



OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 7 November 2017

Session 5



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Pàrlamaid na h-Alba

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JUSTICE COMMITTEE
32nd Meeting 2017, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

- *George Adam (Paisley) (SNP)
- *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)

*attended

THE FOLLOWING ALSO PARTICIPATED:

- Claire Baker (Mid Scotland and Fife) (Lab)
- Ephraim Borowski (Scottish Council of Jewish Communities)
- Neil Doncaster (Scottish Professional Football League)
- Debbie Figures (Scottish Women's Convention)
- The Rev Ian Galloway (Church of Scotland Church and Society Council)
- Anthony Horan (Catholic Bishops Conference of Scotland)
- James Kelly (Glasgow) (Lab)
- Professor Fiona Leverick (University of Glasgow)
- Alan McCreadie (Law Society of Scotland)
- Chris Oswald (Equality and Human Rights Commission)
- Stewart Regan (Scottish Football Association)
- Desmond Ziolo (Glasgow Bar Association)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 7 November 2017

[The Convener opened the meeting at 10:17]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 32nd meeting in 2017. We have received no apologies.

Item 1 is to ask the committee to decide whether to take in private item 3, which is consideration of the committee's approach to scrutiny of the draft 2018-19 Scottish Government budget. Are we all agreed?

Members indicated agreement.

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

10:18

The Convener: Item 2 is our third day of taking evidence on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill. I refer members to paper 1, which is a note by the clerk, and paper 2, which is a Scottish Parliament information centre paper.

I welcome James Kelly, the member in the charge of the bill, to the meeting. I understand that he can stay only for the first panel of witnesses and that Claire Baker will attend for the second.

I also welcome our first panel of witnesses. Anthony Horan is the director of the Catholic parliamentary office of the Catholic Bishops Conference of Scotland, the Rev Ian Galloway is from the Church of Scotland's church and society council, Chris Oswald is the head of policy at the Equality and Human Rights Commission, Ephraim Borowski is the director of the Scottish Council of Jewish Communities, and Debbie Figures is a development assistant at the Scottish Women's Convention. I thank the panel members for all their written submissions, which have been extremely helpful to the committee.

We will move straight to questions. I begin by asking the witnesses to say in general terms how they feel about the repeal bill. Do you support it or not? Do you have general concerns?

Anthony Horan (Catholic Bishops Conference of Scotland): First and foremost, the Catholic church takes the position that the decision on whether to repeal the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 is for Parliament.

When the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill was introduced in 2012, we supported its broad principle, which is to tackle offensive behaviour and everything that goes along with it. The church will always condemn any behaviour that fosters hatred of any kind. So, we support the broad principle of the act, but underneath that there are questions about the overall efficacy of the act and about how it was introduced and brought into being. I am not sure whether you want me to tease those out now, or whether they will come out in the evidence, but I could give you a broad-brush view.

The Convener: You could mention your areas of concern.

Anthony Horan: It appears that, when the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill was introduced, it was fast-tracked somewhat. It seems that it was rushed through and was perhaps not given proper scrutiny—such as, for example, the bill to repeal the act is currently being given. Questions also remain about whether it was necessary. I know that the committee has heard evidence that there was pre-existing legislation and common law that would have covered the offences that are cited in the act. That broadly describes our concerns.

The Rev Ian Galloway (Church of Scotland Church and Society Council): When the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill was introduced, the Church of Scotland cautioned that it was important to see the impact of the eventual legislation in the context of taking a wider view of how we deal with issues around sectarianism in our society. It is to the Government's credit that, in the years since the act was passed, considerable work has been done on where we sit with those things. We recognise that sectarianism is still very much an issue and that it shows up in lots of different places, including at football.

We cautioned then about the speed of the passage of the bill, and we caution now about the speed of repeal. We note that sectarianism can be seen to be part of a weave of attitudes and behaviours that relate to other issues in our society—racist attitudes and behaviours and other religious attitudes and behaviours, including Islamophobia. It seems to us that, given that a wider review of hate crime is being undertaken, it would be wise to see society's response to sectarianism in the context of that wider review. Particularly for young people, who inherit our legislative decisions along with all the other decisions that we make, sectarianism does not sit on its own, separate from all of those other attitudes and behaviours that they have to encounter, decide about and respond to. That overall weave is where we would like to see the matter resolved, so we think that it would be wise not to rush the question of repeal or amendment but instead to wait for the review's outcome and then to see where the bits of the 2012 act sit in relation to that.

Also, sometimes we make a decision for one reason but send a message that is not the one that we intended to send. We think that there is a danger of sending the message, by the simple repeal of the act, that we are not taking seriously enough such behaviours and attitudes, or society's need to say that those behaviours and attitudes are unacceptable. We want to know very clearly what the alternatives are before we remove one or two of the safeguards that are in place through the legislation. It is largely a question of timing and of

that wider review that we think could, in an overarching sense, include how we should respond to this issue.

Chris Oswald (Equality and Human Rights Commission): I very much agree with Ian Galloway that it would be unwise to proceed with repeal of the 2012 act until the wider review has been progressed and its findings have been discussed and debated. Although the discussions around the act are predominantly about sectarianism, we must note that protections for disabled people and trans people would be lost if the act were to be repealed, and there is at this point no prospect of their reintroduction. The threatening religious communications aspect of the act would also be lost: again, there is no prospect at this point of its being reintroduced.

Although the EHRC recognises that freedom of speech and freedom of expression are enormously important and are protected by article 10 of the European convention on human rights, they need to be balanced against the International Covenant on Civil and Political Rights, which says that states need to have in place laws that counter "incitement to discrimination, hostility or violence".

It is the commission's position that the international convention overrides the ECHR, in this case.

There are also wider implications, because this is not just about people who want to gather at football grounds and who feel that their rights are being infringed by their being unable to sing particular songs. It is about the broader base of fans who wish to attend football matches but are put off doing so because of the conduct of others.

Debbie Figures (Scottish Women's Convention): I will start by describing our organisation. The Scottish Women's Convention is funded by the Scottish Government to consult women across Scotland—we are not a lobbying organisation. We hold roadshows and round-table events that can be very small or have up to 40 or 50 women in a room at a time. We discuss what is happening in their local area and how they feel about that, what is going on in policy and anything else that they wish to discuss. We also hold thematic conference events, which tend not to be about things that are happening locally but about bills that are going through Parliament.

We have held a number of events, from the top of Scotland down to the Borders, and on the islands. Women come to our events to tell us what they feel and to have their voices heard. As a women's organisation, we welcome any moves to offer protection for women where other things do not. We feel that the 2012 act offers some extra protection for women in terms of its equality aspect.

I should mention a campaign that took place over the weekend by a group of women who wanted to get in touch with us. I cannot ignore their voices, because the convention is about women's voices. We had 40 emails from women asking us take back the evidence that we provided for this session. We feel that all women's voices are very important. Women have come to our events and discussed the bill with us—that is what appears in our written evidence to the committee.

Women are not protected against hate crime: that is not part of hate crime legislation. We feel that using the offence of breach of the peace for acts such as rape threats and sexual harassment at football games is unacceptable. That is where we are coming from in our evidence to the committee.

Ephraim Borowski (Scottish Council of Jewish Communities): I apologise for the state of the M8, although this is not a transport committee.

In general, my position is almost identical to that of Ian Galloway. Anybody who is old enough to remember the original race relations act, the Race Relations Act 1965, will realise how much society has changed, in that, for example, people do not say things now that they would have said in the 1960s—at least not in public. That is partly down to legislation, so I do not think that we should underestimate the effect that legislation has on attitudes. That is one marker. I am therefore predisposed towards anything that criminalises hate crime, because it will ultimately feed into society's attitudes. I am also therefore predisposed against repealing any anti-hate crime legislation, for exactly the reason that Ian Galloway gave: doing so could inadvertently send the wrong message, that somehow some kind of hate crime, speech or action is now acceptable in society.

10:30

I have not read all the submissions to the committee, but I read those from what we might call the representative groups. I would not go so far as to say that they are unanimous, but I was taken by the fact that they are nearly unanimous in their opposition to repeal, largely for reasons such as I mentioned. If all the victim groups—as we might call them—say that they feel protected by the legislation to any extent, that is a reason for holding on to it.

As Ian Galloway and Chris Oswald said, the 2012 act has been criticised for being piecemeal and hurried. We are talking about repealing it at exactly the time when there is a large-scale review of hate crime legislation. Whatever the deficiencies of the current legislation, about which I would not pretend to have any expertise, we

should listen, in the context of the Bracadale review, to what people tell us about deficiencies, and we should not repeal the existing legislation hurriedly and in a piecemeal manner.

In the detail, as has been said by others, the issue is not only about football or sectarianism—which is an iffy concept—or religious hatred. We should think in terms of wider hate crime legislation, in this form or a different form, that should cover all hate crime in all contexts equally and not single out a particular group—which is one of the criticisms of the 2012 act.

The Convener: Submissions have been received from a variety of organisations. I have not done a count to see what the majority look like, but there are strong views on both sides of the argument. It is good to put that up front.

Ephraim Borowski: With respect, I say that my impression is that the submissions from groups that are representative of the protected characteristics are notably against repeal.

The Convener: It is good to put that in context.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. Do witnesses feel that the act has led to a change of behaviour at football matches? If you feel that it is for the better, has it led you to enjoy football matches more—if you attend matches?

Ephraim Borowski: The last time I attended a football match was when I was aged about 13, so I cannot respond to that question.

Debbie Figures: I do not attend football matches at all—I have no strong interest in football.

Chris Oswald: I was struck by a report in the Glasgow *Evening Times* last week of fans being sought after sectarian and homophobic chanting on a train between Edinburgh and Glasgow, I think, in advance of a match. The act has not had the full intended impact, but it is still a relatively new piece of legislation.

It is hard to say whether the act has changed behaviour at football grounds. There will be situations where people's behaviour may be constrained by knowledge that the act is in force, and situations where people do not care about those constraints. I am not sure how you could measure that. However, as has been said, there is a strong symbolic element to the Scottish state saying that such behaviour is unacceptable, which I think has been communicated quite successfully and will have had some impact on some fans.

The Rev Ian Galloway: I have led a very sheltered life, but I have been to quite a lot of football matches. As a young person I used to go all the time, and some of the scariest events of my

life, in terms of feeling under personal threat, happened in that context. That includes being subjected to violence and abuse.

I was privileged to be on the advisory group on tackling sectarianism that the Government set up. In the course of that work, I attended a number of football contexts in association with police operations to get a sense of the issues that were involved and how they are working out.

I would not say that anything has got worse than I remember from before, but I would not be able to say with any confidence that things have got markedly better. When you go to events where aggressive hostility is expressed between groups of people, and when you go to events at which deliberate physical damage is done to property—as a matter of course and as a normal expectation—you have to say that things are not great. I know people who experienced those things for the first time and were horrified that their children attended those kinds of events.

