



**OFFICIAL REPORT**  
AITHISG OIFIGEIL

# Justice Committee

**Tuesday 24 October 2017**

**Session 5**



The Scottish Parliament  
Pàrlamaid na h-Alba

© Parliamentary copyright. Scottish Parliamentary Corporate Body

Information on the Scottish Parliament's copyright policy can be found on the website - [www.parliament.scot](http://www.parliament.scot) or by contacting Public Information on 0131 348 5000

---

**Tuesday 24 October 2017**

**CONTENTS**

	<b>Col.</b>
<b>DECISION ON TAKING BUSINESS IN PRIVATE .....</b>	<b>1</b>
<b>SUBORDINATE LEGISLATION.....</b>	<b>2</b>
Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 [Draft] .....	2
Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/310) .....	4
<b>OFFENSIVE BEHAVIOUR AT FOOTBALL AND THREATENING COMMUNICATIONS (REPEAL) (SCOTLAND) BILL:</b>	
<b>STAGE 1 .....</b>	<b>5</b>

---

**JUSTICE COMMITTEE**  
**30<sup>th</sup> Meeting 2017, Session 5**

**CONVENER**

\*Margaret Mitchell (Central Scotland) (Con)

**DEPUTY CONVENER**

\*Rona Mackay (Strathkelvin and Bearsden) (SNP)

**COMMITTEE MEMBERS**

\*Maurice Corry (West Scotland) (Con)  
\*Mary Fee (West Scotland) (Lab)  
\*John Finnie (Highlands and Islands) (Green)  
\*Mairi Gougeon (Angus North and Mearns) (SNP)  
\*Liam Kerr (North East Scotland) (Con)  
\*Fulton MacGregor (Coatbridge and Chryston) (SNP)  
\*Ben Macpherson (Edinburgh Northern and Leith) (SNP)  
\*Liam McArthur (Orkney Islands) (LD)  
\*Stewart Stevenson (Banffshire and Buchan Coast) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Danny Boyle (BEMIS (Scotland))  
Annabelle Ewing (Minister for Community Safety and Legal Affairs)  
Tom Halpin (Sacro)  
James Kelly (Glasgow) (Lab)  
Colin Macfarlane (Stonewall Scotland)  
Sandy Riach (Scottish Disabled Supporters Association)

**CLERK TO THE COMMITTEE**

Peter McGrath

**LOCATION**

The Mary Fairfax Somerville Room (CR2)



## Scottish Parliament

### Justice Committee

*Tuesday 24 October 2017*

*[The Convener opened the meeting at 10:01]*

### Decision on Taking Business in Private

**The Convener (Margaret Mitchell):** Good morning, and welcome to the Justice Committee's 30th meeting in 2017.

Agenda item 1 is a decision on whether to take in private agenda item 6, which is consideration of further witnesses for our stage 1 scrutiny of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. Do members agree to take item 6 in private?

**Members indicated agreement.**

## Subordinate Legislation

### Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 [Draft]

10:01

**The Convener:** Agenda item 2 is subordinate legislation. The committee will consider the draft Legal Aid (Scotland) Act 1986 Amendment Regulations 2017. The instrument is subject to the affirmative procedure.

I welcome the Minister for Community Safety and Legal Affairs, Annabelle Ewing, and her Scottish Government officials. Aileen Grimmer is from the civil law and legal system division, Gaynor Davenport is from the directorate for housing and social justice, and Sadif Ashraf is from the directorate for legal services.

I remind members that the officials are permitted to give evidence during agenda item 2, but may not participate in the debate on the regulations during item 3.

I refer members to paper 1, which is a note by the clerk, and I invite the minister to make a short opening statement.

**The Minister for Community Safety and Legal Affairs (Annabelle Ewing):** Thank you and good morning, convener.

I am pleased to be here to present regulations that make provision for legal aid to be available, in certain circumstances, in the first-tier tribunal for Scotland housing and property chamber. The regulations are needed to ensure that civil legal aid will continue to be made available when the functions and jurisdiction of the sheriff court, in civil cases relating to tenancy-related disputes in the private rented sector, transfer to that chamber on 1 December 2017. The regulations will also allow for civil legal aid to be available for disputes in relation to the new private residential tenancies that are provided for under the Private Housing Tenancies (Scotland) Act 2016, which will also come into force on 1 December 2017.

The first-tier tribunal for Scotland housing and property chamber has a less adversarial approach in which legal representation will not be the norm, but given that eviction is a possible outcome in cases that will be transferred from the sheriff court, it was considered to be important to maintain the status quo as far as availability of legal aid is concerned. It should also be noted that the regulations do not involve any changes to the eligibility criteria.

The regulations provide for consequential transfer of all existing legal aid provisions, except for applications by landlords in relation to appeals

of landlord registration matters under the Antisocial Behaviour etc (Scotland) Act 2004. It should be noted that the policy objective is to develop landlord registration and letting agent registration in parallel and, moreover, in that regard to mirror existing procedures for property factors in the first-tier tribunal for Scotland housing and property chamber. No legal aid is available for property factors in such matters, and no legal aid is to be available for the new letting agents regime. Therefore, in the interests of parity of treatment, it is not being proposed that legal aid will be available for landlord registration matters: there should not be any difference in treatment in such matters. Even if eligibility conditions were met for such applications—which would be less likely—it is, as I have said, not proposed that legal aid be available.

I am happy to answer members' questions.

**The Convener:** Before we move to questions, there are two declarations of interests to be made.

**Liam Kerr (North East Scotland) (Con):** I want to declare interests as a landlord in the private rented sector, as a member of the Scottish Association of Landlords and as a solicitor with current practising certificates from the Law Society of Scotland and, in England and Wales, the Law Society.

**Ben Macpherson (Edinburgh Northern and Leith) (SNP):** I declare that I am registered on the Scottish roll of solicitors.

**The Convener:** It appears that members do not have any questions, so we will move to item 3 and formal consideration of the motion on the affirmative instrument. I should say that the Delegated Powers and Law Reform Committee has considered and reported on the instrument and has made no comment on it.

I ask the minister to move motion S5M-08085.

*Motion moved,*

That the Justice Committee recommends that the Legal Aid (Scotland) Act 1986 Amendment Regulations 2017 [draft] be approved.—[Annabelle Ewing]

*Motion agreed to.*

**The Convener:** That concludes our consideration of the regulations. The committee's report will note and confirm the outcome of the debate and our agreement. Is the committee content to delegate authority to me, as convener, to clear the final draft of the report?

**Members indicated agreement.**

**The Convener:** I thank the minister and her officials for attending, and I suspend the meeting briefly to allow them to leave.

10:06

*Meeting suspended.*

10:07

*On resuming—*

### **Civil Legal Aid (Scotland) (Miscellaneous Amendments) Regulations 2017 (SSI 2017/310)**

**The Convener:** Agenda item 4 is consideration of a Scottish statutory instrument. I refer members to paper 2, which is a note by the clerk.

Members have no comments, questions or recommendations, so does the committee agree that it wishes to make no recommendations on the regulations?

**Members indicated agreement.**

## Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill: Stage 1

10:08

**The Convener:** Agenda item 5 is our second evidence-taking session on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill at stage 1. I refer members to paper 3, which is a note by the clerk, and paper 5, which is a Scottish Parliament information centre paper. James Kelly is attending the meeting as the member in charge of the bill.

I welcome to the meeting Danny Boyle, who is a parliamentary and policy officer with Black and Ethnic Minority Infrastructure in Scotland, or BEMIS (Scotland); Tom Halpin, who is the chief executive of Sacro; Sandy Riach, who is the vice-chairman of the Scottish Disabled Supporters Association; and Colin Macfarlane, who is the director of Stonewall Scotland. I thank all the witnesses for supplying written evidence, which we have found particularly helpful: indeed, some of the responses have been very detailed.

We move straight to questions. First of all, are the panel members in favour of or against repeal, and why do you hold that view? Who would like to start?

**Danny Boyle (BEMIS (Scotland)):** I do not mind going first. Thank you very much for having us along this morning to discuss this very serious bill and the general issues and social concepts that surround it with regard to hate crime, inequality and human rights.

The convener asked whether we support repeal of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012. The direct answer is yes—we support repeal of the act because we are not convinced that it appropriately or effectively tackles hate crime. If the committee will allow it, I will give a brief overview of our rationale for that.

In 2016-17, there were 3,349 racially aggravated charges brought in Scotland. Over the lifetime of the act, between 2012 and 2017, there have been more than 20,000 charges. Over that period, there have been a total of 64 racially aggravated charges under the act.

The predominant hate crime charge under the act has been for religious aggravation, and the predominant characteristic within the religious aggravation is anti-Catholicism, which accounts for over 75 per cent of charges in every reporting

year. That being said, in relation to the volume of attendees at Scottish football matches, hate crime charges under the act actually account for less than 50 per cent of all charges in every year of reporting. Indeed, in the year in which the act was used most often—2016-17—in which there were 377 charges, only 18 per cent were for hate crimes.

We support a policy of mainstreaming and coherence that strives to ensure that there is a remedy for those who face hate crime on a daily basis in Scotland. The 2012 act does not achieve that; rather, it creates a disproportionate focus on one section of society when the overwhelming majority of hate crime is taking place somewhere else.

It is also misleading to promote the act primarily as hate crime legislation. It deals mostly with threatening behaviour, fighting or threats to fight, so it has reclassified offences under section 74 of the Criminal Justice (Scotland) Act 2003 and under breach of the peace. That is a laudable aim, but those are not a hate crime charges.

We are additionally concerned that the breadth of the law may create restrictions on freedom of expression and equality for all—specifically section 1(2)(e) of the 2012 act, which covers

“other behaviour that a reasonable person would be likely to consider offensive.”

From a minority community’s perspective, that poses challenges. Some of the communities that we work with are not always part of the dominant social narrative. When it comes to contested social issues, two valid but opposing opinions can exist, which can create real problems.

We are aware of some of the broader discussion of the idea that the act should be extended to other sections of society. We are slightly concerned about that. There is recognition in “Race Equality Framework for Scotland 2016-2030”, which was published in March 2016, that we must have a much broader conversation about Scotland’s role in the transatlantic slave trade and Scotland’s co-participation in colonial endeavours in the empire, and how those are now manifested in social issues that affect communities in Scotland today. To apply section 1(2)(e) in a much broader context to contested social issues could pose much larger problems for minority communities.

For those reasons, we support repeal of the 2012 act. We look forward to extending the discussion with members.

