have recognised the continued possibility of invoking natural justice arguments in private law proceedings, even where no express or implied contractual terms bound the parties involved.⁶⁹² This is particularly apparent with club bans, and on observing the 92 football league clubs' websites, reference to an appeals procedure is sparse, and the information that is provided, is, to a greater extent, less transparent than the summary of breaches and sanctions that are applicable.

The duty of natural justice in adjudication, namely that each party has the right to a fair hearing and the right to be heard by an impartial tribunal is equally applicable to

⁶⁸⁸ James (n 659) 46.

⁶⁸⁹ Football Supporters Association, 'Lack of Appeal is Unfair Deal' (thefsa.org.uk, 21 October 2013) <<https://thefsa.org.uk/news/lack-of-appeal-is-unfair-deal/>> accessed 26 March 2021.

⁶⁹⁰ *Bradley v Jockey Club* [2004] EWHC Civ 2164 and [2005] EWCA Civ 1056. Also see, *Law v National Greyhound Racing Club* [1983] 3 All ER 300; *R v Disciplinary Committee of the Jockey Club, ex parte Massingberd-Mundy* [1993] 2 All ER 207 and *R v Football Association Ltd, ex parte Football League Ltd* [1993] 2 All ER 833.

⁶⁹¹ See *Modhal v British Athletic Federation (No.2)* [2001] EWCA Civ 1447.

⁶⁹² 1 WLR 1520 and 2 QB 633.

football clubs and the issuing of club bans. The rules of natural justice guarantee that certain minimum standards of procedural fairness are conformed to. Although there is no definitive list of rules in relation to sport and National Governing Bodies (NGB), the inherent jurisdiction of the High Court has heard cases where challenges have been made based on the procedures followed by sports governing bodies, or panels to which they have delegated jurisdiction to hear specific cases.⁶⁹³ A series of procedural requirements whereby a private body must act in accordance with the rules of natural justice were established in the case of *Enderby Town*. Utilising these requirements and applying them to the use of club bans, the club would firstly be under a general duty to act fairly when coming to its decision regarding a ban, though consideration will be given to the fact a football club is a private entity and not a court or tribunal that are accountable in public law.⁶⁹⁴ Secondly, the club must allow the person subject to its jurisdiction a proper opportunity to be heard, meaning the spectator who will be affected by the club's decision must be provided with the details of the case against them, the opportunity to respond to and cross-examine the case against them and the ability to adduce evidence in support of their own case. Thirdly, the club must require an appropriate burden of proof for a case to be both proved and defended. The club must be prepared to prove its case against the spectator to a high standard. Where the burden falls on the spectator, it will be to prove their version of events to disprove the case against them on the balance of probabilities.⁶⁹⁵ Fourthly and most importantly given the current state of club bans in England and Wales when determining whether the procedure followed by the club is defective, the entire decision-making process is examined. Finally, the person or body responsible for making a decision must neither show bias towards one outcome or another nor must there be a perception of bias in the decision-making process. The bias must not taint the proceedings to an extent that renders them biased and unfair.⁶⁹⁶

Following an alleged offence, Manchester United state that they will determine the sanction to be imposed and will communicate this sanction in writing to the relevant individual, who will have 14 days to appeal the initial decision. At no point up until this

⁶⁹³ For example, see, *Jones v Welsh Rugby Union* (unreported) High Court (QBD) 27 February 1977 and *ibid Enderby Town FC and McInnes*.

⁶⁹⁴ *Enderby Town* (n 693).

⁶⁹⁵ *Wilander v Tobin (No.1)* (unreported) Court of Appeal (Civ) 26 March 1996.

⁶⁹⁶ *Flaherty v National Greyhound Racing Club* [2005] EWCA Civ 1117.

part of the club process do Manchester United allude to the spectator being allowed to present their defence to the allegations being made. This could be described as an appeal heard *de novo*, or the spectator's first opportunity to present their defence on a decision that has already been made. If the latter, then it is questionable as to whether this is titled an 'appeal' when, in fact, it is part of the initial process of issuing a club ban. The information provided by Manchester United illustrates that the appeal will be heard by a Senior Manager and if the individual remains unhappy with the outcome of the first appeal, they will have 14 days to submit a second appeal to an Appeals Panel. More importantly, the Appeals Panel will contain at least two independent representatives.⁶⁹⁷ Including independent individuals is imperative to any decision-making process to satisfy the rules of natural justice against being free from bias. The test for establishing a perception of bias is objective and requires that a fair-minded person would conclude on the facts that there was a real possibility that the decision-maker was biased.⁶⁹⁸ In most instances, the current appeal process for most football clubs involves the Stadium Safety Officer who originally collated the evidence and issued the ban.⁶⁹⁹ Senior members of the football club management team also consider the facts and determine the outcome.⁷⁰⁰ This is a paradigmatic breach of the rules of natural justice; an individual cannot sit on both the hearing and the appeal.

A breach of this nature has already been raised in respect of sport and its National Governing Bodies. Like Parliament's notion that football clubs should regulate themselves, Parliament also noted that NGBs could regulate themselves more effectively without the intervention of lawyers; 'justice can be done better by a good layman than by a bad lawyer'.⁷⁰¹ For that reason, NGB's disciplinary mechanisms used to all follow a similar structure; a member of the rule-making body would sit on the panel which has the task of interpreting and enforcing those rules, and for that same person to sit on the appeals tribunal when they had already been a member of the panel that heard the initial complaint. In public law terms, this means there was no

⁶⁹⁷ Manchester United, Ticketing and Membership Service: Official Club Sanctions (*manutd.com*) <https://assets.manutd.com/AssetPicker/images/0/0/14/123/949109/MUFC_ClubSanctions_Leafletv21608119401512.pdf> accessed 2021.

⁶⁹⁸ *Porter v Magill* [2001] UKHL 67.

⁶⁹⁹ See, Claret & Hugh, 'Stadium Ban Appeals to be Independent' (*claretandhugh.info*, 10 November 2016) <<https://www.claretandhugh.info/stadium-ban-appeals-to-be-independent/>> accessed 19 May 2021 and Football Supporters Association (n 690) and Football Supporters Association (n 654).

⁷⁰⁰ See, Manchester United, Sheffield United FC and Liverpool FC Appeal procedures.

⁷⁰¹ *Enderby Town* (n 693) 605.

effective separation of powers among the various roles being conducted by the legislative, executive and judicial branches of the governing body, and no ability for one part of the system to provide the necessary checks and balances on the decision-making process of the other parts as they were all too intricately linked. With senior members of the football club management team also considering the facts and determining the outcome of those football spectators who are deemed to be in breach of the ground regulations and/or the ticketing terms and conditions, this demonstrates how there is no clear separation of powers in respect of the club/stadium ban procedures adopted by most football clubs. In respect of the NGBs, as a body of national sports law began to develop, several legal challenges made to NGB's decision-making procedures, and the norms adhered to by these tribunals began to be juridified, taking on a more legalistic approach to sporting justice. With the increased use of club/stadium bans and the growing discontent amongst spectators regarding their ability to appeal, or be aware of a legitimate appeals procedure, a process of juridification will likely occur over a period of time, meaning football clubs will have no option but to adopt a fair procedure.⁷⁰²

When a decision is being made, either by a public or private body that involves determining guilt, there needs to be a process that is transparent and independent of scrutiny to protect an individual that may be falsely accused.⁷⁰³ Allowing supporters to attend their sanctions and appeals panel, for example, something currently not allowed by a vast majority of football clubs, would help build trust that the system and processes are fair and free from bias.⁷⁰⁴ The appeals process is meant to provide a safety net for the vast inconsistency in the way individuals are handled when bans are given. A properly standardised procedure that is available at each club will be of great benefit to both supporters and football clubs in providing this transparency. Although there are vast inconsistencies in the approaches that football clubs in England and Wales take concerning the appeals process. Football clubs in the higher tiers of English football do appear to understand the need for independent scrutiny. After reviewing all Premier League clubs and where available, their appeal processes, it appears that for many clubs the appeals committee will usually consist of three

⁷⁰² Football Supporters Association (n 690).

⁷⁰³ See, Manchester United, Sheffield United FC and Liverpool FC Appeal procedures.

⁷⁰⁴ Spirit of Shankly, 'LFC Liaison – Ban & Sanction Process' (*spiritofshankly.com*, 2020) < <https://spiritofshankly.com/ban-sanctions-process/> > accessed 1 May 2021.

representatives. Some clubs are more forthcoming with the information they provide in relation to the make-up of their appeal panel, stating that it consists of a member of the football club staff, a member of the board of the relevant Supporters Trust and an independent third party acceptable to both other members of this committee.⁷⁰⁵ Some clubs state that none of those sitting on this committee will have been directly involved in the matter previously, others do not stipulate this.⁷⁰⁶ Again, demonstrating the issue of bias, a key component of the rules of natural justice. The majority of clubs state that the Safety and Security Teams will conduct the initial investigation and any subsequent appeal lodged, raising questions of impartiality and transparency in terms of those gathering evidence.⁷⁰⁷ Demonstrating that there is no 'separation of powers' between the issuing of the ban and the subsequent consideration of the appeal. It is worth considering, particularly in the appeal process, that independent people would be involved to help alleviate this issue.

Disappointingly, some football clubs do not provide any detailed information regarding their appeals procedure, noting that details will be outlined in writing by the club to those involved in any cases raised.⁷⁰⁸ This again raises concerns with Consumer Rights Act 2015 implications regarding the ticketing contract and the fundamental underpinning of fairness and transparency in terms of the football club's procedures. Having an impartial appeal process is a step forward. Nevertheless, details regarding the process should be made publicly available before purchasing a match ticket and entering into a legally binding contract. A positive of having a Banning Order regime enshrined in statute, such as that of a s 14A and s 14B FBO, necessitates an appeals process that is publicly available and uniform in its instructions to apply. Yet, the construction of the FSA 1989, its piecemeal structure, its level of detail and frequent amendments, and the interaction with common law and European law, means that the law is complex, hard to understand and difficult to comply with.⁷⁰⁹ Therefore, with very few legal firms specialising in this particular area, the difficulty in the advice provided

⁷⁰⁵ Manchester United, Tottenham Hotspur and Crystal Palace FC include a Supporter's Trust member.

