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Football Banning Orders: Analysing their Use in Court

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Abstract In the months prior to the 2006 FIFA World Cup in Germany, the government funded a number of targeted policing operations aimed at securing Football Banning Orders against known or suspected football hooligans. This article is based on court observations and associated interviews carried out in early 2006 in and around Manchester. It evaluates the application process, the legal tests applied and the quality of the evidence relied on by courts when determining whether the imposition of a Football Banning Order is necessary to prevent future football-related disorder being committed by the respondent. In particular, the analysis focuses on whether the use of a civil procedure can continue to be justified in the light of the punitive length of and conditions attached to these Orders, whether the correct standard of proof is being applied by the court at all stages of the application and whether policing tactics are focused too narrowly on the securing of Football Banning Orders.

State responses to football crowd disorder, or 'football hooliganism' as it has been labelled by the media, have typically resulted in criminal legislation and innovations in public order policing tactics. A series of Acts introduced between 1985 and 1994 created new offences that could be committed by football supporters and outlawed activities such as consuming alcohol in stadiums,[1] indecent and racist chanting,[2] invading the pitch and ticket touting.[3] During the same period, police strategies for controlling what are currently known as 'risk supporters'[4] were also changing. In the late 1980s, policing strategies changed from reactionary mass public order policing to more 'intelligence led' policing, with the creation of Football Liaison Officers and the Football Intelligence Unit, part of the National Criminal Intelligence Service (NCIS).

This change in policing was complemented by the use of a new legislative provision, the Football Banning Order (FBO), the first version of which was introduced by s. 30 of the Public Order Act 1986.[5] The purpose of FBOs was to prevent those convicted of 'football-related' offences[6] from attending future football matches in England and Wales in the hope that the removal of these 'troublemakers' from matches would lead to a reduction in disorder. Prior to this, the only way that a 'hooligan' could be prevented from attending matches was if the club in question banned that person from entering the ground under its own rules. However, breaching such a ban would merely lead to the banned individual's ejection from the home stadium and could not prevent them travelling to away matches. Conversely, the breaching of an FBO is a criminal offence that can lead to imprisonment.

Since 1986, the conditions that can be attached to FBOs have been extended on three occasions. The Football Spectators Act 1989 (FSA) gave magistrates the power to impose orders that prevented those convicted of football-related offences from leaving the UK when English club sides or the national team were

playing abroad.[7] However, these orders did not prevent several high-profile incidents involving supporters of the England national team abroad, most notably in Dublin in 1995 and Marseilles at the 1998 FIFA World Cup. As a result, the definition of 'football-related' was extended to encourage the imposition of more orders, and magistrates were given the power to order that those convicted of football-related offences surrender their passports when designated English and Welsh teams were playing abroad.[8]

Finally, following disorder at the UEFA European Championships in Belgium in 2000, the Football (Disorder) Act 2000 amalgamated domestic and international orders, allowing FBOs to be imposed even where the conviction was not 'football-related' and created a new form of FBO that enabled the police to apply for the imposition of an order on a suspected hooligan 'on complaint'.[9] This important development ensured that FBOs could 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. The FBO would be imposed by a magistrate where he was satisfied that to do so would help to prevent future football-related disorder.

To supplement these provisions, s. 21 of the Football (Disorder) Act 2000 gave police officers the power of summary detention during the control period around a designated match where they believed an FBO on complaint should be imposed on an individual. This power 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. Although technically a civil order, the 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. FBOs are now the cornerstone of the Home Office's strategy for preventing football-related disorder, both domestically and abroad, and by the 2006 World Cup there were 3,286 banning orders in force.[10] In 2005, £5 million was set aside by the Home Office for the purpose of developing profiles against risk supporters for the purpose of imposing FBOs.[11] In the build-up to the high-risk 2006 FIFA World Cup in Germany there was a rush to impose FBOs, with the Home Office frequently stating the minimum number that would be in place by the start of the tournament. Furthermore, regardless of the outcome of the tournament, it can be expected that in the build-up to the equally problematic 2008 UEFA European Championships in Austria and Switzerland, there will be another push to impose more FBOs.

This article will analyse the utilisation of FBOs as a deterrent measure. Despite a number of very serious civil liberties concerns surrounding FBOs, which have been discussed elsewhere,[12] we intend to focus instead on the procedural issues surrounding their imposition in the magistrates' courts and Crown Courts, the evidence gathered by Football Intelligence Officers and the tests used by magistrates to determine whether FBOs, particularly those on complaint, should be imposed. This analysis is based upon observations in magistrates' courts and Crown Courts in the North-West of England and interviews carried out with the police, the Crown Prosecution Service and the Home Office, supported by over 11 years of crowd observations (up to and including the 2006 World Cup) from several different academic projects. We will reveal a number of concerns with the current procedures for imposing FBOs, particularly those on complaint, which cast doubts as to whether these orders are being imposed correctly and on the right people. If we are right in our concerns, the problems identified could have severe consequences for public order around football matches both domestically and abroad.

Banning orders: powers and procedures

The procedure for the imposition of an FBO is the same whether it is on conviction or application. Although an FBO imposed under FSA, s. 14A appears to be an integral part of the sentencing procedure, technically it is a civil application made by the prosecution at the end of the trial and is 'in addition to a sentence imposed in respect of the relevant offence'.[13] There is no specific mention made anywhere in the FSA, or the antecedent legislation, about the procedure to be followed when applying for an FBO, however, 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.

Following a conviction for a football-related offence, the prosecution will apply to the court under s. 14A for an FBO to be imposed on the defendant. Under s. 14A(2), if the court is satisfied that there are reasonable grounds to believe that making an FBO would help to prevent violence or disorder at or in connection with

any regulated football matches, it must make the order. If it does not, then reasons for not doing so must be given by the court. Additional evidence to that given at trial may be led by both the prosecution and the defence, including evidence that would not have been admissible at the trial (s. 14A(3A), (3B)). If the application is made following a conviction, the FBO must be imposed for a minimum period of three years rising to a maximum of five, however, if the conviction led to immediate imprisonment, the minimum is raised to six years and the maximum to 10. From our observations, only three out of 55 convicted defendants did not have an FBO imposed on them, 18 received FBOs of three years, 26 for six years and eight for 10 years.

