OFFICIAL REPORT
AITHISG OIFIGEIL

Justice Committee

Tuesday 3 October 2017

Session 5

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Pàrlamaid na h-Alba

Tuesday 3 October 2017

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JUSTICE COMMITTEE
29th Meeting 2017, Session 5

CONVENER

*Margaret Mitchell (Central Scotland) (Con)

DEPUTY CONVENER

*Rona Mackay (Strathkelvin and Bearsden) (SNP)

COMMITTEE MEMBERS

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

*attended

THE FOLLOWING ALSO PARTICIPATED:

George Adam (Paisley) (SNP)
Simon Barrow (Scottish Football Supporters Association)
Jeanette Findlay (Fans Against Criminalisation)
Paul Goodwin (Scottish Football Supporters Association)
Assistant Chief Constable Bernard Higgins (Police Scotland)
Andrew Jenkin (Supporters Direct Scotland)
James Kelly (Glasgow) (Lab)
Anthony McGeehan (Crown Office and Procurator Fiscal Service)
Paul Quigley (Fans Against Criminalisation)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

The Mary Fairfax Somerville Room (CR2)

Scottish Parliament

Justice Committee

Tuesday 3 October 2017

[The Convener opened the meeting at 10:01]

Decision on Taking Business in Private

The Convener (Margaret Mitchell): Good morning and welcome to the Justice Committee's 29th meeting of 2017. There are no apologies.

Agenda item 1 is a decision on whether to take item 5, which is consideration of our forward work programme, in private. Are we agreed to take that item in private?

Members *indicated agreement*.

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

10:02

The Convener: Agenda item 2 is our first evidence session 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 charge of the bill, to the meeting. George Adam is also in attendance. You are both very welcome.

We will take evidence from two panels, and time is extremely tight. The committee has 11 members, whose role is to scrutinise the bill. If time allows, at the end of members' questioning I will ask George Adam whether he wants briefly to ask questions. Time will, of course, be allotted to James Kelly to ask questions at the end, after he has heard all the other questions and answers.

I welcome our first panel: Anthony McGeehan, who is the procurator fiscal responsible for policy and engagement at the Crown Office and Procurator Fiscal Service, and Assistant Chief Constable Bernard Higgins, who is responsible for operational support at Police Scotland. I thank the witnesses for their written submissions—as always, those are very helpful.

We will move straight to questions.

Rona Mackay (Strathkelvin and Bearsden) (SNP): Good morning. In general, has behaviour at football changed since the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 came into force? If so, how?

Assistant Chief Constable Bernard Higgins (Police Scotland): Good morning. I have been in the police for 29 years, and football—in both fan behaviour and stadiums—is almost unrecognisable from what it was like when I started, in 1988. In the past five or six years, there has been a massive improvement not just in fan behaviour but in stadium facilities and the professionalism of key elements of producing a football match, such as stewarding arrangements.

I will give an example of that. In the past four years, we have worked tirelessly with clubs and associations such as the Football Safety Officers Association to reduce the number of police officers at football events, which reduces the costs for clubs. We are in a position to do that only because infrastructure and fan behaviour have improved.

The 2012 act has certainly brought the question of what is acceptable behaviour in a football context to the forefront of people's social consciousness. Since the introduction of the act, there have been many occasions when fans have reported what they have believed to be inappropriate and abusive behaviour. For example, at the Hibernian v Heart of Midlothian Scottish cup final some years ago, a Hearts supporter made racist and homophobic comments. He was reported to the stewards and then to the police by Hearts supporters and was duly arrested.

The act has done two things: it has brought to the forefront for the wider Scottish community—not just the football community—what is and is not acceptable behaviour, and it has made it clearer when the police can take action to address behaviour at football matches and when they cannot.

Rona Mackay: Do you have any comments, Mr McGeehan?

Anthony McGeehan (Crown Office and Procurator Fiscal Service): I have no comment to add in relation to behaviour at football matches.

Rona Mackay: Would repealing the act send out the wrong message that it is acceptable to revert to previous bad behaviour?

Assistant Chief Constable Higgins: There is the potential for that to happen; it would be a subjective view to say that it would definitely happen. Repealing the act might be interpreted by some as a lifting of the restrictions on how they can behave in football stadia, or it might not.

Rona Mackay: Is your feeling that the act has helped to improve behaviour at matches over the past five years?

Assistant Chief Constable Higgins: Yes. It is important to stress that, generally, football is well attended and supporters are well behaved. For example, in the 2016-17 season, the police arrested 191 people at football matches out of the 4 million people who went through the turnstiles. Statistically, 0.00005 per cent of people who attend football matches engage in behaviour that warrants their arrest. The vast majority of fans who attend football matches do so in the spirit of wanting to enjoy the game.

The act has allowed the police to address and challenge specific types of behaviour, and it has raised social consciousness. If the act were repealed, the police would continue to try to address the behaviour using other legislation. Mr McGeehan is far more skilled and knowledgeable about the alternatives than I am.

There is no doubt that the behaviour of fans at football matches has improved greatly over the past five years. That is the result of a number of factors. It is not simply down to the act; it is down to fans associations taking responsibility, the clubs stepping up to the plate and taking responsibility, the better infrastructure, the closer liaison between the police and football safety officers and a combination of other elements. The act has had an influence but not in isolation.

Rona Mackay: Is it accurate to say that the act applies beyond the football stadium? It can apply outwith the stadium, when people are coming to and from the match. It can apply on street corners or anywhere.

Assistant Chief Constable Higgins: Yes. That is correct.

Anthony McGeehan: The act goes beyond the stadium not only in relation to section 1 but also through section 6, which is not connected with football.

Rona Mackay: We will come to that later.

Mary Fee (West Scotland) (Lab): My question follows on from the line of questioning that Rona Mackay has opened up.

We have received a number of submissions from football supporters stating that the relationship between supporters and the police has deteriorated significantly since the 2012 act has been in force. Would you comment on that, ACC Higgins?

Assistant Chief Constable Higgins: I do not see that. I have officers who liaise regularly with fans groups—Supporters Direct Scotland, the tartan army and the Scottish Disabled Supporters Association—at a national level. At a local level, within the police's territorial divisions, there are single points of contact who liaise with the clubs through the clubs' fan liaison officers.

We work hard to develop relationships with any fan base. My door is always open, and I will happily speak with anybody about any aspect of football policing. If there is a perception that the relationship between the police and the fan base has deteriorated, we need to work on that and improve the situation.

I make no comment about the rights and wrongs of the introduction of the act, but the reality is that I am a police officer and I must apply the law of the land as it stands. Even if that law is unpopular with certain sections of the population, it is not within my gift to decide not to enforce it where it is appropriate.

Mary Fee: Another comment that has been made is that policing is seen as being overzealous.

Assistant Chief Constable Higgins: I have just given you the statistic that we have arrested

0.00005 per cent of people attending football matches, or 191 people out of an attendance of 4 million. That does not seem to me to be overzealous; I think that that is pretty proportionate.

Mary Fee: In answer to the first question that you were asked, you said that football has changed dramatically over the time that you have been in the police. I am struggling to understand the significance of the 2012 act. If football is almost unrecognisable from how it was when you went into the force, I do not understand how the 2012 act could have made a significant impact, because there has been a gradual shift in behaviour.

Assistant Chief Constable Higgins: I am swinging the lamp a bit here. When I joined the police, in 1988, it was acceptable to go to an old firm match and listen to sectarian singing from both sides. Now, people recognise that that is wrong in a modern society. Sectarian singing, racist abuse and homophobic abuse are simply not acceptable. I suggest that the 2012 act has put that at the forefront of the public's mind and that there is now a greater understanding of the issues. There might not be an acceptance of the act, but there is a greater social consciousness about and awareness of some of the challenges that exist within not only Scottish football but Scottish society.

Mary Fee: If there were only 191 arrests last season, do you agree with the comment by supporters that there is little or no evidence of significant disorder in football?

Assistant Chief Constable Higgins: It depends what you mean by "significant disorder". In 2015, several thousand Rangers and Hibernian fans took to the field at Hampden and engaged in significant and sustained violence and disorder. As a result of that, over a period of months, we arrested 184 people. One of the most significant examples of disorder that we have had occurred a couple of years ago, when there was a mass brawl involving up to 30 or 40 Airdrie and Ayr United fans in Coatbridge town centre and a young detective sergeant sustained a broken jaw.

The statistic of 4 million attendees and 191 arrests does not reflect the massive joint operations that are undertaken by us, stewards and clubs to ensure that the 900-plus professional football matches that take place each year go off as peacefully and safely as possible.

Mary Fee: Is the change in the policing operation due to the 2012 act?

Assistant Chief Constable Higgins: No. I became the strategic lead for football about five or six years ago. Policing is an expensive asset. If you employ a number of police officers, that will be much more expensive than if you employ an accredited stewarding company. Therefore, I undertook work with the football authorities and clubs to reduce the number of police officers at every match, which would be financially beneficial. However, in order to do that, we had to do other things such as work with the Football Safety Officers Association to ensure that the safety and security of grounds met the requirements of the safety advisory groups, and that process has taken place over many years. The commitment of the police to that process is evidenced in the fact that every major club in Scotland outwith the old firm has held games at which there have been no police officers at the stadium. That is because we have done work to ensure that those environments are safe.

10:15

Maurice Corry (West Scotland) (Con): Good morning, gentlemen. I ask Mr Higgins to elaborate on the challenges that officers could face when policing in the football environment should the 2012 act be repealed. How would Police Scotland deal with those challenges?

Assistant Chief Constable Higgins: It would not pose a significant operational challenge; we would continue to discharge our duties in the same manner. We would seek guidance from the fiscal's office about which charges we should apply, as opposed to those in the provisions of section 1 of the 2012 act. I know that Mr McGeehan has views on that issue. If the act is repealed, I am sure that guidance on the subject will be forthcoming from the Crown Office and Procurator Fiscal Service. However, regarding boots on the ground and how football matches are policed, little—if anything—would change.

Anthony McGeehan: The Lord Advocate has published guidelines in relation to the operation of the 2012 act by the police. We would intend to publish similar guidelines in relation to the application of breach of the peace and section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 should the Parliament decide to repeal the 2012 act.

Fulton MacGregor (Coatbridge and Chryston) (SNP): I ask both panel members whether there would be a gap in the law, in effect, if the act were to be repealed. If so, would games be more or less safe for fans?

Anthony McGeehan: In my assessment, there would be a gap in the law. Alternative charges to those under section 1 of the 2012 act are available to prosecutors—principally, under section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 and breach of the peace. There are similar alternatives to the charges under section 6 of the

2012 act in the provisions of section 127 of the Communications Act 2003.

However, both of those alternatives to sections 1 and 6 of the 2012 act have limitations. The section 1 alternatives pose a different legal test against which an accused person's offending must be assessed; in short, it is "fear and alarm" as opposed to the test that is set out in section 1. Section 1 also has an additional utilitarian value for prosecutors, as it has an extra-territorial element. It can currently be used by prosecutors to address offending that has been committed outwith Scotland by persons who are normally resident in Scotland, and it has been used successfully to prosecute hate crimes that were committed outwith Scotland by persons who were normally resident in Scotland. The ability to do that does not exist in relation to section 38 of the 2010 act or breach of the peace.

The alternative to section 6 of the 2012 act—section 127 of the Communications Act 2003—has similar limitations. It contains no extra-territorial element such as I have described in relation to section 1 of the 2012 act; therefore, we would be unable to prosecute offences that were committed outwith Scotland by persons who were normally resident in Scotland. We have successfully used section 6 to prosecute hate crime that was intended for a Scottish audience and that was committed by persons who were normally resident in Scotland.

The other advantage of section 6 relates to the sentencing powers that it makes available. Normally, only summary-level sentences are available to sentencers, whereas section 6 of the 2012 act makes solemn-level sentences available, and those have been used by a sentencer to address serious hate crime that was perpetrated by a Scottish accused. That person used the internet to post hate crime that was supportive of a proscribed terrorist organisation—ISIS. The severity of the accused's actions were reflected in the sentencer's starting point for the sentence, which was 24 months. The sentence was reduced to 16 months to reflect the fact that the accused pleaded guilty, but the reality is that the option for the sentencer to reflect the severity of the accused's behaviour would not have been available if the alternative charge, under section 127 of the 2003 act, had been used.

The Convener: There is a lot of technical detail in your response, which we will try to tease out in our lines of questioning as we progress. It would be impossible to take in everything that you have just said, so we will break it down.

Fulton MacGregor: You got in before me, convener, and were in full flow, but I was aware that you will pursue another line of questioning later on. Suffice it to say that Anthony McGeehan feels that there would be a gap in the law if the 2012 act was repealed and that he has concerns about the use of other legislation. Does ACC Higgins have anything to add?

The Convener: Can we establish that what you have suggested is actually the case? Would there be a gap in the law or would the existing law cover the circumstances that have been described?