**The Convener:** Before I move on to the other panel members, will you comment on the policy memorandum to the 2012 act? You highlight in your submission the acknowledgement that

sectarianism is a social concept that has no legal character in Scots law, which I find quite interesting.

**Danny Boyle:** The general point is that the concept of sectarianism remains a contested social issue. We have had recommendations from Dr Duncan Morrow's independent advisory group on what the definition of sectarianism should be, but our general argument is that it has to happen independently of the judiciary as a first port of call because it remains a contested term. When hate crime occurs, irrespective of whether it is anti-Catholic, anti-Protestant, anti-Semitic or Islamophobic, it is quite clear.

However, the general jargon, particularly in relation to the contested concept of sectarianism, has been caught up with section 1(2)(e) of the 2012 act. From our perspective, things that are not necessarily sectarian are being called sectarian, which is clouding the broader narrative on what the 2012 act sets out to achieve and its purpose.

10:15

**The Convener:** I am more interested in the point that the concept has not been tested in Scots law and has no legal character, and so might be based on a false premise. Is that more or less what you mean in your written submission?

**Danny Boyle:** The policy memorandum that supports the 2012 act acknowledges that sectarianism is not a legal concept in Scots law.

**The Convener:** Is that part of the problem, as you see it?

**Danny Boyle:** That debate has to happen in civic society independently of cases being taken through the courts: the social and political issues must be debated independently of the catch-all legislation.

**The Convener:** Thank you. Who would like to go next?

**Tom Halpin (Sacro):** On behalf of Sacro, I endorse the 2012 act's initial intention in terms of hate crime and prejudice, so anything that I say about repeal should in no way detract from our regarding them as reprehensible. However, I have learned, from working with people who have been arrested or reported for that crime, something that is more around the sectarianism element.

Sacro operates a project on tackling offending prejudices, in which we receive referrals from the Crown Office and Procurator Fiscal Service. We also work with people who have been given community payback orders for other offences, but who have exhibited those attitudes of prejudice. The project has a cognitive behaviour therapy programme that gets into attitudes and belief

systems. The reality for the year that had most cases—2016-17—is that the project received 26 referrals. There is therefore inconsistency in how the 2012 act is applied in terms of the numbers that are coming through.

Of those 26 cases, seven included what would be defined as sectarianism, and one of those was about sectarianism and homophobia. However, of those seven cases, only three were referred through the 2012 act, so we know right away that legislation beyond the 2012 act is also taking such behaviours into account. Through the 2012 act, we are applying specific legislation to one group in society—football supporters—of whom many come from disadvantaged backgrounds, so we are stigmatising them because we have legislation specifically for that group.

When I was putting together my written submission, I was trying to find a balance in respect of why we would legislate against a behaviour, and so on. For me, there has to be a compelling case for doing that. However, four of the seven cases that were referred to the project were not dealt with under the 2012 act, so how compelling a case is there for having that legislation for only one group in society? I acknowledge that broader prejudices have been referred to in the discussion here. That is a bigger discussion, but we are talking about the area that the 2012 act relates to, which is bringing out quite controversial views at the moment.

At the start of the legislative journey, Sacro supported the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill and lots of its principles. However, we say that broader legislation is available. With regard to giving fixed-penalty tickets to people, the ages of the 26 people who were referred to the project range are pretty balanced through the range from 20 to 50, so is not just about young people or middle-aged people. As a sample, that group includes a broad age range. However, if we simply give a fixed-penalty ticket to someone who is chanting something that they would say their uncles and fathers had chanted in the past, and they do not understand why they have been given a fixed penalty, we are sending someone away who has not changed their attitude and who might be even angrier because they have just lost money, which they do not have a lot of in the first place.

**The Convener:** On the fixed penalty, are you talking about the transitional arrangements and when they would come in, or more generally?

**Tom Halpin:** Exactly: part of my submission says that that should not happen. Unless people are looking at and working on the behaviours and the belief systems that underlie them, they will not change things. The low level of referrals shows

that there is, at the moment, inconsistency in how the legislation is applied.

**The Convener:** Thank you for that. Who would like to go next?

**Colin Macfarlane (Stonewall Scotland):** Thank you for the opportunity to give evidence. Stonewall Scotland supports the principles of the 2012 act, and we supported the then bill when it went through the parliamentary process in 2011 and 2012. The act sends a clear message that abusive behaviour at football is not acceptable.

We know from our research that a clear issue is that lesbian, gay, bisexual and transgender people fear attending football matches. We know that 60 per cent of sports fans in Scotland have witnessed anti-LGBT language or abuse in a sport setting in the past five years, and 82 per cent of those fans witnessed that behaviour in a football setting. LGBT people tell us that football is a sport in which they do not feel safe or secure, whether that is because of chanting or comments that are made in the stands.

Our view was that the act would send a clear message that such behaviour is unacceptable. Repealing the act without putting other measures in place could undermine work that has been undertaken by organisations such as Stonewall Scotland, the Equality Network, football clubs, Police Scotland and the criminal justice agencies to increase LGBT people's confidence not only in reporting hate crime but in attending sporting events such as football.

We agree that there are implementation issues. We said in our submission that, as the act has been in place for five years, it is probably time for a review of what is and is not working. Our view is that nothing should happen until the review of hate crime legislation that Lord Bracadale is undertaking has reported back. That would be a good time to look at what needs to be done, whether the 2012 act needs to go and what reform it needs if it is to stay, and to look at hate crime legislation in the round.

Repealing the act without putting anything in place would be damaging—it would send a negative signal to LGBT people. Most LGBT people will not be watching today's meeting and will not pore over the *Official Report* or look at the intricacies of the different elements of the act, but they will see a headline that says that the act that potentially protects them at football matches has gone. That would lead to a lack of confidence.

**Sandy Riach (Scottish Disabled Supporters Association):** Thank you very much for allowing me to speak today. I am new at this so, if I seem unprepared, that is probably right, because we came into this late. The Scottish Disabled Supporters Association is a young organisation—it

was formed on the back of UEFA—and I look after all the clubs and their bits and pieces in Scotland.

I agree with the rest of the team of witnesses that we cannot have nothing at all, not just because of elements but because of what happens across the board. People do not care. Sometimes they do not realise how something affects people with disability—how they take chants, songs and speech. That is across the board, whether someone is in a wheelchair, is ambulant disabled, is autistic or has learning difficulties. A lot of people forget that such behaviour has a different effect on those people from that on someone with a normal ability.

It would be wrong to get rid of the legislation completely. Something needs to be put in place or kept in place for the future.

**The Convener:** To be clear, if something else was in place, might you be in favour of repeal, or are you against repeal per se?

**Sandy Riach:** I am against repeal unless there is something in place, if the position is reviewed or updated.

**The Convener:** Is it your submission that the act is not perfect? Would you like it to be looked at again and reviewed?

**Sandy Riach:** Yes.

**The Convener:** That is clear—thank you.

**Rona Mackay (Strathkelvin and Bearsden) (SNP):** Despite differing views, everyone would probably agree that offensive behaviour does take place, generally and at football. Is such behaviour at football matches a problem that the clubs could deal with? Mr Riach just said that he thinks that something needs to replace the act if it is repealed, and I ask the other panel members for their views on that. It is clear that, if the act was repealed, a gap would be left.

**Tom Halpin:** The problem is broader than just the clubs. There is offensive behaviour, which is on many occasions criminal behaviour, and broader legislation is available to deal with aggravations and hate crime. I am not a lawyer, so I would have to defer to others on the specific acts, but our referrals show that people are being charged with offences under other legislation and are being referred to initiatives such as ours, which includes outreach and education and is not just about the 26 people with whom we worked directly. We could work with more people, as we have trained people across Scotland, and there are other initiatives like ours. The idea that the clubs will change someone whose behaviour is so embedded and so offensive by taking away their season ticket will not tackle the hatred that is out there; the approach has to be broader than the clubs.

**Rona Mackay:** By extension, that means that you think that there would be a gap if the act was repealed and that there would have to be something else.

**Tom Halpin:** The point that I made was about the cases that were referred to us, four out of seven of which did not come through the act. Other legislation is available and I believe that, if that was applied appropriately, it would cover the gap.

**Danny Boyle:** I will cover briefly what is criminalised by the act and then touch on the most pertinent point, which is where we will go from here and what we will do next. As I said in my introductory comments, the act primarily reclassified breach of the peace as threatening behaviour, and 60 per cent of the charges over the act's lifetime have been for offences in that category. In the words of the Crown Office,

"The offence was classified as threatening where the accused threatened another/other person/people; it involved the accused acting in a disorderly or aggressive manner, making threats or challenging others to fight, or where they engaged in fighting."

It is a laudable criminal justice aim to prevent such offences. We can see that the majority of the charges relate to a single game—the 2016-17 Scottish cup final. In short, the act covers serious public order issues, so it is unclear to BEMIS why those issues are being collated and portrayed as relating to hate crime. We already suffer from a lack of clarity as to the locus and motivation of perpetrators and the ethnicity or other characteristics of victims of hate crime. The dissemination of statistics in relation to the 2012 act further clouds what is ambiguous and offers no illumination on the extent of hate crime issues in Scotland.

We have touched on the fact that the act covers some instances of hate crime but, as I outlined, that constitutes less than 50 per cent of all charges in each year of reporting, and the figure is as low as 18 per cent for 2016-17. The vast majority of instances are anti-Catholic, which reflects a broader issue that we know about—that the vast majority of religiously motivated hate crimes in Scotland are anti-Catholic and have been in every year since devolution. Disaggregated data on the ethnicity of those who suffer racially aggravated crime would be incredibly helpful. That being said, any hate crime is utterly unacceptable and, whether it is anti-Protestant, Islamophobic, anti-Semitic or against any other protected characteristic, we need to identify such crimes individually and not consume them in a generic, catch-all narrative.

Over the five-year lifetime of the act, specifically in relation to hate crime—not a reclassified breach of the peace—we have had 64 race charges, six

anti-Semitic charges, four Islamophobic charges, eight homophobic charges and one aggravation where anti-disability was the charge. All those hate crimes would be covered by pre-existing legislation. There is absolutely nothing new in the act that did not exist before 2011 to deal with hate crime.

As an aside, although it is a key point, the Bracadale review was initiated to bring clarity to the suite of hate crime laws and live legal instruments, so we know that the spread of those laws is confusing to the victims of hate crime in knowing which piece of legislation to use to get an effective remedy. The football act has increased that confusion, as opposed to helping us to deal with it.