Where no conviction has been secured, the chief officer of police for the area where the suspected 'hooligan' resides may apply on complaint to the magistrates' court for an FBO to be imposed on the suspect under FSA, s. 14B. The court must impose the order where two conditions are satisfied. The first is that the suspect has at any time caused or contributed to any violence or disorder in the UK or elsewhere.[14] The second is that the court is satisfied that there are reasonable grounds to believe that imposing an FBO would help to prevent violence or disorder at or in connection with any regulated football matches.[15] To prove these two conditions, the police use a variety of evidence. The first condition is usually proved by the submission of first-hand and/or video evidence showing the respondent engaging in incidents of violence or disorder, or by adducing evidence of previous convictions for offences of violence (whether or not the incidents from which they arose were football-related). Where a respondent has been known to the police for a more prolonged period of time, they may also proffer evidence of his 'profile'. The second condition, when addressed by the court, is usually evidenced by the respondent's 'profile' alone.

'Profiles' are dossiers of evidence compiled by Football Intelligence Units. They contain the basic personal details of the respondent, usually acquired either on arrest or as the result of evidence gathered under s. 60 of the Criminal Justice and Public Order Act 1994, and his photograph. The profile also contains a log of every incident of football-related disorder or violence with which the respondent has had some connection. Such evidence can range from the damning, such as reports of the respondent actually being involved in a fight, to the circumstantial, such as the respondent being seen sitting with other suspected hooligans.[16] This profile is used by the police to demonstrate a propensity to football-related violence and disorder in the respondent and to prove that an FBO would help to prevent future repetitions of such behaviour at or in connection with regulated football matches. If the application is successful, the respondent will be banned for a minimum of two years, rising to a potential maximum of three years.

FBOs imposed as a result of either procedure are claimed to be preventative rather than punitive. They are supposed to protect people and property from being damaged by acts of football-related disorder by removing the banned person from situations where such disturbances may take place. Their punitive effect is considered to be incidental only to their preventative intention.[17] FBOs imposed under FSA, s. 14A are in addition to the sentence imposed by the court, not a part of it, whilst those imposed under s. 14B do not follow any kind of criminal process. Thus, neither are considered by Parliament or the courts to be punishments. At all stages of the applications that we observed, the police and magistrates were keen to avoid the phraseology of criminal litigation, such as 'prosecute,' 'punish' and 'guilty', although they were not always successful on this count.[18]

There are two important differences between the procedures described under ss 14A and 14B. Under s. 14A, there is no initial condition that the prosecution prove that the defendant has previously been involved in violence or disorder. This is for the simple reason that, following a trial and conviction, this requirement will have been proved beyond reasonable doubt during the course of the preceding trial. The only exception to this is where the defendant has been convicted of ticket touting under s. 166 of the Criminal Justice and Public Order Act 1994, where it appears to be assumed that the unauthorised sale of tickets to a designated football match of itself creates disorder and/or a breach of the peace.[19] Under s. 14B, there is no requirement that the first condition be satisfied by violence or disorder that is football-related. Apart from these, the procedures used and the standards of proof and evidence required are the same, whichever procedure is used to apply for the FBO. For both, the courts must impose the FBO if the conditions are fulfilled.

The standard FBO on complaint issued by Trafford Magistrates' Court for supporters of Manchester United imposes the following conditions upon defendants:

- They must not enter any football stadiums in England and Wales where a regulated football match, as defined by the FSA, is taking place.[20] This includes all games in which the

England and Wales national teams are playing and all games where at least one of the teams is a member of either the FA Premier League, Football League, Football Conference (including the North and South divisions) or the League of Wales.

- When a football match is played outside England and Wales involving England, Wales or an English club side they must report to the local police station at the time of the game and/or surrender their passport at least five days in advance of the game.[21]

- They must not enter Manchester city centre on Saturdays or Sundays between noon and midnight when Manchester United is playing at home (or between 4 pm and midnight for evening matches).

- In the same period they must not enter within a one-mile radius of Manchester United's ground.

- They must not attend or travel to any place where the English national team is playing (using the same control period around a match).

As can be seen, these are serious restrictions on a banned person's movement. Although exceptions are made for defendants/respondents working or living in excluded zones (no defendants were put under 'house arrest' for the duration of the control period by such orders), and for those needing to travel abroad for holidays or work, these are drafted very restrictively by the court.

In practical terms, Manchester United supporters served with an FBO would not be able to go to a restaurant or go shopping in the city centre during the afternoon or evening of every other Saturday or Sunday between August and May. Furthermore, the exclusion zone around the football ground would also prevent them attending the Lancashire County Cricket Club, The Lowry theatre, exhibitions and retail park outlets, the Imperial War Museum or a recycling centre. They would also be unable to travel on the Altrincham Metrolink line or several important road and bus routes. If they wished to go on holiday abroad whilst England was playing, then they would need to request special dispensation to retain their passport and provide the police and the Football Banning Order Authority (FBOA) with details of their travel plans. The control period for the 2006 FIFA World Cup in Germany ran from 30 May to 9 July. Should a defendant live or work in the excluded area, which in Greater Manchester was not uncommon, then the restrictions on movement, for example from the house to the corner shop, would need to be even more stringent.

Once an FBO has been imposed, its domestic application is automatic. However, its international application must be activated by the FBOA. The FBOA analyses the risk associated with each game that takes place outside of England and Wales that involves either the national teams of England and Wales or English and Welsh club sides to determine whether or not the control period applies to each individual FBO. All FBOs will be activated for all England games. A banned person's FBO will also be activated whenever the team that he supports is playing abroad. The FBOA will only activate the control periods for other games if it is thought that there is a particular risk of violence and disorder at a particular club or in a particular country.[22]

What makes the FBO such an effective tool in preventing those banned from attending matches or leaving the country is its hybrid character. Although the application process is by means of a civil procedure, its breach is criminal. Where a person who is subject to an FBO breaches any of its terms, a summary offence is committed which can lead to a fine or imprisonment (FSA, s. 14J). The further complicating factor is that the offence under s. 14J is a relevant offence for the purposes of the FSA (Sched. 1, para. 1(a)). This means that the breach of an FBO is a football-related offence which can lead to the imposition of an FBO under the s. 14A procedure. Thus, 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 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.