I think that it is easy for us to normalise, in the context of football, behaviour that should not be normalised and should not be acceptable. I know of a number of people who are what I would call middle-class people with significant responsibilities whose behaviour when they attend these events is unlike at any other point in their lives—I hope. I do not know what they do behind the closed doors of their homes, and sometimes I worry about that. If it is anything like the behaviour that they exhibit at football matches, it is very concerning. Football matches are one of the few contexts in our society where people behave in that way and think that it is okay and normal. Actually, it is not normal and we should not be accepting it as normal.

I do not think that behaviour in football contexts has improved dramatically, although some people will be aware that they are more under scrutiny and are more liable to a response than they were before the act was passed.

I do not think that the act is a panacea, by the way—I am not here to hold a candle for it. I am here to say that we cannot accept the behaviour that we get in the context of football any more than we would accept it anywhere else. We need to look for leadership on that approach, and I do not see the leadership that we need coming from, for example, the football industry. I just do not see it. Therefore it is important that Government takes a lead on our behalf and encourages us all to take a lead in saying that it is unacceptable and we will not put up with it.

Anthony Horan: I used to attend football matches regularly, but having a very young family has somewhat put paid to my attendance at games. However, I still go to the odd one, and my experience is similar to what Mr Galloway

described. It does not appear to have got any worse, but I do not think that it has got any better either. As Chris Oswald said, it is very hard to gauge, but I do not see any improvement in behaviour at football matches. It has not changed dramatically.

Rona Mackay: Debbie Figures, I appreciate that you said that you are not a football fan but, based on the women's forums that you have held and on your previous submissions, can you give us a flavour of whether the legislation makes you feel safer? Does it help when you are travelling to matches, and is that why you do not want to see the act repealed?

Debbie Figures: The women who have come to our events—I emphasise that we can take the voices only of the women who attend our events, who number in the hundreds; we are a small organisation but we cover Scotland widely—have felt increasingly terrified and scared, particularly on public transport and in public places such as pubs, when football games are on. They have given us evidence on that. Our evidence contains direct quotes from women. We held round-table events with young women and found that it extends to school uniform and feeling that they cannot wear their school tie because they have been subjected to abuse according to what school they go to. That is completely unacceptable. As a women's organisation, we think that any form of violence against women is completely unacceptable, and attacking someone for their gender is a form of violence against women. I cannot tell you whether it has improved in the football grounds because I do not have that experience and women have not told us about that in particular. However, they have told us how they feel. The emphasis from the women who have come to us is that they are scared and feel under scrutiny when they are at matches.

Mary Fee (West Scotland) (Lab): I want to pick up on the communications and engagements that you have had with women across the country. You said that you have held a number of events and have consulted women. Can you give us an idea of how many women you consulted?

Debbie Figures: Every six weeks, we host a round-table event, which involves eight to 12 women—I am in charge of dealing with those. We hold roadshows—80 to 120 women turned up to our last two roadshow events. We also have conferences and things come up in general conversation, because after our panels of speakers there are round-table discussions. There can be anything up to 140 women at a time at those events. We hold a lot of events and round tables with women. We also speak to women daily about blogging. We have feedback on our website and other social media where women can send in

comments if they need to—we are very inclusive of all women's voices.

Mary Fee: Have you had any specific events to discuss the repeal of the act?

Debbie Figures: Yes.

Mary Fee: That is what I am interested in.

Debbie Figures: We recently held two events on the topic, one with young women of school age to 20 and another round-table discussion with women of a mixture of ages. We have had constant discussions about it as well—there is always talk about what is going on.

Mary Fee: How many women attended the two specific events?

Debbie Figures: There were 20 young women at the young women's event and about 40 women at the other event where there were two round tables.

Mary Fee: Was the evidence that you gave to the committee based on what you heard from those 60 women?

Debbie Figures: No. We had widespread evidence from our roadshows and from women coming to us and discussing the issue.

Mary Fee: I am keen to understand how many women support the repeal and how many do not, given that you said at the start that you have been contacted by 40 women asking you to withdraw your evidence.

Debbie Figures: Yes, we were. I have printed them out for you.

Mary Fee: I was keen to get a sense of how many of the women you spoke to support the repeal.

You say in your evidence:

"Women have reported being groped, physically assaulted or even threatened with rape".

I struggle to understand why you think that the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 gives you protection against being groped, physically assaulted or threatened with rape. Those are all in the range of sexual offences. I put it to you that there is protection under the law for women who are threatened with sexual assault, regardless of the provisions of this act.

Debbie Figures: Threats of rape?

Mary Fee: If someone was threatened with rape, sexual assault or violence out in the street today, they would be protected under the law.

Debbie Figures: You will find that numerous threats of rape have been dealt with under breach of the peace. As far as we are concerned, that is

not adequate. Threatening rape is a form of abuse against women. We are not covered by hate crime. We have a submission to Lord Bracadale's review of hate crime legislation suggesting that women should be included in hate crime. A lot of abuse is targeted at women because they are considered an easy target, because they do not fight back as much. Women who get rape threats are not covered by sexual harassment, which is being touched on your body. Everyone has a voice, and threatening women because of their gender and shouting, "I'm going to rape you," because they have a different view is unacceptable.

Mary Fee: Historically, the police have used an aggravator in breach of the peace. Is that not sufficient?

Debbie Figures: No.

The Convener: That gender is not covered by hate crime is a very good point. I hope that Lord Bracadale is going to look at that.

Debbie Figures: We hope so.

10:45

Fulton MacGregor (Coatbridge and Chryston) (SNP): I just want to ask Debbie Figures whether the views that she is expressing are those of the Scottish Women's Convention. I know that Mary Fee would not have intended it in this way, but I think that her line of questioning was slightly unfair because we have not asked any other organisation how many individuals they have spoken to. We have asked those individual organisations and agencies for their view of the bill, so I want to ask Debbie Figures whether the view that she has expressed is the view of the Scottish Women's Convention.

Debbie Figures: It is totally the view of the Scottish Women's Convention. We are an inclusive organisation and hundreds of women submit evidence to us on various issues. We are open to anyone who comes forward to us and every woman's voice is important to us. That is why I talked about the 40 women who contacted us over the weekend. We would not ignore the fact that there was a campaign over the weekend to contact us, but the women who turned up to our events in numbers have said what is included in our consultation response. We cannot include the voices of those who did not come forward to us. We have given the voices that we have and we deal with a lot of women every day.

Mairi Gougeon (Angus North and Mearns) (SNP): I have a couple of quick questions particularly on some of the elements of your evidence and I am glad that you were able to come along this week.

We heard from Fans Against Criminalisation in evidence to the committee on 3 October. Mary Fee touched on how you compiled your evidence, which was certainly a point that Fans Against Criminalisation raised. Jeanette Findlay said:

“We tried to correspond with the Scottish Women’s Convention in particular, but it was unable to provide us with any details about where it had collected that evidence, how many women it represented, the age ranges involved or any basic statistics.”—[*Official Report, Justice Committee*, 3 October 2017; c 34.]

I just wanted to give you a chance to respond to that.

Debbie Figures: I can say that Jeanette Findlay did not contact the organisation via email or in any other form. She did tweet to us occasionally, but our policy is not to respond to tweets that create any sort of negativity. She never actually sent us any form of question. We had one woman contact us when that evidence was given, but it was not Jeanette Findlay herself. We are still in the process of trying to arrange a meeting with her outwith work hours, which is causing a bit of an issue, but we will get around to talking to her at some point. Jeanette Findlay herself has not contacted us except through Twitter.

Mairi Gougeon: Thank you. I just wanted to clarify that.

In your written evidence to the committee, you say that breach of the peace legislation does not

“send a strong enough message of condemnation in regards to the offensive behaviour that can occur at football events.”

That is one of the fears that have been articulated.

In his opening remarks to the committee, Mr Borowski said that we should not underestimate the effect that legislation has on attitudes. Although the argument has been used in the committee that we should not be legislating ourselves out of a problem, the legislation sets the tone for the type of behaviour that we are willing to accept. What is your opinion of that?

Debbie Figures: Our consultation response clearly says that amendments need to be made to the act, and there should be clarification of how it should be used. We also think that there should be education of the police and people of all ages, including in schools, on how the act affects people’s use of sectarian language.

It is important to say that women are not covered by anything other than what is in the 2012 act. It covers the equalities strands, and therefore includes women, giving them the extra protection so that, whatever is said to or done to women, they can use the act to get the justice that they deserve.

Not all women agree with what we are putting in, but we have to make sure that all women have a voice, and we are a voice for those women who feel that they are treated unfairly at these matches. We are here to give that voice, so that is why we are giving this evidence today.

George Adam (Paisley) (SNP): I know that I have already declared this but, for transparency, I say that I am convener of the St Mirren Independent Supporters Association.

The Convener: That is duly noted.

George Adam: An urban myth seems to have taken over that the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 was a knee-jerk reaction to the game of shame between Rangers and Celtic in 2011. A lot of fans like to paint the idea that it was the result of the two managers effectively going toe to toe with each other—that is parochially known in Glasgow as “having a square go”. However, although there were 34 arrests at the game of shame, there were 229 arrests in the whole of Strathclyde during the previous game. Sixteen people were arrested at the game of shame for offences of a sectarian nature. That came on the back of around three or four games at which things were constantly getting worse. The football commentator Chick Young said:

“In 40 years of covering Old Firm matches, this one is up there with one of the most scandalous I have ever seen.”

He was talking about what happened on the football field and off the park.

With that backdrop, do the witnesses consider that the legislation was necessary to tackle offensive or hateful behaviour at football matches?

The Convener: Who would like to tackle that briefly? We are running quite a bit behind, so I would be pleased if members’ questions and witnesses’ answers could be as succinct as possible.

The Rev Ian Galloway: That is a difficult question to answer. I do not think that the issue is one particular incident or one short period of time; a culture of behaviour has been around for a long time that has not responded to pressure from society in other ways to change. I am not saying that the legislative approach has been any more successful, but I am concerned that we still have the potential for such behaviour and for arrests and flashpoints. Removing the legislation without serious consideration of what the alternatives are to make a difference is a matter of concern.

The Convener: Do any other panellists want to comment? If not, we will move on.

George Adam: May I ask another question, please?

The Convener: I think that that is what you more or less did.

George Adam: I have a supplementary question on the back of that.

The Convener: Okay—if it is brief.

George Adam: The whole point of the act was to deal with what a reasonable person finds offensive. Back at the time that we are talking about, Rangers supporters sang the famine song. That caused such a stushie, to use a Scots word, that UNICEF and the Irish Government talked about it. I think that the Rev Ian Galloway referred to the idea of culture. A lot of football fans believe that that is part of their culture. Surely the act along with a basket of other measures helps to ensure that we get to a place where that is not allowed any more.

The Convener: Is that question directed to anyone in particular?

George Adam: It is directed to the Rev Ian Galloway, as he mentioned culture.