Anthony McGeehan: There would be a gap in the law. The 2012 act gives prosecutors powers that are not available under breach of the peace, section 38 of the 2010 act or the Communications Act 2003.

The Convener: We will address later the situation in which you think that that gap would exist. ACC Higgins may now respond to Fulton MacGregor's question.

Assistant Chief Constable Higgins: I will not add to what Anthony McGeehan has said. The issue of whether repeal of the 2012 act would make the football environment more dangerous or less safe is subjective. As I said, many people might see repeal of the act as a lifting of restrictions, which would perhaps mean that behaviour would deteriorate, leading to additional police officers and stewards having to be deployed to stadiums. However, the reality is that we do not know what would happen; we would need to wait and see how fan groups reacted to repeal of the act.

Fulton MacGregor: My last question is probably for ACC Higgins. Do you feel that the police have a clear understanding of what "offensive behaviour" covers for the section 1 offence? We have received evidence that some people feel that they have been charged under the act for arguing with stewards. Would a police officer know what constitutes such an offence?

Assistant Chief Constable Higgins: The short answer is yes. I will not throw statistics at you, but the Crown Office takes action in 89 per cent of cases in which we arrest people under the 2012 act. To me, that demonstrates a high level of understanding by the arresting officers.

The Convener: It would be helpful if you could give a really good and concise example of what "offensive behaviour" consists of.

Anthony McGeehan: It is behaviour that is offensive to any reasonable person. The Lord Advocate has published guidelines in relation to behaviour that may be offensive under the 2012 act, and the definition is set out on page 4 of those guidelines, which are dated August 2015. It is one and a half pages of narrative. I could go through that guidance, if that would be beneficial to the committee.

The Convener: It would be helpful if you could select one example. Are there examples in the narrative?

Anthony McGeehan: Yes. The first paragraph on page 5 states:

"While it is a matter for the judgement of a police officer whether a song or other behaviour, including the display of offensive flags or banners, is likely to be offensive to a reasonable person having regard to the nature of the material or song, including its lyrics and any 'add ons', the surrounding circumstances and the context in which it is being displayed or sung, the following are examples of the type of displays, songs and chants which are likely to be offensive to a reasonable person.

• Flags, banners, songs or chants in support of terrorist organisations.

• Flags, banners, songs or chants which glorify, celebrate or mock events involving the loss of life or serious injury.

It should be noted that in order for this offence to be committed, in addition to the display, song or chant being offensive or threatening, it must be likely to incite public disorder."

The Convener: Can the police give us a specific example of how that guidance is being applied and their interpretation of it?

Assistant Chief Constable Higgins: Over the years, we have arrested a number of people for displaying pro-IRA banners. We have arrested a number of people for singing, for example, "The Billy Boys", with the add-on words in that song about being "up to our knees in Fenian blood", which are offensive and would likely incite public disorder. It is pretty commonplace in terms of what we can apply the 2012 act to. As I said, should the 2012 act be repealed, we would still challenge that behaviour under existing legislation and we would still arrest people for it. Whether the behaviour became a breach of the peace or a section 38 offence under the 2003 act would be a matter for the Crown Office to give us guidance on.

The Convener: If the 2012 act was repealed, that offensive behaviour—as it has been defined and examples of which have been given—would still be covered by legislation.

Assistant Chief Constable Higgins: It would, by and large, with the exceptions that Anthony McGeehan alluded to in terms of the gaps. The general offences that we arrest people for would still be covered.

Ben Macpherson (Edinburgh Northern and Leith) (SNP): I ask for clarity on the same point, Mr McGeehan. You state in your written evidence:

"The legislation does not particularise the 'behaviour that a reasonable person would be likely to consider offensive'. It is not unusual for legislation to contain a test in relatively broad terms".

Can you comment on that point? Your written evidence also states that the Crown Office

"does not agree that the legislation is applied arbitrarily or unfairly."

Those are important points in your evidence to highlight in relation to the question that the convener asked.

Anthony McGeehan: The lack of a definition of "offensive behaviour" in the 2012 act is not unusual in legislation. A type of behaviour and offending that the majority of us are familiar with is dangerous driving. Section 2 of the Road Traffic Act 1998 prohibits dangerous driving but provides no definition of what may constitute dangerous driving—that is defined by the particular circumstances of each individual case.

The use of "offensive" as a test is also not unique to the 2012 act. For example, one of the alternatives that has been identified as a possible remedy should the 2012 act be repealed is the Communications Act 2003, which prohibits the sending of a message that is

"grossly offensive or of an indecent, obscene or menacing character".

Again, the offensiveness of an act is a reference point for criminal behaviour, but there is no specification as to what may or may not constitute offensive behaviour.

The second part of your question was about the rejection by the COPFS of the suggestion that the 2012 act is applied illiberally. My position is that, in order for an offence to be committed under the 2012 act, it is not sufficient that the behaviour is offensive; rather, it must be one of five types of behaviour that are specified in the 2012 act, and it must be behaviour that incites or

"is likely to incite public disorder".

Only if those two tests are met can a charge against an accused person properly be brought.

Ben Macpherson: Thank you for that clarification.

Liam McArthur (Orkney Islands) (LD): Mr McGeehan, I am interested in your reference to the use of the terms "grossly offensive" and "obscene" in the Communications Act 2003. From a lay perspective, that appears to set the bar slightly higher than the use of the term "offensive" in the 2012 act. Do you see that as potentially problematic? If something is "grossly offensive", there is much less scope for dispute about it, whereas something that is deemed "offensive" might be offensive to some but not necessarily offensive to others. It might be seen as more of a judgment call made by officers and, ultimately, the Crown Office.

Anthony McGeehan: My analysis is that it sets not a higher bar but a different bar. In the 2012

act, the bar that is set is that the behaviour is offensive and incites or

"is likely to incite public disorder".

That second element is not in the Communications Act 2003, for which a different test is applied.

If you were to ask me whether, in isolation, "offensive behaviour" is less serious than "grossly offensive behaviour", I would answer, "Yes". However, in answer to a question about whether the 2003 act sets a higher bar than the 2012 act, I would suggest that it does not; it simply sets a different bar. One view might be that the 2012 act sets a higher bar.

10:30

Liam McArthur: In his line of questioning, Fulton MacGregor highlighted the fact that supporters groups have raised concerns about the approach that is being taken by the police because of their interpretation of offensive behaviour. The 2012 act has been in force for a number of years. What level of concern has there been among officers about how they should interpret offensive behaviour, and what discussions have there been with fan groups—either individual groups associated with particular clubs or across the piece—about the way in which officers have been interpreting offensive behaviour over that period?

Assistant Chief Constable Higgins: When the 2012 act was introduced, a training package was delivered across the force, as happens with every new piece of legislation. Since then, a lot of our thinking has been developed through case law in stated cases. We understand what offensive behaviour is.

I am open to any engagement on the concerns that have been raised by fan groups. Some of my staff recently went to the annual conference of Supporters Direct Scotland, at which there were fan groups from across the country. They spent time in engaging with the fans and delivering a presentation about some of the challenges of policing football events. It is always an open dialogue.

When the 2012 act first came in, some officers in areas outwith the central belt were probably not exposed to the chanting and songs that predominate among old firm fans. We had to educate those officers to recognise potentially offensive singing and chanting. That was right back in the early days; we are now four or five years into the act, and I would say that pretty much every officer has a firm grip on and understanding of the 2012 act and what falls within the definition of offensive behaviour.

Liam McArthur: I am sorry to interrupt, but would you argue that, at this stage, there is unlikely to be any legitimate suggestion that football is being policed inconsistently or in different ways in different parts of the country?

Assistant Chief Constable Higgins: No—that is not happening. There are 42 professional clubs in Scotland and, as of today, 24 of those clubs have had people charged with offences under the 2012 act. Those clubs range from Elgin City and Inverness Caledonian Thistle right the way down to Queen of the South and everything in between. That suggests to me that the officers policing Elgin City have as good an understanding of the 2012 act as the officers who are policing Celtic, Rangers, Hibs, Hearts and whoever.

Liam McArthur: I have a follow-up question. You said that the percentage of reports from the police that are taken forward for prosecution is in the mid-'80s. Over the four or five years for which the 2012 act has been in force, what has been the pattern of the percentage of police reports going to prosecutions? Has that 80-odd per cent been consistent across the piece or has the percentage increased over the years?

Anthony McGeehan: That information is published by the COPFS. In the COPFS publication "Hate Crime in Scotland", there is a table that sets out the number of charges that have been reported to the COPFS and the action that has been taken in connection with them. That information is in table 6A of the document, and I can go through the years if that would be helpful.

Liam McArthur: The top-line figures would be helpful.

The Convener: Are we going into the statistics in more detail? Carry on.

Anthony McGeehan: In 2012-13, 267 charges were reported under section 1 of the 2012 act and no action was taken in connection with 23 of those. In 2013-14, 206 charges were reported and no action was taken on 16 of them. In 2014-15, 193 charges were reported and no action was taken on four of them. In 2015-16, 286 charges were reported and no action was taken on 14 of them. In 2016-17, 377 charges were reported and no action was taken on seven of them. I can make the full table available to the committee. It provides further information on other actions that have been taken by prosecutors beyond and separate from court proceedings.

Liam McArthur: Thank you.

The Convener: Maurice Corry has a supplementary question.

Maurice Corry: I have a short question, convener.

Mr Higgins, has the relationship between supporters and the police changed since the legislation was introduced? If so, why has it changed?

Assistant Chief Constable Higgins: There are pockets of supporters in which the relationship has certainly changed. However, I would say that the relationship with 99 per cent of those who make up the 4 million regular attendances at Scottish football matches remains exactly the same.

Maurice Corry: Okay. Thank you.

The Convener: Can we establish why, in some cases, you do not proceed?

Anthony McGeehan: Again, detail in relation to the reasons for proceedings not being taken is set out in the hate crime publication. I can take the committee through that if it would be of benefit.

The Convener: If you could succinctly explain your understanding of the reasons, that would be helpful.

Anthony McGeehan: At page 16 of the Crown Office publication "Hate Crime in Scotland 2016-2017", table 9 breaks down the reasons for no action having been taken on Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 offences, and separates the no-action decisions for both section 1 and section 6 offences.

On section 1 offences, which appear to be the focus at present, the total number of charges on which no action was taken was seven. We can break down the reasons for no action having been taken on those. First, I should explain that, when prosecutors mark a case for no action they assign a code to provide an indication of the reason for their decision-making process. The terminology that I will use refers to the codes that prosecutors would use and record for particular no-action decisions. One of those seven cases was marked no action for the prosecutorial code "Not a crime"; another was due to there being "Insufficient admissible evidence"; four were coded "Further action disproportionate"; and one was marked "Other". Our codes allow some flexibility for prosecutors to account for cases in which prosecution is not in the public interest, but the reasons for that perhaps do not match the easily available codes. That is why we have the "Other" code.

The Convener: It would be helpful if you could write to the committee, summarising the information for the years since the 2012 act came into force, and including the information that you gave in response to Liam McArthur.

Anthony McGeehan: Certainly.

Liam Kerr (North East Scotland) (Con): Earlier, you talked about the Lord Advocate's guidelines, and ACC Higgins talked about specific songs. Some supporters have suggested that singing certain songs at football matches results in charges and prosecutions, but that the same songs can be sung at concert venues with impunity. Is that anomaly the reason that football fans have come to the view that they are being unfairly targeted and criminalised?

Assistant Chief Constable Higgins: I am not aware of such songs having been sung at any concerts. However, if that were reported to us, we would investigate and I am sure that we would report it to the procurator fiscal.

Liam Kerr: Of the 191 arrests that have been made from 4 million attendances, how many took place away from the ground, or the curtilage of the ground, such as in pubs or bars?

Assistant Chief Constable Higgins: The raw data that I have relate to arrests in the football stadia.

Liam Kerr: So all those arrests have taken place at the grounds. The 2012 act specifically extends the offence beyond the ground, does it not?

Assistant Chief Constable Higgins: It does. However, the 191 arrests are not 191 arrests under the 2012 act; that is the total number of arrests and includes offences such as common assault.

Liam Kerr: How many of the 191 are arrests under the 2012 act?

Assistant Chief Constable Higgins: I do not have that breakdown, although I can get it to you.

Anthony McGeehan: I might be able to assist on that point. I understand that perception, but I suggest that it is based on a false assumption, which is that the singing of a certain song would not constitute a criminal offence in any other context. However, in a different context, it may well be a breach of the peace or an offence in contravention of section 38 of the 2010 act.

Your second question was about statistical data on the locus of section 1 offences and the Scottish Government may well have that information. The Scottish Government produces annual research on the 2012 act and analyses the locus of particular offences, including the percentage of those offences that occur within and outwith football stadia. If that information would be of value to the committee, I suggest that you request it from our Scottish Government colleagues.