Interpreting the legislation

The previous section described the procedures currently in place for the imposition of FBOs on those found guilty, or suspected of being guilty, of committing acts of football-related disorder. Although FBOs are technically civil orders and as such were intended by Parliament to be imposed following a civil procedure, their existence as a response to criminal or quasi-criminal activity, their supervision by the police, their highly restrictive provisions and the criminal penalties imposed for their breach means that to the banned person, FBOs often have the appearance of a criminal punishment. This hybrid nature of FBOs has led to a series of legal conundrums. Should courts follow a civil or criminal procedure when determining what evidence should be accepted? What standard of proof should be used when deciding whether a suspected football hooligan has been involved in football-related disorder? What standard of proof should be used when deciding whether an FBO will help to prevent future football-related disorder? These issues formed the focus of a challenge to the imposition of two FBOs on complaint in the case of *Gough and Smith v Chief Constable of Derbyshire*.[23] Unfortunately the ruling by the Court of Appeal was confused, inconsistent and, as will be seen, appears to hold little influence over the way in which magistrates' courts rule over FBOs on complaint cases.[24]

Are FBOs punitive or preventative?

Whether FBOs are punitive or preventative measures should determine whether they should be imposed by a criminal or civil procedure. If they are punishments for crimes committed, or disorder that a person has been associated with, then they would appear to be criminal in nature and therefore subject to the procedural safeguards enshrined in Articles 6 and 7 of the European Convention on Human Rights. If they are preventative, and designed to protect the public from football-related violence and disorder, then they should be imposed by means of the less stringent civil procedure. The defendants in *Gough* argued that, because of the impact on their ability to travel and to visit Derby city centre, the FBOs were punishments. The court refuted this, ignoring the effect of the orders and concentrating instead on their protective mantel, claiming that they have no element of punishment in them:

In my judgment it is no part *at all* of the purpose of any such order to inflict punishment. The fact that it imposes a detriment on its recipient no more demonstrates that it possesses a punitive element than in the case of a *Mareva* injunction. The purpose is to protect the public, here and abroad, from the evil of football violence and the threat of it.[25]

This issue is by no means as clear cut as Laws LJ makes it seem. Although the court claimed to apply the criteria from *Welch v United Kingdom* (1995) 20 EHRR 247, it does not fully justify the conclusions. This issue is of importance because if the imposition of an FBO is a penalty, or punishment, then the respondent must have committed a criminal act according to the law in order to be punished by it. If no criminal act has been committed, no punishment can be imposed. This brings into question the legality of FBOs imposed on complaint under FSA, s. 14B. From *Welch*, the following criteria should be used to determine whether or not the order made by a court constitutes a penalty for the purposes of Article 7: is it imposed following a conviction for a criminal offence; what is its nature and purpose; how is it characterised in law; what procedures are followed for making and implementing the order and how severe is its impact on the respondent. Each of these points is addressed in order.

First, the Divisional Court held that whether the FBO was imposed under s. 14A or s. 14B, the order must be classified in the same way regardless of its originating section. FBOs are treated as one order within the FSA; apart from length, there are no distinctions relating to the procedure to be followed by an applicant seeking such an order and the FBO has only one definition within the Act. Thus, this first criterion cannot be determinative of the classification of an FBO as a penalty.[26] However, that an FBO imposed under s. 14B does not follow conviction of a criminal offence does not of itself mean that the order cannot be a punishment. The gateway to an application for an FBO on complaint is that the respondent has been involved with violence or disorder; in other words, that the respondent has engaged in criminal conduct of at least some minor nature. Although the imposition of an FBO under s. 14Bmay not always follow a criminal conviction, it should always follow some identifiable criminal conduct on the part of the respondent.

Secondly, the Divisional Court held that the nature of an FBO is civil, relying on s. 14A4(a) that the order is imposed in addition to sentence.[27] By drawing an analogy with the purpose of imposing Anti-Social Behaviour Orders, the court also held that an FBO is designed to protect the public in the future not to punish the respondent for past misconduct. Although the court acknowledged that it was possible for an order to exhibit both punitive and preventative characteristics, the predominant purpose of FBOs was preventative.[28] In effect, the court ruled that the preventative *purpose* of the legislation prevailed over the punitive *effect*. This conclusion is taken as a self-evident truth despite the inherent contradictions that follow. Laws LJ states that, 'The more closely an order is related ... to the commission of a particular offence or offences, the more likely it is that the order should fall to be treated as a penalty'.[29] FBOs can only be imposed following conviction of 'particular offences' or on the less rigorous grounds that the respondent has caused or contributed to criminal conduct for which he has not been convicted. Despite Laws LJ's claim that, 'In my judgment it is no part *at all* of the purpose of [an FBO] to inflict punishment'[30] (his Lordship's emphasis) it seems clearer that these orders are penalties regardless of how they are labelled by the courts or the legislature.

Taking the third and fourth points together, Laws LJ assumes that FBOs are civil orders and that the procedures used for making them are outside of the normal process of distributive criminal justice.[31] By analogy to the reporting restrictions imposed on sex offenders, Laws LJ seems to suggest that FBOs are more administrative in nature than criminal.[32] Although these points are on the face of it true, the real question must be whether this ought to be the case. The characterisation of the order and the procedure used to impose it should be determined by its nature as a penalty or a preventative measure, not the other way around.

The anti-subversion doctrine[33] of the ECHR requires that courts should not blindly accept a state's own labelling of FBOs as determining the issue. Instead, the interpretative jurisprudence of the European Court of Human Rights requires courts to progress beyond merely accepting the domestic classification of the proceedings to examine the nature of the offence committed and the severity of the penalty imposed.[34] In *R (on the application of McCann) v Crown Court at Manchester*,[35] which involved similar discussions as here but in respect of ASBOs, the House of Lords applied a rather loose interpretation of this test. It held that the domestic classification as civil was of paramount importance to the determination of the appropriate procedure as no offence need be committed prior to the application for an ASBO being made and, as it was not a penalty, there was no need to examine its severity on the respondent.[36] Applying *Engel* in the way it was intended, however, the court in *Gough* should have examined the substance of the FBO, rather than its form, and taken into account 'the severity of the potential penalty which the defendant risks incurring',[37] and also the nature of the offensive conduct itself. The English courts should not have simply denied that an FBO is a penalty without examining these specific issues in depth.

Finally, the court addresses the issue of severity.[38] Considering that the court is attempting to determine whether or not an FBO is a penalty, the impact that it has on the respondent is barely discussed. Laws LJ goes as far as to acknowledge that the restrictions are 'more than trivial' but then states that the impact on the respondent alone is not enough to turn the FBO from being a preventative to a punitive measure. Strangely, his Lordship also points out that the harshness of the order is an entirely subjective issue and therefore, by implication, cannot be used to determine the general level of impact of FBOs on banned persons. This level of individual consideration is not appropriate at this stage of the analysis; it should be kept for determining the length of ban appropriate to each particular respondent. Instead, the conditions attached to the FBO, their impact generally on banned persons, the maximum and minimum lengths for which they can be in place and whether or not they are proportionate to the crimes committed or disorder involved with should be the focus of the court's attention.