The Rev Ian Galloway: You have more of a view of the evidence of what has happened since the act was passed than I have, but I think that there have been a number of instances when people stopped singing particular things when they knew that they were being filmed and were under additional scrutiny. I am not sure how effective the approach has been, but I would like people to stop singing those songs completely, and I would like them to do that because they know, as human beings, that singing them is wrong. Singing them is offensive to people beyond those who are there; it is offensive to people who hear that when they are watching the highlights of the match. I would like people to stop doing it now, because it is the wrong thing to do to their neighbours.

George Adam: Can I ask—

The Convener: I am afraid that we have to move on.

The Rev Ian Galloway: I am not sure how important the legislation is in that regard.

George Adam: Anthony Horan—

The Convener: You have had a really good go at that issue, George. We must move on to Ben Macpherson.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): Good morning, panel. As the Rev Ian Galloway has said, the legislation is not a panacea, but there is evidence that it is making individuals think twice about singing certain songs and behaving in certain ways.

On that theme, I note that, in its submission, the Church of Scotland's church and society council says:

“repealing the Act without replacement would be a symbol that our elected representatives do not think that behaving offensively or sending threatening communications is problematic.”

In light of that statement, do you have concerns that if the 2012 act were to be repealed, some supporters might believe that certain behaviours would become acceptable, because they would have been decriminalised?

The Rev Ian Galloway: I think that there is a danger that people will make their own interpretation in the light of their own predilections. Although certain reasons might be put forward for repealing the act, people might well take something completely different out of it. There is a danger of some people seeing the act's repeal as a form of victory, which would be extremely unhelpful. That would not be the reason for repealing the act, if that were to be proceeded with, but that is the way in which it would be perceived, and perceptions are very important on such matters.

We think that there is a significant danger in that regard, unless it were to be stated clearly that all such behaviour was unacceptable and alternatives were put forward to strengthen society's way of dealing with them. At the moment, I do not see that happening in this process.

Ben Macpherson: Would any of the other panellists like to comment?

Chris Oswald: I agree.

Ephraim Borowski: Likewise.

Ben Macpherson: I think that that covers the point.

Mairi Gougeon: Some of you have mentioned Lord Bracadale's review. Do you feel that it would make more sense for us to wait for the outcome of that before considering the repeal of the act? I would just like a simple answer from all the panellists.

The Convener: A yes or no will suffice, as we have covered the issue.

Ephraim Borowski: Yes.

Chris Oswald: Yes.

Debbie Figures: Yes.

Maurice Corry (West Scotland) (Con): Good morning, panel. With regard to the most appropriate way to tackle hate crime at football, is some form of legislation required to tackle offensive behaviour and hate crime at football? Again, a yes or no will suffice.

Chris Oswald: Yes.

Ephraim Borowski: Yes. However, I do not think that the question is quite as amenable to a one-word answer, because in the background there is the question whether there is adequate legislation other than the 2012 act. I would look to the lawyers for an answer on that.

This might be in part an answer to George Adam's question, too, but I am struck by the fact that the act is being used. There is a substantial number of prosecutions each year, which suggests that the general common-law and statutory offences that could otherwise be used are thought by the police and the Crown Office not to cover the entire patch. That is before we come to section 6 of the act, which relates to offensive communications and which I assume we will address at some stage.

Chris Oswald: I very much agree. In the 1990s, I spent a lot of time working with people who were victims of racial harassment. At that point, racial harassment was often prosecuted as a breach of the peace, which simply did not reflect the impact and the social significance of such behaviour and the dangers that it presented. It deals with the physical act, but it does not deal with the motivation behind it, the behaviour itself or the social impact of it, and I would worry if we were to move back to the catch-all of breach of the peace.

11:00

Debbie Figures: That is exactly my opinion. Indeed, I have stated as much already: breach of the peace is simply not what is needed to capture the fact that a woman is being abused for being a woman. It is not enough.

The Rev Ian Galloway: Before this legislation, the law was being enforced in a relatively ineffective way at matches; the act has given an additional focus in that regard, and there is a need not to remove that. Whether through the legislation or through other means, we need that focus to make it clear to people that, as far as football is concerned, we will no longer put up with the sort of behaviour that we would not put up with elsewhere. That is not what football is for, and it is not what it is about.

Anthony Horan: It is important to have legislation that is well thought out, suitable and proportionate to its aim—that is not in question. However, Mairi Gougeon made a good point when she said that we should not necessarily be legislating ourselves out of a problem.

We need to appreciate that legislation, whether we mean this act or other legislation that has similar offences attached to it, must be accompanied by something else; it must be more

than just words on the page. It is incumbent on the Government to ensure that there is awareness of this across the country, but in all honesty, people should know what is right and wrong. We need to be careful here; we have talked about sending out the wrong message, but there is a danger that we are underestimating the public. Most people know what is right and what is wrong, and they know what is appropriate and what is inappropriate behaviour, whether it be at football, on the street, in a pub or wherever. Unfortunately, people's behaviour is often fuelled by alcohol. In that case, it does not matter a jot what law is in place, because those people will behave inappropriately anyway.

We need to do more than simply throw legislation at the problem. For example, according to religious aggravation statistics released in May, 57 per cent of charges were for anti-Catholic abuse or abuse that targeted Catholicism. That figure has been consistently high for a number of years now; last year, there was a slight dip, but it has always been more than 50 per cent. The next group is the Protestants, with 23 or 24 per cent of religious aggravation being anti-Protestant. Given that Catholics make up only 16 per cent of the Scottish population, the religious aggravation against them is significantly disproportionate. Legislation has its place but, as I have said, instead than simply throwing legislation at the problem, we need to get to the root of it. It is important for Government to accept and acknowledge, as it has in other areas, that there is a distinct problem here. I think that there is a distinct anti-Catholic problem in Scotland.

Ephraim Borowski made a very good point when he said that sectarianism is an "iffy" concept. He is absolutely right. If something is anti-Catholic, we should call it anti-Catholic; if something is anti-Protestant, we should call it anti-Protestant; and if something is anti-Semitic, we should call it anti-Semitic. We need the leadership from Government that the Rev Ian Galloway referred to on this issue, because we must get to the root of the problems. First of all, though, we need to accept that a problem exists.

Fulton MacGregor: I am interested in hearing the panel's views on other initiatives, such as those in education, to tackle the root cause of sectarianism. Previous witnesses have talked about education programmes that could work in that regard, and I am particularly interested in what happens in schools. As you will know, in a survey of schools that it undertook, the committee found that a lot of young people are aware of the act. Given that and given that those young people responded with their thoughts to the survey, how might repealing the act impact on education programmes? We have touched on how such a move might send the wrong message to wider

society, although others have said that it might not.

I know that we are running out of time, convener, so I ask that the witnesses frame their responses to my question in terms of the education of young people. That is what I want to tease out.

Ephraim Borowski: Unfortunately, education is open ended; it is not indoctrination. You give young people information and they will make of it what they want, which in itself will be informed by their pre-existing prejudices. That is simply a sad fact, but I can give you one appalling example that I heard about this week. This Parliament and the Scottish Government support the programme of school visits to Auschwitz, the intention of which is to educate young people about where hatred can lead. A young girl in the Jewish community who had recently visited Auschwitz with a youth group received from her supposed best friend a text message or a tweet of an extreme and outrageous anti-Semitic nature. What that shows is that education sometimes actually provides the ammunition that people can use to fuel their pre-existing hatred, so I do not think that education alone, any more than legislation alone, can be looked to as a panacea.

In this particular context, there is obviously a lot to be done. I do not want to end up merely swapping statistics, but the hate crime statistics published by the Government and the Crown Office—which Anthony Horan has already referred to and which show that he is absolutely right to say that, relative to the size of the community, there is a disproportionate representation of anti-Catholic hatred—show that the level of anti-Semitic hatred is 40 times that, relative to the size of the community. As I have said, there is a lot of work still to be done.

Debbie Figures: As far as we are concerned, education is vital, and we have stated that there needs to be more education in schools on sectarianism and its impact. A mixture of young women from all areas have come to us, and not just about the Catholic and Protestant sides of it. It is a mixture of everything. The fact that they feel intimidated because they go to certain schools is indicative of what happens in daily life. It is important that young women—indeed, all young people—should feel safe in their own systems. If education has failed in that way, we should perhaps be educating people more about this issue, and that is why we are calling for more education in that respect. On a personal level, I would hope that people would not do it to one another; however, it does not work like that, so as far as the women who come to us are concerned, I would say that education is vital.

Fulton MacGregor: I know that a lot of good work is going on in schools and by organisations such as Nil by Mouth, and I know that the football authorities and the churches are behind that and that various folk are involved in it. What I am trying to look at is the fact that there is wide knowledge about the act among school children and young people, and I wonder where the witnesses think the repeal bill would fit into that. The two responses that we have heard so far have been absolutely great and I agree with everything that has been said, but I think that we have time for only one more answer, so I would like to hear about the repeal bill in the context of any further work.

The Rev Ian Galloway: These things are separate. A huge amount of very good and committed work is going on locally. For example, in the south side of Glasgow, we work with hundreds of young people across the education spectrum, and each year we take about 100 16-year-olds from the local Catholic secondary school and the non-denominational secondary school to Belfast so that they can reflect more on these issues.

An enormous amount of that sort of work goes on. The question is whether having too hasty a repeal at this point sits in contradiction to it or whether engagement with those issues needs a wee bit more consideration. Young people clearly understand that sectarianism is like racism, Islamophobia and anti-Semitism, and in their lives they develop a response to that weave of attitudes and behaviours. We want to support them in that, and we should be very careful before we introduce any message that might suggest to them that sectarianism is not as important as they have begun to think it is.

The Convener: We are running badly behind time now, so I ask members and the panel to be as succinct as possible, because we want to get through all the questions.

Chris Oswald: If we were to repeal the act and move to a purely educative system, we would go back to the same old ways. My concern is that young people would go to a game, see unacceptable behaviour and, because there was no sanction, believe that they could behave in the same way.

Fulton MacGregor: Perhaps I can join up two questions. Concerns about the repeal of section 6 of the 2012 act have already been mentioned. Can you elaborate on your concerns about the repeal of that section and, in particular, an increase in online abuse?

The Convener: It would be good to hear from Ephraim Borowski, because of his written evidence.

Ephraim Borowski: I am sad to say that I am more of an expert on online abuse than I am on football. I have been targeted for being a witness in a court case; instead of sending messages to an organisation, somebody took the trouble to find my personal email address. We have to take account of the electronic world in which we live, which does not recognise national boundaries. The lawyers tell us that section 6 is an important transnational power that catches conduct that would not otherwise be caught by Scots law, and that is another important reason why, if this legislation is not to be retained in exactly its present form, it should be amended rather than repealed. Given the runaway growth of social media, this matter probably needs more careful and extended consideration of the kind that Lord Bracadale is giving it instead of simply knee-jerk repeal.