10:30

As we said in our submission to the Bracadale review—I discussed this with Colin Macfarlane as we came in earlier—we think that the most sensible thing is to create a universal approach to tackling hate crime that is preventative and rooted in education but which also has a strong legal remedy when necessary. The most simple way in which we envisage that being taken forward is to have a piece of hate crime legislation that reflects the characteristics in the Equality Act 2010 and which can be evolved and updated as society changes. Some of the contested issues that remain live in the context of the football act are about things that do not constitute hate crime and are separate—they are about what would be offensive to a reasonable person. They have to be dealt with outside the legislation.

We have seen that the implementation of the legislation has polarised the judiciary, the police and certain sections of football fans and, to an extent, it is polarising equalities organisations in relation to the best approach to tackling hate crime. We struggle to see the value in continuing down this road and we would much rather see an informed universal approach and strategy for challenging hate crime in Scotland.

**Rona Mackay:** Some of your remarks do not reflect what we heard from the police at a previous evidence session. They are not finding the situation confusing, but—

**Danny Boyle:** To be perfectly frank, the 2012 act has created an anomaly in our relationship with the police. We have an incredibly positive and proactive working relationship with the police in every other facet of our work. Police Scotland's equality and diversity unit does fantastic work, as do community police officers on the ground, in engaging refugees and minorities. Our most robust and frank conversations with Police

Scotland have related to the implementation of the act.

It does not surprise me that Police Scotland wants to maintain section 1(2)(e) of the act, which refers to what would be offensive to a reasonable person, as it is in Police Scotland's interests to do so. That power is instilled in police officers on the ground, who then assess any given situation. We feel that it places police officers in a precarious position. They are not anthropologists, sociologists or political commentators, so the act is a difficult piece of legislation for them to implement and it immediately puts them in a negative interaction with football fans or other members of society. It fundamentally undermines the concept of policing by consent. We therefore have a degree of sympathy for police officers in that context.

**Rona Mackay:** I am sure that that is your view, but it is not what we heard from the police.

Does Mr Macfarlane have any comments?

**Colin Macfarlane:** There was a lot in what Danny Boyle said, but I will pick up on some of it. I do not agree that equalities organisations are polarised; I think that we are probably coming from the same place overall, which is that we want to ensure that our constituents feel safe and secure when they attend sporting events, whether that be football or whatever.

As I said, we agree with the principle of the act and the message that it sends. We are not religiously wedded to the act, and we highlighted in our written evidence areas where improvements could be made if it is to stay and where some of the implementation has not been quite right—particularly in relation to LGBT reporting and recording. However, our big worry is about the signal that will be sent to LGBT people if the act goes and nothing is put in its place.

Police Scotland has been doing really good work along with organisations such as mine, the Equality Network and LGBT Youth Scotland, and we have been working with the Scottish Professional Football League and clubs to start building the confidence of LGBT people in attending matches and to allow them to feel safe and secure in sporting environments. The act is symbolic for them, because it gives them the sense that they are covered. As I mentioned, people often do not know about the intricacies of the legislation that does and does not cover them, but they know that, if they go to a football match and hear homophobic chanting or if somebody throws homophobic, biphobic or transphobic abuse at them, the act will protect them. The bit that we support is the principle of the act.

To go back to the Bracadale review, Danny Boyle is right that the gamut of legislation is confusing. I do not want to pre-empt what

Bracadale will say, but it probably would be better if there was a streamlined system of hate crime legislation. We should wait and see what Lord Bracadale comes back with and then consider and review the situation and move forward on deciding whether the act should remain and be reviewed and improved or whether something else should be in its place. The Bracadale review is the best way to look at that—it would be folly to get rid of the act before Bracadale reports back.

**Liam McArthur (Orkney Islands) (LD):** Thank you for your evidence. I am struggling to get my head around the concept of the message that repealing the bill would send. I can understand why, in part, legislation can be about sending a message about Parliament's—and wider society's—acceptance or rejection of particular behaviours, but we are hearing that the 2012 act is not delivering beyond the gamut of existing legislation. It is not sending the right message if it is convincing people that it provides protection that it does not. Would those protections not be better provided by repealing the act and, through the Bracadale review and—as Danny Boyle suggested—equalities legislation, creating a more effective catch-all approach to behaviours that we all agree are reprehensible? I cannot understand why we would want to keep the act in place as a way of sending a message about protection, given that it does not provide that protection.

**Colin Macfarlane:** We support the principles of the 2012 act, but we are not wedded to the act itself, should it be repealed or reviewed. The implementation of the act is what is important. We have looked at some of the implementation issues and we do not disagree that they are there. However, the act sends a signal: for an LGBT fan or person, the fact that the act exists and will protect them—although there are other bits of legislation that can do that—has a symbolic element. We are not wedded to whether the act should stay or go, but we want to ensure that the signal that it sends remains. If it were to be repealed and nothing was put in its place, what would that say?

The Bracadale review is looking at elements of hate crime reporting in general. We know that very few LGBT people report hate crimes. It is a confidence issue that we need to work on with Police Scotland and civic Scotland. In the context of football, that means making clubs safer places for LGBT people. We are not saying that the act is perfect—it is not. We are saying that if you simply get rid of the act without putting something in its place, that will send a negative signal to LGBT people about whether they can feel safe and secure in a football or other sports setting. That is where we have an issue with a blanket repeal and that is where the Bracadale review comes in. Bracadale will come back with recommendations

and we should look at those, see what is suggested and take it from there.

**Liam McArthur:** As someone who has expressed concerns about the 2012 act and who supports its repeal, I am concerned that my position, which I share with other members of the Parliament, will be construed as sending a unfortunate message to the LGBT community, particularly given that the Scottish Parliament has an unrivalled track record in doing much to support that community. We are hearing the concerns that Mr Boyle and others have raised about the effectiveness of the act and the effect that it has had on relations in the network of equalities organisations and between that network, individuals and the police.

I am very wary about the issue regarding the message and I am interested to hear Mr Boyle's position on that matter. The idea that repealing the act would somehow send an unfortunate message about the Parliament's support for people in the LGBT community is something that I find difficult to understand and accept.

**Colin Macfarlane:** Can I just come back on that? LGBT people tell us that the act gives them confidence to attend those events and that they feel protected, safe and secure. They also tell us that if the act were to go, they do not know what would protect them. In place of the act, you would need a proper information campaign, with the Scottish Government and Police Scotland taking the lead, to remind LGBT people about other legislation—

**Liam McArthur:** If we are being told that the act is not providing the protection that people in the LGBT community believe that it does, that is a problem, irrespective of the bill that we are considering.

**Danny Boyle:** I am entirely sympathetic to colleagues' concerns about hate crime aggravations in any circumstance in Scotland. They have us as an ally in challenging that behaviour. However, we are making a point about the danger of the act in relation to people's perceptions of the coverage of support and the lived experience of the act's implementation. The act is unnecessary precisely because it rides on the back of tackling the problem of hate crime and the public consciousness that goes along with that. As we have already said, the vast majority of charges are not hate crime charges. A point that develops from that concerns the different experiences of people with different protected characteristics in relation to different pieces of legislation.

We share the aspiration to tackle and challenge hate crime across the board. What is potentially unique to the issues of race and ethnicity concerns

the legal definition of race in the Equality Act 2010 as it relates to the 2012 act. Minority communities have a different experience by virtue of the new offence under section 1(2)(e) of the 2012 act, which criminalises something that would cause offence to a reasonable person. I will try to frame that from an LGBT perspective without putting words in anyone's mouth. If, for example, a football team in Scotland that had a really strong LGBT identity—perhaps because the LGBT community had created and developed that club—found that, under section 1(2)(e), its members were being criminalised by virtue of other people in society finding that to be offensive, MSPs would take a different stance on the issue.

We absolutely share the aspiration to tackle hate crime across the board, but the 2012 act does not achieve that. I am surprised that human rights advocates have not been invited along today to give evidence, because the act raises fundamental issues around freedom of expression. The highly respected Liberty organisation described section 1(2)(e) as a "breathtaking expansion" of the criminal law. We would encourage the Scottish Human Rights Commission and the Equality and Human Rights Commission to say something in that regard.

**The Convener:** Have no fear, Mr Boyle; we have that covered.

**Ben Macpherson:** I have a short supplementary question. Colin Macfarlane spoke about partnership working with other organisations in the lesbian, gay, bisexual, transgender and intersex community. The Equality Network recently published its Scottish LGBTI hate crime report for 2017, on which Mary Fee lodged a motion that received cross-party support. The report acknowledged concern about the existence of LGBTI discrimination in football, with 66 per cent of respondents stating that they had either experienced or witnessed homophobic, biphobic or transphobic hate crime at matches, when travelling to and from matches or when attending a venue at which a match was being shown. Are you concerned that repealing the 2012 act would remove a key part of the criminal justice system that is used to tackle that hate crime?

**Colin Macfarlane:** Exactly. Further, as I said, our research showed that 82 per cent of Scottish fans said that they had witnessed anti-LGBT language and abuse in a football setting.

I sometimes look at the issue as being like a jigsaw puzzle. The legislative framework and the work that is done in our schools and communities and by organisations such as Stonewall are pieces of that jigsaw puzzle that create the final big picture. Stonewall's view has been and continues to be that the principle of the 2012 act is part of the armoury that we can use to tackle

homophobic, biphobic and transphobic language, abusive behaviour and discrimination in Scottish society. In 2011, we said that we supported the principles of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. The research that has been done by Stonewall and the Equality Network has shown that such behaviour is a clear issue in a football setting. If you take the 2012 act away, you will take away part of the jigsaw puzzle and we would worry that, unless it is replaced by something to fill that gap, things will fall through the net.

There is also an issue about the message that taking away the 2012 act would send. The act symbolises something and sends a message. Such messages are important to LGBT people. They need to know and feel that they are safe and secure whether they are in school, in the workplace, in their communities or attending a football match.

10:45

I will use a personal example if the committee will allow me to do that. My dad died 20 years ago. He was a huge Rangers fan. I was an only child—his only son—and he wanted me to go to football matches with him. As a teenager, I was coming to terms with my sexuality and I knew the kind of language that was used on the terraces—you could hear it consistently on match days around Ibrox. I used every excuse possible not to attend those matches with my father because I was absolutely terrified about what I would hear and whether any of his friends who were there might use that language and what it would mean for me. It is a great regret for me that I was not able to spend that time with my dad and be a good son in that way.