⁷⁰⁶ Crystal Palace FC, Fans' Charter (*cpfc.co.uk*) < <https://www.cpfc.co.uk/siteassets/pdfs/policies/fan-charter-june-2017.pdf> > accessed 21 May 2021.

⁷⁰⁷ For example, see Manchester City, 'Supporters' Charter 2020/21' (*mancity.com*) <https://www.mancity.com/meta/media/ygvbqcod/1920-supporter_charter_final.pdf> accessed 28 May 2021.

⁷⁰⁸ For example, see Norwich City Football Club, Supporter Charter 2020/21' (*canaries.co.uk*, 2020) < <https://www.canaries.co.uk/Our-Club/Carrow-Road/Customer-Charter/> > accessed 27 May 2021.

⁷⁰⁹ Office of the Parliamentary Counsel, *When Laws Become Too Complex: A Review into the Causes of Complex Legislation* (Cabinet Office 2013).

to supporters without challenge by the courts means the level of success regarding appeals for FBOs is relatively low.⁷¹⁰

In contrast to a FBO, some football clubs do signify that if a supporter is not satisfied with the outcome of the appeal panel, then they will be offered the chance to submit their case to the IFO for review. It must be noted that although this is not highlighted explicitly on football club websites or in their terms and conditions, it does apply to all spectators. The IFO acts as a check and balance and is the final stage within football's regulatory framework and complaints procedure. They are accredited as an Approved Alternative Dispute Resolution (ADR) Body under the 2015 Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations. If the football bodies have dealt with a complaint in full, then the IFO can review whether due process was followed and if the complaint was managed properly. In these circumstances, the IFO does not offer an alternative interpretation of rulings, but an examination of whether a complaint has been handled appropriately.⁷¹¹ Unlike other ombudsmen, the IFO's decision is not legally binding on the individual or the football club and they do not offer an alternative interpretation of any football-specific regulations, such as ground regulations or football-specific legislation.⁷¹² For that reason, the IFO cannot act as 'cure' for any natural justice defects that are apparent throughout the current club ban procedure. As the IFO is not a public body, the limit of their power to arrive at a particular decision and whether the correct process was followed cannot be judicially reviewed by the courts like other ombudsmen.⁷¹³ The position the IFO take in relation to reviewing a club's procedure has been criticised as 'unfair, based on the assumption that fans making complaints are always guilty of wrongdoing' and 'in the [IFO's] adjudications, they repeat all the allegations made by

⁷¹⁰ There are around ten solicitor firms across England that specialise in football-related offences and FBOs. For example, Wilford Smith, Olliers, Norrie Waite, EV Law, Football Law and VHS Fletchers. Also see, Amanda Jacks, 'Served With A Football Banning Order? Contact the FSF' (*thefsa.org*, 7 August 2015) <<https://thefsa.org.uk/news/served-with-a-football-banning-order-contact-the-fsf/>> accessed 1 January 2021.

⁷¹¹ Independent Football Ombudsman, 'About Us' (*theifo.co.uk*) < <https://www.theifo.co.uk/about-us.html>> accessed 15 May 2021.

⁷¹² See, Chartered Trading Standards Institute, 'ADR Approved Bodies' (*tradingstandards.uk*) < <https://www.tradingstandards.uk/consumers/adr-approved-bodies>> accessed 15 May 2021.

⁷¹³ See, Financial Ombudsman, 'Can I Appeal Against an Ombudsman's Decision?' (*financial-ombudsman.org.uk*)<<https://www.financial-ombudsman.org.uk/faqs/all/can-appeal-ombudsmans-decision#:~:text=An%20ombudsman's%20decision%20is%20our,on%20them%20and%20the%20business.&text=Because%20our%20decisions%20are%20final,be%20reviewed%20by%20another%20ombudsman.>> accessed 1 May 2021.

the clubs without commenting'.⁷¹⁴ This opinion may appear to be excessive when the primary function of the IFO is not to 'offer an alternative interpretation of the rulings', but to examine whether a complaint by a football club has been handled appropriately.

Evidence suggests that the 'default position [of the IFO] is that clubs do not need to provide any evidence, just statements from club officials' and evidence such as 'CCTV footage is allowed to elapse without the IFO questioning why'.⁷¹⁵ Although these suggestions appear to place the IFO in a precarious situation, the main issue is the authority that the IFO hold. The IFO does not publish details of responses from clubs to its adjudications, although the IFO does expect compliance and if a club declines to follow the adjudication, then the club are expected to provide an explanation. Unfortunately, the IFO cannot enforce the explanation to be published, therefore, there is no way of determining the levels of compliance, if any, because of any recommendations being put forward by the IFO not being legally binding. For that reason, football clubs can reject any suggestions put forward by the IFO, albeit this is a rare occurrence.⁷¹⁶ These recommendations can include but are not limited to, recommending that a written apology be offered to a fan, recognising a club had grounds to sanction a fan, recommend that a lesser sanction should be imposed, or that a sanction should be overturned. It is apparent from the IFO adjudications that a key concern is that supporters are treated with respect by the clubs who deal with their complaints.⁷¹⁷

In many of the cases where the IFO has found against the supporter as regards the substance of a dispute, the IFO has also made findings criticising communication failures on the part of the club to improve practices and processes.⁷¹⁸ The authority,

⁷¹⁴ Amanda Jacks, 'The Independent Football Ombudsman – Fit for Purpose?' (*thefsa.org*, 8 May 2015) < <https://thefsa.org.uk/news/the-independent-football-ombudsman-fit-for-purpose/> > 8 May 2015.

⁷¹⁵ *ibid.*

⁷¹⁶ See, Emma Bartholomew, 'Arsenal Refuse to End Fan's Ban Despite Ombudsman Ruling' *Islington Gazette* (London, 27 April 2015)

<<https://www.islingtongazette.co.uk/news/arsenal-refuse-to-end-fan-s-ban-despite-ombudsman-ruling-3732810>> accessed 12 May 2021 and Paul Britton, 'The 'Sorry' Tale of the Manchester City Fan Wrongly Kicked Out of Wembley Stadium' *Manchester Evening News* (Manchester, 17 April 2020) <<https://www.manchestereveningnews.co.uk/news/greater-manchester-news/fa-wembley-city-fan-ejected-18107316>> accessed 12 May 2021.

⁷¹⁷ Marc Delehanty, 'A Guide to England's Independent Football Ombudsman' (*lawinsport.com*, 15 April 2015) <<https://www.lawinsport.com/blogs/littleton-chambers/item/a-guide-to-england-s-independent-football-ombudsman>> accessed 13 May 2021.

⁷¹⁸ Independent Football Ombudsman, 'IFO Complaint 14/17: The Renewal of a Five-Year Ban at Stoke City' (*theifo.co.uk*, 4 February 2015) < <https://www.theifo.co.uk/adjudications/Stoke.pdf> > accessed 13 May 2021, 12.

or enforceability of the IFO adjudications has been called into question by the House of Commons Culture, Media and Sport Committee that concluded the existing powers of the IFO should be enforced.⁷¹⁹ Nevertheless, there were no suggestions regarding the enforcement, i.e. whether it would be on a statutory basis, or whether the adjudications should be binding. Either position would be advantageous with the growing use of stadium bans. Allowing a football spectator to have the right to question the already questionable stadium ban processes in place by an independent body, with the possibility of having an unjust decision overturned, would provide a level of justice and fairness that is missing at present. There needs to be a minimum standard of best practice introduced to ensure that club bans can work and is acceptable to fans, clubs, and the police. Without such a minimum standard or a codified procedure in place, it is unlikely that a spectator will be able to claim unreasonable, arbitrary, or capricious conduct by the football club. Without codified rules and procedures, a spectator wishing to challenge the football club's conduct can only do so when it can be established that no similarly constituted body that had properly instructed itself according to the rules by which it was governed could have reached the same conclusion.⁷²⁰ With the boundaries of unreasonableness being extended to analyse the proportionality of punishments handed down, an element that is central to the club/stadium ban regimes, it is now key that with increased use of such bans, that fair, proportionate and transparent procedure is created.⁷²¹

6.4 Spectator Data Sharing Agreements

The process of a club/stadium ban is touted as a useful tool against errant fans and its increased use is highlighting a very wide range of legal issues, including not only those mentioned above but the role of data sharing agreements and data protection. Where the presence of a banned supporter would pose a risk to others, in cases where offences have been violent, discriminatory, or threatening in nature, a club will provide details of supporters sanctioned with a ban to relevant opposition clubs and the police. Therefore, the club can extend its ability to share information, including name,

⁷¹⁹ House of Commons Culture, Media and Sport Committee, *Football Governance Follow-Up* (4th Report House of Commons 2013).

⁷²⁰ *Nagle* (n 693).

⁷²¹ *Bradley* (n 691).

address, date of birth and photo where applicable, and impose sanctions in the event of a supporter breaching regulations at another stadium.⁷²² Therefore, the procedural irregularities that exist concerning club bans can also be highlighted through the data sharing or data sharing agreements. This is a process that involves the production of evidence or intelligence used by a football club to issue a club ban that can be passed to the police via an agreement. This information or evidence relevant to a football spectator that is held by a football club is disseminated to the local constabulary, football authorities, other football clubs and relevant authorities. This includes personal data, Special Category Data and Criminal Offence Data. The data sharing agreements are also extended to the BTP concerning spectators travelling to games by rail, with 55 agreements of the 92 Football League clubs sharing spectator information with the BTP.⁷²³

The information is shared to:

minimise the risk of violence; minimise the risk of persons subject to a FBO entering the stadium; to maximise preventative measures taken against persons convicted of football-related offences or involved in football-related criminality; and allow football clubs to take further steps against individuals to prevent further offences being committed'.⁷²⁴

As it has been 'recognised that police action alone against those persons convicted of football-related offences is less effective as a deterrent'.⁷²⁵ This police action can include but is not limited to the use of FBOs. Police focus on deterring other supporters has led to the courts having to remind prosecutors that deterrence is not the only deciding factor in succeeding with an application for a FBO.⁷²⁶ Therefore, the convenience of a data sharing agreement between the local police constabulary and

⁷²² Tottenham Hotspur (n 670).