The Convener: You are referring to the extraterritorial aspect that is not covered elsewhere in Scots law.

Ephraim Borowski: Yes.

Debbie Figures: It is vital that we keep section 6 to ensure that online abuse of any sort is criminalised. It is not just young people who are affected by social media, but people of all ages; indeed, the women who come to us about abuse on social media are not just young, but all ages. It is very important that online sectarianism is dealt with appropriately.

The Convener: I see that the other panel members concur with that.

Liam Kerr (North East Scotland) (Con): Staying on section 6, on threatening communications, a number of witnesses have suggested that a key function of the 2012 act is to send out a message. Is it your view that section 6 has an impact in sending out a message that that particular type of behaviour is unacceptable and illegal?

11:15

Chris Oswald: Section 6 is perhaps the part of the 2012 act that comes closest to prohibitions that are already in place around incitement to racial hatred. It is a very high bar and there are very few prosecutions on that issue. However, it is a serious issue and I would be concerned if section 6 were to be removed. It might not be a provision that is used particularly often, but it has a strong significance.

Liam Kerr: Such behaviour is still going on, yet there have been very few prosecutions under section 6. Mr Borowski made the point that the act is being used, but the fact that there have been so

few prosecutions suggests that that part of the act is not being used. Why is it not being used?

Chris Oswald: You would probably need to direct that question to the police and prosecutors. Incitement to racial hatred, which is a similar type of offence, is used on perhaps a dozen occasions a year. The frequency of its use does not undermine the importance of those prosecutions.

Ephraim Borowski: I have two brief points to add to that. My understanding from some of the other submissions to the committee is that section 6 adds the extraterritorial element to other legislation. If that is the case, it might well be that the provision is not used as much as it might be, or such cases do not get to court as often as they might, because of the unhelpful attitude of international social media companies, which are not prepared to provide the evidence that would allow a prosecution to succeed. It might not be to do with the nature of the offence.

I am most concerned that individuals—whether they are members of my community or any other community—should feel safe, particularly in their own homes. In section 6, we are talking about people who are being targeted—in effect, anonymously—by the so-called bedroom warriors. Those people do not see the effect of their actions, but the result can be exceptionally serious for people's sense of wellbeing, their welfare and, indeed, their continued existence.

Liam Kerr: Given the lack of prosecutions and the fact that section 6 seems to be the less well-known part of the act, what would happen to the type and volume of online abuse if it were to be repealed?

Anthony Horan: I have been subjected to online abuse because of my faith, and I know that I am not alone in that. It is a vile and growing problem. Ephraim Borowski is correct to suggest that Lord Bracadale's review is an opportunity to achieve the most appropriate legislation to tackle the problem. As Liam Kerr says, section 6 is not used very often and that needs to be considered.

One of the problems here is the behaviour of adults. We tend to blame young people for most of the behaviour that we see on social media, but baiting by celebrities and even civic leaders on Twitter, for example, creates a culture that suggests to young people that social media is a free-for-all, where they can behave in any way that they like. That is why we have the bedroom warriors that Ephraim Borowski referred to.

Ownership needs to be taken of the issue. Section 6 is not being used very often. Some people would argue that there are other provisions that would cover the behaviour that is cited in section 6. The act could be repealed, but there will be a problem either way. The Government needs

to take ownership of the issue so that it can find a solution that tackles the behaviour in question.

Fulton MacGregor talked about education, which is vitally important, but if we want to change the culture of online hate and abuse, we need to look first and foremost at how the adults behave, because they are setting an example to young children that certain behaviours are acceptable.

Debbie Figures: It is important to remember that social media can sometimes be anonymous and that we will not know who the abuse is coming from. In addition, the names and pictures on social media might not represent the person behind the abuse. It is dangerous if we do not get information from social media companies about who the person behind the image on a social media account is.

The Convener: I have always maintained the policy that committee members should ask all the questions first, as it is our duty to scrutinise the bill, but given that James Kelly has time constraints that mean that he must leave the committee early, I am going to bring him in now. Mary Fee will conclude our line of questioning after James Kelly has exhausted his line of questions.

James Kelly (Glasgow) (Lab): I am appreciative of that, convener, and of the time constraints.

I want to raise just one point with the panel. We have heard in previous evidence sessions that 72 per cent of the people who have been charged under the 2012 act are under the age of 30. We have also heard that many of those people have been brought into the criminal justice system for the first time by being charged under the 2012 act. Does the panel share the concerns that have been raised about the number of first-time offenders who have been brought into the criminal justice system in that way? Does the panel think that alternatives to prosecution should be sought in some cases?

Chris Oswald: If we look at the profile of people who are convicted of racially motivated offences, we find that 50 per cent of them are under the age of 20 and that 50 per cent of those people are under the age of 16. I think that the figures to which Mr Kelly referred reflect the fact that those people are more likely to carry out such acts rather than indicating a focus on younger people.

As to whether people are being brought into the criminal justice system because of the 2012 act, I would say that that is happening because of their behaviour rather than because of the 2012 act, which simply sets out behaviour that is felt to be socially damaging.

The Rev Ian Galloway: We should always look for alternatives to prosecution, not simply with the 2012 act but in our approach to people, particularly young people. The important question is how we encourage people to move away from behaviour that is detrimental to other people and to society, but it would be very unfortunate not to have a sanction for such behaviour. There comes a point when people have to learn that certain behaviour is unacceptable and will not be tolerated. For me, it is always unfortunate when a young person goes into the criminal justice system, but flexible responses are available and we need to exercise those. However, as a way of enabling that, we should not do away with all the relevant legislation.

Ephraim Borowski: I agree with everything that the two previous speakers have said. Unless there is independent evidence that the proportion of prosecutions is out of line with the proportion of perpetrators, the proportion of prosecutions is simply a fact. I suspect that we might find the same proportion if we looked at driving offences, for example.

Mary Fee: I will roll my two questions into one, and I would be grateful if the panel could answer with a yes or a no, if they have a view. Does the panel think that the 2012 act has had an impact on reducing sectarianism? I specifically mean sectarianism. Given that there is no definition of sectarianism in Scots law, would it be beneficial to have one?

Ephraim Borowski: I am happy to start on the last part of that question. Whether there is a definition of sectarianism in Scots law is possibly a different question. As a couple of us have already said, the issue is not sectarianism as properly defined. Dare I say it, that is itself a sectarian concept, because sectarianism is an intra-religious phenomenon. We are talking here about religious hatred or hatred of a religion. It is interesting that the way in which the statistics are published means that they do not talk about incidents that are directed against somebody of a particular faith; rather, they talk about how people are motivated by hatred of that particular faith. Frankly, that is how it should be.

Having said all that about the second part of Mary Fee's question, I do not think that I can answer the first part of it.

Mary Fee: Okay. Thank you. Does anyone else want to comment?

Anthony Horan: I do not believe that the 2012 act has had any impact on overall behaviour in tackling sectarianism.

On the point about the definition of sectarianism, I refer to my earlier evidence. It is an unhelpful term; we need to call specific behaviour what it

really is and not just put it under the banner of sectarianism.

Mary Fee: That is helpful—thank you. Does anyone else want to comment?

The Rev Ian Galloway: The act has not been around for very long. Sectarianism has been around for a very long time. I would like to see what difference the act might make over a slightly longer period of time, along with other initiatives.

The hardest thing that the advisory group on tackling sectarianism had to do was to define sectarianism. We bandied that around for quite a long time and came up with something that was entirely unsatisfactory.

We have different forms of sectarianism in our society, but the intra-religious issue that Ephraim Borowski talked about is clearly part of it. That is true within the Christian tradition and within the Muslim tradition. These things are very difficult, but we just have to accept that they are there and they have to be responded to. When they become detrimental to people on the other side or to people in our society at large, we have a responsibility to intervene and to try to make a difference to the behaviour, even where there are sensitivities.

Mary Fee: Thank you. That is helpful.

The Convener: That concludes our questions. I thank the witnesses for being brief when they were asked to be. We are under huge time constraints and have to hear from another panel of witnesses today, as well as from all the other people we want to hear from when we are scrutinising the bill. Thank you all for appearing today; it was very helpful.

11:28

Meeting suspended.

11:35

On resuming—

The Convener: I welcome our second panel of witnesses who are giving evidence on the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill: Desmond Ziola of the Glasgow Bar Association; Alan McCreadie, the head of research at the Law Society of Scotland; Professor Fiona Leverick, the professor of criminal law and criminal justice at the University of Glasgow; Stewart Regan, the chief executive officer at the Scottish Football Association; and Neil Doncaster, the chief executive of the Scottish Professional Football League.

I thank you all for your written submissions. In particular, I thank Stewart Regan and Neil Doncaster for coming here, as it has been quite difficult to find a mutually convenient time. I am pleased that you are able to attend and also that you managed to make an excellent submission, as have all the other witnesses.

We will move straight to questions, starting with Rona Mackay.

Rona Mackay: Good morning, panel. The bill proposes to repeal the 2012 act in its entirety. In general terms, do you think that that is a sensible proposition? If so, why?

Desmond Ziolo (Glasgow Bar Association): Good morning. I am grateful for the opportunity to come before you this morning and speak on behalf of the Glasgow Bar Association.

It has been stated before that it is probably unfortunate that sections 1 and 6 of the 2012 act were amalgamated into one act. It is clear that section 6 in its entirety was an issue for the members of the previous panel and that they were concerned about its repeal. However, I want to touch on the point that was made to one of those panellists by one of the committee members—I think that it was Mr Kerr—that there is a question about why the power in section 6 has not been used.

I think that Police Scotland's submission to the committee says that the power in section 6 is not being used because of the narrow scope of the section and its wording. Clearly, it is not working and it is not applicable in that the police do not feel comfortable using it. I accept what the faith groups are saying; however, if the Police Service of Scotland is not comfortable using the power in section 6 due its narrow scope, surely it is time to revisit it, maybe as part of consideration of the suggestions and comments that have been made regarding section 1.

Alan McCreadie (Law Society of Scotland): I thank the Justice Committee for affording the Law Society an opportunity to provide evidence this morning.

The Law Society has no view at all on whether the 2012 act should be repealed and takes the view that that is a matter for the legislature. We did, however, provide both written and oral evidence at the bill stages of the 2012 act, much of which has been replicated in our written evidence to the committee. The Law Society has highlighted, and continues to highlight, some of the more practical aspects—the clarity that the act affords and its enforceability. Those issues remain very much live for the Law Society.

Professor Fiona Leverick (University of Glasgow): I do not have a particularly strong view

on whether the 2012 act should be repealed. The main reason for that—I confirm what other witnesses have said in other meetings—is that pretty much all the behaviour that is described in the act is covered by other criminal offences, whether common-law breach of the peace or statutory offences.