Linked to the issue of severity are two further factors that point towards FBOs being penalties. First, an FBO must be imposed by the court if there is evidence to satisfy both conditions. The court has no discretion about imposing the FBO. Where Laws LJ presumably considers this to be an administrative order, an alternative explanation is that this is a penalty fixed by law, as is the mandatory life sentence for murder. Secondly, from our observations, it appears that there is a lack of proper individual consideration of length of FBOs. All of the orders were imposed for either the maximum or minimum length available. This was particularly obvious for the FBOs imposed under s. 14A. Despite a range of custodial sentences being imposed, the FBOs were either for the minimum six years or the maximum 10 years. No explanation was given by the court as to why the length of order had been granted for each defendant. Although it may be easier to justify

FBOs imposed on conviction, it is difficult to see how such bans are not punitive in their nature when imposed in these circumstances.

Throughout the judgment in *Gough*, the court states that no single criterion can be determinative of whether FBOs are a penalty or not. The court appears to place significant emphasis on the need for a link between a criminal conviction and the orders; a link that Laws LJ claims is not present. The court also dismisses the impact of an FBO on a banned person without proper analysis. The conclusion that FBOs are not penalties 'at all' seems hard to justify and is neither fully nor convincingly justified by either the Divisional Court or the Court of Appeal. Instead, Laws LJ states that, 'An application under s. 14B is, categorically, *not* a criminal charge, and no amount of special pleading will make it so (his Lordship's emphasis)'.[39] In the Court of Appeal, Lord Phillips MR endorsed Laws LJ's reasoning and his conclusions that FBOs were not penalties and that the procedure utilised under FSA, s. 14B was not criminal in nature.[40] Despite the forcefulness of these judicial statements, however, that a criminal procedure should be followed, with all of the inherent safeguards that such provides, seems to be the only logical, and necessary, conclusion.[41]

What is the appropriate standard of proof that must be discharged?

There are two occasions during the application for an FBO where the prosecution or the police will have to prove issues to the satisfaction of the court; first, it must be proved that the respondent has been involved in violence or disorder in the past and secondly that the imposition of an FBO will prevent future football-related disorder. If the above argument is correct, and the criminal standard of proof ought to apply, then the prosecution/police will have to prove both of these issues beyond reasonable doubt. If the above is wrong, and a civil procedure ought to be followed (as was determined in *Gough*), then the appropriate standard of proof that must be reached by either the prosecution or the police would appear to be proof only on a balance of probabilities. This question strikes at the heart of FBOs and their effectiveness.

Under normal circumstances, where a civil procedure is being followed, the applicant must prove their case on the balance of probabilities. The FSA is again silent on whether this should be the case for FBOs. The antecedent legislation does not provide any further clarity on this point. Exclusion Orders imposed under the Public Order Act 1986 required that the court be satisfied that making such an order would help to prevent football-related violence or disorder.[42] In its original form, FSA, s. 14 required the same standard for the imposition of a Restriction Order. In amending s. 14, the Football (Offences and Disorder) Act 1999 required the court to be satisfied that there are reasonable grounds for believing that the making of an FBO would help to prevent football-related violence or disorder. In none of these Acts is the level of a court's satisfaction defined fully.

At trial in *Gough*, Aujla DDJ held that he only needed to have reasonable grounds for believing that the FBO would prevent future football-related disorder, thereby setting the standard of proof at what was argued by the respondents to be too low a level. In the Divisional Court, Laws LJ held that the standard of proof required for proving that the respondent had been involved previously in violence or disorder was 'practically indistinguishable from the criminal standard' and that the standard required for a belief in the future preventative nature of the FBO was 'appropriate to the gravity of what is asserted'.[43] The Court of Appeal agreed with Laws LJ that although a civil procedure was to be applied to proceedings, it did not follow that the proof had to be only on the balance of probabilities. Lord Phillips MR went on to hold that:

While technically the civil standard of proof applies, that standard is flexible and must reflect the consequences that will follow if the case for the banning order is made out. This should lead the Magistrates to apply an exacting standard of proof that will, in practice, be hard to distinguish from the criminal standard.[44]

His Lordship went on to clarify more precisely the standards to apply to the two parts of the test. First, that when proving the respondent's prior involvement in violence or disorder, the applicant must satisfy the court to a standard of proof practically indistinguishable from the criminal standard.[45] Secondly, in respect of the court having reasonable grounds for believing that the order will prevent future football-related violence or disorder:

It must ... be proved to the same strict standard of proof [the criminal standard]. Furthermore, it must be conduct that gives rise to the likelihood that, if the respondent is not banned from attending prescribed football matches, he will attend such matches, or the environs of them, and take part in violence or disorder.[46]

This leaves trial courts to apply a two-stage test which, in the words of Lord Phillips MR, is 'not readily susceptible to proof'.[47] The first test requires the court to be satisfied, to all intents and purposes, beyond a reasonable doubt that the respondent has previously been involved in incidents of violence or disorder. The second requires that the court be satisfied again, to all intents and purposes, beyond a reasonable doubt that the imposition of the order will prevent the respondent from being involved in future incidents of football-related disorder.[48] In considering this second question, the court must be convinced, presumably beyond a reasonable doubt, that if an FBO is not imposed on the respondent, then he *will* attend prescribed football matches *and* take part in violence or disorder. Thus, the Court of Appeal, in recognition of the severe restrictions on liberty contained within an FBO, has set the courts below an extremely exacting series of tests to be satisfied before an order can be imposed.

It is, therefore, entirely possible that even though it has been argued here that the FBO procedure ought to be considered to be criminal with all of the inherent and ECHR safeguards that that would encompass, if such stringent tests as those proposed by Lord Phillips were to be followed, then the common law may provide respondents with the necessary protections. In reality, the research carried out here demonstrates that the concessions supposedly granted by Lord Phillips, particularly with regard to the standard of proof, are not being adhered to by the courts.