Liam Kerr: Thank you. I will come at it from the other side. Some stakeholders have argued that the provisions in section 1 of the 2012 act should

be extended to cover events such as parades. At present, what charges would be brought if the songs in support of terrorist organisations that we are talking about were in evidence at such events? Should the act be extended to cover such activities?

Assistant Chief Constable Higgins: Policing parades is a very challenging environment, regardless of the type of parade—loyalist or republican, they bring their own challenges. We arrest individuals for breach of the peace or section 38 offences and report them to the Crown Office.

I would need to give some thought to the issue of extending the provisions of the act to cover parades. There is no question but that it might be helpful. However, the police service often takes a fairly neutral view of legislation until we see how it is drafted, at which point we can give an operational perspective on how it might be applied in the real world. I will hold my own counsel until I see more detail on that suggestion.

Liam Kerr: You talked about the real world and I have a bit of a daft laddie question about that. What would you do if the entire stand broke out in offensive behaviour, by breaking into song?

Assistant Chief Constable Higgins: That frequently happens. We use the stadium closed-circuit television and we deploy police officers with cameras to film people. We then try to identify the main protagonists and arrest them.

Liam Kerr: There have been a number of appeals against convictions under the section 1 offence. How many of those appeals have been successful and on what grounds?

Anthony McGeehan: The COPFS does not hold specific data on the number of appeals in relation to the 2012 act or their outcomes. An accused person may appeal a variety of judicial decisions at a number of different stages in the criminal justice process. Our database is an operational one, which is designed to support the effective prosecution and investigation of crime. We do not hold a database or data on the number of appeals connected with the 2012 act, their nature or their outcome. If that data would be of use, a request for that data might be made to the justiciary office.

10:45

Liam Kerr: ACC Higgins talked earlier about the fans' clubs and the football clubs themselves stepping up in the past few years, and there are obviously UEFA and FIFA restrictions. What would be the practical impact of repealing the legislation?

Assistant Chief Constable Higgins: That is a subjective question, Mr Kerr. Nothing might happen. Equally, people might interpret a repeal as a lifting of perceived restrictions and revert to the behaviour that we saw in the 1980s and 1990s. I have gone on record as saying that some of the challenges in football, such as hate crime, are not football issues but issues for the whole country, although hate crime often manifests itself in a football environment. I cannot arrest my way out of changing hate crime and sectarianism in this country; a far wider approach is needed to challenging behaviour that is inappropriate. It just so happens that a lot of the inappropriate behaviour manifests itself in a football stadium, but that does not mean that the problem lies with football. The problem lies within wider Scottish society, because we still see offensive behaviour on the streets of Scotland on a Saturday night.

Operationally, I do not know what repeal of the 2012 act would do, but Police Scotland is absolutely committed to continuing to work with all multi-agency partners to address the scourge that is hate crime, no matter what form it takes, whether it is in a football stadium or on Sauchiehall Street on a Saturday night.

The Convener: Before we move to supplementary questions from Fulton MacGregor and Mary Fee, I want to ask about the non-recording of appeals. It would seem logical that, if the Crown Office and Procurator Fiscal Service was looking at its prosecution policy and found that 95 per cent of appeals—I know that that is unlikely—were on particular charges, it would want to determine why there were so many appeals. Is there a gap there that might help you to prosecute more effectively?

Anthony McGeehan: Our appeals unit monitors significant appeals and we consider the outcome of those appeals as they impact upon any prosecutorial policy. However, we do not record in a simple numerical database the number of appeals that relate to the 2012 act or the nature of those appeals.

The Convener: Would it be helpful to record that?

Anthony McGeehan: I would suggest that what is particularly helpful is identifying those appeals that have a particular impact on a particular area of the law, and our appeals unit does that. I am not convinced that a simple numerical volume of appeals would be particularly useful in indicating an area of the law or policy that requires consideration by the Crown Office. As I have indicated, an accused person can appeal at a variety of stages of the criminal justice process. That appeal might be in connection with an offence under the 2012 act, but the appeal might be limited to a decision by the sheriff to remand him or her in custody pending trial or pending sentence.

An appeal can be an appeal against conviction, against conviction and sentence, or against sentence, so a simple numerical tally of the number of appeals would not tell us very much about any particular area of the law. What would be significant are the appeals that offer particular direction to prosecutors, police officers and defence agents on significant areas of law. We monitor those and we amend, adapt and reflect upon our policies in light of those significant appeals.

The Convener: I understand that you analyse each appeal, but this is a wee bit like not being able to see the wood for the trees. Although the figure would be fairly meaningless in isolation, if you added it to your analytical data it might well be very helpful in starting to tease out that, for example, 95 per cent of charges were appealed at a certain stage. Further down, there might well be a core percentage of appeals that actually hit the policy's effectiveness, and I think that the figure, used in conjunction with the other information that you have, would be helpful in that respect. Does ACC Higgins have a view about this issue?

Assistant Chief Constable Higgins: I understand exactly Mr McGeehan's explanation about the variety of appeals and the reasons for them. I agree that a single figure would not actually tell us very much, but there would probably be merit in breaking it down further.

The Convener: It might be a useful tool. We talk consistently in the Parliament about the lack of recorded data and how we will never improve things if we do not have the full information. That is perhaps something to reflect on.

Fulton MacGregor: Mr McGeehan, may I ask you about the use of diversion schemes? Fans Against Criminalisation states in its written submission that a freedom of information request revealed that only two people had been offered diversion in relation to sectarian offences. Is that the case? Do you have any comments about why that is?

Anthony McGeehan: The evidence in relation to two persons being diverted resulted from a freedom of information request that an organisation made to the COPFS. That data reflects the information that was provided by the COPFS at that time. We can provide up-to-date diversion figures if that would be useful.

The overarching commentary that I would offer in that regard is that the COPFS always supports, in appropriate cases, interventions or diversion that address the causes of behaviour. I stress that that is our position in relation to appropriate cases, which are identified with reference to our published prosecution code. We look at the severity of the offence and then a variety of other factors to decide the appropriate outcome for the accused. Those factors might well include the accused person's history—his or her criminal record—and personal circumstances.

Another overarching observation that I would make is that Sacro diversion was extended to cover all hate crime only relatively recently. Previously, the Sacro diversion scheme related only to education on sectarian issues. Only a minority of section 1 offences that are reported to the COPFS qualify or are relevant for a sectarian diversion scheme. That informs the low diversion rate that Fulton MacGregor referred to.

The other tension for prosecutors is addressing offending behaviour both in the future and immediately. That tension was reflected in the 2015 academic study that was conducted by the University of Stirling. One of that study's recommendations—this is not specific to prosecutors—was that there should be an option for diversion and football banning orders to be combined, which would prevent offending both immediately and in the future. At present, that option is not available to prosecutors. If we think that a football banning order is appropriate to address an accused person's behaviour in the future, I am afraid that our only option is to initiate criminal proceedings.

Fulton MacGregor: What do you say to the criticism in the evidence that we have received that young men, perhaps with no previous criminal record, have been criminalised in particular through the 2012 act? Do you have a comment about that?

Anthony McGeehan: I have read the critique that the 2012 act focuses on young men. I suggest that the conclusion that the act focuses on young football fans is incorrect. A conclusion that an act focuses on young male persons in particular, or even on male persons in particular, might similarly be arrived at if we were to look at those persons who commit other types of criminal offences, such as sexual offences. If we did that, we would see that a significant proportion of people accused of sexual offences are male. In relation to the criminalisation of football fans, I would suggest that the question of whether an accused person is a football fan is irrelevant for the purposes of proving a case under the 2012 act.

I have read the critique that the act criminalises young males with no record of criminal offending, but if I can make this real—to borrow a phrase—last month, there was national press coverage of a conviction under the 2012 act in relation to homophobic behaviour that occurred at a Dundee match. I cannot locate the details in my papers but, essentially, the accused person was accused of addressing homophobic comments at a Dundee football player, and that accused person had a

significant criminal record involving a previous banning order and violent offences. I refute the suggestion that the act is used to target young males with no criminal record.

Fulton MacGregor: Just to finish off—

The Convener: This is some supplementary.

Fulton MacGregor: I am sorry, convener.

Do you support the use of diversion, where appropriate, and perhaps the expansion of the use of that disposal?

Anthony McGeehan: I would go further than that. Our case-marking instructions for prosecutors in relation to the 2012 act positively encourage prosecutors to consider diversion in appropriate cases. The issue is the identification of appropriate cases.

Mary Fee: A moment ago, ACC Higgins spoke about the behaviour that we are talking about being a wider issue in Scottish society—we do not see that behaviour only at football grounds. Has the increased police focus on the issue had any impact on the reduction of bigotry in wider society?

Assistant Chief Constable Higgins: I would like to think so. I think that we are one of a number of agencies that contribute to combating the scourge of sectarianism that affects this country, so the short answer is yes.

I do not think that we have had a particular focus on enforcing the act. We have policed games and applied the appropriate charge when we have arrested some people.

In response to Mr MacGregor's question about criminalising young men, I have a simple view. In the absence of the act, those same young men would have been arrested but they would have been charged with a different offence, with the exceptions that Anthony McGeehan outlined in relation to the gaps. In the absence of the act, someone who was arrested for singing an offensive song would almost certainly have been charged with a breach of the peace or a section 38 offence. I do not accept the argument that the act has criminalised young men. It has brought the issue to the forefront of people's minds, but those arrests would still have taken place in the absence of the act.

Ben Macpherson: Mr McGeehan, you referred earlier to section 6 of the 2012 act. One thing that is clear is that, if the act is repealed, that repeal will include section 6, which focuses on threatening communications. In your written evidence, you stated that the behaviour that is covered by section 6 does not have to be committed at a football match but that

"Section 6 has been used successfully to prosecute individuals who have made serious threats of violence against members of the public, including threats of murder, and individuals who have made threats towards Jewish, Muslim and Catholic communities designed to stir up hatred on the basis of religious grounds. It has also been used successfully to prosecute accused who have used social media to post threatening material designed to stir up religious hatred and which referenced the proscribed terrorist organisation ISIS."

Will you expand on your earlier comments about how important section 6 is to the criminal law and dealing with threatening communications? How might the repeal of section 6 leave prosecutors less able to secure convictions for such threatening communications?

11:00

Anthony McGeehan: I would describe section 6 as affording prosecutors three advantages. First, one of the pieces of logic behind section 6 was that it would address a debate in connection with the Communications Act 2003 and its applicability to the variety of ways in which electronic communications can be used by persons. The 2003 act relates to the sending of communications, and there have been questions and challenges to do with whether the variety of actions that an accused person might take on the internet constitute the sending of a communication as opposed to simply the creation of a forum, for example, or the posting of a blog. That was one of the doubts or grey areas that section 6 was designed to address.

The principal benefits of section 6 are in relation to its extraterritorial provisions, which allow prosecutors to address offending by Scottish residents when they are outwith Scotland. The provisions are designed for a Scottish audience. The offence has been used to address hate crime posted in those circumstances.

Section 6 also provides for greater sentencing powers than those in the 2003 act. As I illustrated, we have had a case in which an accused person posted comments that were supportive of a proscribed terrorist organisation—ISIS—and the view of the sentencer was that the severity of those actions should be reflected in a starting point of 24 months' imprisonment. That starting point for the sentencer would not have been available in the alternative charge under the 2003 act.

Ben Macpherson: Thank you. It is important that those advantages of section 6 are highlighted. For clarity, how many convictions have been secured under section 6 that were prosecuted on indictment?

Anthony McGeehan: We have figures for the number of convictions under section 6, but I do not have the data to hand for your latter point about

solemn convictions. I can secure that if it would be of benefit to the committee.

Ben Macpherson: I think that it would.

The Convener: Yes, thank you.

Ben Macpherson: I noted that Police Scotland's evidence says that the wording of the section 6 offence restricts Police Scotland's ability to bring charges in relation to such threatening communications. I know that you were reluctant earlier to comment on drafting and I appreciate that that might be the case here but, as the point has been raised, do you want to elaborate on that and the fact that section 6 does not give Police Scotland the scope that it could give to use the offence outside a football context?

Assistant Chief Constable Higgins: That is a debate for another time. The act in its current form serves a purpose. The reality is that we have few section 6 inquiries compared with the number of wider telecommunication inquiries that we undertake. I am happy to elaborate on that by way of written note.

Ben Macpherson: I would be grateful for that—thank you.

The Convener: I will take brief supplementary questions from Mairi Gougeon and Liam McArthur.

Mairi Gougeon (Angus North and Mearns) (SNP): I have a more substantial question to ask. Would you prefer me to do that now or shall I wait?

The Convener: We will go to Liam McArthur on this point first.

Liam McArthur: Following up the response that Mr McGeehan gave to Ben Macpherson, it seems from the evidence this morning that, should the act be repealed, the gaps relating to section 6 would be more significant than those relating to section 1 offences. With hindsight, was it a mistake to bring together offensive behaviour at football and threatening communications in a single bill? Should there have been two separate pieces of legislation, one to deal with a gap in the law and one to deal with what does not now appear to have been a gap?