There are two advantages to keeping the act. First, it is very specific. When somebody is convicted under the act, the type of behaviour that they have engaged in is recorded very specifically, whereas, if a common-law offence such as breach of the peace is used, that specificity is lost. Having said that, breach of the peace can be racially or religiously aggravated, so those aspects can be captured.

Secondly, the point that some people have made about symbolism is a good one. If you repealed the act now, that might send a message that, all of a sudden, behaviour such as sectarian chanting is acceptable, so you would need a strong education campaign around that. The argument for repeal is possibly that the act has lost the confidence of the people who are targeted by it—football supporters—even though it did not create any new criminal offences, or, if it did create new criminal offences, they are for conduct that is already covered in other legislation.

It is very unusual—almost unheard of—for an act containing criminal offences to be specifically targeted at football supporters. We conducted a review of worldwide legislation for Lord Bracadale’s hate crime review, and the only other comparable piece of legislation that we could find was one that prohibits racist and offensive chanting at football matches in England and Wales. Nowhere else has specifically football-related criminal offences, so you can see why football fans might perceive that they are being targeted by the act. Nevertheless, the reality is that pretty much everything described in the act is covered by other criminal offences.

Stewart Regan (Scottish Football Association): I thank the committee for giving me the opportunity to come this morning at short notice, as we are unable to attend on 14 November. That is really appreciated.

Like those who have spoken previously, I would say that the decision whether the act should be repealed is a matter for others rather than for the Scottish Football Association, but I would like to make a number of points relating to the act.

Back in 2011, after the Celtic-Rangers Scottish cup replay, which led to the summit being set up by Alex Salmond, supported by Stephen House, we participated fully and debated fully the making of improvements to behaviour in Scotland generally. The Scottish FA said at the time that

anything that could help to improve behaviour had to be seen as a positive thing, and I stick by that position. The direction of travel of the act was definitely to be encouraged, but things have changed since then and we have moved on.

The Scottish FA completely overhauled its disciplinary procedures in 2011 and introduced a new, independent judicial system. In partnership with the Scottish Professional Football League, we have strengthened our guidelines on unacceptable conduct, and we have seen a number of other developments including the introduction of supporter liaison officers across the Scottish Professional Football League clubs, who have worked closely with fans’ groups to improve behaviour.

Although the act might have had the best of intentions, it has served to damage relationships between a number of key stakeholders. In a recent survey of 13,000 football fans, 71 per cent of them said that the act had not been effective. If that is the case and there is a belief that it is not working, and if the police are not using certain parts of it, there must be questions about its effectiveness.

The review of hate crime has the potential to pick up many aspects that are perhaps positive in regard to the 2012 act. I recently met Lord Bracadale and expressed a number of points about how he may be able to address hate crime generally through measures that could be put in place to address all of Scottish society and not to target football fans unfairly.

The key point that I would like to make in this evidence session is that football has been targeted and singled out, and a piece of legislation has been put in place that focuses exclusively on football. No other sport has that, and no other element of society has that. Over the past 24 hours, when I was preparing for this evidence session, I looked back at the music industry and identified that, between 2004 and 2013 at T in the Park, there were 3,600 incidents, three attempted murders, three drug-related deaths, 10 sexual assaults, one abduction and 2,000 drug offences. A summit was not called after T in the Park events and no emergency legislation was put in place. Football has been targeted, and many of the issues that the act sought to address can be addressed by other legislation.

11:45

Rona Mackay: Do you accept that sectarian songs are sung mostly at football matches?

Stewart Regan: Football gets tarred unfairly with being the source of a lot of unacceptable behaviour. None of us likes to hear sectarian songs being chanted, but that does not happen just at football matches; it is society wide. As the

Rev Ian Galloway said earlier, sectarianism has been around for hundreds of years.

Yes, there are incidents at football matches, but we believe that we have rules and guidelines to address those. The direction of the legislation can be caught in existing and perhaps amended legislation through the hate crime review.

Neil Doncaster (Scottish Professional Football League): I can add little to what Stewart Regan has said. There is very little interaction between the 2012 act and the work that the clubs and the SPFL do. The act is concerned with a criminal standard of proof and sectarian behaviour, whereas the work that we carry out relates to unacceptable conduct, which is a much broader concept with a much lower standard of proof—the balance of probabilities.

We have detailed rules and guidelines that govern unacceptable conduct and we work closely with clubs to minimise the incidence of unacceptable conduct within stadiums.

Rona Mackay: Have the 41 recommendations that were drawn up by the joint action group been implemented? If so, has that resulted in improved behaviour at and around football matches?

Neil Doncaster: We are going through a process with the Government to monitor what is going on at games. We appoint SPFL delegates to all the Premiership matches, all televised games in the league and any other high-profile games. We take reports from those delegates and use that information to take any action that might be required against the clubs concerned in accordance with our rules. We will be—and are—monitoring what is going on within stadia, but it is too early to say what the trends are.

Rona Mackay: You did not answer my question. Have the 41 recommendations been implemented?

Neil Doncaster: I do not have that information to hand.

Stewart Regan: Without having a list of the 41 recommendations in front of me, I cannot go through them one by one. We were part of the group that designed the 41 recommendations, and we worked hard in June, after the summit met, to change our rules and governance procedures and to implement new initiatives. We worked with the SPFL to deliver a single league body for Scottish football, which resulted in the merger of the Scottish Premier League and the Scottish Football League. Many of the issues that were identified at that time have been addressed. I cannot say whether all 41 recommendations have been implemented, but I would like to think that the majority of them, if not all, have been.

Rona Mackay: When was the joint action group set up?

Stewart Regan: The joint action group was set up after the Celtic-Rangers Scottish cup semi-final in March 2011.

Rona Mackay: There has been no monitoring of the implementation of the recommendations since then, and you are not sure how many have been implemented.

Stewart Regan: We have been working with the various authorities and the Scottish Government ever since. As you know, the Scottish Government has a football lead and, since 2011, we have been having regular meetings with the Scottish Government that have led to a number of changes such as the strengthening of the guidelines on unacceptable conduct and the introduction of delegates at matches in the league and the Scottish cup. We have worked very closely with the Government.

We do not have a tracker on every recommendation but, if the committee is looking for feedback on that point, we can certainly provide it.

The Convener: That would be helpful.

George Adam has a supplementary question, after which he will ask another question.

George Adam: I am aware of what supporter liaison officers are meant to do, and I know that there was a great change in fan behaviour in European football, particularly in the Netherlands, because of them. Can you expand on that programme for my colleagues on the committee?

Stewart Regan: The Scottish FA has funded Supporters Direct Scotland to implement a programme of introducing a supporter liaison officer at every one of the top clubs and working its way down the league. In some cases, that will be a full-time paid position; in other cases, it will be a voluntary position. The role of the supporter liaison officer is to act as a bridge between the club, the supporters groups and the football authorities. They run a number of workshops and training sessions at which they share best practice, and they work with groups to identify ways to improve behaviour—for example, by looking at travel initiatives to get fans to grounds safely. The officers work with the clubs to identify areas of discontent and put in place action plans to address those.

George Adam: There seem to be three debates on the bill currently: the political debate that is going on here, the debate between Rangers and Celtic fans, and the discussion between all the rest of us football fans. There are huge differences in opinion. Nil by Mouth did some work recently in which it found that fans of teams apart from

Rangers and Celtic say that sectarianism is a real problem, whereas Rangers and Celtic fans say that it is not.

What are the SFA and the SPFL doing to ensure that they are part of the solution?

Stewart Regan: Do you mean specifically in relation to sectarianism?

George Adam: Yes.

Stewart Regan: The Scottish Football Association partners with organisations such as Show Racism the Red Card, for example. Our clubs also have initiatives in place. We have worked with the Scottish Government. We have held seminars and workshops for various parties at Hampden park, which were led by Show Racism the Red Card. We have changed our rules to ensure that we can deal with unacceptable conduct, including sectarianism and other forms of unacceptable behaviour.

We continue to work on a raft of areas with various stakeholders across the game, including the Scottish Government.

Neil Doncaster: We have employed someone specifically and the bulk of his role is to monitor what is going on at our games and to use the reports of the SPFL delegates to ensure that we have a record of what unacceptable conduct is taking place and where. We want to ensure as best we can a consistency of approach to such conduct.

We have amended our rules and the guidelines of which clubs must take account considerably. The focus of the SPFL and all its member clubs remains on tackling unacceptable conduct where it occurs.

George Adam: However, today, the Rev Ian Galloway—albeit as a Church of Scotland minister—told us that from the perspective of someone who is not a football fan, he is not seeing leadership from football authorities in any shape or form. Given that comment, do you have anything to add to what you have just said?

Stewart Regan: I would encourage the Rev Ian Galloway to come and spend some time with Scottish football clubs and the authorities to see exactly what is happening—the education programmes and the literature that is out there.

Without minimising or diminishing sectarianism and its impact on Scottish society, I want the committee to be aware that Scottish football is seen to be the 12th best behaved association out of 55 in Europe. When I look at some of the footage from other countries, particularly those in eastern Europe, I see huge issues with police with riot shields, police horses on the pitch and pyrotechnics across the stadium, which lead me to

believe that we control behaviour as well as we can. There is always room for improvement, but I want to put it in perspective. There are occasional outbursts of sectarian activity and we try to deal with those. It is not something that happens at every football match across Scottish society.

George Adam: Let us be honest with each other. As I said earlier, there are three debates—the political one, Rangers and Celtic fans and the rest of us. It may not happen at all the games in Scottish football, but there is a problem. I did not let my son or daughter go to see St Mirren play Rangers or Celtic until they were well over 12 because I did not want them to have to go through that sort of problem. It is still a major issue.

As the Rev Ian Galloway said, the situation is a cultural thing—Rangers and Celtic fans will say automatically that it is part of their culture. However, songs such as the famine song, which I mentioned earlier, and other popular songs that have always been a part of football are taken away from their context and are sung in the parks in a sectarian manner. What are the football authorities doing to say that that is unacceptable?

Stewart Regan: Neil Doncaster can comment on that more than I can, but the clubs are providing stewards to accompany their fans and monitor behaviour at home grounds and, more important, when they go away. We tend to see more activity away from home, where there is perhaps less control than there is at home grounds. There is also education at the club level.

Finally, in the SPFL delegate reports, to which Neil Doncaster referred earlier, there is monitoring of any sectarian activity, and a record is kept of any bad behaviour. We have agreed to share that information with the Government as part of our ongoing focus in the area.

Neil Doncaster: I echo Stewart Regan's comments. If there are concerns about what is going on at football matches, we absolutely invite people to come along, see what is going on at matches and see the work that the clubs are doing in communities. We have seen the bhoys against bigotry campaign from Celtic and the follow with pride campaign from Rangers. An awful lot of work is going on to address what is a wider societal issue, and we welcome that.

The Convener: I want to pursue with the SFA the issue of discipline before we go on to consider wider aspects, which will involve more of the witnesses. The SFA's written submission talks about—you have also talked about this today—the "revised guidance to members last year, providing the governing body with enhanced powers to sanction under its jurisdiction"

any behaviour that does not comply with having taken

“all reasonably practical steps to prevent unacceptable conduct.”