⁷²³ Only two of those clubs are in the Premier League. See, Adam Leventhal, 'BTP Information' (*Twitter*, (28 July 2018)

<https://twitter.com/adamleventhal/status/1022558886048481285?ref_src=twsrc%5Egoogle%7Ctwcamp%5Enews%7Ctwgr%5Etweet> accessed 20 May 2021.

⁷²⁴ Leicestershire Police, 'Information Sharing Agreement Between Chief Constable of Leicestershire Police and Leicester City Football Club (LCFC/18-19)' (*leics.police.uk*, February 2019)

<<https://www.leics.police.uk/SysSiteAssets/foi-media/leicestershire/policies/2019/information-sharing-agreement-lcfc-leics-police.pdf>> accessed 17 June 2021.

⁷²⁵ Hampshire Constabulary, 'Information Sharing Agreement' (*hampshire.police.uk*)

<<https://www.hampshire.police.uk/SysSiteAssets/foi-media/hampshire-constabulary/information-sharing-agreements/football-clubs--event-agreements/isa---174---portsmouth-football-club-v1.0.pdf>> accessed 21 May 2021.

⁷²⁶ Doyle (n 15).

a football club creates a system for the formal exchange of information and intelligence, concerning football fans, disorder issues and crowd management to enable action to be taken against crime and anti-social behaviour within the local authority area. Whether that is by a club ban, or if necessary, a FBO.⁷²⁷ As FBOs are seen as a less effective deterrent, there is a likelihood of an increase in club bans over the coming seasons due to intelligence being shared between football clubs and its local police constabulary through these data sharing agreements.

These agreements are meant to ‘set out the purpose of the data sharing, cover what happens to the data at each stage, set standards and help all the parties involved in sharing, to be clear about their roles and responsibilities in dealing with football spectators’.⁷²⁸ Nevertheless, the procedures regarding both the implementation of a club ban and a FBO needs to be addressed. In particular, the information that is shared between the parties needs to be satisfactory, conforming to the Data Protection Act 2018 and the General Data Protection Regulation.⁷²⁹ Any ‘personal data’, meaning any information relating to an identifiable person who can be directly or indirectly identified, such as online identification markers, location data, genetic information such as DNA swabs and photographs needs to be considered.⁷³⁰ With that in mind, the specific identifiable data that is shared between football clubs and the local police constabularies can include, but is not limited to the following example:

	The full name, date of birth and address of any individual associated with the football club who is subject of a football banning order.
	The full name, date of birth and address of any individual believed to be ticket touting in relation to any event held at the stadium

⁷²⁷ Hampshire Constabulary (n 727).

⁷²⁸ Information Commissioner’s Office, ‘Data Sharing Agreements’ (*ico.org.uk*) < <https://ico.org.uk/for-organisations/data-sharing-a-code-of-practice/data-sharing-agreements/> > accessed 16 May 2021.

⁷²⁹ General Data Protection Regulation [2016] OJ L119/1.

⁷³⁰ Information Commissioner’s Office, ‘Guide to the General Data Protection Regulation’ (*ico.org.uk*, 2 August 2018) < <https://ico.org.uk/media/for-organisations/guide-to-the-general-data-protection-regulation-gdpr-1-0.pdf> > accessed 15 September 2021.

The Police Will Share	The details of any individuals believed to be attending the specific football club's matches with the intention of committing any offences.
	The details of any individual believed to be intending to commit acts of violence, crime, disorder, or disruption within the footprint of the stadium.
	Where necessary a photograph of the individual to aid identification of the subject and minimise any intrusion to others.
The Football Club Will Share	Information gained that did not necessarily involve an offence but resulted in sanctions being taken by the management against an individual, such as ejection or temporary or permanent bans.
	Information that will assist in the planning of events that may necessitate policing operations at a range of scales at the stadium, its footprint area or spanning adjacent premises or land.
	Information that will assist in the planning of Policing Operations not only for fixtures at the football club but also for those fixtures involving the England National Team or other matches played in the UK or abroad.
	Information regarding spectators travelling to events at the stadium, that may be used for policing purposes, including but not exclusive to numbers, modes of transport, companies providing transport etc.
	Information regarding incidents of criminal activity, violence, disorder, or other form of antisocial behaviour reported to them or otherwise notified if relevant.

Figure 2: Hampshire Police Information Sharing Agreement⁷³¹

⁷³¹ Hampshire Constabulary (n 727).

Manchester United's Privacy Policy states, 'we use your data for the following purposes: for crime prevention and detection purposes and safety and security purposes' and 'we may share your data with third parties (a) if we are under a legal or regulatory duty to do so'. There is no legal requirement that football clubs must share this data with the local police constabularies and most private sector organisations, such as football clubs do not need to identify a specific power to share the data.⁷³² Football clubs have a general ability to share information, provided it does not breach data protection legislation or any other law. The information shared by and received by the police is granted statutory power for Law Enforcement Purpose under Part 3 of the Data Protection Act 2018, where the sharing of personal data is between the police and other Competent Authorities. This is defined by Schedule 7 of the Data Protection Act 2018, for any of the Law Enforcement purposes such as the prevention/investigation/detection/prosecution of criminal offences, execution of criminal penalties, safeguarding against and preventing threats to public security.⁷³³ The Information Commissioner's Office have affirmed this position by stating data protection law does not prevent appropriate data sharing when it is necessary to protect the public, to support ongoing policing activities, or in an emergency for example.⁷³⁴

If personal data is shared, the private sector organisation must clearly explain their lawful basis for sharing the data. Although Manchester United, for example, do state in their privacy policy why the data is shared, they do not state their lawful basis for doing so. The full extent of the data held is usually shared without the football spectator's knowledge, or the spectator is made aware throughout the club ban process, although this is not always the case. From a contractual perspective between the spectator and the football club, a spectator's legal rights include the 'confidentiality of personal information ... and if a contract term that purports to make the consumer abandon these kinds of rights may be unfair whether or not it is legally effective'.⁷³⁵ What is contradictory in respect of data sharing from a club's perspective, is the ability

⁷³² Manchester United, 'Privacy Policy' (*manutd.com*, 10 August 2020)

<<https://www.manutd.com/en/Help/Privacy-Policy>> accessed 24 August 2021.

⁷³³ s 31 Data Protection Act 2018.

⁷³⁴ Information Commissioner's Office, 'Law Enforcement Processing' (*ico.org.uk*) <<https://ico.org.uk/for-organisations/data-sharing-a-code-of-practice/law-enforcement-processing/>> accessed 1 June 2021.

⁷³⁵ Competition & Markets Authority (n 660) 87-88.

to share sensitive data with the police, that may or may not support ongoing policing activities and there are no statutory powers governing this. The information provided to the police that should be used to help secure FBOs, may not be regarded as sufficient from the court's perspective and subsequently, the spectator is issued with a club ban instead.

Private sector organisations do have the option to use explicit consent as a lawful basis for the disclosure. However, this does not appear to be applicable in respect of football clubs. This raises another potential question with a football club's ticketing terms and conditions at the point of sale. If a football spectator purchases a ticket, then should they be explicitly aware that they are giving consent to their data being passed to a third party. If club bans are going to become the norm and replace s 14B FBOs as proposed by this thesis, then the terms and conditions of a ticket need to be adjusted to recognise this and ensure data can be shared appropriately. A private sector organisation must state why they intend to use a person's data and what reason or lawful basis this is for through their privacy notice. At certain points of sale, for example, paying for a match ticket over the counter at a football club's ticketing office, an individual would merely have to pass over their name and may not have been notified, or given the chance to read the privacy notice, or the terms and conditions. In this regard, it would be best practice for a football to provide a model consent form for each ticket transaction and provide details regarding the sharing of data, and the withholding or retraction of the consent of the data.⁷³⁶ It has been noted that some football spectators, whilst being involved in the club ban process, have requested their data that football clubs hold, but their requests have subsequently been declined.⁷³⁷ Any individual has the right to make a data protection subject access request per the Data Protection Act 2018 to find out what information is being held about them and to insist on having that information kept accurate and up to date. Having access to this data is of paramount importance to a football spectator if they were to be involved in the club ban process. Particularly, as already discussed, the current club ban procedure is insufficient, and a standardised approach is needed.

⁷³⁶ Information Commissioner's Office (n 736).

⁷³⁷ A football spectator asked for video evidence under the Data Protection Act 2018 and the club denied it ever existed, or it had been lost. Despite it being used as evidence to issue a Club Ban. Amanda Jacks (n 716).

6.5 Club Ban Statistics

To reflect the true situation regarding the information held by football clubs in respect of its spectators, an email was sent all 92 football league clubs in England and Wales asking for the number of individuals subject to a club ban. The thesis aims to illustrate whether there is a sufficiently robust evidence base for retaining the current framework that is available to monitor and govern football spectators in England and Wales under the FSA 1989 by highlighting whether it is fit for purpose. To achieve this aim, it was necessary to gather information regarding the number of club bans in existence to compare this against the number of statutory FBOs currently in place. These requests were not personal data requests, as there are no identifiable markers that could relate to a specific individual, merely the request for a figure. Therefore, this was not a data protection subject access request whereby there are some situations when organisations are allowed to withhold information, for example, if the information is about the prevention, detection, or investigation of a crime.⁷³⁸ In that regard, it was for the individual club to decide whether they would share the information requested. The requests to each football club were identical and were worded as follows:

I am hoping that you will be able to provide me with the following generic information: -

1. How many stadium bans were issued in the 2017-18 season?
2. How many stadium bans were issued in the 2018-19 season?
3. How many stadium bans do you currently have in force?

The response rate was 9%, with 84 football clubs not replying (91%). For those football clubs that did reply, they responded in three ways. Firstly, by refusing to share any information due to not sharing this information externally, this was 50% (4) of the responses. Secondly, by providing full data, this was 25% (2) of the responses received and thirdly, by providing full data with extra information, this was 25% (2) of the responses received. When the information was refused, it was typically followed by stating that as a private organisation they did not share this information externally.

⁷³⁸ Gov.uk, 'Data Protection' (*gov.uk*) <<https://www.gov.uk/data-protection/find-out-what-data-an-organisation-has-about-you>> accessed 3 June 2021.