For us, it is about ensuring that any LGBT kid is able to participate fully in a family environment. They need to be able to go with their families to take part in sport or watch their football team and not feel worried or scared that they will hear that kind of language or see abusive behaviour. The 2012 act is the piece that holds the jigsaw puzzle together because people can feel confident knowing that it is there. I repeat that they will not be watching the committee today and they will not look at the *Official Report*, but they will see a newspaper report or hear a news report that the act that is in place, which protects them at football matches, might go, which will send a negative message to them and will mean that they might not feel safe or secure in a football setting.

**Ben Macpherson:** Thank you for that, and for your personal reflection.

**The Convener:** Stewart Stevenson has a supplementary. It would be helpful if members'

supplementary questions could be less long winded.

**Stewart Stevenson (Banffshire and Buchan Coast) (SNP):** It will probably be very brief and it is directed to Mr Macfarlane in particular.

Section 6 of the bill, on commencement, says:

"This Act comes into force on the day after Royal Assent."

Am I hearing, implicitly if not explicitly, that if Parliament passes the bill into law, commencement should not take place until there is a replacement regime, or, as an alternative, that there should be a specific timetable so that the bill does not become a blank cheque for never doing anything? Is that what I am hearing?

**Colin Macfarlane:** Are you talking about the transitional arrangements?

**Stewart Stevenson:** Yes.

**Colin Macfarlane:** Our view is that the 2012 act should not be repealed until something is put in its place. I am sorry to keep going back to this, but the Bracadale review will be the opportunity to do that. If the 2012 act is going to go, we would say that its repeal should be delayed until Bracadale has reported and made recommendations. Bracadale gives an opportunity to look at whether the act should remain and be improved or, if it is to go, what should go in its place.

I do not want to pre-empt what the Bracadale review will say, but if it says that there should be a whole new system that lumps together our equality rules and hate crime rules, that will create an opportunity to look at how we move forward.

**Danny Boyle:** I appreciate the narrative that is accompanying some of the discussion but I refer members and the public back to the statistics that we have in relation to the 2012 act. As we have already said, it was used most often last year and 18 per cent of the charges related to hate crimes. Since it was enacted, there have been eight charges for homophobia—

**Stewart Stevenson:** I am asking a specific question about commencement. Could you address that? You do not have to if you do not want to.

**Danny Boyle:** I am quite happy to address it, because it is pertinent to the point that I am in the middle of making.

Assistant Chief Constable Higgins said in evidence that, out of 4 million attendees at football—I am guessing that that is not 4 million Scottish citizens because that would be quite an incredible attendance rate—0.00005 per cent—

**Stewart Stevenson:** Forgive me—

**Danny Boyle:** Your specific question was on section 6 and whether it means that repeal of the act would leave a major gap in the law.

**Stewart Stevenson:** No, I am not asking about that, because it is self-evident that it would. In response to the specific point that LGBT people are making, which is that they feel protected by the intention of the act, regardless of its legal impact, I am asking whether it would be appropriate for commencement to wait for a replacement regime, whatever its nature, and whether there should be a time limit so that there is no blank cheque meaning that the passing of the bill can be ignored. That is a very specific question. If you do not have an answer, you are perfectly entitled to say so.

**The Convener:** The question is about section 6 of the repeal bill.

**Stewart Stevenson:** Yes.

**Danny Boyle:** Understood. I refer you to my previous comments, in which I addressed a lot of the substance of your question. This is about the perception and experience of the 2012 act. On experience of the 2012 act and protected characteristics, it is important to recognise that the 2012 act is significantly broader than an act that deals with just one protected characteristic. In my opening statement, prior to Colin Macfarlane's eloquent input, I said that, from the perspective of race equality and the legal definition of race, which is very broad, section 1(2)(e) of the 2012 act creates specific problems. Although there is a potential injustice via the implementation of the bill, we do not support—

**Stewart Stevenson:** Mr Boyle, my colleagues will ask many—

**Danny Boyle:** Given that the hate crime legislation—

**The Convener:** If you talk over each other we do not get anywhere. I think that you have the answer to your question.

**Stewart Stevenson:** I am not getting an answer.

**The Convener:** I have given a lot of latitude on supplementaries. I will move to the next question, which is from Maurice Corry.

**Maurice Corry (West Scotland) (Con):** Good morning, gentlemen. This question is for Mr Halpin. Has the 2012 act led to a change in behaviour at football matches or in communities?

**Tom Halpin:** Our experience comes through the referrals that we get, and there is no doubt that we have seen the biggest number of referrals in 2016-17, although we are still in year at the moment.

You need to go to football matches and observe the behaviour to see whether the 2012 act has changed societal behaviour and behaviour at football matches. There is a long way to go. It is true that the 2012 act has, to a huge extent, raised the issue in the consciousness of everyone who has any connection to football, whether professionally, as a supporter or whatever.

We have a concern. Our experience is that interventions can be very successful, with well over 70 per cent of the people whom we work with reporting a real change in attitude. We would agree with them. However, if we do not work with people in terms of their belief systems and boundaries and how they sustain change once they have accepted it, this could be a very shallow change in Scottish society.

**Maurice Corry:** Has the 2012 act made the experience of football matches more or less enjoyable for the people from whom you get your information?

**Tom Halpin:** There are hugely positive outcomes, but even today there are broad things in Scottish society that people do not want to confront. For example, one person who went through the programme was happy to tell their story, but the minute that their representatives—their support system—realised that they were going to speak up, the person was advised not to go public. There is still a stigma; there was a real risk that speaking up would affect that person's future employment opportunities.

**Maurice Corry:** But overall there is a positive effect.

**Tom Halpin:** The interventions have had a positive effect. There is no doubt about that.

**The Convener:** Liam Kerr has a supplementary.

**Liam Kerr:** I want to drill into that point. Mr Macfarlane, you talked about your personal experience. Empirically, will you say whether there has been a reduction in the singing of songs and use of language that you spoke about since the 2012 act came into force? If so, is there any evidence that the reduction is a function of the act and not something else, such as a change in societal attitude, for example?

**Colin Macfarlane:** I cannot say whether there has been a reduction in the past five years. All that we can comment on is our latest research and the Equality Network's latest research. I do not know whether the Equality Network did research before the 2012 act came into force.

Through what we do here, what we have seen, what LGBT people tell us and what our research tells us we know that there is a problem around LGBT people, homophobia, biphobia and transphobia at football matches, be that in

chanting, song lyrics or LGBT people not feeling safe and secure attending football matches or watching a live football match in a pub, for example. Our research has also shown that a percentage of that language or abuse happens in a live sport setting, for example at the stadium or club, or in the pub.

Where we have seen a shift is in the work that we are doing with clubs. We are working on our rainbow laces initiative, which we launched in November. We work with grass-roots clubs and we are also now working with the SPFL, which supports the rainbow laces initiative. We are in conversation with some of the premier league clubs about how they can take part in that initiative. That represents a shift in the past five years because, before that, organisations did not want to work with us on those issues.

**Liam Kerr:** Has there been a reduction in the behaviour that you talked about, as a specific function of the introduction of the act?

**Colin Macfarlane:** I cannot answer that because we do not have the evidence from our research to suggest that.

**Fulton MacGregor (Coatbridge and Chryston) (SNP):** The issue of a gap in the law has been touched on. In our last evidence session before the recess, we heard a strong statement from Anthony McGeehan from the Crown Office and Procurator Fiscal Service that repealing the 2012 act would lead to a gap in the law. The Scottish Women's Convention said the same in its submission. What are the panel members' thoughts on that? Some of you have already touched on that, so I leave it to each person's discretion whether they want to give a brief answer.

**Tom Halpin:** I refer to cases that we have actively worked with, which include behaviour that could be described as hate crime occurring in a public house, and that were referred to us for attitudinal change programmes. It was very similar to behaviour that was referred to us under the act from a football ground.

**Danny Boyle:** We have previously outlined at some length our opinion that hate crime elements that are dealt with in the act are covered by pre-existing legislation.

Inherent in your question is the narrative about hate crime. There is an anomaly there, in that the two representative intermediary bodies that work directly with the Scottish Government's equality unit on the development of the race equality framework for Scotland—whose members, whom we work with, face the overwhelming majority of hate crime aggravations—are both in favour of repeal of the act. That is quite a strange circumstance.

We remain unconvinced that behaviour that would otherwise not be considered criminal should be criminalised by section 1(2)(e). Five years on, we are unconvinced that the act is necessary and believe that it creates confusion and double standards in hate crime policy. If the act was coherent, provided a balanced remedy and took forward the social conversation about hate crime, we would back up the Crown Office, the police and the Scottish Government, as we do on various other strands of hate crime and equalities work in Scotland. However, the act does not provide a balanced remedy.

As I think that Mr McArthur touched on earlier, a social narrative is developing that organisations such as ours, by criticising or challenging the act, are somehow pro hate crime or sectarianism. That narrative has begun to manifest on certain websites and in the editorials of some newspapers. That is not only insulting to various organisations that have challenged hate crimes throughout their existence, in conjunction with key stakeholders, including the Scottish Government, but is a really dangerous political binary to set with regard to legislation that is contested. For those reasons, we do not see that repeal of the act will lead to a gap in the law.

**Fulton MacGregor:** I do not think that anybody around this table would suggest that. I just want to clarify whether, in your opinion, Anthony McGeehan was incorrect when he gave us evidence.

**Danny Boyle:** I will not sit here and say that another person's submission is incorrect; obviously, from his perspective, it is entirely correct.

**Fulton MacGregor:** I do not think that it is really a matter—

**The Convener:** Wait a minute. Let Mr Boyle answer the question.

11:00

**Danny Boyle:** I am quite happy to respond to the question, convener. Our analysis is different from that of the Crown Office and Mr McGeehan in relation to many aspects of the legislation. As a humble public servant, Mr McGeehan has a duty to respond to and protect the legislation at his doorstep. This is an absolutely critical matter with regard to this piece of legislation, because the fact is that some issues that we are dealing with should be crossing neither Mr McGeehan's table nor the table of any individual police officer. These issues have to be debated and discussed outside the criminal justice system.

On the gap in the law, I have already covered sections 1 and 2 with regard to hate crime and the

additional aspect of generally offensive behaviour. My understanding from the submission provided by Police Scotland in addition to its oral evidence is that

“an individual making a threat intended to stir up racial hatred could not be dealt with using the Section 6 offence but would risk being prosecuted using other legislation.”