Current problems

The purpose of our research into FBO procedures was to determine whether as a matter of fact, rather than academic possibility, the correct legal tests were being applied by the courts and, therefore, that the common law was providing those merely suspected of being involved with football-related disorder with the appropriate procedural safeguards. Information was gathered from court observations of 55 applications for FBOs under FSA, s. 14A, following convictions for a variety of offences arising out of football-related disorder and seven civil applications for FBOs under FSA, s. 14B. The observations took place at Trafford Magistrates' Court and Manchester Crown Court between February and May 2006 during the period immediately prior to the FIFA World Cup Finals in Germany, when applications for FBOs was at an all-time high throughout the country. These observations were supplemented by informal interviews with Football Intelligence Officers, court clerks, the Crown Prosecution Service, defence counsel and defendants both in Manchester and in Germany at the World Cup. The research revealed four main areas of concern with the procedures followed by courts when imposing FBOs that could mean that, despite the reported public order success of the 2006 World Cup Finals,[49] many of the wrong people are still being targeted by the police in the ongoing campaign against football hooliganism.

First, the standard of proof held to be applicable by Lord Phillips MR in *Gough* was not being rigorously applied. Secondly, there was an over-reliance on evidence of a poor quality, particularly evidence of 'guilt by association' rather than 'guilt by commission'. Thirdly, there was no proper examination of the second test, merely an assumption that the respondent will be involved in future incidents of violence or disorder based on his having been previously involved in acts of 'hooliganism'. Finally, there was little or no individual consideration of either the appropriate duration of an FBO, or of the conditions attached to them.

The appropriate standard of proof: is Gough being followed?

The first question on which the observations focused was whether the magistrates, when imposing FBOs on complaint, were adhering to the ruling of the Court of Appeal in *Gough* that the standard of proof to be applied in the two tests should be 'hard to distinguish from the criminal standard'.[50] Although the magistrates had certainly been briefed on the decision, it was much less clear that they were applying it to the cases before them. In *Chief Constable of Greater Manchester v Riley*,[51] for example, before imposing the maximum three-year FBO, the judge noted that because of the 'restriction on liberty' that an order would cause, he was obliged to 'apply a high civil standard' of proof. However, closer analysis of the type of evidence relied upon

by the magistrates revealed that in many cases, it was mere lip service that was being paid to the *Gough* tests.

This was apparent from the case of *Chief Constable of Greater Manchester v Davies*.[52] Here, a senior Football Intelligence Officer (FIO) alleged that an individual picked up on police video footage during an incident of disorder known as the 'Deansgate Incident' was the defendant. This incident occurred before an England match, when a group of Manchester United risk supporters charged towards a group of Wigan Athletic risk supporters who were gathered in Deansgate, one of the main roads in Manchester City Centre. However, the police officers on the ground did not identify the defendant as part of the Manchester United group at the time of the incident. Furthermore, the image on the video was blurred and the defendant denied he was present. After examining the evidence, the judge also failed positively to identify the defendant from either the video or the still image. Therefore the only evidence that the defendant was the individual in the video was the retrospective opinion of the Football Intelligence Officer that he was positive the blurred image on the video was Davies.

In *Gough*, the courts had ruled that when the police were trying to prove that particular offences had been committed they had to prove this to a standard approaching the criminal standard of proof; beyond reasonable doubt. Had the judge in *Davies* followed this precedent, how could he have found the defendant had been involved in the Deansgate Incident, especially as the judge himself could not identify the defendant even on a balance of probabilities? However, the judge ruled that he was satisfied that, on the basis of the FIO's opinion, that this was the defendant, and this identification was one of only two pieces of evidence that led to an FBO being imposed on the defendant. Although this is a problem that cannot arise in the context of a s. 14A application, as the defendant will already have been found guilty beyond reasonable doubt following a criminal trial, this approach was repeated throughout the s. 14B applications on complaint. The correct test was identified by the court but not applied to the facts before it.

The quality of the evidence

The failure to adhere to the higher standard of proof as required by *Gough* was further evidenced by the willingness of the magistrates to accept and even rely upon evidence of nothing more than guilt by association on the part of the defendants, a problem originally seen in *Gough* itself.[53] Such guilt by association in a group of supporters--where some of whom were disorderly and/or known to the police as 'risk supporters'--was accepted as pivotal evidence against respondents only peripherally involved in disorder in applications for FBOs on complaint. Again, it is difficult to reconcile the requirement in *Gough* for proof indistinguishable from the criminal standard with the proof of involvement in disorder that was accepted in the magistrates' court on many occasions.

This was highlighted particularly in the FSA, s. 14B applications arising out of what was referred to as 'The Oxford Road Incident,' which occurred in February 2005 when Manchester United supporters were trying to board the train to Liverpool for an FA Cup tie. The version of events accepted by the court was that a group of approximately 90 fans, about half of whom the police had identified as 'risk supporters', arrived at Piccadilly Station where they were met by Greater Manchester Police. The police refused them entry to Piccadilly Station and escorted them instead on to the platform at Manchester Oxford Road Station where they were told to wait for the next Liverpool train. At the same time, a train carrying approximately 300 Leeds United supporters, including a number of risk fans, pulled up at the platform and began to attack the Manchester United supporters with bottles.

Video footage demonstrated incontrovertibly that the Leeds United supporters were the aggressors and that the vast majority, if not all, of the Manchester United supporters were unaware of who was on the train or what was about to happen. However, the footage showed some of the Manchester United supporters surging briefly towards the train as they came under attack. This incident, taken out of its immediate context, was used to prove that the defendants were involved in incidents of violence or disorder on the basis that they had been seen on the platform at the relevant time and because some of the crowd had surged towards the train when their group came under attack. In the cases of *Sutton*,[54] *Clarke*,[55] *Reilly*[56] and *Davies*,[57] this 'guilt by association' was used to demonstrate that an FBO was required, despite the fact that neither the officers present, nor video footage, identified the defendants as having themselves surged towards the train.[58]

In the case of *Davies*,[59] the defendant was also identified as being in a disorderly group in a second incident known as the 'Dry Bar Incident'. Again, no evidence was provided to suggest he had been disorderly himself. The Dry Bar Incident occurred when unidentified individuals in a crowd of Manchester United supporters, who were walking past a bar where some Manchester City supporters were drinking, threw one glass and one bottle at the bar. This, along with the dubious evidence accepted from the Deansgate Incident, was relied on by the judge to suggest that an FBO was required, and the judge commented that this incident alone would be sufficient to result in the awarding of a banning order.