Another quite alarming factor with those clubs that did not provide any extra details within their responses was that the football club could not find or did not log this information. Therefore, how can club bans be enforced if the clubs are not storing this information? For those clubs that stated they do not provide this information to external sources, it would be beneficial if clubs could be as transparent as Crystal Place FC who note that at the end of each season, the club will provide to the Premier League or Football League and the Supporters Trust a summary of club bans imposed that season. This will include the number of supporters receiving club bans, the duration of these bans, the offences for which they were imposed, the number of initial meetings held with supporters, the number of supporters who have used the appeal process and the number of successful and unsuccessful appeals.⁷³⁹ In doing so, this would allow the Home Office and the Government to use the statistical information held by football clubs, to make informed decisions about the current FBO statutory framework.

Football Club	Information Provided (Yes / No)
Bristol City	Yes
Bury FC	Yes
Chelsea FC	No
Everton FC	No
Exeter FC	Yes
Manchester City	No
Newcastle United	No
Notts County	Yes

Table 3: Respondents to Club Ban Requests Email

For those football clubs that responded and provided information, the number of club bans in existence may appear to be low. However, the respondents were football clubs from the lower leagues and as already discussed, the number of FBOs has increased over the timeframe specified in the email to the football clubs.

Football Club	Club Ban Numbers (2017-18)	Club Ban Numbers (2018-19)	Club Bans Still in Existence
Bristol City	14	22	16
Bury FC	0	3	1
Exeter FC	2	2	25

⁷³⁹ Crystal Palace (n 708).

Notts County	10	3	3
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Table 4: Respondent Figures from Club Ban Requests Email

Interestingly, when breaking down the figures and comparing the number of club bans in existence against the number of FBOs as discussed in Chapter Five, there appear to be some notable differences. Although it cannot be guaranteed that the respondents did not include those spectators subject to a FBO within their figures, there are more club bans issued per season than FBOs. This raises several questions with the preventative package of measures offered by the Government. Football clubs are entitled to ban supporters if they do breach the ticketing terms and conditions. However, as previously discussed, the dispute between the footballing authorities and the police as to who should be responsible for those spectators that do misbehave is still ongoing. Club bans are used for more minor breaches of the ground regulations, such as persistent standing and drunkenness within the stadium, FBOs are used for more serious misconduct both at and away from the ground. The statistics do highlight that the number of football-related arrests is for low-level public disorder and anti-social behaviour. therefore, the difference in numbers between FBOs and club bans can be for many reasons. Firstly, FBOs do not work in their current form and those that do misbehave are not being caught under the statutory framework. Secondly, the police are not securing enough funding to secure s 14b FBOs and therefore, the intelligence is passed to the club via data sharing agreements, and the club subsequently bans the spectator. Thirdly, FBOs are not seen as a deterrent to those that may misbehave.

Football Club	Club Ban Numbers (2017-18)	FBO Numbers (2017-18)	Club Ban Numbers (2018-19)	FBO Numbers (2017-18)
Bristol City	14	5	22	12
Bury FC	0	0	3	3
Exeter FC	2	1	2	8
Notts County	10	6	3	0

Table 5: Comparison of Club Ban Figures from Respondents and Football Banning Order Statistics for the Same Club⁷⁴⁰

⁷⁴⁰ Home Office (n 46) and Home Office, User Guide to Football-Related Arrests and Banning Order Statistics, England and Wales, 2018 to 2019 Season (gov.uk, 19 September 2019)

It was noted by the Head of Safety and Security at Bristol City that:

Some of those who receive stadium bans from me are pending a court case or advice from CPS. If they are released on police bail, under the new guidelines the police cannot impose bail conditions unless they have been charged. I therefore issue a stadium ban pending any decision. It could be that they then appear before the court and receive a Football Banning Order which will then take precedent over my ban. I also issue bans for less than 12 months depending on the incident – for example, a person may be involved in foul and abusive language on a non-policed game, and we eject them. I will normally give a ban of 3 matches, but it could be as long as 3 months. I banned 1 supporter for 2 games before I found out he had given me false details; he was then banned for a further 6 games.⁷⁴¹

The extra information received from Bristol City is interesting as reference is made to those individuals who are banned and are subsequently served a FBO, with the FBO taking precedent. This statement is true, and it would be interesting to know whether the clubs think that a FBO is sufficient as it is wider-ranging. Storr's response also highlights how easy it is for football clubs to capture and store the data concerning club bans. This could play a pivotal role in informing government decisions and policies. If data can be shared between the football club and other authorities, it should also form part of the Home Office's annual statistical publication to provide context on the wider situation regarding football violence and disorder.

6.6 Conclusion

Football intelligence officers have been notified that their yearly funding could be 'dramatically cut' and they must produce better ideas that will prevent disorder at football; it must be measurable in the form of banning individuals and it must focus on hate crime and pyrotechnics, with any education schemes being unlikely.⁷⁴² For that

<<https://www.gov.uk/government/statistics/football-related-arrests-and-banning-orders-england-and-wales-2018-to-2019-season>> accessed 8 November 2019.

⁷⁴¹ Email from David Storr to author (17 October 2019).

⁷⁴² Melissa Reddy, 'Football Policing to Focus on More Stadium Bans When Fans Return' *Independent* (London, 27 November 2020) < <https://www.independent.co.uk/sport/football/premier-league/policing-football-stadium-bans-news-b1762710.html>> accessed 1 December 2020.

reason, football spectators will likely witness an increase in club bans over the coming seasons as intelligence is shared between the football club and local police constabulary through data sharing agreements. A heavier reliance on the club sanction procedure due to lack of funding could lead to a statutory s 14B FBO being served. Therefore, this chapter aimed to evaluate the use of stadium bans issued by individual football clubs. Focus was paid to the process of a stadium ban and how the bans are implemented. In turn, this has allowed analysis regarding the legality and proportionality of a stadium ban. Elements regarding the contractual nature of the ticketing arrangements and the processes instigated in the event of a breach of the contract have been discussed to demonstrate whether there is evidence to suggest that there is a need for retaining the current statutory framework under the FSA 1989, or if the alternative mechanism of a club ban should replace or continue to co-exist alongside FBOs.

The long-established disagreement regarding the responsibility for football-related violence and disorder will continue as highlighted in the previous chapters. The solution to the problems of disorder in the football stadium will always ultimately be the responsibility of individual clubs. For that reason, the use of stadium bans will increase, particularly for those breaches that can be classified as lower-level public disorder, or anti-social behaviour. Nevertheless, stadium bans are not without their issues. Although a football club retains the right to deny an individual entry onto their premises due to a fundamental breach of contract by the spectator if they have breached the terms/ground regulations, the proportionality of their response needs to be addressed and carefully measured. The varying range of sanctions, such as the duration of the ban needs to be proportionate to the actions/conduct of the individual, how many times and what would be an appropriate sanction for such behaviour. In turn, this would need to consider both the fiscal impact of the ban and the personal impact on the fan not being able to attend the stadium.

One of the fundamental issues regarding stadium bans that need to be addressed is the process that football clubs adopt. There are no guidelines or statutory regulations that a club must adhere to when deciding whether a football spectator has breached the ground regulations, therefore, there is a varied approach adopted. Although some clubs such as Manchester United, Liverpool FC and Sheffield United provide a satisfactory overview of the procedures they adopt, there is still improvement needed.

A standardised approach that is applicable across all 92 football league clubs needs to be adopted. A more proactive, proportionate, and fair procedure needs to be used for those that do breach the ground regulations. The findings analysed throughout this chapter demonstrate that the processes adopted raise issues regarding the rules of natural justice and are littered with procedural irregularities. Allowing a spectator to provide their evidence in the initial stages and allowing a fair and impartial appeals process would aid in arriving at a more just and proportionate response.

The true impact that club bans are having on the prevalence of FBOs is at present, unclear. However, after contacting the 92 football league clubs, albeit there was a small response, there are more club bans issued per season than FBOs, particularly in football's lower leagues. Although this may be because of club bans being issued for the lower-level public disorder offences when FBOs are used for the more serious offences, there is still a possibility that this may suggest that the behaviour of spectators is changing, and a club ban is more appropriate. With various data sharing agreements in place between football clubs and the police and football clubs and the BTP, the intelligence gathered on spectator behaviour includes, but is not limited to, any material being personal and/or sensitive personal data as defined under Data Protection Act 2018 must be considered. Data such as an individual's name, identifying details, photographs and passport details may then be passed to another football club, competition organisers, the police and/or such other appropriate authority as the club sees fit.⁷⁴³ It will be interesting to see whether this approach will see the use of more club bans than FBOs in the future. If this approach is taken, the chapter has analysed that using such data, spectators need to be fully aware of how their data is collated and used.

The contractual breaches of the ground regulations are usually classified as being football-related, those whereby they will fall foul to an offence under the FOA 1991. Offences which could ordinarily leave a football spectator subject to a s 14A FBO. Therefore, it is necessary to question whether a club ban, if the issues regarding proportionality are addressed, would be a better option than the police pursuing a statutory FBO. The next chapter will draw on the findings from the entirety of the thesis

⁷⁴³ English Football League, 'Example of Ground Regulations' (*efl.com*, 2020) <<https://www.efl.com/siteassets/efl-documents/ground-regulations-2019-20-efl---final.pdf>> accessed 21 May 2020.

to provide conclusions and recommendations regarding the use FBOs and whether they are fit for purpose in their current form. The chapter will use the analysis that has been conducted to provide recommendations as to whether FBOs work to reduce football-related violence and disorder. The chapter will determine whether FBOs are being used with the same intent as when they were first created and whether the use of club bans, an alternative mechanism in this overall package of measures, is deemed a better option for managing football spectators.