That could not be clearer with regard to the additional aspect, which we have not yet covered. There is no gap in the law.

**The Convener:** I think that Mr MacGregor also has a question about travel. That was a pretty long supplementary, and you are moving into other members' lines of questioning.

**Fulton MacGregor:** I also want to hear from the other panel members. Perhaps, as the convener has said, you could make your answers brief.

**Colin Macfarlane:** Our understanding is that the 2012 act covers—I need to get my teeth around this word—extraterritoriality, which basically covers Scots going to watch, say, the Scottish team at international matches and means that an incident of hate crime or abuse either online or at such a match can be prosecuted consistently abroad. Indeed, the COPFS has stated to the committee that it has used that piece of legislation to prosecute hate crimes under those circumstances. Taking away the act leaves a gap with regard to international matches, and the Crown Office and Procurator Fiscal Service has said as much, too.

**Fulton MacGregor:** My next question is more for Sandy Riach. Colin Macfarlane and Danny Boyle have said a bit more about the groups that they represent, but has the 2012 act led to any changes for the folk that Mr Riach's association represents as far as going to matches is concerned? What sort of things have you experienced at matches? I believe that you touched on that issue in your opening remarks.

**Sandy Riach:** Our organisation is still young, and I have not been able to do the same research or get any data on what has happened over the past five years as those in other organisations—although I will gladly get involved with such research in order to find these things out. However, having done this for 14 years now, I can tell you that I have seen aggressive behaviour towards disabled people. It happens partly because of ignorance; after all, can you tell whether I have a disability? That sort of thing cannot be dealt with through stewarding or by the police. We have addressed, highlighted and reported such incidents in the past, but nothing has been done. Where do we go from there? How can we get that kind of information progressed? I would like to hear the experiences of other clubs and other disabled supporters associations, and

what I think I will take from this meeting is a road map—for want of a better word—for finding out about these things and hearing those experiences.

I recall an incident at Celtic Park in which a section of fans directed abuse at disabled supporters at the front. We could not get anything done about it. That needs to be stopped; after all, it was quite clear from the closed-circuit television that things were happening and that there were other incidents of drunken and disorderly behaviour. That sort of thing might be dealt with under another part of the law, but I am not 100 per cent sure about that. Something needs to be in place, but I am not 100 per cent sure what it should be.

**The Convener:** Is it fair to say that there is still more work to be done by your association in contacting other clubs to pin the matter down?

**Sandy Riach:** Yes—definitely.

**The Convener:** What you have said is helpful, but it is good to put it in context. We really have to move on now.

**Fulton MacGregor:** I suppose that I have asked a supplementary question.

**The Convener:** You have just done that. At the very beginning, you certainly were not on-message. We need to move on.

**Mary Fee (West Scotland) (Lab):** Good morning, panel. A lot of what I was going to cover has been touched on, but I want to pick up on something that Colin Macfarlane mentioned in his answers to Liam McArthur and Liam Kerr. He said that the 2012 act gives LGBT people confidence that they will be protected at football matches—you know that I support anything that can be done to make any sporting event more supportive of LGBT people in general—and that very few LGBT people report crimes. I understand that the act may give the perception that it is safer to attend a sporting event, but do you have any evidence that LGBT people are using it to report crimes?

**Colin Macfarlane:** No, I do not have evidence of that. However, I take you back to my jigsaw analogy. We know that there is a problem with LGBT people feeling confident in reporting hate crimes to the police but, as I have said, we also know that 82 per cent of LGBT people have heard homophobic, transphobic or biphobic language and abuse at football matches. The principles of the act form part of the jigsaw that builds confidence, but there is still work to be done in our schools and our communities and with the criminal justice system, Police Scotland and the clubs. The act forms part of the armoury to make LGBT people feel safer and secure in their communities, at work, at school or attending football matches. We do not have evidence about whether or not

they are using the act to report, but we know that it makes people feel confident that there is something in place as part of the jigsaw puzzle and armoury that protect them and make them feel confident and safe.

**Mary Fee:** Okay. I will go on to talk about how hate crime can be tackled, but do any of the panel members have anecdotal evidence that the behaviour that we are talking about is less prevalent now at football matches because of the act? I would appreciate it if we did not rely so much on statistics.

**Tom Halpin:** An attitude comes through that there is more likely to be robust enforcement towards people who have been referred to our project. The key point is whether that robust enforcement would have been possible with the existing legislation. Because of the examples that I have given, there is nothing to suggest that that could not be the case with the proper briefings. My understanding is that, consistently in police briefings at the start of the journey, there was confusion among officers about what act should be used. Their thinking was so ingrained and they were so used to the existing legislation that they tried to understand why the act would be used at the start. The commanders at the matches had to explain that and take the matter forward.

The act has raised matters in everyone's consciousness. That is why we supported it at the start. However, on everyone's belief that there will be robust enforcement if a matter is properly reported and responded to by the match commander, we have heard about disability examples that were clearly not appropriately responded to. The issue might be circumstantial, but what was the retrospective investigation?

The message that the act sends to those who are victimised is hugely important, but the issue is also the message that it sends to those who have such beliefs and cultures. How do we change them? That has an impact on how we change others who are going into the sport. From my experience, my strong belief is that the low levels of prosecution and referrals show that we do not have a grip of that yet.

**Mary Fee:** Does Danny Boyle want to add anything?

**Danny Boyle:** Yes—I am considering whether or not to give a personal anecdote. I think that I will, because I think that it is relevant to the point that you asked about and where we are going.

In 2011, when the concepts behind the act were being developed, I was working for a Glasgow-based organisation called the Irish Heritage Foundation, which is funded via the Irish Government's immigrant support programme, which puts money into communities in which there

is a large Irish diaspora. I know that you do not want me to focus too much on the statistics, but they are important as a subsidiary to my main point. Under the act, as it has been implemented, people who share my identity—that of a lay Catholic member of the Irish diaspora—are most likely to be viewed as victims. In 2011, I was one of the people who were warned by Strathclyde Police to be careful about what we receive in the post and where we go in public.

The Irish Heritage Foundation's submission to the consultation process on the bill said that the organisation was against the bill because we did not see that it would add any value, from a race equality perspective, to the work that is being done around a much broader societal issue. We felt that it was unhelpful to focus primarily or disproportionately on football.

From a personal perspective, over the past five years, I have not seen any evidence that the act has had a meaningful outcome in terms of the behaviours that have been identified in relation to football.

**Mary Fee:** Colin Macfarlane talked about the rainbow laces campaign—I am the proud owner of a pair—and there is also the charter that the Equality Network is trying to get clubs to sign. Those campaigns represent an important way of tackling homophobic abuse, sectarian abuse and other sorts of abuse, and they involve everyone from members of the club all the way down to the supporters. Danny Boyle spoke about the importance of education in that regard, too.

What other tools can we use within the framework of education to change what are in some cases quite deep-seated and deep-rooted views on sectarian and anti-LGBT behaviour?

**Colin Macfarlane:** I can speak only from an LGBT perspective, but you are right to say that education is critically important. Our schools report, which we published last month, showed that there are still shockingly high levels of homophobic, biphobic and transphobic bullying in our schools, and we know that teachers still do not feel confident about talking about and tackling those issues. The TIE—time for inclusive education—campaign has done a lot of work to raise issues around that. We run a train the trainer course that was set up in direct response to our first schools report, which showed that something like 75 per cent of primary school teachers and 44 per cent of secondary school teachers were told that they cannot talk about LGBT issues in the classroom. Our course trains teachers specifically on LGBTI issues, and involves those teachers then going back into their schools to train their peers.

I do not have the exact statistics, but I know that Leadership, Equality and Active Participation in Sports for LGBTI people in Scotland, a campaigning organisation, is engaging in interventions around sport in school, because that is where a lot of LGBT young people's negative experiences of sport arise—I can personally vouch for that. That is all part of the jigsaw puzzle about how we make those changes.

With regard to the rainbow laces campaign, there has been a bit of education for football clubs themselves around the work that they need to do. I know that the Equality Network has been working hard for a long time in that regard and we have been working hard for the past three or four years to get our foot in the door so that we can talk to the SPFL, the Scottish Football Association and the clubs about the fact that homophobic, biphobic and transphobic abuse happens at football matches and that LGBT people do not feel safe attending football matches. All that work is making things better, and the act is part of that jigsaw puzzle.

We believe that the shift that we have seen in relation to the fact that clubs and the governing bodies now want to talk about and actively tackle the issue has come about as a result of the higher profile that the issue has had, which is due in part to the existence of the act. We believe that that is the case because that is what they tell us.

That answer was rather rambling. Education is key, but again, it is part of the jigsaw puzzle and just one element in our armoury for tackling the issue.

**Mary Fee:** Do you think that education will tackle the very deep-seated behaviour? Will education tackle sectarianism?

**Colin Macfarlane:** Are you asking me directly about sectarian behaviour?

**Mary Fee:** Yes.

11:15

**Colin Macfarlane:** If you look at social change programmes and how you can nudge the dial, I would hope so, although I do not have a definitive answer about whether we will completely eradicate either homophobia, biphobia and transphobia or sectarianism. However, through education and teaching our young people about what it is like to grow up and live in modern 21st century Scotland, we have to be able to talk about those issues and tackle them in our education system.

**Danny Boyle:** I have two brief points. Education has an incredibly important role to play. The curriculum for excellence and rights respecting schools are two examples of conduits for

increasing knowledge about 21st century Scotland and the diversity of the communities and populations that live here and the fact that they are all intrinsically valuable to Scotland—both the individuals and the communities of protected characteristics.

We run a number of campaigns, such as the enhanced by our diversity, combined by our humanity campaign, and much of that is about celebrating the intangible cultural heritage of the diverse communities that call Scotland home. Embedding those ideas in our education process is incredibly important. I am happy to say that, in the context of the race equality framework, we will be taking forward work with Education Scotland and other race equality partners to review the curriculum for excellence resources with regard to that specific point.

I will shift things back to the specifics of football. If, as a catalyst of the technical disagreements and discussions that we have had about the value or otherwise of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, we are able to put more emphasis into progressing the issues outside the criminal justice system, that is a positive that has significant value. Hypothetically, if we had a coalition of organisations such as those represented here today and fans groups and so on that could put into a sporting environment what we intend to put into an education environment, that could be highly beneficial.