Applications for FBOs under both ss 14A and 14B typically lead with a long list of occasions on which the defendant/respondent has been seen with 'risk supporters' or in groups that have become disorderly. This was found to be the case even where there was no evidence to suggest that the individual was actively involved in the disorder and despite the incidents being witnessed and often videoed by police. In *Chief Constable of Greater Manchester v Clarke*,[60] for example, the applicant opened by noting that between 2003 and 2005 the respondent had been 'observed on 25 occasions in large groups of risk supporters'.

The Trafford Magistrates' Court cases illustrated that such evidence alone would not always be accepted by the judge, but in *Riley* the court ruled that guilt by association was enough to meet the second leg of the test, to prove whether or not an order was necessary, even if this went no further than proving the respondent's 'presence and tacit support'. On one striking occasion this guilt by association was cumulative. After Clarke's presence in a group had been used to justify an FBO being imposed against him, this was then used as evidence to justify an FBO being imposed on Riley, on the basis that he had been associating with people who were subject to an FBO (i.e. Clarke).

Gough and the second test

Despite the requirement in s. 14B(4)(b) that the court must be satisfied that the imposition of an FBO on the respondent will help to prevent future incidents of football-related disorder, the courts spent little or no time examining this point specifically and in isolation from the requirement in s. 14B(2), that the respondent must have been previously involved in incidents of violence or disorder. The evidence put before the court was used to demonstrate the respondent's predisposition to violence. In all of the cases observed, it was then assumed that if the respondent had been involved in football-related disaster in the past, he would be again in the future and therefore an FBO was required.

FSA, s. 14B(4)(b) requires that the court examine separately whether there is a need to impose an FBO. *Gough* requires that the need again be proved to 'the same strict standard of proof'; a standard indistinguishable from beyond reasonable doubt.[61] At no point in any of the cases did the court attempt to convince itself, beyond reasonable doubt, that if an FBO were not imposed on the respondent, then he would attend prescribed football matches and that once there he would take part in violence or disorder. Although the same evidence will usually be relied on by the applicant to prove both previous disposition to and future likelihood of involvement in violence or disorder, by failing to address these issues specifically and separately, the respondent is denied the opportunity to explain why an FBO need not be imposed, despite previous involvement in disorder. In particular, where mere guilt by association was used to demonstrate involvement with incidents of disorder, it is almost impossible to extrapolate from such evidence a conclusion that the respondent *will* be involved with future football-related disorder if the FBO is not imposed. Furthermore, as will be discussed below, the automatic assumption by the courts that all those found to have been involved in disorder in domestic football need to be banned from attending England matches abroad, is often a fallacy.

Individual consideration of the FBO's duration and conditions

A series of linked, but unexpected, problems that arose in applications under both ss 14A and 14B was in relation to their length, the conditions attached to them and the costs payable by the respondent. According to *Gough*, as FBOs are preventative not punitive, then the appropriateness of the conditions and its length should be established on an individual basis, depending on the potential risk posed by the defendant. Further, to satisfy the requirements of proportionality, each respondent's order must receive individual consideration.[62] This practice was not followed by the courts in either Manchester or Trafford. The severity of the or-

ders imposed under s. 14A was at no stage objectively justified, with the court typically imposing either the maximum or minimum possible length of order with standard conditions. Where FBOs were imposed on conviction, despite sentences being imposed on the defendants ranging from a 160-hour Community Punishment Order to 18 months in prison, the court imposed the minimum three-year FBO on all defendants receiving a non-custodial sentence, and either the minimum of six years or the maximum of 10 years on all those imprisoned. Although the full range of sentencing options were used, and justified by the court, the same was not true when it came to determining the appropriate length of the FBO.

In the applications under s. 14B, the defendant was either subjected to an FBO of the three-year maximum length where the order was contested, or the minimum two-year FBO where the order was not contested. In practical terms, this meant those who were suspected of more serious offences tended to get shorter bans than those against whom the allegations were less serious and the evidence weaker. Although this conclusion may seem strange, the explanation is straightforward. Those facing serious allegations supported by strong evidence knew there was no point contesting the FBO as they were likely to lose. The inevitability of the imposition of the FBO stopped this group of respondents from contesting the application.

However, those facing weaker evidence were more likely to contest the application even though they risked a longer FBO as a result. For example, in *Clarke*, the respondent did not contest the imposition of the order because of the weight of evidence clearly demonstrating that he had been actively involved in serious disorder. Video footage showed the defendant running with groups of risk supporters to and from disorder with rival supporters, on one occasion with his face covered seemingly in an attempt to disguise himself from the police. Despite the seriousness of the allegations and the weight of the evidence against him, because Clarke did not contest the order it was imposed for only two years. In contrast, the evidence in *Davies* was considerably less substantial, with the judge accepting only two brief sightings as being relevant. His decision to challenge the poor-quality evidence and contest the application was penalised by the court imposing on him the maximum three-year FBO. In none of the s. 14B applications observed was a justification given for the differential length of the FBO imposed. In particular, the difference in the length of orders in *Clarke* and *Davies* was not justified in terms of preventing future disorder; instead a one-year discount was used as an inducement to the respondents to encourage them not to contest the applications with the maximum length ban imposed as a punishment for those who did.

Regarding the conditions attached to FBOs, again we saw little evidence that appropriate conditions were being attached to specific respondents. As with the length of the orders, the police/CPS would typically request, and receive, all the standard conditions, including the condition that passports should be surrendered before England matches. This enabled the Home Office to claim that over 3,000 fans had been prevented from attending the 2006 FIFA World Cup, but did not tell the full story; many of these fans who had to surrender their passports would not have travelled to the World Cup anyway. Again, if we consider that the infringements on liberty were justified by the Court of Appeal in *Gough* on the grounds that they were preventative and not punitive, the need to impose an FBO when there is no evidence that the fans would travel in the first place becomes superfluous.[63] Fans were banned from travelling with England unnecessarily, either because they did not support England, did not travel abroad to support England, did not wish to leave the country or did not possess a passport. Our own observations were reinforced when it emerged that of the 300 banned supporters who had not surrendered their passports at the start of the World Cup 2006 Control Period,[64] over 200 had failed to do so because they did not actually own a passport.[65] In these cases, it becomes more difficult to justify the infringements on a banned person's liberty on the basis of *Gough* that they are proportionate and purely preventative. They appear instead to be much more general in nature and lacking a specific preventative purpose. Contrary to the sweeping assumption accepted by the court in *Gough*, just because some of those who instigate or are involved with disorder abroad are known risk supporters does not mean that everyone involved with disorder in this country will travel abroad to cause football-related disorder in the future.[66]