Chapter Seven: Conclusion & Recommendations

7.1 Introduction

The thesis aims to illustrate whether there is a sufficiently robust evidence base for retaining the current framework that is available to monitor and govern football spectators in England and Wales under the FSA 1989, by evaluating whether it is fit for purpose. There is no single documented piece of work that takes such a comprehensive approach to analysing whether the creation and use of FBOs are satisfying their designated purpose of reducing football-related violence and disorder. It will determine the fitness for purpose of the statutory FBO framework, whether it is doing what it set out originally to do and whether there was a genuine need for such robust legal interventionism. Providing an examination of the historical development of the legislation governing football spectators was necessary to establish whether there was a legitimate need for the introduction of FBOs. This then allowed for a critical exposition of the legality and interpretation of the statutory framework to provide

context as to how the law has been interpreted/defined and to evaluate whether it enables the parliamentary aims of decreasing football disorder through FBOs. Additionally, the monitoring of FBOs through the Home Office's annual statistics needed to be examined to establish whether there is sufficient evidence to support that there is still currently a need for FBOs to be used as a preventative measure. In doing so, this will highlight any deficiencies in the data that may impact their publication. Demonstrating inconsistencies in the collection and presentation of the data will aid the assessment of whether FBOs are indeed fit for purpose. Finally, it was necessary for the thesis to explore alternative solutions, particularly the use of stadium bans issued by individual football clubs. This preventative measure that has been available before the creation of any legislative provisions under the FSA 1989 will aid in establishing whether replacing FBOs with a new preventative mechanism to reduce football-related violence and disorder is needed. This chapter will, therefore, justify the necessary overhaul of the current packages of measures adopted to decrease football-related violence and disorder as well as propose several recommendations that can be implemented to achieve this aim.

7.2 Thesis Findings

Throughout the thesis, it has demonstrated that the statutory framework governing football matches in England and Wales is not fit for purpose. By examining the various governmental literature, it has been illustrated that there was no cogent evidence base for the introduction of FBOs in the first place and there has been no evidence for their various amendments made to the statutory framework.⁷⁴⁴ The lack of responsibility taken by all parties concerning spectator management, from the FA through to the police and the Government in regulating football spectators, has produced a rushed, and ill-thought-out framework. The various governmental reports and inquiries into football-related violence and disorder have illustrated that all parties involved either denied or were unwilling to accept responsibility for football spectators. The various questions posed by those tasked with investigating the various stadium disasters, or the Working Parties commissioned to examine crowd control, asked all the wrong questions. The questions posed would, therefore, not provide the evidence needed to

⁷⁴⁴ See Chapter Two and Three for discussion and analysis regarding the evolution of FBOs.

implement a framework such as those that regulate FBOs. The wide-ranging questions meant there was no focus on a singular issue, the issue being football-related violence and disorder. Instead, the reports would drift into matters regarding the finance of football clubs and football governance, but not considering spectator behaviour travelling to and from a football match, or crowd control measures outside of the stadium. More importantly, the reports did not make any distinction between criminal behaviour and what could be perceived as anti-social or minor public disorder. Therefore, there was no focus on what was necessary.

Parliament's approach to the regulation of football spectators can instead be deemed as political rather than necessary, fuelled by the media's intent to frame all football spectators as hooligans.⁷⁴⁵ This political approach taken by Parliament now means that they believe that FBOs are the only effective means of tackling football disorder.⁷⁴⁶ Nevertheless, this legislative framework was implemented as a result of various moral panics regarding football spectators overseas. Each intervention could be perceived as a 'grandstand gesture' that Parliament was seen to be doing something, although they were not sure what that was meant to be as the only evidence available was being provided by the media. There was no division of responsibility with all relevant authorities dismissing their responsibility for football spectators. Therefore, there was still no sound evidence base to create measures such as FBOs, even after multiple inquiries and reports. What remains in place is a promotion of a distinctly political agenda that indicates the FBO framework is a panic law solution. What was needed was a series of measures, rather than a single piece of legislation that is littered with inconsistencies in its implementation and application. Most notably, the introduction and use of s 14B FBOs. These Orders are so widely drawn in terms of who they can capture and there has been a changing emphasis on security and the pro-active management of risk and away from the more traditional criminal law response to wrongdoing which was the purpose of introducing FBOs. As ACPO stipulate, the 'risk' a spectator poses must be 'quantifiable and dynamically assessed' and is not sufficient on its own.⁷⁴⁷ Individuals and groups are being described as 'risk', without specific

⁷⁴⁵ See Chapter Three. Specifically, section 3.1 for analysis regarding the political motivation behind FBOs.

⁷⁴⁶ HC Deb (n 1).

⁷⁴⁷ ACPO (n 496).

reference to the actual risk posed. Demonstrating that s 14B FBOs are not being used as first intended.⁷⁴⁸

After the implementation of the FBO framework, the nearest governmental effort amounting to an attempt at doing ‘something’ now consists of the ritual accumulation of the annual Home Office statistics.⁷⁴⁹ The monitoring of FBOs by the Home Office is used to inform the general public, inform government policy and operational decisions by the police, demonstrate the scale of football disorder, and aid the police and CPS activities in reducing football violence and disorder.⁷⁵⁰ The statistics provide the trends of FBOs served and the number of arrests each football season. The monitoring of FBOs is an external factor that is used to measure the effectiveness of this area of law. However, they also state that they should not be used to make a season-on-season comparison. For that reason alone, the statistics are not a reliable means to monitor the levels of football violence and disorder in England and Wales. The unreliability of the statistics is also highlighted through the methodological underpinning of capturing the data.⁷⁵¹ The various means by which each police constabulary logs the data demonstrate that there is no standardised approach. Having no standardisation of logging FBOs and arrests, also highlights the unreliability of the Home Office statistics. As this unreliable external factor is the only means for measuring the effectiveness of FBOs, there is no ongoing evidence to justify the ongoing use or to demonstrate that FBOs are reducing football-related violence and disorder.

The solution to violence amongst sports spectators does not entirely lie in the law or Parliamentary regulations.⁷⁵² Violence in the context of sport, as in other contexts, is reflective of wider societal issues.⁷⁵³ Any solution also rests with those people who

⁷⁴⁸ See Chapter Four. Section 4.5.1 provides the analysis and discussion regarding ‘risk fans’ and the use of s 14B FBOs.

⁷⁴⁹ Extract from a paper dealing with the subject of ‘football hooliganism’ by Fitzpatrick (c) 1979 itemising here the character format entitled ‘Dedlos’ & ‘Dimwit’ developed to illustrate and epitomise the vandal/hooligan personality in a Letter from Tony Hardisty to Lord Westwood (26 September 1980).

⁷⁵⁰ See UK Statistics Authority (n 8) and Home Office (n 46).

⁷⁵¹ See Chapter Five. Section 5.7 analysis the methodology adopted by the police to collect the football-related data.

⁷⁵² Ricky Cannon, ‘Sensible Soccer: The Creation of the Unconvicted Football Hooligan Order’ (2000) 6 European Public Law 594.

⁷⁵³ Stoner (n 441) 12.

attend sporting fixtures and those authorities that govern the sports.⁷⁵⁴ The use of club or stadium bans that have been in existence before the creation of FBOs but now coexist alongside the statutory framework, offer an alternative solution to some of the issues with FBOs; particularly around capturing those spectators that are involved in lower-level public disorder and/or anti-social behaviour. Nevertheless, these preventative mechanisms are also not without problems. Club bans are not regulated, any club ban that is issued, their duration and how they are implanted rests entirely with the football club. Although football clubs are within their right to ban a spectator from their premises by revoking their permission to be there, or their licence to enter the stadium, an investigative procedure with a reliable appeals system is necessary to avoid any potential legal proceedings that may be brought against the football club. As there are very few football clubs that have a transparent club banning process in place, a more standardised procedure must be implemented across all football leagues in England and Wales.⁷⁵⁵ In doing so, this will not only supplement any statutory framework in place but also provide information regarding the true nature of football-related violence and disorder inside of a football stadium as not all individuals are subject to both a FBO and a club ban.

Collectively, the findings highlight that the package of measures, currently available is no longer fit for purpose. The lack of evidence to justify their initial introduction should have acted as a forewarning that there would be future issues in how the Orders were used and applied. FBOs were introduced to capture the ringleaders and organisers of football disorder, those that instigate or plan football-related violence and disorder.⁷⁵⁶ However, this is no longer the function of either s 14A or s 14B Orders. Primarily, FBOs capture those that engage in low-level public disorder or those engaged in sub-criminal anti-social behaviour. The proportionality of imposing FBOs for such minor offences moves far beyond the rationale for implementing FBOs over 20 years ago: that only the ringleaders should be targeted. Those minor offences or anti-social behaviour that occur within the football stadium are better addressed using a club ban. Nevertheless, the process of serving club bans also needs to be addressed to ensure that spectators are subject to a fair, impartial hearing that satisfies the rules of natural justice. In resolving those issues, the ongoing monitoring that would provide the evidence

⁷⁵⁴ Cannon (n 754).

⁷⁵⁵ See Chapter Six for the analysis regarding the procedures adopted by football clubs.

⁷⁵⁶ See Chapter Two and Three for analysis and discussion regarding the introduction of FBOs.

needed to justify the ongoing use of FBOs also needs to be improved. The Home Office statistics are not only unreliable, but they do not illustrate a true representation of the problem within England and Wales. For that reason, a radical overhaul of the package of measures used to manage football spectators needs to be addressed as it is no longer fit for purpose. A range of recommendations follows, proposing how to achieve a more proportionate and less problematic regulatory framework that ought to be adopted to resolve the issues stated above.

7.3 Summary and Recommendation for Changes to Section 14A and Section 14B

After examining governmental reports, Parliamentary publications, and evidence from the National Archives about football-related violence and disorder it has been demonstrated that there has been a lack of evidence and a lack of scrutiny of the justification for the implementation of s 14A and s 14B FBOs. Any amendments that have been made to this statutory framework have instead been the usual cut and paste method of statutory amendment, rather than a carefully considered, evidence-based change.⁷⁵⁷ The lack of evidence underpinning their introduction has unsurprisingly created issues regarding the interpretation of the statutory framework when the Orders are being served by the courts, or when the police are pursuing a s 14B FBO. It has been established that the construction of the wording of s 14 of the FSA 1989 is not clear enough to interpret in a manner that is proportionate and the initial purpose of implementing these Orders is no longer the rationale behind the Orders being served. Therefore, the package of measures available cannot be fit for purpose. To rectify these problems, it is necessary to amend the FSA 1989. Firstly, it is proposed that s 14A FBOs that are served on conviction are used, but careful amendments are made to the process.⁷⁵⁸ Secondly, that s 14B FBOs that are served on complaint are repealed.⁷⁵⁹

The purpose of FBOs was to catch those that instigated and/or committed serious football-related violence and disorder. Nevertheless, half of the arrests at football matches are for minor public disorder offences and anti-social behaviour such as those

⁷⁵⁷ HC Deb (n 165) 118.