In respect of the 2012 act, there is a tendency to talk about or assess football fans entirely negatively. I will say something beyond the statistics, which, as I have said, show that there is less hate crime in football than there is in the general populace. Football fans are running food drives and I have attended football games where there have been pro-refugee banners and anti-racism banners. A couple of weeks ago, I saw, probably for the first time, some pro-LGBT banners at a game. There is a lot of progressive stuff happening in football clubs and among football supporters and in fan culture, and that should be appropriately acknowledged.

The stats are saying something and the development of how people support their teams in Scotland is also changing. We need to harness that as opposed to holding discussions in the context of the criminal justice system, because that polarises opinion and creates some significant issues that could be tackled through other means.

**Tom Halpin:** A huge amount of work goes on to educate young people about diversity, inclusion and the law. Our experience, and part of our approach, is that where a school has specific issues with particular individuals and behaviours, it needs more than the broad educational approach

and we have to work with the young people on their beliefs, cultures and all the things that go with that. I urge caution about saying that we are already doing all that. There need to be interventions when such behaviour bubbles up through the school.

**Sandy Riach:** I want to add something that is partly about education but is at a bit of a tangent to that. Many disabled people who go to football matches are scared. They are scared of the environment and of what happens at grounds, including noise, singing, chanting and general foul language, because sometimes it is difficult for them to perceive what is going on. I have done some stuff on autism, and there is an organisation called the Shippey Campaign down in England that tries to educate and integrate people so that they can go to a game and enjoy football. There are quite a lot of people who will do that, so there is the education aspect.

People need to be made aware that there is stuff in place to make sure that they are safe—people will look after them when they go to football matches and something will be done if something goes wrong. That is what I want to make sure of. A couple of times, I have seen situations after which nothing has been followed through. We need to make sure that the element of society who want to go to football matches can do so and know that they will be safe.

**Rona Mackay:** We have talked about Lord Bracadale's hate crime review. Given that that is due to report in spring 2018 and will include the 2012 act, do you think that it is sensible to wait for the outcome of that review? You can answer fairly briefly if you wish.

**Colin Macfarlane:** Yes.

**Sandy Riach:** Yes. I need to catch up.

**Tom Halpin:** I would not be opposed to that.

**Danny Boyle:** No. The act should be repealed at the earliest possible opportunity, because it is not dealing with hate crime and it is creating significant issues independent of some of the concerns that have been raised today.

**Rona Mackay:** You do not think that it would be sensible to wait until you see what the review says. It might address the points that you are raising.

**Danny Boyle:** We have called for an educational and universal approach to taking forward the strategy for tackling hate crime. There are far too many contentious issues inherent in the implementation of the 2012 act. It is now no longer policing by consent, as I talked about already. The act no longer has the respect or credibility that such a piece of legislation needs and I support its

repeal as soon as possible. That will not leave any gap in the law in terms of tackling hate crime.

**Rona Mackay:** Could Colin Macfarlane elaborate a wee bit on the online abuse that LGBT people suffer? Presumably some of them report it, although you say that there are difficulties with that. Do you think that the repeal of the 2012 act would make them even less likely to report it?

**Colin Macfarlane:** We know that individual LGBT people experience elements of hate online—let me see whether I can find the stat for you. One in 12 LGBT people have experienced online homophobic, biphobic and transphobic abuse or behaviour. That increases to 23 per cent—or one in four—of trans people. When the question is about communication that is not aimed at someone as an individual, nearly half of LGBT people have seen some of that kind of abuse, whether it is on Twitter, Facebook or forums, and that is just in the past month.

Our view is that section 6 of the 2012 act, which covers the communications element, is vitally important. Again, it goes back to the signals that it sends. I honestly cannot say whether the repeal of the act would stop people from reporting abuse. People understand that there is something in place that helps them and protects them against online abuse—what happens if that disappears and there is nothing in its place? There is the Communications Act 2003, but we were not able to find available figures about whether online hate cases are prosecuted under that act, so I cannot say what the correlation would be. For us, section 6 of the 2012 act is an important piece of legislation.

**Rona Mackay:** Colin Macfarlane said that the LGBT community feels a bit more protected by the 2012 act and talked about the fears if it is repealed. Is that how disabled groups look at it as well? Does the act make them feel a bit more protected, either at matches or travelling to and from them?

**Sandy Riach:** Yes. We have people who have put a big sign on the bus that says "Disabled Supporters", but they have still experienced abuse. I agree with Colin Macfarlane on this one.

**Ben Macpherson:** My questions relate both to section 6 of the 2012 act, which Rona Mackay asked about—not section 6 of the bill, which Stewart Stevenson referred to—and to the Bracadale review. It has been made clear to us that there is strong support from prosecutors and Police Scotland for section 6 of the act, in that it has been successfully used to prosecute individuals who have made serious threats of violence against members of the public, including threats of murder, and to prosecute individuals who have made threats towards the Jewish,

Muslim or Catholic communities designed to stir up hatred on the basis of religious grounds.

I have concerns about the repeal of the act relating to those who experience hateful communication online. Do witnesses feel that the introduction of the 2012 act has had any impact, not just in terms of the practical effect on the criminal justice system but in sending a message about what online behaviour is unacceptable?

Danny Boyle from BEMIS made the point earlier that we should always look to challenge legislation and consider its effectiveness. I am absolutely with him on that. What I am finding hard to concur with is the strong view that he expressed in response to the previous question that repeal should happen as quickly as possible. Surely we have a constructive opportunity here, with the Bracadale review, to work together consensually across the sectors involved and across the parliamentary chamber, looking at how we pull all this together, utilising section 6 of the 2012 act and the strong support that there is for that and thinking about other aspects in the repeal bill?

It is important in our communications that we think about this piece of legislation that is under review as having those two elements—the offensive behaviour at football aspect and the threatening communications aspect. I would be interested in hearing your thoughts, and I may have a supplementary or two after that.

**Danny Boyle:** I am happy to respond. I understand that section 6 of the act has been used to bring 17 charges over the five years of the act—feel free to correct me if I am wrong.

**Ben Macpherson:** I am not able to clarify that figure as things stand, but that is a very utilitarian perspective, rather than thinking about the categorical imperative and the fact that it has been useful for prosecutors in certain circumstances for achieving the ends of justice. That is extremely important, so I think that the focus on whether it is an effective piece of legislation should not be judged on the stats—

**Danny Boyle:** It may also be utilitarian to consider whether the justice that has potentially been attained with the use of section 6 has more value than the volatile injustice that is potentially contained in sections 1 to 5 of the 2012 act.

We are not averse to reviewing hate crime legislation, which is exactly what we are doing within the context of the Bracadale review. As I have already acknowledged, the suite of hate crime laws are difficult to navigate and it is difficult to access a remedy for those who are victims of breaches of the law relating to protected characteristics.

As I have already said—I do not know how many times I can repeat it—sections 1 to 5 of the 2012 act do not primarily deal with hate crime; 18 per cent of the crimes for which charges were brought under the act last year were considered to be hate crimes. I cannot see how we can track the trends of hate crime—where it is manifesting and what the genesis of that thought or behaviour is—via the opaque set of statistics that we receive in regard to the 2012 act.

It becomes even more complicated when we add in the general offensive behaviour aspect and I have outlined already that there are particular issues and concerns for minority communities in relation to the social, cultural, and historical analysis of events that have taken place in the United Kingdom.

Both our points are equally justified. I do not think that your point should necessarily supersede the issues that we have identified with sections 1 to 6, and I think that my argument may hold more weight, considering that there is no gap in the law with hate crime aggravations. With specific reference to section 6, we have already acknowledged from police evidence that a racial aggravation would not necessarily be used with the threatening communications aspect of the act, so we retain our position that the act can be repealed and that, if there is any positive learning that we can take from the 17 charges made under section 6 of the 2012 act, we can take that into the Bracadale review. However, we cannot see the justification for maintaining the implementation of a piece of legislation that has no credibility and does not, in its entirety, challenge hate crime.

11:30

**Ben Macpherson:** The alternative perspective would be that, by losing section 6 through repeal, there would be a gap in the law. I appreciate that you have disputed that today, but others would substantiate it.

**Danny Boyle:** There have been 17 charges under section 6, and I know that your point is to ask about the 17 people who have been the victims of those crimes, but there have also been more than 130 charges for other offences, and the 130 people charged with those offences—the specifics of which we have no knowledge of—could claim in their defence that those charges are unjustified. That is our particular concern with section 1(2)(e). If we are playing a numbers game, who is more important—the 17 victims or the potential victims of a miscarriage of justice?

**Ben Macpherson:** You may want to play that numbers game, but I certainly do not.

**Danny Boyle:** You started it.

**The Convener:** We are going round in circles. We have heard the witness's response. Is there anything new that you want to bring up?

**Ben Macpherson:** I just want to state that the question should be about how we should look to reform rather than repeal the legislation. That would be a more constructive approach, considering the substantial review that lies ahead of us. Do any other panel members want to come in, particularly on the importance of section 6?

**Tom Halpin:** There are no cases referred to our service under that section so, from my perspective, the question is about how we apply it.

**Colin Macfarlane:** I agree with the point about implementation, but the point that Ben Macpherson has made about the Bracadale review being the opportunity to have an overarching review is pertinent. We know that it is coming. We cannot pre-empt what will come or what recommendations Bracadale will make about the act, but it would not be helpful to remove the legislation and have nothing in its place. We should at least be able to have a considered view of what Bracadale is likely to come back with and how the review will address concerns that we have all raised about implementation and about whether the act is right or wrong. That is the point at which to have the discussion. Taking away protections or affecting the symbolism of the act without putting anything in its place or waiting to hear what Bracadale says would be folly. It would be the wrong thing to do, and an immediate repeal to get rid of the act before Bracadale has reported back does not make sense from our perspective.

**Maurice Corry:** Mr Boyle, let me cut to the chase. If, as you suggest, the 2012 act has done little or nothing to tackle hate crime, what needs to be done, in your opinion, to eradicate such crime, as well as tackling offensive behaviour at football matches? That is a basic question.

**Danny Boyle:** I may already have touched on what our suggestion would be. We share the view of our colleagues on the panel and Mr Macpherson that the Bracadale review offers a perfect opportunity to bring clarity to the suite of hate crime legislation that we have at the moment. Independently of that, we feel that we need to be careful not to conflate hate crime with the criminal justice system, and that we need alternative approaches starting at the earliest stage, with education. That is where our focus will be, and I understand from discussions with Police Scotland that that will be the police's additional focus with regard to the Bracadale review. The focus will be on taking a lot of the momentum and the burden of hate crime issues out of the criminal justice system and beginning preventative educational measures. That should happen across society. There should not be a disproportionate focus on a

sport where the statistics tell us that hate crime happens less than it does in the rest of society.