In *Clarke*, the defendant was banned from travelling abroad with the England national team despite the fact that he was Scottish and a supporter of Scotland. Since the legislation had not at that time been introduced in Scotland, Clarke could travel abroad to watch Scotland but not England (unless, of course, the two nations were playing on the same day or in the same tournament in which case the ban would be activated). Likewise, the defendant in *Davies* supported Wales, though as the FSA applies to England and Wales, his FBO would prevent him travelling when both the Welsh and English national teams were playing abroad. Finally in

Fielding, even though the police accepted (a) that the respondent had never been abroad following England, and (b) had a pre-booked holiday in Spain arranged for the time of the 2006 World Cup tournament, he was still subjected to the condition requiring him to surrender his passport when England were playing away, starting with the World Cup in Germany.[67]

In none of the s. 14B cases observed at Trafford Magistrates' Court was evidence lead to justify that the defendants needed to have their passports removed when England were playing abroad. Police contentions that domestic bans might save banned persons enough money to encourage them to travel abroad with England is a huge leap of faith, especially for fans of Wales and Scotland and Manchester United supporters, many of whom have an antipathy towards the England team. However, all the defendants had this condition attached, as standard, to their bans and they were added to the total number of bans which in turn was used to suggest that disorder was less likely to take place at the 2006 World Cup. In the s. 14A applications at the Manchester Crown Court, as all of the convictions arose from incidents surrounding an England game taking place in Manchester, it was assumed without contradiction by any of the defendants, that the travel bans were appropriate.

The issue of the costs payable following the s. 14B applications also raised interesting questions of a similar nature to the appropriateness of the ban's length and again throw doubt on whether FBOs on complaint can be seen as purely preventative rather than punitive. Costs were used to encourage defendants to accept FBOs rather than contest them, with lower costs having to be paid by respondents who did not challenge the orders. In *Fielding*,[68] for example, the respondent did not contest the application and paid only £800 costs. Likewise, in *Clarke*, the judge noted that the respondent's costs were being set at this lower level because of the time he had saved the court by not contesting the application. However, where respondents did contest the orders, typically, as noted above, where the evidence for their involvement in disorder was weaker, their costs increased to £1,447.[69]

Are opportunities for criminal charges being missed?

A final problem which we identified from observations of FBOs on complaint was that in some circumstances, the obsession with compiling evidence for profiles in order to secure FBOs under FSA, s. 14B could be curtailing opportunities for proffering criminal charges. In particular, opportunities were missed for prosecutions under the Public Order Act 1986 being missed? In the case of *Davies*, defence counsel pointed out that if the police could prove it was the defendant in the video during the 'Deansgate Incident' then they would be likely to be able to bring a successful prosecution. Why then did the police not search the defendant's house for the clothing seen in the video of the incident? One possible explanation for this is that the longer time it would take to secure a conviction would mean that an FBO may not be secured in time for the 2006 World Cup. This means that a narrow focus on profile compilation is preventing those guilty of public order offences from being charged with relevant offences, which in turn could lead to the imposition of longer FBOs on them. Observations at the World Cup in Germany 2006 revealed that this may be a deeply rooted problem. Typically, when incidents of disorder were developing, UK police spotters on the ground would see their role as limited to gathering evidence for future applications for FBOs, when in reality they were in a position to play a proactive role in preventing disorder occurring. This leads to an absurd state of affairs where FBOs are justified in English courts in terms of preventing disorder, whilst UK policing priorities at major football championships abroad appear to allow disorder to develop in order for them to be able collect evidence for future FBO applications.

Conclusion

The debate over Football Banning Orders is one that would appear to have died down over recent years, with two high-risk football tournaments having passed with relatively few public order problems. Much of this success has been credited to the ever-increasing number of FBOs that have been imposed on 'risk supporters'. The apparent concessions of the Court of Appeal in *Gough* towards civil libertarian concerns over proportionality in particular have taken much of the sting out of criticisms from fans groups about the risk of innocent supporters being given unnecessary bans. However, our own research has suggested that there are

fundamental problems with FBOs imposed under both FSA, s. 14A and s. 14B and that this will have a serious negative impact upon both their ability to prevent football-related disorder and to have their draconian conditions justified under the principle of proportionality.

The rush to achieve pre-established minimum numbers of FBOs in the build-up to high-risk football tournaments such as the 2006 World Cup means that the strict regime for imposing FBOs established in *Gough* is not being followed in the lower courts. Magistrates are accepting dubious evidence, often of little more than guilt by association, and are not applying the correct standard of proof in order to ask whether first, individuals have been involved in previous disorder, and secondly whether an FBO is required to prevent them causing future disorder. In particular with regard to the second question, this means that bans, or certain conditions, are imposed unnecessarily on individuals who are not a threat to public order in this country or abroad. When these facts are considered together with the type and range of conditions imposed on respondents, the duration of FBOs and the costs implications of contesting an Order, it becomes extremely difficult to agree with the decisions in *Gough* that FBOs are purely preventative rather than punitive in nature.

FBOs can undoubtedly play an important role in reducing football crowd disorder alongside the many other strategies applied at the 2004 European Championships and the 2006 World Cup. However, they impose serious restrictions upon individuals who have either already been punished for an offence, or who have not been found guilty of any criminal offence. As such courts should, following *Gough*, only impose FBOs where they are necessary beyond reasonable doubt and with serious consideration of how necessary is each individual condition.

With a similar, though more draconian, scheme of FBOs having recently been introduced in Scotland,[70] a template has been produced for how the current scheme for England and Wales is likely to develop. Before Parliament rushes into passing yet more panic law, it should not be forgotten that FBOs are a means to an end--the end being the reduction of football crowd disorder at home and abroad. At present, the imposition of FBOs appears to be an end in itself and this can only harm the legitimate rights of football fans and the opportunity to ensure that the correct individuals are being punished and banned from attending football matches.

[1] Sporting Events (Control of Alcohol etc.) Act 1985, ss 1 and 2.

[2] Football (Offences) Act 1991, ss 3 and 4.

[3] Criminal Justice and Public Order Act 1994, s. 166. For a review of the football-related legislation up to and including the Football (Offences and Disorder) Act 1999, see G. Pearson, 'Legislating for the Football Hooligan: a Case for Reform' in S. Greenfield and G. Osborn (eds), *Law and Sport in Contemporary Society* (Frank Cass: London, 2000).