⁷⁵⁸ See Chapter Four for the analysis regarding the use of s 14A. Specifically, Section 4.6.

⁷⁵⁹ See Chapter Four for the analysis regarding the use of s 14A. Specifically, Sections 4.5.1 and 4.6.

housed in s 4 and s 5 of the POA 1986. These lower-level offences that are committed can lead to a conviction and the serving of a s 14A FBO, however, this was not the purpose of creating a FBO on conviction. Instead, being involved in such behaviour was likely to be captured by other statutory provisions and more commonly, used as evidence for an application for s 14B FBOs on complaint. If those that organise and instigate football-related violence and disorder are now not the focus of using s 14A FBOs, then the purpose of these Orders has changed beyond Parliament's original intention. Therefore, it is either necessary to revert to using FBOs as Parliament intended, for breaking the link between football disorder and its organisers or amending FBOs to ensure that they are fit for their new purpose. If an individual has committed an offence, there is no genuine need to compile evidence to apply for a s 14B FBO. If the offence is serious, and is classified as football-related, then the individual should be prosecuted and served a s 14A FBO. This may have a considerable impact on the number of FBOs being served, however, it would demonstrate a more accurate representation of the scale of football-related violence and disorder in England and Wales. Something that is not currently reflected in the annual production of the Home Office statistics.

To retain s 14A FBOs it is then necessary to address how the courts serve the Orders. Currently, it can be argued that a s 14A FBO is a penalty fixed by law on those that are convicted of a football-related offence. As there is no single criterion that can be determinative of whether FBOs are a penalty or not. This, therefore, blurs the lines as to whether an individual who is served a FBO under s 14A is being punished twice.⁷⁶⁰ For that reason, a more legal appropriate approach to take is to incorporate the Order into the sentencing procedure, rather than maintain it as a civil application attached to a conviction. This will ensure there is a more proportionate response, i.e., ensuring the punishment fits the crime. Making s 14A FBOs part of the sentencing procedure it will ensure that the courts use the sentencing guidelines, something that is absent in the current procedure. Although each case will be different, the aim will be the same. The Sentencing Council promotes greater consistency in sentencing, whilst maintaining the independence of the judiciary.⁷⁶¹ Therefore, ensuring that any sentencing

⁷⁶⁰ See Chapter Four. Specifically, Section 4.2 for discussion regarding the standard of proof and analysis regarding whether FBOs are preventative or punitive.

⁷⁶¹ Sentencing Council, 'About Us' ([sentencingcouncil.org.uk](https://www.sentencingcouncil.org.uk)) <<https://www.sentencingcouncil.org.uk>> access 15 October 2021.

concerning the serving of a FBO is consistent and how the decision is reached is the same. This will aid in overcoming some of the inconsistencies highlighted throughout the thesis with the interpretation of what is classified as being 'football-related' or what can be determined as being a 'regulated' or 'designated' football match. Furthermore, for any Orders served, there will be a more consistent approach to both their duration and any conditions that may be attached. The Sentencing Council highlight that one of the most important aspects of sentencing is to decide what sort of sentence would be most likely to change the offender's behaviour.⁷⁶² Although being part of the sentencing procedure would now classify FBOs as being punitive, it would finally clarify their position in law. Allowing the offender to put forward any mitigating factors such as difficult personal circumstances, expressions of remorse or a guilty plea in aiding the court in their decision-making. In doing so, if the offender does admit to a specific football-related crime, it would usually mean a reduced sentence which would include the duration of the FBO. This would be particularly important if an individual is convicted of a lower-level public order offence.

In clarifying the position of s 14A FBOs and ensuring a more proportionate approach to serving the Orders, it becomes unnecessary to retain s 14B FBOs. This Order is both radical and tough in that they allow bans and constraints on individuals based on criminal law, but crucially do not require subjects to be guilty of a criminal offence.⁷⁶³ For example, these Orders provide the opportunity for much wider evidence to be considered within the application than one may normally consider in other proceedings. It is also not a requirement that the evidence would be admissible in such other proceedings.⁷⁶⁴ Therefore, the procedure adopted to impose a s 14B FBO in terms of the standard of proof necessary to impose an Order and the type of evidence that is admissible tilts towards that of criminal law.⁷⁶⁵ Therefore, they will not have been found guilty of a football-related offence but will be served a FBOs as though they have been. Where civil procedures could result in a penalty with a significant punitive effect, they should adhere to criminal law protections if the constraints on

⁷⁶² *ibid.*

⁷⁶³ See Chapter Four. Specifically, Section 4.2 for discussion regarding the standard of proof and analysis regarding whether FBOs are preventative or punitive.

⁷⁶⁴ s 14C(5)(a) FSA 1989.

⁷⁶⁵ See Chapter Four. Specifically, Section 4.2 for discussion regarding the standard of proof and analysis regarding whether FBOs are preventative or punitive.

individuals are allowed based on criminal law.⁷⁶⁶ For that reason, the option of a club ban that will be discussed in the next section of this chapter, there are already alternatives in place for those who may be involved in other lower-level football-related disorder, particularly as s 14B is rarely used against the ringleaders or those that 'orchestrate riots'.⁷⁶⁷ They are now imposed arbitrarily and disproportionately and therefore are not fit for purpose in their current form. This is most notable with those spectators that are classified as being 'risk', with most s 14B applications being made based on generalisations, rather than on intelligence of actual engagement in violence or disorder. **Describing an individual or a group as 'risk' should not be sufficient proof of the need for the imposition of an FBO on its own. There must be a specific reference to the actual risk posed by individuals or groups, i.e., a supporter who has been involved with identifiably risk behaviour.** If this is absent, pursuing this is not only disproportionate but also a misuse of time. The arbitrariness of this Order gives far too much power to individual police officers. The measure is too widely drawn, finding individuals without previous conviction and using a plethora of evidence that can be adduced to prohibit an individual from attending football matches for a minimum of three years, alongside the possibility of a custodial sentence on breaching said Order is a step too far.⁷⁶⁸ The evidence used for these civil applications does not need to meet the same high evidential and legal thresholds as that required to prove a criminal offence, but the outcome, a FBO is the same. By retaining s 14A for those that commit a serious football-related offence and club bans for those that breach ground regulations inside of the stadium, retaining s 14A and club bans is a more appropriate and proportionate change to this preventative package of measures.

7.4 Summary and Recommendation for Changes to Regulation of Stadium / Club Bans

Evaluating the use of stadium bans issued by individual football clubs has demonstrated that there are inconsistencies and issues like the statutory framework housing FBOs.⁷⁶⁹ Problems regarding the process of banning a spectator and the

⁷⁶⁶ See, *Engel v The Netherlands (No.1)* (1976) 1 EHRR 647, *Garyfallou AEBE v Greece* (1997) 28 EHRR 344 and *Lauko v Slovakia* (1998) 33 EHRR 439.

⁷⁶⁷ James and Pearson (n 59).

⁷⁶⁸ HL Deb (n 465).

⁷⁶⁹ See Chapter Six for analysis and discussion of the procedures and use of club bans.

contractual nature of the ticketing arrangements need to be addressed to represent a more proportionate procedure implemented by football clubs. With the second of the recommendations posed by this thesis that s 14B FBOs should be repealed, and the likelihood that football spectators will witness an increase in club bans over the coming seasons as intelligence is shared between the football club and local police constabulary through data sharing agreements. It is even more imperative that this alternative mechanism needs to adhere to the rules of natural justice, and for any decision made by the football club to be a proportionate response. To do this, several changes are proposed that should ensure a more consistent approach to the club ban procedure. Firstly, there needs to be oversight and regulation by the FA regarding the use of these bans. Secondly, a standardised approach needs to be adopted by all clubs involved in designated football matches. Thirdly, there needs to be a much more robust procedure in place. Including, independence of the panel, allowing a spectator the right to be heard, the right for a spectator to be represented, formal written reasons and the right to appeal. Finally, the use of data-sharing agreements between a football club and police constabularies needs to be more robust and transparent. Rectifying these issues will allow the club bans to effectively replace the statutory s 14B FBO on complaint and to help demonstrate the true nature of football-related violence and disorder.

The function of a club ban lies primarily with the football club. The football club retains the right to remove or prohibit individuals from its premises. On the face of it, this is acceptable, however, an individual should also retain the right to challenge that decision made. Currently, there is no oversight or regulation regarding club bans. The decision, processes, and procedure rest entirely with each football club, meaning that the processes adopted will vary from club to club.⁷⁷⁰ As the thesis is recommending repealing s 14B FBOs, it is even more pressing to ensure that this alternative mechanism in the form of a club ban is correctly utilised. Throughout the thesis, it has been noted that the Government and the police have stated that responsibility for football spectators rests solely with the individual clubs. Therefore, any oversight or regulation of club bans is likely to be more successful and more easily implemented through football's governing body, the FA, or an independent body, such as an

⁷⁷⁰ See Chapter Six. Sections 6.3.1, 6.3.2 and 6.3.3 for full discussion and analysis on the different club ban procedures adopted by the various football clubs in England and Wales.

Ombudsman. For that reason, the best approach is for the FA, or its designate, to provide a standardised approach to the club ban procedure. This would ensure a coherent process, along with regulation, for all football clubs to adopt. The FA have already created specific rules that hold individual football clubs directly responsible for the behaviour of their supporters. If disturbances do occur, sanctions can include fines, playing behind closed doors and possible exclusion from tournaments.⁷⁷¹ For that reason, it is possible to create a standardised approach that each club can adopt in concerning stadium bans; something that would benefit each club and the possible sanctions they may be subject to currently.