Anthony McGeehan: I cannot comment on the wisdom of the parliamentary approach that was taken in the past. Many of the criticisms that are directed at the act would appear to be directed principally at section 1 as opposed to section 6. Section 6 does not appear to have attracted the same degree of attention or criticism.

Liam McArthur: The criticism came from external stakeholders. From your experience of the way in which the act is working, would you argue that section 6 on threatening communications has had effect, while section 1 has not had great effect in terms of prosecutions or plugged a gap in the law?

Anthony McGeehan: No, that would not be my position. My position would be that both section 1 and section 6 have utilitarian value to prosecutors. There are alternatives to both section 1 and section 6. Some of the deficiencies in the alternatives apply equally to section 1 and section 6. As I indicated, both section 1 and section 6 have an extraterritorial power that is not available with any of the alternatives. In relation to section 1, alternatives such as breach of the peace and section 38 of the 2010 act are available. In relation to section 6, there is an alternative in the Communications Act 2003.

The distinction is that the alternatives to section 1 have the advantage that there is no disparity in sentencing powers. Such a disparity exists between the alternatives to section 6 and section 6 as it stands.

The Convener: Could existing legislation therefore be amended so that extraterritorial powers could be incorporated?

Anthony McGeehan: It could be amended, subject to parliamentary scrutiny and authority, but one of the principal alternatives offered for section 1 is breach of the peace, which is based on common law as opposed to statute.

The Convener: Are you saying that you do not see a way round that and that there is no other law that would cover it?

Anthony McGeehan: There is no immediate or obvious way round it.

Mairi Gougeon: Lord Bracadale is currently undertaking a review of hate crime legislation in Scotland. Do you think that it would be beneficial to await the outcome of that before proceeding with the potential repeal of the 2012 act?

Anthony McGeehan: I chose not to contribute in response to Mr Kerr's question about extending the act to parades, because my assessment was that, in light of Lord Bracadale's review, it would be premature to conclude that the act be extended to parades only. That review is going further than looking simply at the 2012 act. It is considering a wider range of issues, including the extension of hate crime to other protected characteristics. I would await the outcome of Lord Bracadale's review before offering any opinion, for example in relation to the extension of the 2012 act to parades.

Mairi Gougeon: I want to consider the wider impact of repeal of the 2012 act. I want to focus on some of the issues that have been raised in other evidence to the committee, in particular from the Scottish Women's Convention. The convention stated:

"Arguments for the use of breach of the peace do not send a strong enough message of condemnation in regards to the offensive behaviour that can occur at football events. ... This form of abuse tends to be highly sexualised and threatening when aimed at women. It is not only highly offensive but can lead directly to gendered abuse including intimidation and rape threats."

Do you agree with that assertion on the limitations of breach of the peace and the comments on the message that it sends? Do you think that the 2012 act is able to tackle that kind of abuse and behaviour in a more targeted way?

Assistant Chief Constable Higgins: The 2012 act certainly allows us to target behaviour as you have described. I agree that using breach of the peace is almost taking a scatter-gun approach rather than limiting. When I joined the police, breach of the peace could be applied to pretty much any set of circumstances, and that left my colleagues in the Crown Office with head-scratching moments in which to consider how they would mark a breach of the peace case. With the 2012 act, a very specific course of conduct is involved. I therefore agree with your comments.

Anthony McGeehan: I absolutely agree that legislation can be used to send a message. An example of legislation that has been used for that purpose is the Emergency Workers (Scotland) Act 2005. It could be argued that the offences that that act describes were already addressed by the common law—by breach of the peace and assault, for example—but it sent a message about the way in which the law would treat offences against emergency workers. It is an entirely appropriate function of legislation to send such a societal message.

Mairi Gougeon: The Scottish Women's Convention also said in its evidence:

"Women are often the victims of sectarianism and, as a result, often avoid public spaces on match day due to fear. This particular type of behaviour is often linked to violence against women and can deepen the inequality between the sexes."

Do you see a specific link between the type of behaviour that is seen on match days and violence against women?

Assistant Chief Constable Higgins: I must confess that I have not looked specifically at that issue. We have monitored the level of domestic abuse incidents that occur after old firm matches, for example. I do not have any of the statistics with me, but the general pattern is that domestic abuse increases then. That can be because of a combination of factors, but the 2012 act allows us to target that specific behaviour, and I hope that that can have a consequential impact on what happens afterwards.

Maurice Corry: Mr McGeehan, on the subject of post-repeal convictions, I understand that you said that the Crown Office did not comment on that aspect of the bill in its written submission. Do you have any concerns about that aspect of the bill, as it is drafted?

Anthony McGeehan: The bill proposes a slightly unusual approach to repeal. There is almost a guillotine approach at the date of repeal for all live prosecutions. That is not the traditional approach, which is that new prosecutions would not be possible post-repeal but live prosecutions would not be affected.

I understand that the policy behind the approach in the bill is to prevent injustice, but only a minority of the charges and prosecutions relate to offensive behaviour under section 1(2)(e) of the 2012 act, which appears to be the subject of the most scrutiny. The remaining charges under section 1(2)(a) to section 1(2)(d) relate to behaviour such as hate crime. I ask whether a different type of injustice would be created if those prosecutions were brought to an end as a result of the approach that is adopted to repeal in the bill.

Maurice Corry: Thank you.

George Adam (Paisley) (SNP): Good morning. I would like to go through some points.

I am a football fan, and I declare an interest as convener of St Mirren Independent Supporters Association. I regularly go to football matches, and I know what it is like when St Mirren play Morton. That is the big game in Renfrewshire and everybody gets really passionate about it.

The Convener: You should be succinct, Mr Adam.

George Adam: The question is, when is the line crossed? Does the act give you powers that you did not have before? Where is the line? When does the competitiveness of two towns and two teams become offensive behaviour? Has that line helped you?

Assistant Chief Constable Higgins: That is a good question. Police officers make judgment calls all the time, whether it is in a football environment or on Sauchiehall Street on a Saturday night. When we see two people arguing, we have to decide whether to split them up, give them a warning and send them home or to take more punitive action.

11:15

One of the things that we train our officers to do from the moment that they join the police is to apply discretion where appropriate. It is when behaviour gets to the tipping point of becoming offensive that we need to take action, and that depends on the circumstances of each individual match.

I accept your point that football stadiums are excitable, high-octane places that are full of banter. However, there is a difference between banter between rival sets of football fans and chants and songs that are designed to enflame, incite and offend.

George Adam: Is it not the whole point of the act that there are certain key songs, phrases and chants that cross that line and become totally unacceptable?

Assistant Chief Constable Higgins: The act does not create that—it is the individuals undertaking the behaviour who do. We apply the provisions of the act to deal with it.

George Adam: Mr McGeehan, you mentioned earlier that if the act were to be repealed, you would have to look at other options to work out how to deal with that. We have received various bits of evidence on that. Victim Support Scotland said that it is opposed to the repeal of the 2012 act

"unless there is a viable alternative to support victims of threatening communication and religious prejudice".

The Scottish Council of Jewish Communities has said:

"we are concerned that repeal of the Offensive Behaviour at Football and Threatening Communications Act would send exactly the wrong message."

Is it not the case that, if we repeal the act, not only would it be difficult for the Crown Office, there would be a need for an act that, as we can see from those groups in our communities—

The Convener: We have covered that, Mr Adam. That question has already been asked. Let us move on.

I will hand over to the member in charge of the bill to ask any questions.

James Kelly (Glasgow) (Lab): Thank you, convener. I have one point for ACC Higgins and three for Mr McGeehan.

ACC Higgins, Mary Fee raised a concern about overzealous policing of the act, and you gave a response to that. One of my concerns is that people who are prosecuted under the act are pursued—to put it charitably—overzealously. I will give an example: first-time offenders are often brought to the police station and detained overnight. That is not normal for first-time offenders—first-time offenders who are charged with much more serious crimes are usually freed until they appear at court.

After the cup final, you published the CCTV images of fans in the park who were alleged to have been involved in criminal activity. I know of a case where a young Hibs fan voluntarily went with his lawyer to a police station after he was captured on CCTV. He had no previous convictions or involvement with the police, but he was detained overnight before appearing in court. Why is that the case for people who are brought to police stations and charged under the act?

Assistant Chief Constable Higgins: It depends on the nature of the offence that he was charged with, Mr Kelly. At that cup final, we saw violence and disorder the like of which we have not seen for more than 30 years. Anyone who engaged in that was engaged in the highest level of disorder seen in the country for more than 30 years.

One of the reasons why we would put people to court is to seek bail conditions, which the court will impose and which might, for example, limit their ability to attend future football matches. However, without the specifics of that individual case, I can comment only in very general terms.

James Kelly: I gave that as an example. I can tell you that, in the meetings that I have held around the country, there have been numerous such examples. It seems to be a regular practice for people who are charged under the act to be detained on an overnight curfew.

Assistant Chief Constable Higgins: It is not an overnight curfew, sir—they are just detained in custody to appear the next lawful day. It is a practice that we employ and I make no apologies for it because, when we are dealing with the worst type of hate crime, we want to put control measures around individuals until the courts can decide their guilt or innocence. We hope that that will prevent them from engaging in any more such activity until that time.

In the Criminal Justice (Scotland) Act 2016, which is due to go live in January of next year, there is a presumption of liberation. Just now, we do a custodial test on any person who comes into police custody to decide whether to release them, hold them in custody or release them on an undertaking to appear. That is going to change quite dramatically in January, because the presumption will become that, for all but the most exceptional, high-end cases, anyone coming into police custody will be released.

James Kelly: I want to move on and ask Mr McGeehan about whether the law is effective. I am sure that you will have read the Law Society of Scotland's submission. It outlines existing provisions other than the 2012 act that could be used to prosecute. It also points out that the definitions that are used in the act have led to some confusion, and highlights that it feels that there will continue to be appeals because of that confusion. What is your response to that?

Anthony McGeehan: In relation to availability of other offences to address the behaviour in question, that reflects the COPFS position and it

reflects the Lord Advocate's guidelines: we recognise that it might be possible to address the behaviour in question as, for example, a breach of the peace or as a contravention of section 38 of the 2010 act.

Our position is that use of the 2012 act ensures that the behaviour can more securely be addressed and prosecution not be subject to the type of challenges that existed before the 2012 act. When the bill was first being debated by Parliament, the then Lord Advocate referred to cases in which there had been successful defence arguments that, for example, racist or homophobic abuse did not constitute a breach of the peace because of the peculiar circumstances of football and the potential that sections of a crowd might well be inured to that type of offending behaviour.

James Kelly: What about the Law Society's specific point that if the 2012 act continues to be in force there will continue to be appeals because of confusion over the definitions in the act?

Anthony McGeehan: There will continue to be appeals in relation to many pieces of legislation, which is entirely proper as part of a well-functioning and balanced criminal justice system in which laws are tested, clarified and applied by the courts. I can give examples. We experienced a similar series of cases in relation to drink-driving until the courts clarified the law in relation to that. Offensive weapons legislation is another example. The 2012 act is not unique or unusual in respect of its scrutiny by the courts or its consideration by the appeal courts.

James Kelly: I will move on to section 6, on which you have outlined your position. How many prosecutions and convictions have there been under section 6 since the 2012 act was commenced?

Anthony McGeehan: That information is published by the Scottish Government. If the committee will bear with me, I will find the relevant publication that confirms the data.

The Convener: If it helps, it can be sent to us, if it is not immediately to hand.

Anthony McGeehan: Yes—I will forward the information. The Scottish Government has published data on proceedings and convictions in relation to section 1 and section 6 for the duration of the 2012 act's having been in force.

James Kelly: If it is helpful to the committee, the information is actually on page 11 of the financial memorandum to the bill: only 17 prosecutions have been secured under section 6 during the period in which the 2012 act has been in force.

Is the threshold in the act so high that it is difficult to secure convictions under section 6, as the police and other respondents have noted in their submissions, and is that evidenced by the fact that there have been only 17 convictions?

Anthony McGeehan: I would not draw from the number of convictions the conclusion that there is a particular difficulty in connection with section 6. As I have said, section 6 provides to prosecutors a power and a tool that would not otherwise be available in relation to extra-territorial activity and to offending that might merit a solemn sentence.

James Kelly: Threatening communications have grown over the past five years, particularly in relation to online activity. Surely the statistics—only 17 prosecutions—indicate that both police and prosecutors do not have confidence in the legislation to secure convictions?

Anthony McGeehan: I would not draw the conclusion that prosecutors do not have any confidence in section 6.

James Kelly: Prosecutors are obviously not using the legislation.

Anthony McGeehan: They are using it in a limited number of cases, where it is the appropriate charge, such as when there is an extra-territorial element that cannot be addressed through any other legislative tool.