[4] The term 'risk supporter' has replaced the previous labels 'hooligan' and 'prominent'.

[5] Although the Public Order Act Orders were originally called 'Exclusion Orders', for the avoidance of confusion, the phrase Football Banning Order will be used to encompass both the current form of the order and all its previous incarnations.

[6] Public Order Act 1986, s. 31.

[7] International Banning Orders were originally known as Restriction Orders.

[8] Football (Offences and Disorder) Act 1999, s. 3.

[9] Introducing s. 14B into the Football Spectators Act 1989.

[10] Home Office Press Release, 30 May 2006.

[11] C. Stott and G. Pearson, 'Football Banning Orders, Proportionality and Public Order Policing' (2006) 45(3) *Howard Journal of Criminal Justice* 241.

[12] See, e.g., E. Deards, 'Human Rights for Football Hooligans' (2002) 27(6) EL Rev 765; G. Pearson, 'Qualifying for Europe? The Legitimacy of Football Banning Orders "On Complaint" under the Principle of Proportionality' (2005) 3(1) *Entertainment and Sports Law Journal* internet; and G. Pearson, 'Contextualising the Football (Disorder) Act: Proportionality under the Hammer' in S. Greenfield and G. Osborn (eds), *Readings in Law and Popular Culture* (Routledge: Oxford, 2006).

[13] FSA, s. 14A(4)(a).

[14] FSA, s. 14B(2).

[15] FSA, s. 14B(4)(b).

[16] As was the case in *Gough and Smith v Chief Constable of Derbyshire* [2002] EWCA Civ 351 at [30].

[17] *Gough and Smith v Chief Constable of Derbyshire* [2001] EWHC Admin 554 at [42].

[18] For example, in *Chief Constable of Greater Manchester v Clarke*, Trafford Magistrates' Court, 14 February 2006, the judge corrected defence counsel who had mistakenly requested for the length of a s. 14B order to be reduced because the defendant had 'pleaded guilty'.

[19] *R (on the application of Brown) v Inner London Crown Court* [2003] EWHC 3194.

[20] The most recent definition of a regulated football match is in the Football Spectators (Prescription) Order 2006 (SI 2006 No. 761).

[21] For the 2006 World Cup, this period was extended for 10 days.

[22] *Gough and Smith v Chief Constable of Derybshire* [2002] EWCA Civ 351 at [21].

[23] [2002] EWCA Civ 351.

[24] For more on the *Gough* case, see G. Pearson, 'A Cure Worse than the Disease? Reflections on *Gough and Smith v Chief Constable of Derbyshire'* (2002) 1(2) *Entertainment Law* 92 and 'Football Banning Orders' Current Survey [2002] *Public Law* 576.

[25] *Gough and Smith v Chief Constable of Derbyshire* [2001] EWHC Admin 554 at [42].

[26] Ibid. at [33-34].

[27] Ibid. at [35].

[28] Ibid. at [37].

[29] Ibid. at [38].

[30] Ibid. at [42(1)].

[31] Ibid. at [42(2)].

[32] Ibid. at [39] and [42(3)].

[33] A. Ashworth, 'Social Control and "Anti-Social Behaviour": The Subversion of Human Rights' (2004) 120 LQR 263.

[34] See, e.g., *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.

[35] Conjoined hearing with *Clingham v Kensington and Chelsea Royal London Borough Council* [2002] UKHL 39.

[36] Ibid. at [65-77].

[37] *Engel v The Netherlands (No. 1)* (1976) 1 EHRR 647 at para. 82.

[38] *Gough and Smith v Chief Constable of Derbyshire* [2001] EWHC Admin 554 at [35] and [42(4)].

[39] Ibid. at [87].

[40] *Gough and Smith v Chief Constable of Derbyshire* [2002] EWCA Civ 351 at [89].

[41] For a contrary position, see Deards, above n. 12.

[42] Public Order Act 1986, s. 30(2).

[43] *Gough and Smith v Chief Constable of Derbyshire* [2001] EWHC Admin 554 at [88].

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

[45] Ibid. at [91].

[46] Ibid. at [92].

[47] Ibid. at [93]

[48] Following *R (on the application of McCann) v Crown Court at Manchester* [2002] UKHL 39 at [81-83], this reasoning was followed for applications for ASBOs; the standard of proof required for a successful application was held to be the civil standard but that proof of the need for the order was required beyond reasonable doubt.

[49] Although observations on the ground indicated a number of serious incidents of disorder, some of which were not reported by the media.

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

[51] Trafford Magistrates' Court, 14 February 2006.

[52] Trafford Magistrates' Court, 16 February 2006.

[53] *Gough and Smith v Chief Constable of Derbyshire* [2002] EWCA Civ 351 at [28-34].

[54] *Chief Constable of Greater Manchester v Sutton*, Trafford Magistrates' Court, 13 February 2006.

[55] *Chief Constable of Greater Manchester v Clarke*, Trafford Magistrates' Court, 14 February 2006.

[56] *Chief Constable of Greater Manchester v Reilly*, Trafford Magistrates' Court, 14 February 2006.

[57] *Chief Constable of Greater Manchester v Davies*, Trafford Magistrates' Court, 16 February 2006.

[58] Although the unfortunate Mr Davies was identified as being hit in the face by a bottle thrown from the train as he stood on the platform.

[59] Trafford Magistrates' Court, 16 February 2006.

[60] Trafford Magistrates' Court, 14 February 2006.

[61] *Gough and Smith v Chief Constable of Derbyshire* [2002] EWCA Civ 351 at [92].

[62] Ibid. at [68].

[63] Although it should also be noted that Gough was required to surrender his passport even though the courts accepted he had never travelled abroad to watch football before and had no plans to do so in the future.

[64] British Embassy World Cup Guide, 7 June 2006 (see *www.britishembassyworldcup.com/en/press/press_guide/060607_world_cup.pdf*, accessed 13 September 2006).

[65] Interview with anonymous UK police officer, Frankfurt 8 June 2006.

[66] *Gough and Smith v Chief Constable of Derbyshire* [2002] EWCA Civ 351 at [79].

[67] In this case, the defendant would need to apply to the FBOA in order to be able to go on holiday as planned.

[68] Trafford Magistrates' Court, 15 February 2006.

[69] See *Davies*, Trafford Magistrates' Court, 16 February 2006.

[70] Police, Public Order and Criminal Justice (Scotland) Act 2006, ss 51-69.