**The Convener:** We have heard good examples of initiatives.

Fulton MacGregor can ask a brief supplementary question.

**Fulton MacGregor:** I want to ask Tom Halpin about the STOP—Sacro tackling offending prejudices—programme. It is disappointing that it is not being used as much as would be expected, especially as it gives young men in particular an opportunity to divert away from prosecution. As I mentioned in a previous evidence session, that seems to me to be more of an implementation issue rather than an issue with the legislation. If the act were not to be repealed and were to stay, would you welcome some sort of guidance on the greater use of that programme? As a former criminal justice social worker—I should probably declare an interest in that regard—I know fine well about the good work that Sacro does, and I am sure that the programme could be very effective, given the opportunity. What are your thoughts on that?

**Tom Halpin:** Actually, there is an awful lot of common ground between us, and I thank you for your comments. The harsh reality in Scotland is that, because of the need to send the right message to the groups who are victims of the legislation, those who are making decisions are defensive about their decision making and nervous about diverting people away from prosecution. That service is one example. If you had conversations with marking fiscals about the circumstances in which they mark cases away, you would get different answers. Although there are consistent marking policies and all the rest of it, the issue is how we ensure that we are respectful to the victims and to the affected groups and other interests.

Repealing the act will not greatly change the profile of that service. It is not only about individual interventions; a huge part of it is about education and reaching out. It is about working in prisons and going straight to the source—in other words, the groups who predominantly show those behaviours and have those embedded beliefs. I acknowledge that there is an issue about the application of the act and the process, but Sacro thinks that we are disproportionately targeting, criminalising and stigmatising one group, which impacts on their future opportunities. My view is that we should legislate to criminalise conduct when the reason to do so is compelling, overwhelming and beyond reasonable doubt. In this case, maybe it is, maybe it is not—I am not convinced.

**Liam Kerr:** I want to take you back to the act's aim of tackling sectarianism. I appreciate the point that Mr Boyle made at the start about the definition of sectarianism but, that aside, is sectarianism a significant problem throughout Scottish football or, as some have suggested, is it limited to two particular clubs? Has there been any change, pre and post 2012?

**Tom Halpin:** The referrals to our service are not exclusively from the two clubs that you are referring to. I bet that everybody on the panel will have their own anecdotes, as will those on the opposite side of the table. If you have grown up in Scotland, you will have been touched by the issue in some way. I in no way hold the view that the issue is restricted to two particular football clubs in Scotland—it is a Scottish societal issue.

**Liam Kerr:** Is that view echoed by the rest of the panel?

**Sandy Riach:** I am from the north-east and, over the years, as I grew up, I heard about sectarianism but, as a child, I did not know what the word meant, because nobody ever bothered about it. It did not really matter whether someone was Catholic, Protestant or whatever, or whether they had a blue scarf, a green scarf or a red one. I wish that it was like that today, but it is not.

The issue is also about where you are and where you live, whether it be Glasgow, Edinburgh, Inverness, Wick, Stornoway or Lerwick. The situation is different everywhere. You might not necessarily experience it in Aberdeen, but you might experience it in Peterhead, Fraserburgh or Forres. It might even cross religions. It is really diverse and I have difficulty setting it in one straight line, if you understand what I am trying to say.

**Liam Kerr:** Do you think that the 2012 act, then, has had any impact? If we start from the position that there is sectarianism in football, has the 2012 act impacted on that? If so, where is the cause and effect? If not, what would be a better way of impacting on sectarianism?

**Danny Boyle:** That is the perennial question about sectarianism. As we said in our introductory comments, sectarianism has become like chewing gum. It is what we apply when we disagree with someone's point or opinion and, as a concept, it is becoming valueless for trying to describe a set of circumstances or situations.

The act identifies sectarianism in the traditional sense as intra-Christian sectarianism around anti-Catholic or anti-Protestant issues. Relative to the number of attendees at football, the number of prosecutions and charges under the act is tiny. That does not necessarily mean that there is not a broader issue with regard to the social, cultural and political histories of different people in

Scotland and how they interact with each other, but the act does not provide an appropriate place for informed discussions and debates.

It is also largely a fallacy that sectarianism is primarily the responsibility of two particular clubs. The fact that only 12 per cent—just over a tenth—of charges brought under the 2012 act related to Rangers v Celtic matches does not reflect the narrative that sectarianism in Scotland is primarily the responsibility of those clubs.

As far as sectarianism is concerned, I have said time and time again that we should look at section 1(2)(e) of the act, which covers generally offensive behaviour. As I have said, individual police officers are not sociologists, anthropologists, or historians, but they are faced with the challenge of having to interpret songs that are sung at football matches as sectarian and focusing on them as generally offensive or otherwise offensive. That is the complication.

As we heard from Supporters Direct Scotland, offensive behaviour could be something as innocent as people doing the conga at a football match; their being filmed doing so is a procedural issue that is also of concern. In all seriousness, we know from the Lord Advocate's guidelines and the jurisprudence in relation to the act that it is most likely to cover songs that show support for terrorist organisations or which glorify or celebrate events involving loss of life or serious injury.

BEMIS maintains the position that we articulated throughout the act's implementation and which we identified to Police Scotland in relation to the decade of centenaries touched on in our written submission: celebrating a British, Scottish or Irish social, cultural or political identity does not, in itself, constitute sectarianism or offensiveness worthy of criminal proceedings. That is our bone of contention with the 2012 act, section 1(2)(e) and charges that are made under the provision on generally offensive behaviour. That is the intersection where possible miscarriages of justice could be identified because of misinterpretations of what constitutes sectarianism. Instead of me and members of this committee, organisations or, indeed, the people who come from those communities having those conversations, it is being left to the individual interpretation of one police officer.

**Liam Kerr:** Mr Boyle, I will stop you there. You can come back in in a second, but I know that Mr Halpin wants to come in.

11:45

**Tom Halpin:** There is no doubt that the 2012 act has had an impact on football matches and travelling to and from them. The leadership of the Scottish Parliament in passing that legislation sent

a very strong message to society as well as to agencies, clubs and associations around the clubs that the offensive behaviour concerned was totally unacceptable. As we know, the legislation came out of certain events and the public conversation around them, but why was that needed for the lead to be taken and for attention to be focused on the issue? The briefings around football became more focused on the issue of offensive behaviour, as did briefings in clubs around their own security arrangements et cetera, and society moved on. The question for the Parliament today is: did it have to be that legislation that brought that change? That is a bigger discussion, but there is no doubt that having the legislation shifted the dialogue on at the time.

**Liam Kerr:** Can I press you on that? I saw Mr Macfarlane nodding, so he, too, might want to come in on this point. In Sacro's submission and throughout this evidence session, the suggestion seems to be that criminalisation does not address the underlying attitude, and it raises the question whether, instead of using the blunt tool of legislation to suppress attitudes and criminalise people, it would be better to change people's views and address the underlying prejudices to ensure that their offensive behaviour stops and that they self-police.

**Tom Halpin:** It will come as no surprise that I do not have a yes or no answer to that question. The reality is that we have this blunt instrument that says to someone, "You are being criminalised for this"; as I have pointed out with regard to fixed-penalty notices, they are used as symbols of our distaste for what that person has done, but does anyone honestly believe that such an approach is going to change their beliefs and attitudes?

I have vignettes and case studies of people who have reported to us that their thinking has changed, that they now understand, that they are now at college and so on. We are talking about real life-changing things, and they come about through working through people's belief systems and having them recognise the risks of their behaviour. Some of the issue is about being taken along by the crowd and by their peers; the question is how they withstand that, and that requires them to make the brave decision to be different. That is a small example of the societal shift that we are talking about.

There has to be a mixed approach. However, there are only 26 referrals a year to our project from the much higher number of cases that are being prosecuted, so what is happening to the others? What intervention has there been with them other than prosecution?

**Danny Boyle:** As a supplementary to that, I point out that we do not have sufficient awareness of the narrative of cases in which people have

been charged and prosecuted and then found not guilty. There is a significant number of such cases; different figures were given for them in the committee's previous evidence session, but it is clear that a significant number of charges and prosecutions have happened under the 2012 act. They take up a significant amount of time; however, they might be precarious with regard to the individual arrested, whom they have offended and who the victim is, and as a result, those individuals might end up being found not guilty.

What we have not analysed is the impact on the life of the person charged over the duration of the trial diet and so on, and I encourage the committee to revisit what I think is a fundamental issue. Colin Macfarlane might not have heard the things that I am hearing about the implementation of the legislation, but they are why we are taking such a strict line on its being repealed as soon as possible. We have to illuminate and consider the impact on the individual.

The crux of the matter—the fundamental issue—is that we are criminalising people for conduct in a specific set of circumstances that is not criminalised in another set of circumstances. Indeed, I could go into specific examples of two different approaches being taken to the exact same thing being expressed at football and in this Parliament.

**The Convener:** Did you want to add something to that, Mr Boyle? Will it be lengthy, or can you provide it in written form after this evidence session?

**Danny Boyle:** I will be very quick. The issue that I have in mind relates to parliamentary motions and songs sung at football matches. As we said earlier, and as we set out in our written submission, we met at the request of FoCUS—the football co-ordination unit for Scotland—which was concerned about how it would police events or commemorations that might take place at Scottish football grounds during the decade of centenaries. Its concerns were based primarily on the commemoration of the 1916 Easter rising in Ireland and the battle of the Somme, which has significant connotations for many of those in the Ulster Scots community in Scotland.

The advice that we gave the unit was, as we have pointed out, celebrating a social, cultural or political Scottish, Irish or British heritage is not offensive or criminal in itself. However, outside the parameters of that discussion, we know that people have been arrested for singing songs that pertain to that period. In that respect, people at a football match might be arrested for breaching section 1(2)(e) of the 2012 act, while, at the same time, a motion might be lodged in the Scottish Parliament celebrating exactly the same thing: 1916, the Irish rebellion and the formation of the

modern Irish state. It strikes people on the ground, who deal with such issues on a day-to-day basis, as class hypocrisy that a social and political privilege given to someone within the confines of the Scottish Parliament is not extended to the individual layperson on the street. That is the definition of inequality. It lies at the root of our concerns, and it is not properly acknowledged or understood in the broader debate on equalities in relation to the legislation.