Will you outline what those steps might be? What can a club do to comply with that test on whether you would intervene?

Neil Doncaster: I am very happy to answer that question.

I do not want to bore the committee, but annex 5 to our rules is specifically guidance for clubs on what they should do. The rules state that, when it comes to unacceptable conduct, any commission that is convened to look at alleged breaches of our rules has to look at the extent to which clubs have adhered to our guidelines, which are extremely in-depth. I urge any member of the committee who is interested to look at annex 5, which is available online, and to go through the extremely long list of all the things that we expect clubs to do to address unacceptable conduct before it occurs and to deal with it when it has occurred. There was a change to the rules last summer to deal with the aftermath of unacceptable conduct and identify any perpetrators.

We continue to refine the rules and make improvements. The league and its clubs have a genuine and on-going focus on ensuring that unacceptable conduct is tackled where it occurs, on trying to prevent it from occurring, and on appropriate measures being taken after the event when it has occurred.

The Convener: So there should be absolutely no doubt about what that test means. It would be good to see those in-depth guidelines. If you would not mind sending them or providing a link, that would be very helpful.

Neil Doncaster: I would be very happy to do that.

Liam Kerr: The Glasgow Bar Association and the Law Society of Scotland stated in their submissions, and Professor Leverick has stated this morning, the clear view that there would not be any gaps in the law were we to repeal the 2012 act. Not all the witnesses who have been before the committee have seemed to agree with that. Confine yourself purely to the legality of the approach rather than dealing with the wider messaging or anything like that. How confident are you that there will be no gaps if that law is taken away?

Alan McCreadie: In our evidence on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill back in 2011, we identified a number of standalone offences and some statutory aggravations, and took the view that any new standalone offence of offensive behaviour at regulated football matches would be adequately covered. We also recognised that the

offences, the common-law crime of breach of the peace and section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 would apply across the board.

Perhaps one issue that continues to be considered with the legislation is that a special capacity offence is involved, in that it can take place only at a regulated football match. Perhaps I can come on to that definition later. I accept that a view has been taken abroad that that is a concern and that that targets those who attend football matches.

We are of the view that the common-law crime of breach of the peace, section 38 and a number of statutory aggravations are in place and continue to be, and that offensive behaviour at football matches could be dealt with under pre-2012 legislation.

12:00

Liam Kerr: I understand.

Professor Leverick: I echo that. I am confident that, if the 2012 act was repealed, measures are in place that cover the behaviour that is prosecuted under the act. The only possible issue is the extraterritorial behaviour that was mentioned earlier, which the act makes provision for. Behaviour that takes place entirely outside Scotland probably would not be covered. That may be the one gap, but whether that is important is open for debate. We may want not to prosecute behaviour that takes place entirely outside Scotland but to leave it to the national courts of that jurisdiction.

The Convener: Do you have any statistics on how often that part of the 2012 act has been used outside Scotland?

Professor Leverick: Gosh—I do not know the figure. It has been used in at least one case. I know that because I have read the earlier evidence that was from, I think, the Crown Office representative. I have no personal knowledge of the figure.

Alan McCreadie: May I interject, convener? Although I, like Professor Leverick, have unfortunately no information as to its use extraterritorially, the issue is reflected in our written submission or in what was provided to all MSPs in advance of the debate in the Scottish Parliament on 2 November 2016. A reference is made to the Lord Advocate’s guideline on the extraterritorial application. He states that,

“given the practical and logistical difficulties of investigating and prosecuting a crime that occurred outside Scotland, a careful and measured approach must be taken and the authorities in the place where the offence occurred should ordinarily have primary jurisdiction.”

That deference to the jurisdiction in which an offence is alleged to have taken place is as it should be.

Liam Kerr: Does Mr Ziolo want to say anything on that point?

Desmond Ziolo: The Glasgow Bar Association believes that there would be no gap in the law. I accept the evidence, which I think Mr Kerr is referring to, from the Crown Office representative and Assistant Chief Constable Higgins. ACC Higgins said that, if the 2012 act was repealed,

“we would still challenge that behaviour under existing legislation and we would still arrest people for it.”—[*Official Report, Justice Committee*, 3 October 2017; c 9.]

Therefore, by his own admission, there is existing legislation.

The only issue, as Professor Leverick said, is the extraterritorial issue. I think the issue that was touched upon in the Crown Office’s written submissions concerned a Berwick Rangers match with Rangers fans. That issue only encompasses section 6, which goes back to the previous panel discussion and the implementation and use of section 6, which is not widespread in any event.

Liam Kerr: I want to press you on section 6. The Scottish Government’s view is that a section 6 offence specifically addresses threats that are intended to stir up religious hatred, and that there is no other legislation to cover that specific mischief. What is your view on the Government’s position?

Desmond Ziolo: The position with regard to religious hatred?

Liam Kerr: Sure.

Desmond Ziolo: At this stage, we would maybe need to consider more formal written submissions on it. The issue with section 6—which allows prosecutors and Police Scotland to arrest people for the commission of offences—is with the wording of section 6(2), which refers to “a seriously violent act”. That is causing concern with Police Scotland, which needs to be addressed before we can take on the issue of whether any legislation is available to prosecute certain offences.

As I understand it, the term “seriously violent” is not defined. I think that that is why Police Scotland will try to use a section 127 offence, which the committee has heard about before. If that is the offence that will primarily be used by Police Scotland and the Crown Office, surely the Crown Office should instigate greater sentencing power for it. I know that it has told the committee that the sentence for that offence is limited to 12 months, as opposed to five years for the section 6 offence.

I cannot really comment on the extent of religious hatred because, before we get to that, the issue concerns the wording in section 6(2).

Liam Kerr: Do you concede—this appears to be the Scottish Government’s position—that if section 6 of the 2012 act were to be removed through repeal, there would be no other act through which that mischief could be attacked?

Professor Leverick: I do not think that that would leave a gap, because if someone behaves in a threatening manner or makes a threat, that would be covered by section 38 of the Criminal Justice and Licensing (Scotland) Act 2010, which is on threatening or abusive behaviour. If someone engaged in such behaviour online, that would be covered by section 127 of the Communications Act 2003. The fact that the offence was religiously motivated or had a religious aggravation could be recorded using the sentencing aggravation provisions. Therefore, I do not think that there is a gap.

Liam Kerr: My final question is for Mr Ziolo; it relates to the comments that he made at the outset. I ask him to forgive me, because it is a slightly leading question. You talked about the lack of use that has been made of section 6 of the 2012 act. Are you suggesting that that is because, as it is drafted, section 6 is not fit for purpose?

Desmond Ziolo: I mentioned what the Police Service of Scotland said in its submission about section 6. It said that

“due to its narrow scope”,

it

“has not been widely used by Police. This section is not restricted to a football context”.

In the next paragraph, Police Scotland goes on to say:

“due to the wording of Section 6 of the Act, the majority of this cannot be dealt with using this provision and is in fact dealt with as an offence under the Communications Act 2003, Section 127”.

It is clear that there is a problem with the wording. As I understand it, that was highlighted in various submissions to this committee and other committees back in 2011. It is not for me to say whether it is badly drafted, but if Police Scotland is advising the committee that section 6 cannot be used because of the wording, the inference may be drawn that there is an issue with the drafting of the act.

Liam McArthur (Orkney Islands) (LD): Good morning. The previous panel told us that there is a general belief that the 2012 act has not had a discernible effect on behaviour at football grounds, and that there is a serious concern that repeal will send an unhelpful message.

Given what you have all said about the absence or gap that would exist were repeal to take place, is there a risk that people with protected characteristics—the groups that we heard from on the previous panel—might feel that they are protected by law when, in effect, the protection is not real but is more presentational and superficial than they imagine? Are there inherent risks in having a law that gives people false comfort that they have protection under it?

Professor Leverick: There might be such a risk. It is clear from listening to members of the previous panel that some of them feel that the act gives them protection that they would not otherwise have, even if that perception is not correct. There is a risk of that.

That is an area in which we should be thinking about Lord Bracadale's hate crime review. Under the 2012 act, the only protection that such groups have is in relation to a regulated football match, but I am sure that people want a more general protection against hate crime. Therefore, I think that there is something to be said for putting the hate crime element on pause and waiting to find out what Lord Bracadale comes up with.

Liam McArthur: In committee, one often hears that constant amendment of legislation over time leads to complexities. As a result, there are clamours for new legislation that pulls all that together. Is there a risk that we will, in holding on to the current legislation and trying to amend it to expand its provisions or reach, build in that complexity? Whether they are arguing for repeal of the act or not, pretty much everyone has admitted that the legislation is defective in certain respects. Should we clear the slate on the legislation, allow Lord Bracadale's recommendations to be taken forward and consider the whole gamut of hate crime that we all wish to deal with?

Professor Leverick: Not everything in the 2012 act is a hate crime provision; a lot of it relates to hate crime, but not all of it. Some parts are about straightforward public order offences that have no connection to hate crime whatever. At least part of the section 6 criminal offence is not a hate crime related provision. I said that we should hang on and wait to see what Lord Bracadale says, but that will take us only so far because there are parts of the 2012 act that do not relate to hate crime.

Alan McCreadie: There is a view that repealing the 2012 act could send out the wrong message. I contend—Professor Leverick has just alluded to this—that the 2012 act is not just hate crime legislation, albeit that its scope is subject to Lord Bracadale's review. However, I guess that that would have to be weighed against the content of the act and how it is working at present in terms of how the courts interpret it and how it can be enforced.

Ben Macpherson: The witnesses' responses have covered some of Liam Kerr's points about the advantages that the Crown Office and Procurator Fiscal Service has noted regarding section 6. Police Scotland has suggested to the committee that the 2012 act is a useful tool for policing football matches and the areas in and around the grounds, on top of the common-law breach of the peace offence and section 38 of the Criminal Justice and Licensing (Scotland) Act 2010. Can Professor Leverick and Alan McCreadie, in particular, comment on Police Scotland's point?

Professor Leverick: I cannot speak for Police Scotland. All I would say is that, as we have pointed out, Police Scotland also said in its evidence that if the 2012 act is taken away, nothing would really change and the police would simply use other provisions of the law. The 2012 act might be an important tool in communicating that certain types of behaviour are unacceptable, albeit that they are covered by other parts of the law. However, that is not my area of expertise.

Alan McCreadie: I confess that there is not much that I can usefully add with regard to section 6. Unlike the section 1 provision, the section 6 offence is not a special capacity offence, so it applies across the board. Obviously, I take on board what Police Scotland says about the 2012 act being another useful tool in the armoury for dealing with what seems to be online abuse. However, as was previously stated, the society would very much take the view that there are existing provisions in place. It is worth noting that there were—I think—only 51 prosecutions last year, so it is fair to say that there has been a low number of prosecutions. I am unaware of the reasons for that, but it seems that there has been a relatively low number of prosecutions under section 6 of the 2012 act.