Within this standardised approach, several factors also need to be considered to ensure that there is a more transparent process not only for the spectators but for the football clubs in exercising their rights. Firstly, clarity regarding the ticketing terms and conditions and the possible spectator breaches that may occur, need to be clarified. Currently, some clubs do provide the length of the bans that can be imposed.⁷⁷² However, the varying duration of the bans that are adopted by each club needs to be proportionate to the breach. Therefore, a clear and comprehensive overview of the ticketing terms and conditions as well as any sanctions need to be available. Secondly, the variation in processes currently adopted by clubs needs to be rectified. Most football clubs have no formal procedure in place. Introducing a robust process that can be adopted by all football clubs is better practice than allowing clubs to develop their own. Implementing a procedure that is fair, proportionate, and just at all stages of the club's investigation will allow a spectator to put forward their evidence and make a rebuttal. At present, this is not possible and the lack of any appeals procedures by some clubs makes it difficult for some spectators to have their case heard at all.⁷⁷³ By introducing an appeals procedure for all clubs, whereby a fan also has the right to be represented. For example, allowing a spectator to attend with a member of the club's Supporter's Trust will ensure that a spectator receives a fair and unbiased hearing. Adopting this will not only aid the spectator, but will also stop any potential legal proceedings being brought against the football club.

⁷⁷¹ The Football Association (n 638) FA Rules E20 and E21.

⁷⁷² See Chapter Six. Sections 6.3.1, 6.3.2 and 6.3.3 for full discussion and analysis on the different club ban procedures and sanctions adopted by the various football clubs in England and Wales.

⁷⁷³ See Chapter Six. Section 6.3.3 provides full discussion and analysis on the different appeals procedures, and lack of, adopted by football clubs in England and Wales.

Finally, if s 14B is to be repealed, alongside the recommendations posed above, it will also be necessary for the clubs to have a standardised approach to sharing and logging the data. Where the presence of a supporter would pose a risk to others, in cases where offences have been violent, discriminatory, or threatening in nature, a club will provide details of supporters sanctioned with a ban to relevant opposition clubs as well as being passed to the police, football authorities and other relevant authorities. It can be assumed that all 92 Football League clubs have data-sharing agreements in place with their local constabularies. However, there are only 55 agreements of the 92 Football League clubs sharing spectator information with the BTP.⁷⁷⁴ Although there is no legal requirement that football clubs must share this data with the local police constabularies and most private sector organisations, such as football clubs do not need to identify a specific power to share the data. If s 14B is repealed, having such agreements in place will aid in understanding the nature of the minor and lower-level offences that occur inside of the football stadium. Nevertheless, clubs do need to ensure that if personal data is shared, the football club must clearly explain their lawful basis for sharing the data, including the full extent of the data that is held via their ticketing / contractual arrangements. In doing so, this will provide transparency regarding both the spectators' and the clubs' rights regarding privacy and data sharing.

7.5 Summary and Recommendation for Changes to Monitoring Football Violence and Disorder: The Statistics

The analysis regarding the monitoring of FBOs via the Home Office statistics, supplemented by the information uncovered by the FOI requests, has established that there are numerous deficiencies and inconsistencies in the collection and the publication of the football-related arrest and FBO statistics.⁷⁷⁵ Therefore, as this is the only data available to monitor football-related violence and disorder, this causes difficulty in establishing the efficacy of FBOs. The range of anomalies in the data, although appearing relatively small, has, cumulatively, a larger impact as these statistics are the sole source of official 'truth' that is used to inform policy and law-

⁷⁷⁴ See, Chapter Six. Section 6.4 for analysis regarding Data Sharing Agreements. Also see, Leventhal (n 725).

⁷⁷⁵ See Chapter Five for analysis and findings regarding the Home Office statistics and FOI requests.

making. As the thesis is recommending retaining s 14A FBOs, the statistics are still needed to monitor how many FBOs are served, along with the number of arrests, the nature of the arrests, the number of prosecutions and the nature of those prosecutions, the number of s 14A Orders served, alongside the new experimental data that is being generated. Furthermore, as the thesis is proposing a robust overhaul of the club ban process, the statistics would also need to include the number of club bans recorded to demonstrate the true scale of football-related violence and disorder. These statistics should include the nature of the behaviour that led to the club ban and the duration, alongside those factors already stated above with s 14A FBOs. Nevertheless, for the statistics to work, there needs to be an overhaul of how they are collected and presented. One recommendation can be to move the collection and collection of data to the Office of National Statistics (ONS) instead of the Home Office. The ONS already collect crime statistics and they 'go beyond what is reported to the police as most offences – about 60% – are not reported to the authorities'.⁷⁷⁶ The ONS' role is to help answer questions regarding what types of crimes are increasing and decreasing and what is the best overall assessment of changes in crime in England and Wales by providing overall assessments of crime trends based on the best possible source of information each type of crime.⁷⁷⁷ This level of detail is what is required when monitoring football-related violence and disorder; the football-related arrest and FBO statistics need to be thorough and reliable. The statistics need to include as much relevant information as possible, such as the number of arrests, why the arrest occurred, the number of offences committed, the number of convictions, the number of FBOs served, the number of FBOs breached and whether the arrests and/or offences were committed inside of the stadium or away from the stadium. This will help highlight whether football-related violence and disorder are increasing or decreasing because of government, police and football authority intervention.

To ensure that the data presented is thorough and reliable, it is recommended that the methodological underpinning of capturing the data is also addressed. As the thesis has demonstrated from the use of FOI requests, there is not a singular approach to

⁷⁷⁶ Iain Bell, 'Crime Statistics – What Next?' ([ons.gov.uk](https://blog.ons.gov.uk/2018/01/22/crime-statistics-whats-next/), 22 January 2018) <<https://blog.ons.gov.uk/2018/01/22/crime-statistics-whats-next/>> accessed 15 September 2021.

⁷⁷⁷ *ibid.*

logging data in relation to football-related incidents, arrests, or offences.⁷⁷⁸ This inconsistent approach means there are 43 police constabularies in England, whereby their data is used to produce the Home Office annual statistics, and there is no consistent or standardised approach to logging that information. Although some of the football-specific offences are logged using the Home Office Counting Rules, the other more common offences such as affray and violent disorder have no specific attached marker or tag that allows the offences to be logged as football-related. For that reason, the current information is provided to the Home Office is unreliable and does not reflect the true nature of football spectator behaviour in England and Wales. A standardised approach within the Home Office Counting Rules that is football-specific, will provide a more coherent system. Allowing the constabularies in England and Wales to correctly identify and log incidents and offences that are football-related using a 'tag' or a 'marker' that can be searched and collated for the annual statistics will provide a much clearer and more thorough picture. Having a more robust system in place will provide options for future reform and development on the legality of managing football spectators.

Finally, with the likelihood of the increase in the use of club bans over the coming seasons, and the thesis proposing repealing s 14B of the FSA 1989. It would be necessary for football clubs to collate the data regarding the number of club bans issued to football spectators. Currently, from the research conducted for this thesis, many football clubs do not store this data.⁷⁷⁹ Not only does this cause issues in enforcing the club bans, but it does not help in highlighting the level of football-related violence and disorder at that football club. As recommended, implementing a standardised club ban procedure and regulating the procedure would require football clubs to store the data regarding the number of bans in place, alongside the supplementary information regarding the nature of the ban. One notable example of this is the process in place at Crystal Palace FC which provide to the Premier League or Football League and the Supporters Trust a summary of club bans imposed that season. This will include the number of supporters receiving club bans, the duration of these bans, the offences for which they were imposed, the number of initial meetings

⁷⁷⁸ See Chapter Five. Section 5.7 analyses the FOI requests and the Home Office Counting Rules to demonstrate the deficiencies in the collection and logging of data.

⁷⁷⁹ See Chapter Six. Section 6.5 discusses and analyses the club ban data provided by various football clubs.

held with supporters, the number of supporters who have used the appeal process and the number of successful and unsuccessful appeals.⁷⁸⁰ In doing so, these statistics can also feed into the annual statistics to illustrate the true nature of football-related violence and disorder and whether the new, proposed framework is fit for purpose.

7.6 Summary and Recommendation for Changes to Policing Football

Current and previous governments have maintained that the behaviour of football spectators primarily lies with the football club and their ongoing relationship with the local police constabulary. The function and role of the police in managing football spectators and their role with stadium bans denotes that there must be the closest understanding and co-operation between ground authorities and the police, both before a match, during the period of play and afterwards whilst the crowd is dispersing.⁷⁸¹ It has not been within the scope of this thesis to provide an in-depth discussion concerning policing football; this is already a well-researched field with many recommendations and suggestions for change. However, it is necessary to provide recommendations regarding the nature of football policing to ensure that this area functions more fairly and more effectively, particularly with the proposal for repealing s 14B FBOs. It has been noted that ‘a combination of increasingly effective police action, better design and security in the grounds and a greater acceptance of responsibility by the clubs has led to a great diminution in trouble here at [England] home’.⁷⁸² However, there are suggestions that permitting football spectators into stadiums post-Covid-19, the police national policy is to gear up for more arrests and FBOs.⁷⁸³ Something that has been rejected by certain police forces in favour of other football policing activities that are aimed at preventing disorder, and engaging supporters into positive behaviour change. Therefore, suggesting that reform, not only to the statutory framework is required, but also football policing is necessary.⁷⁸⁴

⁷⁸⁰ Crystal Palace FC (n 708).

⁷⁸¹ Ministry of Housing and Local Government (n 85) 14.

⁷⁸² HC Deb (n 479).

⁷⁸³ Melissa Reddy (n 744).

⁷⁸⁴ Richard Hester, ‘Assessing the UK Football Policing Unit Funding of Football Banning Orders in Times of Policing Austerity’ (2020) *Policing. A Journal of Policy and Practice* 15.

It has been suggested that a ‘root-and-branch review’ of the UKFPU is a matter of urgency to stop the approach of seeing ‘fans as a threat and a problem to be solved’.⁷⁸⁵ This comes at a time when the Head of the UKPFU has stated that the courts must get tougher with issuing FBOs and not accept ‘sob stories’ from defendants’. Specifically highlighting those fans who are ‘bare chested, screaming abuse on match day, don a suit for court and avoid a Football Banning Order’.⁷⁸⁶ This attitude regarding football spectators, or ‘generalisation’ as previously discussed has led to a pre-emptive approach to managing football spectators, or FBO-led policing. There has been a shift in criminal justice with a more pre-emptive approach, moving away from the more traditional criminal law response to wrongdoing.⁷⁸⁷ Football supporters are amongst the most heavily policed social groups in the UK and the introduction of civil preventative measures were first used to prevent individuals from attending football stadiums. The nature of pre-emptive police interventions in football has been highlighted by the courts. It is noted that ‘the public generally accept that temporary restrictions may be placed on their freedom of movement in certain contexts, such as... attendance at a football match’.⁷⁸⁸ Pre-emptive police strategies to manage football crowds have not been challenged in the higher courts, and football supporters appear more likely to tolerate and normalise intrusive and sometimes aggressive public order responses as part of the ‘match day experience’.⁷⁸⁹ This repressive policing approach is still prevalent, with allegations made by football spectators that include the use of batons, incapacitant sprays and general excessive use of force by the police.⁷⁹⁰ This serves as a reminder of the need for football to be policed more fairly and effectively.⁷⁹¹

⁷⁸⁵ Reddy (n 646).