**The Convener:** Your point about context is well made.

I am conscious that Mairi Gougeon and John Finnie have not yet asked questions. Before I ask the member in charge to confirm his position, is there anything that either of you wants to ask?

**Mairi Gougeon (Angus North and Mearns) (SNP):** Most of my questions related to the Scottish Women's Convention, the members of which were not able to attend today.

**The Convener:** And John Finnie?

**John Finnie (Highlands and Islands) (Green):** I have no questions.

**Liam Kerr:** Forgive me, convener. I wonder whether Mr Macfarlane might want to come back in.

**The Convener:** Do you want to come back in, Mr Macfarlane? I am sorry; I was justifying bringing Mr Kelly in.

**Colin Macfarlane:** That is okay. Is Mr Kerr's question primarily about whether we need blunt instruments such as legislation to change societal views? Is that where it is coming from?

**Liam Kerr:** To an extent. My concern is whether legislation is the right way to address such views. A number of panel members have made the point that there is an underlying attitude here. My question is whether criminalising it is the best way to change such an attitude, or whether it is better to address the attitude, because it will continue to exist. Even if I am criminalised for singing a song, I may still hold that attitude.

**Colin Macfarlane:** I go back to the analogy about the jigsaw puzzle and about legislation being part of an armoury. Our view is very much that legislation can change such attitudes and that the legislative element could lead to prosecutions.

We might look at the example of drink driving legislation, before which it was considered fine for someone to down five or 10 pints and then drive their car; they were not arrested for that. Then the legislation came in and societal views started to change, because such a person would be prosecuted for drink driving. Another example is the smoking ban and the health effects that it has brought in. The blunt instrument is that smoking in

a public place could lead to prosecution, and society's attitudes to smoking have changed. We might also look at domestic abuse legislation and how that changed society.

There is a view that, at points, there needs to be a stick that moves society forward. If people thought that it was acceptable to drive after drinking so many pints and potentially take lives by drink driving, because there was no consequence for that, everybody would still do it. From an LGBT perspective, there is no consequence if someone at a football match turns round to somebody and says that they are a faggot, a poof or a queer and means them harm. Yes, legislation is necessary as part of a wider gamut of societal change: it does change attitudes.

**Liam Kerr:** That is a fair point, but does the legislation require still to be in place or is it merely a kick start, such that, once the process is in motion, there is no further requirement for it?

**Colin Macfarlane:** The ideal perspective is that we would never need to have in place legislation to stop criminal or antisocial behaviour or abusive language—but we are not there yet, are we?

The legislation is absolutely central to changing such attitudes and acting as a deterrent to people acting in a specific way, whether that be discriminatory or whether it be about, say, getting into a car after you have been drinking. The legislative element is crucial to changing people's attitudes, but there also needs to be some recourse or some enforcement action to send a signal to us that, on this particular issue, such behaviour will not be tolerated and will be acted upon and that there will be consequences for people if they behave in a certain way.

**Mary Fee:** I have a final, very brief question. Prior to the introduction of the act in 2012, what legislation or law was in place to tackle people who committed a sectarian act or behaved in an offensive manner either at or travelling to and from a football match?

**Danny Boyle:** There was, as I have said, the religious aggravation provision in the Criminal Justice (Scotland) Act 2003. Indeed, the police still use section 74 of that act to deal with religious aggravation in the context of football.

**Mary Fee:** Thank you.

**Mairi Gougeon:** I want to go back to a small point that Mr Macfarlane touched on in relation to Liam Kerr's question. First, though, I should say that I perhaps disagree with some of Mr Kerr's comments. The domestic abuse legislation was mentioned. I think that by creating a specific offence of domestic abuse and highlighting coercive and controlling behaviour as part of that, we as a Parliament are telling people that we are

not going to accept the patterns of psychological abuse that we have seen. It is about sending a message to people that such behaviour is not acceptable. I understand the point that some changes might need to be made to that legislation, but I think that for such matters legislation will always be needed in order to help deal with such behaviour.

To me, that is what is important about the 2012 act. I completely agree with Mr Macfarlane's earlier point that, if we repealed the act, a message would be sent to people about behaviour that might be permitted again. I wonder whether other panel members can comment on that. When we consider similar examples such as domestic abuse legislation, do you not agree that the Parliament needs to send a message about such behaviour to try to tackle some of these issues and that we need legislation in place to lead the charge in that respect?

**The Convener:** I will give you the final word, Mr Halpin.

**Tom Halpin:** Thank you very much. The difference is that this legislation is aimed at a specific group and a specific activity. I totally agree with your point about domestic abuse, but my view is that the issue here is slightly different. The message that needs to be sent to society is about more than this one act. This behaviour is absolutely unacceptable—and no one here will think anything different—but the question is whether you need to carry on with this particular act in order to send the message that you are talking about. I am not convinced.

**The Convener:** I will bring in James Kelly.

**James Kelly (Glasgow) (Lab):** Thank you, convener. I have a question for each of the panellists, beginning with Mr Macfarlane. With regard to section 6 of the 2012 act, you referred to the high incidence of your members reporting online abuse. However, as we have heard in evidence—and as the financial memorandum makes clear—only 17 prosecutions have been made under that section in the past five years. Do you accept that, although it is absolutely correct that people who report incidents of online abuse should expect them to be investigated and that those who are involved in such abuse should be brought to justice by the criminal justice system, the logical conclusion of there being only 17 prosecutions, despite your members reporting such incidents, must be that the vast majority of those reports are being dealt with under the Communications Act 2003, not section 6 of the 2012 act?

**Colin Macfarlane:** As I have said, we could not find any figures or statistics for prosecutions and complaints made under the Communications Act

2003, so I cannot make any comparison in that respect and say whether these things are being dealt with more under the 2003 act than under the 2012 act. I do not know.

12:00

It is about the signal that an act sends to the LGBT community that threatening communications and abusive behaviour online will be tackled—from a football perspective, in the context of this discussion. However, I cannot make a comparison between the two acts, because I have not seen the figures for prosecutions under the 2003 act and I do not know whether they are higher or lower than the figures for prosecutions under the 2012 act.

**James Kelly:** The committee heard from Police Scotland that the Communications Act 2003 is the route that the police use. The evidence seems to point to that. What message is sent to your members if legislation is in place that the police and prosecutors have decided is not good enough to secure prosecutions, so they are, in effect, voting with their feet and using a different route?

**Colin Macfarlane:** That takes me back to my point about there being a gamut of legislation and a jigsaw, and to what I said about Lord Bracadale. We know that there are implementation problems—you mentioned 17 cases, but I do not know how many prosecutions there have been under the Communications Act 2003, because I have not seen the figures, so I will not say whether one piece of legislation is better than the other.

The Bracadale review is an opportunity to look at everything in the round. If it appears that the 2003 act is working perfectly well and there are more prosecutions under it, that might form part of what Bracadale comes back with, and decisions can be made then.

**James Kelly:** Thank you.

Mr Riach, let us leave aside issues to do with the 2012 act and consider the promotion of a good atmosphere in the context of football. The committee heard from the Scottish Football Supporters Association that it would like local forums to be created, in which clubs, football supporters and police would get together to look at the issues and consider how to promote good behaviour and relations around football. Is that something that you and your members would be interested in participating in?

**Sandy Riach:** That is one of the things that we have been working on with Supporters Direct Scotland and the SPFL and the SFA over the past four or five years; we have built up a dialogue to improve things. It is about getting the approach drilled down into the clubs. A lot of clubs have

already put in place liaison officers, who work with communities and fans, but disability liaison officers are not in place in every club. That approach would go a long way towards improving the atmosphere and improving the relationships between clubs and the police, stewards and the authorities.

**James Kelly:** I think that there is broad agreement on that.

Mr Halpin, you said today and in your submission that your interaction with the 2012 act has been to do with interventions. You said that three people have been referred to your STOP programme under the 2012 act and others have been referred under pre-existing legislation. Is it fair to conclude that the legislation that pre-existed the 2012 act is effective and will continue to be effective in capturing the offences that we have been discussing?

**Tom Halpin:** I can say from the experience of the cases that have come to our attention that if the pre-existing legislation is applied appropriately, with the right message, it will identify the same people and refer them to the same interventions.

**James Kelly:** Thank you.

Mr Boyle, in your written submission you talked about inconsistencies in the legal judgments. A principle of the Scottish legal system is that there must be legal certainty, with consistent judgments in cases that come before the court. Will you give a bit more detail about the inconsistencies and how they have caused confusion and division among the judiciary?

**Danny Boyle:** From memory, I think that we picked up on two examples in our submission. One was the case of Mr Richmond, who made a derogatory comment about the head of state of the United Kingdom and the leader of the Catholic Church. He was only admonished under the 2012 act, because the judge said that this type of legislation was not meant for the likes of him, despite the fact that he quite clearly said something that could easily be construed as sectarian. In fact, the case was one of the few examples where the word "sectarian" applies under the 2012 act, obviously with regard to both parts of what Mr Richmond said.

That same judgment, using section 1(2)(e), has not been applied in cases where people have been found guilty of a sectarian crime, when the much broader interpretation of "sectarianism", which has no legal validity in Scots law, is applied. I understand that there was a challenge under article 7 of the European convention on human rights to the Donnelly and Walsh case, with regards to the specifics of a particular song, although it was not successful.

From our perspective, that variation in justiciability is a strong argument that the 2012 act, and particularly section 1, is incompatible with the Human Rights Act 1998.

**The Convener:** That concludes our questions. It has been a lengthy but helpful evidence session and I thank the witnesses for attending.

Our next meeting will take place on Tuesday 31 October 2017, when we will take evidence from Sheriff Principal Taylor on the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill and take evidence at stage 2 of the Domestic Abuse (Scotland) Bill.

12:06

*Meeting continued in private until 12:27.*

This is the final edition of the *Official Report* of this meeting. It is part of the Scottish Parliament *Official Report* archive and has been sent for legal deposit.

---

Published in Edinburgh by the Scottish Parliamentary Corporate Body, the Scottish Parliament, Edinburgh, EH99 1SP

---

All documents are available on  
the Scottish Parliament website at:

[www.parliament.scot](http://www.parliament.scot)

Information on non-endorsed print suppliers  
is available here:

[www.parliament.scot/documents](http://www.parliament.scot/documents)

For information on the Scottish Parliament contact  
Public Information on:

Telephone: 0131 348 5000

Textphone: 0800 092 7100

Email: [sp.info@parliament.scot](mailto:sp.info@parliament.scot)

---



The Scottish Parliament  
Pàrlamaid na h-Alba