James Kelly: I will move on to diversion schemes, which were raised by Fulton MacGregor. The latest statistics show that 31 per cent of convictions relate to under-20s. Is that a desirable outcome of Scottish Government justice policy?

Anthony McGeehan: I am an independent public prosecutor. I cannot comment on Scottish Government policy.

The Convener: I think that Mr Kelly's question would be for the minister.

James Kelly: In relation to diversion schemes, you said that the casework instructions for the act are very specific in setting out when diversion should be used. We see from the evidence that we discussed earlier that diversion has happened in only two cases. Why is that?

Anthony McGeehan: The evidence is not that diversion has happened in only two cases. The evidence that was referred to was a response to a freedom of information request in September 2016. I have offered to obtain up-to-date information on diversion.

I have also mentioned possible reasons for the low number of diversions, which include the fact that the diversion scheme was previously focused on sectarian behaviour and did not reflect the wide spectrum of offending behaviour that is addressed by the 2012 act.

The casework instructions encourage prosecutors to use diversion in appropriate cases; a diversion may not be appropriate because of, for example, the accused's record of offending behaviour, or the risk that the accused will commit further offences unless action such as a football banning order is taken.

It might also be suggested that diversion not being used reflects a proportionate approach by the police: we would normally expect to use diversion in offences at the lower end of the offending spectrum. If those offences are being addressed by the police through their existing powers—for example, through application of fixed penalties—we might well see low levels of diversion by prosecutors.

James Kelly: Just to be clear, was the information that was published in response to the FOI request in September 2016 accurate at that time?

Anthony McGeehan: Yes—that information was accurate.

The Convener: We will conclude our questions soon. Mr McGeehan mentioned that it is not unusual for new offences to cause confusion and that the courts usually sort that out. However, we have heard from numerous sheriffs that the legislation is confusing and flawed, so it seems that the courts are not sorting the situation out.

Anthony McGeehan: On responses from sheriffs, I refer to the 2015 academic survey, which included interviews with sheriffs and indicated among them a more diverse range of opinions about the 2012 act and its value.

The Convener: Does not that show, at the very least, that there are diverse opinions among the judiciary, which cannot be welcome or help to ease the confusion?

Anthony McGeehan: I would not conclude from there being a diverse range of opinions among the judiciary that the legislation is wrong. I suggest that a diverse range of opinions is healthy.

The Convener: If opinions are diverse and some are diametrically opposed, that is not healthy, because we would have a polarisation of views.

Anthony McGeehan: A diverse range of opinions is not unique and specific to the 2012 act.

The Convener: What is your answer on polarisation of views?

Anthony McGeehan: I cannot speak for the judiciary and the range of their opinions and whether they are polarised in relation to the 2012 act, or to other statutes.

The Convener: In principle, if there is confusion, that cannot be a good place to be. That is what I am trying to get at.

Anthony McGeehan: I accept that consensus about a wrong that needs to be addressed would be a good thing.

The Convener: That concludes our questioning. I thank the witnesses, and I suspend the meeting to allow a change of panel.

11:31

Meeting suspended.

11:36

On resuming—

The Convener: I welcome our second panel. Jeanette Findlay and Paul Quigley are from Fans Against Criminalisation; Simon Barrow and Paul Goodwin are the chair and chief executive of the Scottish Football Supporters Association; and Andrew Jenkin is head of Supporters Direct Scotland. I thank all the witnesses for their written submissions; it is tremendously helpful to the committee to be able to see submissions in advance of our evidence sessions.

We move straight to questions.

Rona Mackay: We heard from the previous panel that pre-existing legislation would not be sufficient to deal with some of the behaviour that falls within the scope of the 2012 act—in particular, I refer to offences under section 6. What is your view on that? Does it concern you that a gap would be left?

Jeanette Findlay (Fans Against Criminalisation): What you have heard this morning conflicts with the submission from the Law Society of Scotland, which takes the view that there would be no gap in the law. I refer members to the evidence that you have just heard, when ACC Higgins said that, in the absence of the 2012 act, young men would have been arrested and charged with breach of the peace. It does not appear to us that—

Rona Mackay: I am talking specifically about section 6, not about breach of the peace.

Jeanette Findlay: As you have already heard, section 6 is rarely used.

Rona Mackay: How would you bridge the gap that would allow people to send threatening communications? Would that gap be all right with you?

Jeanette Findlay: It is not the role of fans' organisations to determine how a legislature deals with communications legislation.

Rona Mackay: I understand that.

Jeanette Findlay: If there needed to be such legislation, it should not have been attached to something that relates only to football fans. I accept that section 6 does not relate only to football fans, but it is because of the whole muddled original drafting of the legislation that section 1 draws up a list of offences that apply only in the context of a regulated football match, while section 6 concerns an entirely separate matter that applies to everybody and is rarely used. It seems to me that there was a problem with the original drafting, and that the issue could be looked at and corrected after the 2012 act is repealed, which is what we hope will happen.

Rona Mackay: Would anyone else like to comment?

Simon Barrow (Scottish Football Supporters Association): The question illustrates the importance of considering the issue in the context of Lord Bracadale's review of hate crime legislation. One of our concerns relates to the consideration of that wider context.

The Scottish Football Supporters Association has not done a specific survey on that issue, but we receive feedback that shows that there is concern about what appears to be the targeting of football fans in particular. The issue needs to be addressed in relation to the wider review. Obviously, it is important that one considers how such behaviour is dealt with. Football fans do not want to see that behaviour. In Scottish criminal law, there are currently statutory provisions based on race, religion, disability and so on. We do not claim legal expertise with regard to the question of how that fits together, but we want it to be addressed.

Andrew Jenkin (Supporters Direct Scotland): Although we do not have any research on section 6, as it does not concern only football supporters, we have research on supporters' views on section 1. That shows that 84 per cent of supporters do not believe that any conduct that is currently subject—

Rona Mackay: We will go on to that later—my question was specifically about section 6.

Mr Goodwin, do you have any comments?

Paul Goodwin (Scottish Football Supporters Association): No.

Rona Mackay: Do you think that behaviour at football matches has changed since the introduction of the 2012 act? If so, in what way? Has it made your experience of attending football matches more or less enjoyable?

Paul Quigley (Fans Against Criminalisation): Assistant Chief Constable Higgins has remarked in the past that there has been an improvement over the past five years. However, my understanding is that he has no substantive basis for that view. We have experienced what has happened from the fans' point of view. Obviously, I am not quite old enough to have experienced football in the 1960s, 1970s and 1980s, but I accept that some types of behaviour, such as racism and sectarianism, were common in football, just as they were also accepted by society at that time. Football does not operate in a bubble; it reflects society. As those attitudes became less acceptable in society, so they became less acceptable in football.

In the past five years, we have not seen an improvement in terms of the behaviour of fans or the lessening of the singing of certain songs and so on. What we have seen is a breakdown in the relationship between fans and the police. That has been caused by this legislation.

Rona Mackay: That is not quite what we heard from Assistant Chief Constable Higgins, but I accept that that is your view.

Simon Barrow: I have been following Scottish football for 47 years. I am a season-ticket holder at Dumbarton and, over the past five years, I have been to all but four of the 42 professional grounds in Scotland, as well as to junior football grounds.

The answer to the question that Rona Mackay asks depends on the context in which you operate. At Dumbarton, we occasionally see a police officer. There have been some incidents that have needed dealing with when, in recent seasons, we have had larger clubs there, but the experience will be quite different in different parts of football. You have heard one example that is based on the experience of some of the larger clubs. I spoke recently to a woman who is a long-term fan of Hearts, who felt that things had improved since the legislation had come into effect because it had created an atmosphere in which people were able to challenge abuse, and that women and families in particular felt more welcome. On the other hand, I had a conversation with someone who was a fan of another club who had diametrically opposed views and said that it had created an atmosphere in which there was greater suspicion between police and fans. I think that it is a mixed picture.

Rona Mackay: Before I bring someone else in, I put it to the panel in general that Stonewall Scotland, the Equality Network, Victim Support and women's organisations fear the repeal of the 2012 act—they do not want it to be repealed. Does that concern you?

Simon Barrow: It would certainly concern many football fans if sexist and racist abuse, sectarianism, hate speech of any kind, homophobia and so on were tolerated in football,

and fans are actively working to combat those tendencies in some sections of our game and some sections of wider society. The question of the efficacy of the 2012 act is, obviously, a disputed one, from that point of view.

We also recognise that, on the other hand, lawyers, Liberty and other organisations are concerned about the act's effect on free speech. There are conflicting views about it.

11:45

The key point that we want to make is that, whatever happens moving forward, it is vital that we in football take greater responsibility for the atmosphere that exists, for the sense of community, for the way in which we address disorder and so on. The Scottish Football Supporters Association has pointed out the need for policing by community consent, drawing together community groups, women's groups, fans' groups along with stewarding organisations and the police, with regard to what happens in particular situations. As I have said, the picture varies widely across Scottish football. However, we want to find solutions that are based on what happens on the ground and relate that to the provisions in hate crime legislation and how that legislation is dealt with by the police, the courts and so on.

Jeanette Findlay: If the situation that the organisations mentioned by Rona Mackay describe existed, that would be very concerning. I have read the submissions from those organisations in some detail and I have kept track of statistics over the years, and if there was any basis to those concerns, I would be concerned as well. However, I think that you will find that for the entire period since the legislation's introduction, there have been two charges related to homophobia and none related to misogyny or sexism—I do not know what such an offence would be called.

All those organisations conceded in their submissions that the 2012 act was not being used in relation to those protected characteristics. Clearly, there is a problem more widely in Scottish society that affects those groups, but I do not know that any evidence has been presented that the problem is particularly related to football. If there is a problem in that sense, the 2012 act is not dealing with it.

Rona Mackay: I am not sure how worth while it is to look at things retrospectively or whether you are implying that there is no basis to those organisations' concerns. They are clearly concerned and there must be reasons for that. The on-going situation might be that when the people concerned go to football games, they do not feel safe or enjoy the experience, and the organisations feel that the repeal of the 2012 act would be additionally detrimental.

Jeanette Findlay: I do not know whether that is the case.

Rona Mackay: That is their submission.

Jeanette Findlay: I do not know whether that reflects the situation more widely, because I was unable to establish that it did. 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. We examined the evidence, but we were unable to establish any basis for it.

Rona Mackay: Would not you accept it as a general principle that—

Jeanette Findlay: Would I accept as a general principle that women should not be frightened to go to football games? Yes.

Rona Mackay: No. Those organisations fear that, if the 2012 act is repealed, certain groups will feel less protected.

Jeanette Findlay: I know that some organisations said that in their written submissions, but I am not clear what lies behind that or how much evidence there is to support it.

Liam Kerr: ACC Higgins was very clear that behaviour had changed, and I think that Mr Barrow would agree with that. However, is there any evidence from the groups that the witnesses represent that behaviour changed in response to the 2012 act? Flowing from that, ACC Higgins said that the 2012 act puts the issue at the front of the public mind. Have you any idea how many fans know about the 2012 act and have moderated their behaviour because of it?

Paul Goodwin: We are just football fans and not lawyers or experts. We just want to go and watch a game of football. I am old enough to remember football in the bad times, not just in Scotland but in England, where I lived and worked. There has been a dramatic change, and society has done things towards that end. I stood with my father and grandfather at football games shouting things that would be unacceptable in this day and age. As we move on, the different generations have taken that on board. That has been supplemented by important campaigns such as show racism the red card.

Interestingly, in relation to homophobia, Scotland was one of the few countries that, until this football season, did not promote the rainbow laces campaign. It has been running in England

for seven years, but it has taken until now for football itself to pick that up and run with it.

There are always going to be such issues around football. A lot of it comes down to football as an industry and a business looking at the issues. We are the loyal customers of that industry, but we are not the experts on the legal framework. The football clubs and the football authorities have to take responsibility and push the appropriate messages throughout the game to help and support the fans.

Liam Kerr: But did behaviour get better because of the 2012 act?

Paul Goodwin: No. It is immaterial.

Liam Kerr: It is immaterial?

Paul Goodwin: It is immaterial.

Liam Kerr: Do all the witnesses share that view?

Andrew Jenkin: As part of our research, in the national supporters survey this year, we asked whether the offensive behaviour provisions had been effective in preventing unacceptable conduct. Of the 12,000 people who filled in the survey, 71 per cent felt that the 2012 act was not effective in that way.

Liam Kerr: My second question was whether football fans know about the legislation.

Andrew Jenkin: As in any part of society, there are people who are more informed about certain issues than others. In general, a lot of supporters are informed and know the framework well. A lot have replied to surveys and consultations on the matter.

Jeanette Findlay: Can I come back to what Liam Kerr said in asking his question? There seemed to be an assumption that there was very poor behaviour prior to the 2012 act, and that behaviour has since improved. That was certainly the evidence that the committee heard from ACC Higgins.