Ben Macpherson: I was curious to know whether, from an objective or theoretical position, you see value in the Police Scotland view that the 2012 act is a useful tool. I know that that is quite a conceptual question, but I thought, given that Professor Leverick is a professor of criminal law, that it might be interesting to touch on that. However, I appreciate what Professor Leverick has said.

Professor Leverick: I do not know what reason Police Scotland gave for why it sees value in the 2012 act, given that the behaviour in question would be covered by other criminal law provisions.

Alan McCreadie: It is fair to say that section 6 allows for prosecution on indictment. One of the offences to which we referred in our written submission, and to which Mr Ziolo referred earlier, is the section 127 offence in the Communications Act 2003 on improper use of a public electronic

communications network. Such offences can be tried only summarily, whereas what we have in section 6 is the ability to prosecute on indictment if the offence is serious enough.

12:15

Fulton MacGregor: My question follows on from Liam McArthur's, but has a slightly different twist on accessibility. I welcome the commitment of the SFA and SPFL to look at accessibility through my recently established cross-party group.

One of the things that all the witnesses have talked about is football fans being singled out, but the reverse of that is shown in some of the strong evidence that we have heard from Stonewall Scotland, the Scottish Women's Convention and the Scottish Disabled Supporters Association, among others, that the 2012 act makes their members feel safer when they go to football games. Is there concern that we will, if the act is repealed, make the game less accessible to those protected groups, given their evidence?

Stewart Regan: Perception is not reality. It is important that the hate crime review consider some of the softer issues as well as some of the gaps that have been identified in the evidence sessions. None of us wants to get to a position where fans do not feel safe, but if part of the act is not being used, and if the police are challenging its ability to be implemented, that needs to be addressed. Perhaps the way to deal with that is to let the hate crime review play out, see what comes of it, and then decide whether the 2012 act can be repealed.

Fulton MacGregor: That was an interesting answer, which also addressed what was going to be my next question, about the Bracadale review.

Mairi Gougeon: My question is also about the Bracadale review. A few of you have already expressed opinions on that, so I am just looking for Desmond Ziolo's and Neil Doncaster's opinions on whether we should wait until the Bracadale review comes through.

Neil Doncaster: I am loth to offer advice on timing to people who understand the criminal law a lot better than I do. The SPFL has met Lord Bracadale once already and we will certainly continue to engage with him and do what we can to support his work.

Desmond Ziolo: I do not think that we should wait for the Bracadale review. I understand that the faith groups that the committee heard from this morning feel that it would be better for the assessment of hate crime legislation to be carried out under that umbrella. However, the bill and Lord Bracadale's review should be looked at as two separate entities. The Glasgow Bar Association

and other witnesses coming before the committee and submitting that the 2012 act should be repealed does not mean that we would not support other acts or statutory instruments that the Government might want to introduce in relation to hate crime or Lord Bracadale's review.

Mairi Gougeon: I agree that they are two separate entities, in a way, but I still think that the bill will be impacted by the review. It makes sense to me that when we have the results of the review will be the time to consider the issue.

Desmond Ziolo: I accept your proposition: many other witnesses have come before the committee and said the same thing. However, from looking from a legal perspective at what is happening in sheriff courts around Scotland on section 1 of the 2012 act, and at the contentious issues that have gone on for the past five years, along with the lack of use of section 6, I go back to where we were in the beginning: there is no gap in the existing legislation that protects people. As Professor Leverick has already correctly and succinctly narrated, aggravations exist and presiding sheriffs at first-instance cases can sentence accused persons if they are found guilty or plead guilty to offences under section 38(1) of the 2010 act, or to breach of the peace with a racial or sectarian aggravation. Those substantive offences are recorded as criminal convictions under breach of the peace with the specific aggravator. Hate crime is therefore being prosecuted.

Fulton MacGregor made a point about people feeling that they cannot go to the football, but legislation is already there through common-law powers, and other legislation, to protect persons who go to football. It will be a shame if people feel that they cannot go to football for a variety of reasons, especially if they believe that repeal of the act would stop them going because there would be no protection. There is protection under existing legislation. Those organisations and groups may have an issue with the Police Service of Scotland in respect of why it is not implementing the charges and making the public feel safer by going for those specific groups.

Maurice Corry: Mr McCreadie, can you elaborate on the Law Society's written evidence, which suggests that confusion has arisen about what is considered to be offensive or unacceptable behaviour with regard to section 1 of the 2012 act?

Alan McCreadie: Of course; I am happy to do so. The Law Society has taken particular issue with section 1(2)(e) of the act. The act defines the behaviour in section 1(2), paragraphs (a) to (d), and paragraph (e) refers to

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

In the act, there is no definition. I understand that the courts have expressed some concern about the lack of definition of what would constitute offensive behaviour under section 1(2)(e) for the purposes of a section 1 offence.

My reading of the act is that a safeguard seems to have been put in place in section 1(5)(b), which includes the phrase,

“persons likely to be incited to public disorder”.

That might be an issue, in that there might be an offence in the abstract, in that the offensive behaviour took place, but what must be disregarded is measures such as segregation at football matches in the stadium, or that the people who would be

“likely to be incited to public disorder”

are not present, so there is simply nobody there to be offended by the behaviour.

I appreciate that the offensive behaviour is set out in section 1(2), but I think that particular reference has to be made to section 1(2)(e), which seems to be something of a catch-all.

Maurice Corry: You would like some clarity.

Alan McCreadie: There could be more clarity. I add that regardless of whether the act is repealed or otherwise, there is provision in section 5 for Scottish ministers to amend sections 1 and 4 by order. That is a fix that would not need primary legislation.

Mary Fee: I have a couple of questions for Mr Regan and Mr Doncaster. Can you give us some detail about how the relationship between supporters and clubs has changed since the introduction of the act?

Stewart Regan: You would get a much more detailed answer if you spoke directly to the clubs, and the clubs would be delighted to welcome any member of the committee to visit and see the work that they do. I believe that the working relationship has improved through the introduction of the supporter liaison officer, and that has provided a bridge between the clubs and the supporters groups, as I said earlier.

Key topics are discussed, particularly ones that are of concern to supporters, and that does not cover just unacceptable conduct, but a wide range of issues. Fans have certainly got more of a voice. The relationship that the SFA has developed with Supporters Direct Scotland has allowed us to carry out things such as the national football survey, and has provided an opportunity to hear from supporters’ organisations. There has been an improvement in that relationship.

Neil Doncaster: I echo that. The relationship between clubs and supporters’ groups is a very

positive one and it is improving. That is largely due to the excellent work that Supporters Direct Scotland is carrying out. There is no doubt that, as a result of the act some fans groups feel demonised, but that does not affect their relationship with their club. The relationship between supporters and their clubs remains extremely strong.

Mary Fee: Is there still a problem with offensive behaviour at football? Has that problem decreased since the introduction of the act?

Neil Doncaster: In the work that I mentioned earlier, we are monitoring all aspects of unacceptable conduct, including acts that are criminal. We look at all the unacceptable harm that takes place at all the games across the 42 clubs in the SPFL. We monitor that very carefully, particularly at the top end, through the delegates. We share the results with the Government and will continue to do that.

Stewart Regan: There are examples of the 2012 act being used. I read in the national policing strategy for Scotland that in the past 12 months, 52 per cent of cases in which the act was used came from just three football matches. The question is first, whether football fans are being unfairly singled out, and secondly, whether other legislation can provide cover for dealing with unacceptable conduct. We have heard from a number of people who are more expert in the field than I am that there is provision elsewhere. Therefore, as long as there are no gaps—that is where the hate crime review comes in—there may be an opportunity for the committee to consider the next step.

Mary Fee: Are football fans being unfairly singled out?

Stewart Regan: When you look at the survey, 71 per cent of 13,000 believe that the act is not working. The consultation that we have done suggests that fans feel demonised—as Neil Doncaster said—and singled out because football is the national sport. There is no other legislation that focuses on a single sport or other societal area—art, culture or music, for example. The law in general picks up everything else.

The Convener: I notice that you mention in your submission the proposed member’s bill on strict liability as well as the Bracadale review. You say that that has only served to add to the confusion among supporters and has heightened anxiety that they are being unfairly discriminated against. Will you elaborate on that?

Stewart Regan: When it comes to the topic of behaviour, the focus has been on many different areas. Back in 2011, we were of the mind that we did not want to see behaviour get worse and that we wanted to address it, which is why at the time

we were very supportive of the direction of travel and the bill. However, over time, the topic of strict liability has been thrown into the mix and that has created some confusion, because many people do not fully understand the term. There is also the Bracadale review of hate crime, which tiptoes into the area of football-related unacceptable conduct. We have got three key areas, all of which are focused in some way on football. You can imagine the reaction of the football fan being, "Why is this all about football? Why can't unacceptable conduct in society be addressed by standard legislation?"

The Convener: As you have said clearly, the clubs are already doing a lot with supporters to improve behaviour through various activities. Perhaps there is not an equal discussion about that aspect of things.

Mary Fee: I have a brief follow-up question before I move on to my question for Professor Leverick. In our evidence sessions, we have talked a lot about the importance of education and how it is key in tackling some of the behaviours around football. Both of you will be aware of the Equality Network sports charter, which several professional clubs have signed up to. It has had various successes in promoting inclusion across the lesbian, gay, bisexual, transgender and intersex community. The charter has a trickle-down effect, because it works with young supporters to change the whole ethos of the club. Do you see something similar to that having a beneficial effect in tackling sectarianism and offensive behaviour?

12:30

Neil Doncaster: We are proud to be signatories to that charter, which we think is a positive step, and we know that a number of our member clubs have done likewise. I believe that, in general, the clubs carry out a huge amount of positive work in their communities. Earlier, I talked about the follow with pride and bhoys against bigotry campaigns, which are just two examples of the work that clubs are carrying out in this area to educate and improve society.

Stewart Regan: The Scottish FA recently appointed an equality and diversity manager. We were recently nominated for a Scottish diversity award and we are being held up by FIFA for best practice in the area of equality and diversity. We have also signed up to the charter. We are doing some fantastic work in relation to LGBT issues, para-football and the girls' and women's game. We are very proactive in this area.

With regard to unacceptable behaviour, I mentioned earlier the relationship that we have with the clubs and with the show racism the red

card campaign. We are also big supporters of positive coaching Scotland, which is an initiative that is being driven through the Winning Scotland Foundation, and it has now been embedded into our coach education programmes. We are trying to start at the grass-roots level in order to reinforce the right behaviours at the outset so that they can permeate throughout the grass-roots level as children get older.

Mary Fee: Professor Leverick, can you give us some detail on the approaches that are taken in other jurisdictions in relation to sectarian and offensive behaviour? You spoke about what goes on in England and Wales, but does any other country have similar legislation that targets one specific group of people? If so, what impact has that had?