⁷⁸⁶ Margaret Davis, UK Football Police Chief: Courts Must Get Tougher with Banning Orders’ *Evening Standard* (London, 14 July 2021) <<https://www.standard.co.uk/news/uk/courts-football-prime-minister-england-uk-football-policing-unit-b945799.html>> accessed 28 July 2021.

⁷⁸⁷ See, Lucia Zedner, ‘Fixing the Future? The Pre-emptive Turn in Criminal Justice’ in Simon Bronniti, Bernadette McSherry and Alan Norrie (eds), *Regulating Deviance: The Redirection of Criminalisation and Futures of Criminal Law* (Hart Publishing 2009); Garland (n 497) and Zedner (n 392).

⁷⁸⁸ *Austin and Others v UK* (2012) 55 EHRR 14, 59.

⁷⁸⁹ James and Pearson (n 167).

⁷⁹⁰ See, Frosdick and Marsh (n 263) 156 and David Dubas-Fisher, ‘Football Supporters Made Over 200 Complaints Against Police Tactics at Matches in Last Four Seasons’ *Wales Online* (Cardiff, 18 January 2019) < <https://www.walesonline.co.uk/news/uk-news/football-supporters-made-over-200-15697492>> accessed 21 May 2021.

⁷⁹¹ Hester and Pamment (n 555).

The nature of FBOs, in particular, s 14B Orders, the operation and purpose of these is to identify and target risk supporters. In doing so, data suggests that the number of FBOs implemented is partially generated by pressure to deliver targets and a desire of officers to justify and preserve their roles.⁷⁹² A factor that may influence police discretion in the use of FBOs is the funding process involving the UKFPU, possibly creating a target driven culture.⁷⁹³ For that reason, the funding arrangement means that there is 'a banning industry' and that the UKFPU effectively sets targets for the number of civil banning orders that must be issued each year.⁷⁹⁴ As the thesis proposes to repeal s 14B of the FSA 1989, this may change this FBO-led policing mentality. Considering the voice of some police officers that reform is needed, and that the UKFPU funding is utilised for other policing activities that are aimed at preventing disorder, and engaging football spectators in positive behaviour change, the recommendations posed by the thesis would be advantageous.⁷⁹⁵ Dedicated Football Officers are also in agreement, suggesting that the funding would be better allocated to intervention-based work, something that would be available if s 14B FBOs are repealed.

Research undertaken by Stott and others forms the basis of Project ENABLE. A research-led crowd management project, which is helping to transform how future matches are policed and stewarded. Project Enable is an amalgamation of the EFL, leading academics, police forces and football clubs to develop research-led and innovative approaches to crowd safety and security. The project is focusing on matchday policing and stewarding used by several police forces and clubs including those in Lancashire, Staffordshire, South Wales, West Midlands, West Yorkshire, as well as working with BTP in other parts of the UK.⁷⁹⁶ Project ENABLE's aim to work with police forces have shown signs that innovations may be beginning to challenge this orthodoxy.⁷⁹⁷ Particularly through the use of Police Liaison Officers engaging with football supporters, which in turn, enhances their capability to provide improved intelligence to commanders which in turn could assist in their decision making. This

⁷⁹² Hopkins (n 169).

⁷⁹³ *ibid.*

⁷⁹⁴ Stopes (n 466).

⁷⁹⁵ Hester (n 786).

⁷⁹⁶ University of Manchester, 'English Football League Announces Groundbreaking Policing Project' (*manchester.ac.uk* 24 October 2019) < <https://www.manchester.ac.uk/discover/news/english-football-league-project/> > accessed 14 November 2020.

⁷⁹⁷ Stott, West and Radburn (n 170).

analysis illustrates that football spectators respond better to Police Liaison Teams when they promote 'education, facilitation, communication and differentiation'.⁷⁹⁸ One notable example can be the use of 'bubble matches' whereby spectators of the away team must travel on designated transport from specific pick-up points and be escorted to the stadium. There has been a number of calls against this process from spectator groups, the FSA and most notably from football clubs.⁷⁹⁹ The decision to overturn the bubble match at the Tyne / Wear derby was a collective agreement between the football clubs, the spectators, and the police. It was argued that 'match-going fans are not the problem, yet they who are being punished'.⁸⁰⁰ Therefore if the police engage with the spectators, more progress will be made in all areas of football-related policing.

A more educational, interventional approach is needed to appease violence and disorder amongst some football spectators, rather than a high concentrated police presence and a package of draconian measures.⁸⁰¹ This overall approach to risk and police operational planning concerning football matches and its spectators that is posed by Stott and others is a step in the right direction. However, there is more to be done as without a change in the statutory framework, it is unlikely that all police officers will engage Stott and others' research findings. Particularly as some police officers have become stuck with a particular command and control policing model when compared to the policing of other areas, such as protest.⁸⁰² The resistance to change among police staff in tackling football violence and disorder, does appear to be changing, albeit slowly.⁸⁰³ The recommendations posed by this thesis in repealing s

⁷⁹⁸ The general model of crowd behaviour: The Elaborated Social Identity Model (ESIM) per Stephen Reicher and others, 'Knowledge-Based Public Order Policing: Principles and Practice' (2007) 1(4) Policing 403 and James Hoggett & Owen West, 'Police Liaison Officers at Football: Challenging Orthodoxy through Communication and Engagement' (2020) 14(4) Policing: A Journal of Policy and Practice 945.

⁷⁹⁹ See, Football Supporters Association, 'Fans and Players Unite Against Bubble Match' ([fsa.org.uk](https://thefsa.org.uk), 27 March 2013) < <https://thefsa.org.uk/news/fans-and-players-unite-against-bubble-match/> > accessed 14 April 2019 and Football Supporters Association, 'Joint Statement: Sunderland and Newcastle Fans Join Forces to Say No to Bubble Match' ([fsa.org.uk](https://thefsa.org.uk), 7 January 2014) < <https://thefsa.org.uk/news/joint-statement-sunderland-and-newcastle-fans-join-forces-to-say-no-to-bubble-match/> > accessed 14 April 2019.

⁸⁰⁰ *ibid.*

⁸⁰¹ Alex Homer, 'Premier League and EFL Matches 'Over-Policed' *BBC News* (London, 24 July 2018) < <https://www.bbc.co.uk/news/uk-england-44871578> > accessed 12 June 2021.

⁸⁰² See, James Hoggett & Clifford Stott, 'Post G20: The Challenge of Change, Implementing Evidence-Based Public Order Policing' (2012) 9(2) *Journal of Investigative Psychology and Offender Profiling* 174; James and Pearson (n 167) and Hoggett & West (n 800).

⁸⁰³ Stott, West and Radburn (n 171).

14B FBOs and increasing the use of club bans will mean that the police have to possess a more positive approach to policing football spectators. Losing the classification and management of risk associated with s 14B FBOs may stop the reliance on more coercive policing tactics that hinder the development of a liaison-based approach to policing.

7.7 Final Remarks: Future Action & Research

The various recommendations that the thesis proposes highlight that the current package of measures is no longer fit for purpose. FBOs are needed to curb serious football-related violence and disorder and complete removal of these Orders would not be appropriate. However, with most offences now being committed being that of lower-level public disorder and anti-social behaviour, a radical overhaul of the preventative package of measures is needed as the purpose of FBOs has changed since their inception. To achieve a package that is fit for purpose, it is necessary to take, cumulatively, the recommendations posed above. This will involve several legal changes and to achieve this, what is posed is the creation of a hierarchical framework based on the findings and recommendations of the thesis. A framework that provides legal clarity as well as highlights the areas in which further research would be beneficial. Several areas where information is lacking were highlighted in the literature review. Whilst some of these were addressed by the research in this thesis, others remain. In particular, there has been no comprehensive investigation into the use of club bans. Future work, involving liaising with all football clubs, will allow a comprehensive analysis of the perception, use and functionality of these bans, and determine how to move forward to ensure consistency and fairness. In doing so, this will support the implementation of the initial stages of the hierarchical framework that the thesis recommends.

In the first instance, when a spectator breaches the ticketing terms and conditions at their respective football club, depending on the severity of the offence, it would be best practice to serve the individual with a stadium ban; a ban from the home stadium only. If the breach is deemed more serious, for example, sub-criminal, anti-social behaviour or a serious breach of the ticketing terms and conditions, a club ban may then be used,

banning the spectator from both home and away matches for the respective club. To achieve this, the current club ban processes at football clubs need to be replaced with a better, standardised and regulated club ban procedure. This will ensure that any response to those offences committed inside of the stadium is proportionate and the proceedings adhere to the rules of natural justice. If an offence is deemed to be more serious and outside of the remit of the football club's responsibility, then prosecution is needed. Introducing this will mean that s 14B FBOs are no longer necessary and should be repealed. This will assist in better policing of football spectators by moving away from FBO-led and risk-based policing, to allow for a more open, liaison-based approach to deter football spectators from committing offences that may lead to prosecution.

The last step in the new hierarchical system, a measure of last resort, is retaining and utilising s 14A FBOs. A FBO on conviction should be used for incidents of serious disorder/crime, as this was Parliament's intent when the Orders were first created. However, retaining s 14A FBOs, the Order must become part of the sentencing procedure, rather than a civil application attached to a conviction. This will promote fairness and a proportionate response to those that are convicted of football-related violence and disorder. For that reason, using the evidence that this thesis has produced in relation to addressing the policing, how the football-related data is collected and presented, how the law is interpreted and the responsibility of football clubs for their spectators, will underpin any justification for change. It is unravelling a whole package of measures, rather than observing FBOs on their own. Something that, as history has revealed, does not work.

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