Liam Kerr: I did not mean to imply that.

Jeanette Findlay: In fact, there is very little evidence to suggest that there is a behaviour problem at Scottish football grounds. There has not been a problem for a very long time. For instance, if we look at religious aggravation charges—the charges that should have been used in cases of sectarianism prior to the 2012 act—we can see that, in the two years leading up to the legislation's introduction, the proportions of such offences that took place at football grounds were 12.9 per cent and 7.6 per cent respectively. The overwhelming majority of problems with sectarian-type offences—which are just one type of offence—took place somewhere other than at football grounds.

Therefore, when we are asked whether behaviour has improved, our response is that, clearly, the long-term trend since the 1980s shows that it has. However, there was not really a problem with behaviour at Scottish football grounds in 2011—as the evidence suggests. There was very little disorder, violence or any other such behaviour. Scottish football grounds are extremely safe places to be.

The Convener: Fulton MacGregor has a supplementary question. Please be brief.

Fulton MacGregor: Convener, perhaps I could have this question in place of my later one, which I think will be covered by others. This might be a good place to come in.

As the panel members might have heard if they were in the room when our earlier panel gave evidence, legislation is also able to send out a message. If the repeal of the 2012 act were to go ahead, what message does the panel think would be sent out to fans, and to society generally? I will give an example. Last week, the whole Parliament—every party—agreed to the general principles of the Domestic Abuse (Scotland) Bill at stage 1. Part of that is about sending out a message that domestic abuse is not acceptable in our society.

Simon Barrow: I will respond to that. I am not a lawyer, but I happen to be married to one. There are a variety of questions on the extent to which the law is there to send out messages or actually to provide an effective framework for dealing with disorder. Many fans feel that the legislation targets them or is directed towards them unfairly, so one of the signals that they might get from repeal is that that is not so much the case.

If I can relate your question to the previous question, what makes fans feel safe at football is the way in which clubs and fan groups deal with the whole situation. That is where the primary messages are. For example, at my club, I have heard chants or comments that are sexist or homophobic. In response, our supporters trust identifies who is doing such things, and tries to take them into the community suite, have a chat with them and introduce them to someone to whom that behaviour is threatening or offensive—in other words, it takes active responsibility for what goes on. Therefore the primary messages that fans pick up are ones about how things are dealt with on the ground, in the local situation. As to fans' responses to the presence or absence of legislation, it is difficult to draw definite conclusions either way.

Paul Quigley: May I come in on that? It has been established this morning that there would be

no gap in the law in terms of hate crimes such as racism, sectarianism and homophobia. Those types of behaviour would still be illegal. Our group, which campaigns against the 2012 act, and other prominent critics of the legislation criticise it because it is, by definition, discriminatory. It creates an offence that applies only to football fans. I do not think that anyone defends the types of behaviour that we have already covered, which would still be illegal. Repealing the bill would send the message that football fans will no longer unfairly and unduly be criminalised as they have been under the 2012 act, in a specific way that people in wider society are not.

Fulton MacGregor: Is it therefore fair to say that you are opposed not so much to the 2012 act but to the fact that it relates to football? Theoretically speaking, if the act were extended, as the earlier panel mentioned, to cover offensive behaviour at other sports grounds and other venues—that is just an example off the top of my head—would you be comfortable with that?

Paul Quigley: No. Our organisation began around the summer of 2011, when an emergency bill was proposed following the so-called shame game earlier that year. Our opposition to the 2012 act has not changed all that much. We have two primary reasons for opposing it. The first is that it applies only to football fans, as I have said, and we believe that laws should apply universally. The second is that we think that creating an offence that criminalises something as subjective as offensiveness represents a broader danger to freedom of speech and freedom of expression. On that basis, we would oppose legislation that, for example, criminalised certain offensive behaviours outwith hate crime in other arenas.

Fulton MacGregor: So the panel—panel members are obviously particularly well informed—is saying that, if the 2012 act were repealed, there would not be a risk of fans in stadiums up and down the country getting the message from the publicity about that outcome that it is okay to sing sectarian songs.

The Convener: I think that you might be straying into another line of questioning, Mr MacGregor. If you do not mind, we will move on.

Fulton MacGregor: Apologies, convener. I am willing to sacrifice my later question, too, because it has been covered.

The Convener: Okay. Rona Mackay has a brief supplementary.

Rona Mackay: To clarify Fulton MacGregor's question, would the panel be in favour of the 2012 act if the words "at Football" were taken out of its title and it was called the "Offensive Behaviour and Threatening Communications (Scotland) Act"?

Paul Quigley: No.

Paul Goodwin: That would definitely be a starting point in trying to restore football fans' faith. A lot of the problems with the 2012 act are down to the horrific public relations right from the start, when we talked about emergency legislation coming in. Fans of many clubs do not understand why the legislation was introduced in the first place, they do not understand the benefit of it, and they feel—rightly or wrongly—targeted.

We state in our written submission that we are part of Football Supporters Europe, and our European colleagues were surprised by the act. In countries such as Poland, where there is horrific violence and there are issues with flares and all sorts of other things—Turkey is another example—there is no specific legislation. This is the only bit of legislation that we can find globally that is so targeted at football fans. Is that right for our society in Scotland?

In terms of the principles of some of the things that the act tries to do in other areas, however, we would of course be happy for it to be called whatever it needed to be called.

Stewart Stevenson (Banffshire and Buchan Coast) (SNP): I am not speaking much because my voice is not working very well.

Mr Quigley, I think that I heard you suggest that behaviours are caught by the 2012 act that should not be caught by any legislation. Can you give me an example of a behaviour that is caught by the current legislation that you do not believe should be legislated on in any context?

Paul Quigley: Of course. We have not only campaigned against the 2012 act but offered help and support to people who have been charged under it.

Stewart Stevenson: Forgive me—I want to focus narrowly, because the convener has given me only a little time.

Paul Quigley: That is exactly what I am getting to. A Rangers fan was arrested for holding a banner that simply said, "Axe the act." A Motherwell fan was arrested, held in Greenock prison for four days and then convicted of singing a song that simply included profanity about a rival team. I do not think that that is worthy of a criminal conviction—it is not proportionate.

12:00

Stewart Stevenson: My precise point is that you are saying that that should not be criminalised in any context, whether it occurs at a football match or elsewhere. I just want to be clear about what you are saying.

Paul Quigley: We are talking about singing a song, which is the type of behaviour that goes on at a football match. People do not typically walk down the street and sing a song that includes profanity—that would be slightly different. In the context of a football match, I do not think that such behaviours should be criminalised.

Maurice Corry: Will Mr Barrow or Mr Goodwin elaborate on what the SFSA means by "divisions"? How do you see them being overcome?

Simon Barrow: I am sorry—I am not quite sure what you mean by divisions.

Maurice Corry: Your submission talks about divisions.

Simon Barrow: What part of the submission are you referring to?

The Convener: Perhaps I can help. The submission says:

"There are already too many divisions in the game we love and something requires to put in place to show the 'majority' that we understand the problem and work together to resolve it."

Simon Barrow: That was not our submission, so it is a little difficult to—

The Convener: I think that it was from Mr Goodwin, and both of you are here representing the SFSA. Perhaps the question is better directed to Mr Goodwin.

Paul Goodwin: I am sorry—I do not have the submission in front of me. Obviously, there are divisions. It is in the nature of football that we are divided by our loyalties—the committee has heard about divisions between rival fans.

From the top of the game, we are in a period of angst. Fans' representations have generally been ignored for many years—for many seasons. We do not have a route to have a say in the game. That is not just about us; it applies to the holy trinity, as Bill Shankly once called it, of the players, the manager and the supporters. According to him, nothing else in football matters.

Sadly for our game, this is one of the rare occasions when we get a chance to express our opinions. Our opinions tend to be treated in a vacuum, but they vary. As the game changes and becomes more global and corporate—it is a different environment now—the big division in the game is that the communities and societies that many clubs represented beautifully over the years have changed. That may be what the reference to divisions means.

Maurice Corry: Would repealing the act contribute to overcoming those divisions?

Paul Goodwin: I do not think that it is connected.

Simon Barrow: I apologise for the distinction between a group submission and an individual submission.

One thing that we have done recently—we will publish the results next month—is the first benchmarking survey on governance in Scottish football, which looks at the views on how the game is run among fans, players, officials and others with a stakeholder interest in the game. That will enable us to begin to look at the differences of opinion on a variety of issues. That is how we see things moving forward.

As for divisions in relation to the review of the act, we are conscious in presenting our evidence to the committee that fans have different opinions. According to our research, the great majority of fans have severe questions about or are opposed to the act; others are concerned about the issues that the act is intended to address. We acknowledge that the act's intention is good. The behaviours need to be challenged, and fans have to be central to doing that.

Ben Macpherson: Like all of you, I love football. When growing up, I played it a lot, to quite a high level, and I have been to games across Scotland—from Edinburgh derbies to old firm matches and lower league games.

What I find difficult about the comments that we have heard so far from Jeanette Findlay and Paul Quigley in particular is that I do not know what behaviour you want to carry out that the act is preventing you from doing. What are the obstructions to you being fans, supporting a club, participating in the beautiful game and being part of the experience in a football stadium? What does the act prohibit?

The Convener: We will come on to that later.

Ben Macpherson: The questions are connected to the current line of questioning.

Jeanette Findlay: I am happy to reply. The point that you misunderstand is that the behaviour that is prevented is any behaviour that any police officer regards as being potentially offensive to a person who might not be there or might not ever know about it. That is sufficient to bring a charge against someone. As we have heard this morning, such a case is almost always prosecuted by the Crown Office. That requires people to attend court on three or more occasions—sometimes considerably more—over long periods. The process lasts longer than normal, as the University of Stirling research commissioned by the Scottish Government found.

My concern is that someone could be doing anything that a police officer might consider to be offensive. We have already heard that police officers have to be trained and educated about

what might be offensive. It should raise alarm bells that police officers have to be trained to discover what might be offensive. That is the problem.

I am not prevented from doing anything that I want to do when I go to a football match. However, I see young men, by and large, being charged—they are not necessarily being convicted, because the conviction rate is low—and being put through all that disruption for doing things that should not be a criminal offence in a civilised modern democracy.

Ben Macpherson: When the act catches racism, sexism, homophobia and sectarian abuse, are you supportive of that?

Jeanette Findlay: It rarely does.

Ben Macpherson: But are you supportive of that when—

Jeanette Findlay: I am sorry, but that is insulting. It rarely captures those things.

Ben Macpherson: But when it does, are you—

Jeanette Findlay: Look at the statistics.

The Convener: Please allow Ben Macpherson to complete his question. You will then get a full opportunity to answer it.

Ben Macpherson: When the act addresses the fact that there are flags, banners, songs and chants in support of terrorist organisations, are you supportive of that?

Jeanette Findlay: The question that you are asking me is whether I like sectarianism, hate crime and bigotry. That is what you have just asked me. No, I do not—I make that clear.

Ben Macpherson: I am not asking—

Jeanette Findlay: I am telling you that the legislation does not address those things. This morning you heard evidence that the diversion scheme does not work because it is aimed only at sectarianism; it captured only two people in the whole first year. You have heard that sectarianism is the issue in the minority of the charges under the act—the gentleman from the Crown Office said that it makes up the minority of the charges.

What the act captures is not hate crime—there is other legislation to cover that—but behaviour that a police officer might find offensive. I am not saying that there has never been any hate crime captured by the act—of course there has been. However, on the whole, what the act captures is behaviour that a police officer—trained or otherwise—thinks might be offensive to someone who is or is not there. On that basis, young people's lives are disrupted.

There must be a way to have legislation that targets genuine problematic behaviour but does not leave citizens—just because they happen to be attending a football match—wide open to such consequences.

Ben Macpherson: Thank you for that explanation. However, I will go back to the conceptual point that I made, which is important in relation to the legislation. I appreciate that you have views that the act is being used in a way that you believe to be disproportionate—you have put those views forward today and in your submission. However, surely you support it when the law prosecutes on the basis of discriminatory behaviour, chants that would be unacceptable to most people and behaviour that is associated with that negative aspect of Scottish football, which is undoubtedly there. Those of us who have gone to football matches have all experienced it. Children are subjected to listening to such chants when they go to football matches, as are women and wider society as a whole. Surely you must support the act when it addresses that demeaning and unacceptable behaviour.

Jeanette Findlay: No. I support the bringing to justice of people who engage in hate crime; I do not support the act being used for that purpose. Apart from anything else, it has a poor conviction rate. If you genuinely want to address offending behaviour and hate crime, you should charge people under legislation that has some prospect of success. Almost every other possible alternative has a better prospect of success than the act.