Professor Leverick: The simple answer to the question is no, as far as we can tell. I do not want to give a definitive no, because our review focused mainly on materials in the English language, so I cannot absolutely promise that there is not something out there in Serbian or another language that we have missed. Our review showed that there is nothing else that specifically targets football supporters in this way.

I have already mentioned the English legislation. Apart from that, the closest thing to the 2012 act is the Justice Act (Northern Ireland) 2011, which prohibits various types of chanting at sporting fixtures, including sectarian chanting, racist chanting and other types of offensive chanting. It does not confine that prohibition to football, though; it covers rugby union and Gaelic games as well. Aside from that, we could not find anything else worldwide that is as narrowly focused as the act in Scotland. There is legislation around the world that targets public order or hate crime offences relating to sporting events or large public events generally, but nothing that targets football specifically, aside from the English legislation.

Mary Fee: As you know, there has been some confusion about the legislation here. Are you aware of whether there have been any difficulties in implementing the legislation in England?

Professor Leverick: I do not think so. The legislation in England is much more straightforward. It is very narrowly targeted at chanting—racist or what is termed "indecent" chanting—at football matches. It also has a much lower maximum penalty. From memory, I think that you cannot be imprisoned for breaching the English legislation, and that the maximum penalty is a fine. It does not have a link to public disorder; it just prohibits racist and indecent chanting—there are no add-ons.

As far as I can tell from my review, there have been no problems in implementing the English legislation. It seems to have been successful in cutting out racist chanting, although that might have happened anyway. It is hard to pin it to the legislation. It has probably not been that successful in cutting out indecent chanting—a lot of that still goes on in English football grounds—but the racist chanting has pretty much gone now.

Maurice Corry: Sectarianism is currently not defined in Scots law, as you probably know. Is that a barrier to tackling what is perceived to be sectarian behaviour? Perhaps Mr McCreadie could kick off on that.

Alan McCreadie: You are quite correct to say that sectarianism is not defined in law, and I suspect that that may cause some issues as to how to specifically criminalise the offence of sectarianism. It has been my understanding that it is incitement to hatred of a religious group, for whatever reason. That is in section 1(2) of the act, but it does not have to be a religious group—it could be a social or cultural group with a perceived religious affiliation. I suspect that it would be problematic to define sectarianism.

Professor Leverick: I do not really have anything to add to that. The act does not specifically refer to sectarianism at all. It is not part of the terms of the act, but the act has still been used to tackle what most people would perceive to be sectarian chanting and sectarian songs. The fact that sectarianism not only is not defined but is not even in the act has not stopped it being used to prosecute what most people would regard as sectarian conduct.

The Convener: I think that the policy memorandum mentions that the act is to tackle sectarianism.

Professor Leverick: That is true, but the act itself does not use the term “sectarian” at all.

The Convener: “Offensive behaviour” is in the act.

Professor Leverick: I accept that that was the purpose of the act, but that might answer the question. Despite sectarianism not being defined in the act, or even forming part of the text of the act, the act has nonetheless been used to tackle sectarian behaviour.

The Convener: That probably adds to the confusion.

Desmond Ziolo: I do not have a view on behalf of the Glasgow Bar Association as to whether there should be a definition. I noted that the absence of a clear definition is one of the additional difficulties that are highlighted in the Police Scotland submission, but over 10, 15 or 20 years there have been definitions in cases that

have gone before the courts and the appellate courts with regard to certain words, banners and offences that have been classified as sectarian, so there is already an existing body of case law, and the existing common-law powers could be used to prosecute certain offences and diagnose them as sectarian.

Maurice Corry: May I ask Mr Regan and Mr Doncaster a supplementary question?

The Convener: Certainly.

Maurice Corry: An issue that has arisen in evidence is that, when a large number of fans engage in offensive behaviour, it often cannot be tackled at the time, given the disparity between the number of police and the number of fans. How are the SFA and the SPFL ensuring that clubs take action as appropriate?

Neil Doncaster: We amended our rules in the summer and the amendment put a specific obligation on clubs—that obligation is referred to in the guidelines, which I will share with members—to deal with unacceptable conduct after it has occurred. We accept that, in the moment, there might be public order reasons why behaviour cannot be tackled at that time, but it should nonetheless be tackled appropriately after the event and appropriate efforts should be made to identify the people responsible and to take them to task accordingly.

Maurice Corry: Are you working with the clubs to do that?

Neil Doncaster: Absolutely.

Stewart Regan: I have nothing to add, other than to say that the Scottish FA rules mirror those of the SPFL. The members are the same members, so we deal with those clubs in exactly the same way. If something happens, clubs are expected to take action after the event to identify perpetrators using closed-circuit television, to remove season tickets, if necessary, and so on.

Maurice Corry: Do you follow up on that?

Stewart Regan: Yes.

Liam Kerr: Can I clarify something? I presume that that applies only when the behaviour takes place within the confines of the ground and that it would not apply outside the ground, which, as I understand it, is where a lot of the behaviour takes place. Is that correct?

Neil Doncaster: That is correct. From our point of view, we are a members’ organisation and we govern our members. They are clearly responsible for what happens within their grounds; what happens elsewhere is a police matter and that is outwith our jurisdiction.

The Convener: That concludes the committee's questions. Does Claire Baker have any questions for the panel?

Claire Baker (Mid Scotland and Fife) (Lab): In its written evidence, the Law Society says in response to question 3:

"If the 2012 Act is not repealed, it is likely that we will see further cases in the appeal courts".

That is mentioned a couple of times, in recognition of the need to clarify the act and the reach of the act. Will you expand on that?

Alan McCreadie: That relates to the point that I made earlier about interpretation, particularly the interpretation of section 1. I mentioned that the catch-all provision in section 1(2)(e) might be subject to further judicial interpretation. It refers to

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

A point that the Law Society made at the bill stage in 2011 and has continued to make is that, because it is a threefold offence, the behaviour has to be behaviour that

"is likely to incite public disorder"

or, in the abstract,

"would be likely to incite public disorder"

but for the fact that no one is there, and it has to take place in relation to a regulated football match.

The Law Society has also commented on the definition of "regulated football match". That is where the offence becomes a special capacity offence, because it has to take place in relation to a regulated football match, which is defined in section 55(2) of the Police, Public Order and Criminal Justice (Scotland) Act 2006. I appreciate that, as I understand it, there has not been any judicial interpretation of "regulated football match", but I understand that it would not cover, for example, Scottish Junior Football Association games or a football match between clubs from two foreign countries that was taking place in Scotland. Hampden park has held the European cup final, the champions league final and the UEFA cup final, and such matches would not be covered.

In addition, the Law Society has made the point that journeys to and from a regulated football match have not been the subject of any interpretation. Section 2(2) is very widely drawn. Concern has also been expressed about televised football matches. There is no indication as to whether a regulated football match has to be live or whether recorded highlights of a regulated football match would be covered. The provision covers anywhere other than domestic premises, and it refers to television, but since 2012 more and more people have used mobile telephones, iPads

or tablets to watch football matches. I would contend that those issues have not been resolved, perhaps because the case law has not been built up. Those are examples of difficulties of interpretation that the courts might have with the act in its present form.

Claire Baker: What does that mean for people who are being prosecuted or pursued using the act, and for the people who are representing them?

Alan McCreadie: When it comes to law reform, the Law Society always strives for clarity and certainty in the law. I certainly do not seek to minimise the issues that have been referred to by previous speakers concerning offensive behaviour within football stadia in Scotland, but one could conceivably have a situation in which someone was in a pub watching a series of football matches on a Sunday and the offence could take place when they were watching one game but not another. One match might be an English premiership match, such as the Manchester City against Arsenal match that was on at the weekend, which is clearly not a regulated football match for the purposes of the 2012 act, whereas the other match might involve two Scottish clubs and would therefore be a regulated football match—on Sunday, that would have been the Hearts against Kilmarnock game at Murrayfield.

The Convener: We know from the SFA submission that there were concerns about enforceability before the legislation was introduced, and those same concerns are still to the fore. The Glasgow Bar Association's submission refers to the act's failure to properly define the behaviour element of the offence.

Before we finish, it would be good to get a view from panel members on whether the act has been effective in deterring offensive behaviour per se.

12:45

Desmond Ziolo: It is difficult to say. The crime statistics will speak for themselves, but I note that the statistics that have been proffered by the Crown and Police Scotland relate only to the 2012 act—the committee has not been provided with statistics on other offences, such as the common-law breach of the peace offence under section 38 of the 2010 act, which has been used widely. That is unfortunate. We are only really assessing the 2012 act, but I think that we must look at the broader picture with regard to other offences—those that are committed outwith the stadia and those that are committed within the stadia but which are not prosecuted under the 2012 act. I know that the act is another tool, but if police officers are interchanging offences, it would be

good to know about those other offences so that we can take a broader view of all the figures.

The Convener: So it might be the case that the number of breach of the peace offences has gone down because the police have been using the 2012 act instead.

Desmond Ziolo: That could be the case, or there could be a number of breach of the peace charges—section 38 offences, with the various aggravations—that we do not know about. If we had those figures, we could compare and contrast them with figures from previous years. That is something that the committee might want to analyse. That is just a suggestion, but it would make more sense to have all the figures, because then we could say whether the level has gone down or up. Police officers are clearly using the 2012 act, because the statistics are there, but I think that we need more information.

Alan McCreadie: There is not much that I can usefully add to that, other than to note that figures are being kept on prosecutions. I think that there were 377 last year, and reference has been made to that reflecting what happened at one high-profile game—the 2016 Scottish cup final. However, perhaps there should be concern about the level of charges that are being profiled with regard to section 1 and, in particular, section 6—under which I think that 51 offences were prosecuted—of the 2012 act.

Professor Leverick: If the question was whether the act has been effective, I do not have any personal experience of that, but I point to the official evaluation of the act that was undertaken by Niall Hamilton-Smith and some other colleagues, which was referred to in a previous evidence session. The evaluation concluded that there certainly had been a reduction in offensive chanting in football grounds since the act came into force, but that it was impossible to tell whether that was because of the act. I do not think that we will ever solve that conundrum, because so many other factors could have had an effect—changes in social attitude or policing strategies and so on. It will always be extremely difficult to attribute improvements to the act.

Stewart Regan: I do not have a view on how effective the act has been from a legal perspective. However, 71 per cent of football fans do not think that it has been effective, and I think that the relationships between fans and the various stakeholders have been damaged, because of the act and the fact that football feels that it has been singled out. There are clearly issues that need to be tackled.

Neil Doncaster: There is nothing that I can usefully add.

The Convener: On that note, I thank all the panellists for what has been an excellent evidence session. Our next meeting will be on Tuesday 14 November, when we will continue our consideration of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill and the Civil Litigation (Expenses and Group Proceedings) (Scotland) Bill.

We now move into private session.

12:48

Meeting continued in private until 12:55.

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