Simon Barrow: The difficulty that we face is in distinguishing problematic and offensive behaviour that would not be acceptable in other parts of society and which many of us say is not acceptable in football. Clearly sexism, racism, sectarianism, homophobia and other behaviours of that kind need to be challenged and rooted out; there is no question about that. There is a question about when speech reaches a point when it should be criminalised. Although there is some clarity that it should be criminalised when it is threatening and violent and so on, it is difficult to draw that distinction.

For example, every week when I attend home matches, there is someone who sits not that far from me who seems to go to actively participate in criticising the officials; his enjoyment of that activity is occasionally interrupted by football. Some of the ways in which he criticises the officials are rude and offensive to many people. We deal with that partly by moving some people and partly by challenging that behaviour directly, and we have been able to temper that individual's behaviour.

Should that person's behaviour be criminalised? That would not be helpful or appropriate. However, some people's behaviour is clearly directly threatening and creates a public order situation

where the law has to step in. We are talking about the distinction between the two things, and the difficulty is that people feel that the distinction is not clear enough operatively and legally.

Ben Macpherson: I have a genuine question that I put in good faith to Paul Quigley and Jeanette Findlay. Since the enactment of the legislation, in your experience, have football fans been more reluctant to engage in the sort of chanting, singing of songs and displaying of certain symbols and slogans that would be seen as offensive, supportive of violence or celebrating or mocking historical examples of violence?

Paul Quigley: Personally, I have seen no improvement, and I do not think that there is much evidence to suggest that there has been any improvement.

Mary Fee: We asked the earlier witnesses whether they think that the guidelines that go with the 2012 act are suitable and capture offensive behaviour correctly. What is this panel's view?

Jeanette Findlay: Are you asking about the Lord Advocate's 2015 guidelines?

Mary Fee: Yes.

Jeanette Findlay: The difficulty is in how the courts deal with the matter. I mentioned the low conviction rates, which suggest that there is a problem.

We heard this morning from the Crown Office representative and the Police Scotland representative about the legal test of inciting public disorder and something being offensive to a reasonable person. The Crown Office representative clearly did not have information about appeals, but we do. The Crown Office appeals in the Joseph Cairns case and the Walsh and Donnelly case, which are the two main Crown Office appeals against persons being found not guilty, resulted in expansion, explanation and clarification of the terms.

12:15

Two things are important about that. First, the reasonable person was redefined. The law lords found that

"Thus, the Act distinguishes between, on the one hand, 'a reasonable person' and, on the other, a person 'likely to be incited to public disorder'. It may be that a person likely to be incited to public disorder is of a more volatile temperament than a reasonable person or, to use the language of the sheriff, an uninitiated member of the public. The person likely to be incited to public disorder may have particular interests and particular knowledge. He may have particular views about the two songs in question or those who sing them."

In other words, the leading case makes it clear that we are talking about not a reasonable person but an unusually volatile person.

The other issue relates to whether public disorder would take place. The same judgment makes it clear not only that public disorder does not have to take place but that the person who might have been incited to public disorder does not have to be there and does not ever have to find out about the thing that might have incited them.

The Lord Advocate's guidelines might on the face of it have seemed a reasonable set of guidelines about when people should be charged, but the outcome of case law has shown that they are not adequate. That is because the law as it was originally drafted is not adequate. It was never clear, so—with all due respect to the Lord Advocate—I am not sure what guidelines he could have produced that would have allowed proper and sensible interpretation of the law.

Mary Fee: Do other panel members have any comments on the guidelines before I move on to ask about something else?

Andrew Jenkin: This comment is not specifically on the guidelines, but there is generally a lot of ambiguity about what constitutes a criminal offence under the act. That is the only thing that I will add to what has been said.

Mary Fee: The submission from Fans Against Criminalisation refers to "genuine problems" within football stadiums. Can you explain what you mean by that?

Jeanette Findlay: Sorry. What page are you referring to?

Mary Fee: I am sorry, but I do not have a page number at the moment.

Jeanette Findlay: In any context where there are large crowds of people—whether that be a football match, any other sporting match, a concert, a demonstration, a parade or anything else—it is clear that there can be instances of criminal behaviour. Our view is that, before the 2012 act, some criminal acts took place in football stadia—it would be very surprising if that were not the case; there were very few of them, but they were dealt with under the law and by police officers. To the extent that there are any genuine issues of criminality—whatever those might be; for example, it could be assault—the police should deal with them under the existing law and they have the clear ability to do that.

Mary Fee: But do you think that, because of the 2012 act, there is less focus on other issues and more focus on—

Jeanette Findlay: The Government's own research found that there was a danger that because of the focus on football stadia—"focus" being the word, because the police unit that deals with this is called the focus group—there had been, in some cases, a little bit of a rise in disorder away from football stadia, which the act was not capturing. Police resources were being improperly directed to where there was not a problem and away from potential problems that might be taking place elsewhere.

Mary Fee: Can you give any specific examples of that kind of behaviour?

Jeanette Findlay: Inside stadia?

Mary Fee: Outside. You said that police attention was taken away from other incidents. Can you give an example of what kind of incident or behaviour you mean?

Jeanette Findlay: I was referring to the University of Stirling research. It could be low-level minor disorder—a football casual type of thing—that is very limited in scope. The assistant chief constable referred in the previous evidence session to some arrests that took place when there was a mêlée or a rammy involving Airdrie and Hamilton supporters. That did not take place inside a football stadium; it took place somewhere else.

Mary Fee: Has the change in the police operation at football matches had any impact on fans and their experience of enjoying the game?

Jeanette Findlay: Yes.

Paul Quigley: The fan experience has been dramatically changed as a result of the 2012 act. I understand what Mr Barrow said about how those experiences may differ depending on the club, including the size of the club, that a fan supports. In my experience, as a Celtic fan, from the second that fans get off a bus in any city across the country, they are filmed. Fans often feel intimidated from the second that they get off the bus to the second that they get back on it. They are subject to a type of surveillance that did not exist and that they did not have to experience before 2012.

It is correct that there is now suspicion between fans and the police; the relationship has broken down, and I do not think that that is in anybody's interest.

Mary Fee: Are the police justified in the way in which they police matches now?

Paul Quigley: It is a difficult thing to police, because offensiveness is subjective. Other witnesses have said that the 2012 act is not applied arbitrarily, but I cannot see how it cannot be. Even Mr Higgins said that if a full stand is singing offensive songs, the police cannot arrest everyone, so fans would say that the act is applied arbitrarily and they feel that, in some cases, it has been applied overzealously by the police.

Mary Fee: Do other panel members have anything to add?

Simon Barrow: I have a quick comment. I do not have the data in front of me from the 2015 evaluation by the University of Stirling, the University of Glasgow and the Scottish Centre for Social Research, but one of the things that they said was that there was some evidence of detracting attention from relationships between police and fans in some situations.

As Mr Quigley said, the experience is very different across Scottish football. I mostly spend my time in lower-league football and the issues do not seem to have an impact there on the great majority of people for the great majority of the time. However, when I have been at matches between larger clubs, the fan experience is very different. Fans can certainly feel under a lot more pressure and scrutiny than they would in other parts of the game.

Paul Goodwin: I do not know whether it is the act itself that has brought that about. In the role I have, I go to a lot of football grounds around the country and there is far less trust in the police. The policing of football matches has deteriorated over the past 10 years, so before the act.

I was at a promotion match between Partick Thistle and Falkirk. The fans were doing a conga. The police went out with video cameras, videoing every one of the fans. When fans approached and asked why and how the data would be used and stored, they were threatened with being arrested, and on a day that they won the championship. That is a perfect example.

I do not know whether it is the act that is the problem—it is not my area of expertise. However, I think that policing should be by consent, and that is where the work needs to be put in, by all the different stakeholders. We are not in a good place.

Andrew Jenkin: I have some statistics about the policing of football matches in Scotland. In the past two seasons, supporters have been more aware of the police presence, and a majority felt that fans' behaviour had not improved as a result. There seems to be a correlation between the two.

Mary Fee: Liam Kerr asked about fan awareness of the act and how organisations would cope if the act were repealed. What will the football associations do to communicate to their members and supporters of clubs that the act has been repealed? How will you make supporters aware that certain behaviour is not acceptable?

Simon Barrow: Most fans' awareness is conditioned by the messages that they get from the clubs and from the fan groups that collaborate with the clubs. For example, there will be notices in programmes about what is unacceptable behaviour.

Whichever way this goes, we will ensure that sectarianism, homophobia, sexism, racism and other forms of hate in football are addressed. For example, serious attention needs to be given to the issue of strict liability. I have referred to the experiments that we are keen to help to bring to fruition, which bring together fans, stewards, police and so on to look at how disorder and bad behaviour are dealt with, and there are community initiatives that enable clubs to be more community friendly and family friendly.

Context is all. One part of the context is the hate crime legislation review, and we think that it makes sense to consider these questions in that context. The other thing is the responsibility that fans themselves take, and the responsibility of those who govern football to engage with fans to address these behaviours at all levels.

Andrew Jenkin: When we have had consultations we have always tried to leave a space for supporters to offer their opinion on how best we tackle these issues, if not through legislation. The consensus is that we cannot punish a problem away.

The Scottish Professional Football League has had its own unacceptable conduct guidelines in place as of January this year and the Scottish Government will be getting feedback on how that is going. We feel that clubs could be doing more to work with their supporters. If you ask supporters what their views are, you find that there seem to be three key themes. The themes that we have picked out are educational workshops on these issues for supporters, improved and sensible policing that is clear and consistent, and more fan engagement and dialogue between all stakeholders, including police and stewards.

Liam McArthur: It has been conveyed to us that the repeal of the bill, particularly section 1, would send the wrong message about tolerance of hate crime in all its forms and would inhibit the police and prosecuting services in dealing with instances of that. From what you all have set out, it seems that work could be done in a raft of different areas to ensure an appropriate, targeted approach that builds on the messages that have been coming through at a societal level. Is that a fair characterisation of the panel's views?

Andrew Jenkin *indicated agreement.*

Liam McArthur: Nodding of heads does not come across well in the *Official Report*.

The Convener: Who would like to answer that?

Simon Barrow: Yes, is the answer to your question. However, a key aspect of how messages are sent out—which is an issue that this committee has come back to on a number of occasions—is how politicians handle them. When we give the committee evidence on this issue, we want to avoid being involved in a political stushie about it, because it ought to be something on which politicians can come together. The obvious problem is that there are strongly divergent views on the effectiveness and appropriateness of the 2012 act. There ought to be a way of addressing the wider issues of hate crime; very serious attention ought to be paid to any possible gaps that might open up and, in particular, to further engagement with football fans; and there should be further pressure on football authorities to respond to these kinds of issues. The solutions to the problems that football faces—because all sections of society face both general problems and specific problems—must come from football owning and taking responsibility for the issues. That is the primary context in which we can have a positive response.

Liam McArthur: I am interested in that, although it is slightly tangential to the bill. It would help the committee to address one of the concerns that has been raised about the bill if you could give us specific ideas of how that engagement could be made to work better. I get the feeling that it works reasonably well in certain areas, with certain clubs, but that perhaps it is not working as well as it might be across the piece.

Simon Barrow: We would certainly want to pursue some of the issues to which I have drawn attention here and in our submission to the hate crime legislation review.

The Convener: Ms Findlay, you mentioned that there have been a number of cases—perhaps you could give us a rough indication of how many—of people being charged and the case subsequently being dropped, and you talked about the disproportionate effect that that had on the people who were charged. Will you give us some examples of those cases and quantify how prevalent they have been?

12:30

Jeanette Findlay: It is less a matter of people being charged and then the charges being dropped—in fact, the charges are rarely dropped—but I understand that it is normal practice throughout Scotland for fiscals in sheriff courts to strike out charges and make certain arrangements. That never happens in football cases. Almost every case is prosecuted right up to trial and cases are not dropped, even though they

have a lower chance of success once they come to trial.

On the numbers, we can speak about our analysis of the Government and Crown Office data, which we have followed and analysed regularly throughout the past six years and we can speak about the people who come to us. We have a website with a forum through which people who have been charged can ask for support. As the person who takes most of the initial phone calls from such people, I can think of only two cases in the whole six years in which somebody had previous convictions. The people who contact us to tell us what has happened, ask what they should do and seek advice are rarely people with previous convictions.

The Crown Office does not collect that data. The Crown Office official who was here this morning referred to one case, but the Crown Office does not collect data on whether people have previous convictions; I suppose that we have the only evidence of that. Over the past six years, around 200 people have contacted us and I would say that only two had any previous convictions—and even those were 10 or 15 years old. It has also rarely been people who are older; most of them have been a lot younger.

You asked about what happens to them and what the impact is on them. I do not know whether you are aware of this, but there are usually three appearances at court: the pleading diet, the intermediate diet and the trial. The evidence, from our experience and the Stirling research, is that the process is often extended in football cases and people have to appear in court four or five times for various reasons. Because of the nature of where alleged offences are supposed to have taken place, those appearances often involve people travelling quite long distances and having to take time off work and tell their employers that they have been charged.

The worst case that we had involved seven young men who sang a song at an away game and appeared in court 17 times over 23 months. They were all acquitted in the end. During that time, one of them lost a promotion and two of them were completing studies that would have involved professional registration, so they were in jeopardy of losing not just their job but their entire career. Thank goodness, that did not happen. That is an extreme case, but it reflects the kind of cases that we see quite often.

Football cases take longer and are never dropped. Numerous fiscals have said privately to the defence solicitors that we work with, “This would go, but I’m not allowed to drop it.” They are simply not allowed to drop cases; they are made to proceed with them to the furthest extent.

The Convener: Is that done on advice from a higher level?

Jeanette Findlay: Yes. They are never allowed to make that decision. Your witness from the Crown Office is no longer here but would tell you that they are never allowed to make that decision in football cases, although they would normally do so for other types of offences. They are rarely allowed to drop football cases.

It seems tremendously punitive to prosecute football cases to a much greater extent than cases in other circumstances. By and large, cases do not involve any violence and there is usually no specified victim. I have been involved in many cases and I have yet to see somebody other than a police officer stand up in court and say that they were the victim of the offence. Our submission says that in the past year, 86 per cent of all cases of charges under the 2012 act had no identifiable victim. Either the police or the community, as defined by the police officer, have made the charge.

The Convener: I suppose that the point that you are making—

Jeanette Findlay: There are no victims, yet people are put through all that.

The Convener: In your opinion, is there a lack of prosecutorial discretion at a certain level? There is a presumption that the matter will go to the bitter end.

Jeanette Findlay: There appears to be a lack of prosecutorial independence, which I find even more concerning than some of the issues around the 2012 act.

Simon Barrow: There are prosecutorial issues, but more general issues have not entered the debate enough, for example about the distinct outcomes and effects from punitive and restorative approaches to challenging difficult and offensive behaviour and when the boundary is crossed into criminalised behaviour. The point about violence and threats to people is critical, because we are in danger of pushing young people into a system in which the outcome will be further criminalisation.

Ben Macpherson: It is incumbent on the committee to write to the Crown Office and Procurator Fiscal Service to ask for its comments on what has just been said. Those are serious statements.

The Convener: I will be happy to do that.

Fulton MacGregor: Regardless of where people stood on the 2012 act when it was initially in place, I am far from convinced that a repeal of the act would not send out entirely the wrong message. Where do panel members stand on the possible merit of amendments to the act, rather

than repeal? You began to touch on it in answer to Liam McArthur's question.

Andrew Jenkin: Our organisation does not believe in football-specific legislation, so we support the earlier proposal about widening this out not just to sport, which would criminalise sport fans, but to the whole of society. That would be a step forward. You cannot have legislation that applies to one specific sector of society; that is grossly unfair.

Fulton MacGregor: Before anyone else answers, I ask panellists to say whether Lord Bracadale's current review should fit into the process.

Paul Goodwin: His review must be a key part of the process. We have had discussions with him, but I echo the point that the legislation should not be specific to sport. Our colleagues across Europe are concerned that Scotland is isolated; they ask why it happened and it is difficult for somebody who is not closely involved in the issue to explain how we got to this place.

I mentioned earlier that it is a PR mess that needs to be fixed, with politicians from all parties getting round the table. It does not send out good signals about Scottish football at a time when we are trying to attract young people, kids and families to the game. All the evidence is that we are doing that well at a lot of clubs, but the act has bad credibility. I cannot comment on the ins and outs because I am not a lawyer, but the legislation needs to be broadened out or recut in some shape or form; it is not good news.

Simon Barrow: Football-specific and sport-specific legislation is unacceptable to fans—that is clear. Whether reform and retitling are possible can be explored. However, as Mr Goodwin said, the difficulty is that the PR so far has pushed people into a position of alienation, so there is a lot of ground to make up. The hate crime review is the context in which such decisions should be taken.

Paul Quigley: We support the outright repeal of the legislation. It is not right to have legislation that applies to only one sector of society, but criminalising offensiveness to the rest of society would not work either, as it would present too great a danger to freedom of expression.

We support the repeal of the 2012 act as quickly as possible. Jeanette Findlay has touched on the human cost of that legislation and what happens when people are dragged through the courts and how that drags on. People have lost jobs and promotions, suffered varying degrees of mental health breakdown and have even suffered fractured relationships. When, as is so often the case, people are then found not guilty, it does not undo any of the damage that has been done. Those cases—

Fulton MacGregor: I am sorry to interrupt—

Paul Quigley: If you would just let me finish, Mr MacGregor.

Fulton MacGregor: I was quite sympathetic to that argument in the previous panel, but are those not implementation issues, as opposed to being repeal issues?

Paul Quigley: No.

On the Bracadale review, obviously we think that hate crime is a serious issue in Scotland that should absolutely be given the time and energy that are required to deal with it. However, we feel that the legislation is a slightly separate issue. It is not a static issue; it is live, because cases are still going through the courts and people's lives are still being turned upside down. Therefore, we support a full repeal as quickly as possible.

Stewart Stevenson: Legislation.gov.uk identifies for me that there are 87 pieces of legislation in the United Kingdom pertaining specifically to football, starting in 1989. It has been said—particularly by Mr Jenkin, I think—that no legislation should address football alone. Should all 87 pieces of primary and secondary UK and Scottish legislation therefore be abolished?

Andrew Jenkin: The question that I would ask for each of those pieces of legislation is, why should they be for football and not for wider society?

Stewart Stevenson: No, but, very specifically you said that if something refers only to football it should not be legislated for. I am pointing out that, starting in 1989, there are 87 pieces of legislation that have football in their title. I have had a quick look and they are specific to football. Are you saying that all of those 87 pieces of legislation should be abolished?

Andrew Jenkin: My wider point is that I would be interested to know why, in each of those, the legislation was applied just to football.

Stewart Stevenson: Well, the legislation from 1989 is about offensive behaviour at football matches—the issue is not new and the 2012 act is not the first legislation on it, although I accept that the 1989 legislation is UK not Scottish. I am just making the general point, convener, but I think that I have probably heard all that I am going to hear.

Paul Quigley: The point that I would make is that we have an offence book that applies only to football fans.

Stewart Stevenson: Yes.

Paul Quigley: Obviously, some of that specific legislation will deal with offences such as drinking alcohol in a football stadium, but is there any other legislation that creates a criminal offence, other than those loose types of behaviours, that applies only to football fans and no one else?

Stewart Stevenson: Yes, the Football Spectators Act 1989 is an example that creates offences specifically related to football, so we are not talking about a new approach to legislation.

Paul Quigley: So what type—

The Convener: Now that Mr Findlay and Mr Quigley have been made aware of that, perhaps they can have a look at it. If they want to submit something in response, once they have had a chance to consider the point, the committee would be happy to receive it.

I am going to move straight on to James Kelly, because I am afraid that the clock has beaten us. My apologies to George Adam—whether I could bring him in for a supplementary was always dependent on the timing of the committee.

James Kelly: I appreciate that, convener. I have a question for each member of the panel, or each organisation that is represented. In the submissions to the Justice Committee, we have heard from the Law Society that there would be no gap in the law and from civil rights groups about the imposition on civil liberties, but it is very important to hear from supporters' groups, because they are at the sharp end of things, being at the football and witnessing the effect of the legislation.

Can I start with Andrew Jenkin? We have spoken about the international context. What message do you think it sends out, internationally, that Scotland has legislation that specifically targets football fans?

Andrew Jenkin: One of our member groups—I think it was Dons supporters together—did a comparison of all the different football supporters across Europe and found that football supporters were the most legislated against in terms of their rights, safe standing, alcohol at football and the offensive behaviour act. That needs to be addressed, and I certainly think that it is unfair that supporters in Scotland should be criminalised because they are going to football.

12:45

James Kelly: The SFSA representative spoke interestingly about building a more collaborative approach between fans' groups, football clubs and the police. Would the repeal of the legislation—taking it off the table—make that approach a bit easier to build?

Paul Goodwin: Yes, it probably would. I have mentioned PR three times, but in private discussions that we have with various members of the police—as opposed to in public, where they display unity—most of them say that there is a way round all the problems. That goes back to what the Law Society and the like have said in their submissions. Something has to give if people are to have faith that the concerns that they have, to varying degrees, are being addressed and so that we can move on to provide a place where everybody can work together.

James Kelly: My final question, on the conviction rate, is specifically for Jeanette Findlay. We heard from the Crown Office and Procurator Fiscal Service that the conviction rate is "very good" and that convictions are successful; yet, you have repeatedly said that that is not the case. Can you give us a bit more detail on that?

Jeanette Findlay: Conviction rates are presented in two ways in the two separate publications that are referred to. One is a Crown Office publication and the other is a Scottish Government publication. The first is called "Charges under the 'Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012'" and the second is "Hate Crime in Scotland". The figures are based on however many charges there are in a year, but what is reported is a conviction rate based on however many cases are completed in a year.

Let us say that there are 300 charges but only 150 cases are concluded in one reporting period. The conviction rate is the number of people convicted as a proportion of the much smaller number, so it looks as though there is a much higher conviction rate. The figure of 70 to 75 per cent that is reported annually—which is a lower rate than for most convictions—does not represent the true conviction rate, which is never properly reported.

We have counted all the charges from 2011 up to the most recent Scottish Government data and all the convictions in that time. The conviction rate is just below 36 per cent, so there is a tale of unconcluded cases. Even if every one of those cases resulted in a conviction, that would not take the rate to 50 per cent. The figure of 75 per cent or so that is stated each year is vastly overinflated. Most people would think of the conviction rate as being a proportion of the number of people who are charged in a year, but that is not what is given.

James Kelly: It is up to the committee, but it might be useful if you could provide us with your analysis of that if that has not already been done.

The Convener: Thank you. Mr Jenkin, if you would not mind supplying the full details of the survey to which you referred, which Supporters

Direct Scotland carried out, that would be very helpful.

Andrew Jenkin: Of course.

The Convener: That concludes our questioning. I thank all the panel members very much for giving evidence today. Given that we are working against the clock, we will continue straight to our next agenda item.

Subordinate Legislation

Scottish Tribunals (Eligibility for Appointment) Amendment Regulations 2017 (SSI 2017/274)

12:49

The Convener: Agenda item 3 is consideration of three negative instruments. I refer members to paper J/S5/17/29/3, which is a note by the clerk.

If members have no comments to make on the first instrument, is the committee agreed that it does not want to make any recommendation in relation to it?

Members *indicated agreement.*

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Regulations 2017 (SSI 2017/285)

The Convener: May I seek clarification on this instrument? It mentions many police stations—89 prescribed police stations are listed—and I wonder whether any of them are under threat of closure. It would be useful if we could find that out.

If there are no other comments, is the committee agreed that it does not want to make any recommendation in relation to this instrument?

Members *indicated agreement*.

Title Conditions (Scotland) Act 2003 (Rural Housing Bodies) Amendment (No 2) Order 2017 (SSI 2017/301)

The Convener: Do members have any comments on the final instrument?

Maurice Corry: The list of rural registered social landlords does not include ACHA—the Argyll Community Housing Association. It does include Dunbritton, but there are two in my area.

John Finnie (Highlands and Islands) (Green): This list gives them with their full names.

Maurice Corry: Oh sorry, I misread that. John Finnie is absolutely right.

The Convener: Thank you for that clarification, Mr Finnie. Is the committee therefore agreed that it does not wish to make any recommendation in relation to this instrument?

Members *indicated agreement.*

Justice Sub-Committee on Policing (Report Back)

12:51

The Convener: Agenda item 4 is feedback from the Justice Sub-Committee on Policing on its meeting of 28 September 2017. I refer members to paper J/S5/17/29/4, which is a note by the clerk, and invite Mary Fee to provide feedback.

Mary Fee: Thank you, convener. The Justice Sub-Committee on Policing met on 28 September, when it took evidence from the Cabinet Secretary for Justice about governance of the Scottish Police Authority.

The cabinet secretary told the sub-committee that, in his view, the Police and Fire Reform (Scotland) Act 2012 was fit for purpose, but he acknowledged that there have been issues with the way in which roles and responsibilities have been taken forward. He indicated that an interim chief executive should be in place within a couple of weeks and that the appointment of a new chair was currently under way. He described the current review of the SPA and the appointment of a new chair as an opportunity to improve some areas, for example by strengthening input to the SPA from local scrutiny committees by providing them with a formal role.

The sub-committee's next meeting is scheduled for Thursday 26 October, when it will hold a round-table evidence session on Police Scotland's engagement with black and minority ethnic communities.

I am happy to take questions.

The Convener: If there are no comments or questions, we will move into private session. Our next meeting will be on Tuesday 24 October 2017, when our main business will be further consideration of the Offensive Behaviour at Football and Threatening Communications (Repeal) (Scotland) Bill.

12:53

Meeting continued in private until 13:16.

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