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Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Wednesday 22 June 2011

Session 4

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JUSTICE COMMITTEE
3rd Meeting 2011, Session 4

CONVENER

*Christine Grahame (Midlothian South, Tweeddale and Lauderdale) (SNP)

DEPUTY CONVENER

*James Kelly (Rutherglen) (Lab)

COMMITTEE MEMBERS

*Roderick Campbell (North East Fife) (SNP)
*John Finnie (Highlands and Islands) (SNP)
*Colin Keir (Edinburgh Western) (SNP)
*John Lamont (Ettrick, Roxburgh and Berwickshire) (Con)
*Alison McInnes (North East Scotland) (LD)
*Graeme Pearson (South Scotland) (Lab)
*Humza Yousaf (Glasgow) (SNP)

*attended

THE FOLLOWING GAVE EVIDENCE:

Chloe Clemmons (Church of Scotland)
Neil Doncaster (Scottish Premier League)
Ronnie Hawthorn (Celtic Football Club)
Tim Hopkins (Equality Network)
Robert Howat (Celtic Football Club)
Michelle Macleod (Crown Office and Procurator Fiscal Service)
David Martin (Rangers Football Club)
Frank Mulholland (Lord Advocate)
Stewart Regan (Scottish Football Association)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 2

Scottish Parliament

Justice Committee

Wednesday 22 June 2011

[The Convener *opened the meeting at 12:16*]

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

The Convener (Christine Grahame): Good afternoon. I welcome everyone present to the Justice Committee's third meeting in this session. I remind everyone to switch off mobile phones and other electronic devices, as they interfere with the sound system even when they are switched to silent. No apologies have been received.

Item 1 is consideration of the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. This is our second evidence session on the bill. Before we begin, I thank all witnesses for agreeing to attend at such short notice to give evidence on the bill. I also thank those who have made written submissions.

I welcome our first panel of witnesses: Chloe Clemmons, Scottish churches parliamentary officer, representing the Church of Scotland; and Tim Hopkins, director of the Equality Network. I thank Mr Hopkins for his written submission. Given that we have received no written submission from Chloe Clemmons, I invite her to make a short opening statement to outline the Church of Scotland's position.

Chloe Clemmons (Church of Scotland): The Church of Scotland recognises the seriousness of the problem of sectarianism and is absolutely committed to challenging it locally and nationally. To do that, we work closely with our churches on the ground in parishes, many of which work with local Catholic churches. It is very much an ecumenical effort. It is not about us and them—it is about all of us together, working to solve the problem. We are pleased that legislation is being put in the context of that wider plan and that longer-term work will be done in the next couple of years.

We agree that there is a need to clarify the legal process and acknowledge some of the problems that have been identified. However, we are concerned that there are two clear difficulties with the speed at which the process has been initiated.

First, we do not think that it is possible within such a tight timeframe to make legislation that is as clear and robust as it can be. We are particularly concerned by the fact that live speech will not be included because it merits wider consideration, not because there has been a policy discussion. It is worrying that such decisions are being taken simply because of time, without looking at the wider issue of what is necessary. We are very concerned about how you generate ownership of legislation in that way.

Secondly, the Government has called for support from across civic Scotland. We would like to be part of that process, but the Government has not given civic Scotland a chance to engage with the issues and to work out whether the bill is the best way forward. Law works at its best when the majority of the population think that it represents a collective will.

Measures that have been effective, such as the smoking ban, work not because they are enforced but because the passage of the legislation was taken to mean that people supported it—it was seen as the collective position.

People chose to stop smoking because of the legislation, and, more important, people chose to ask the person next to them to stop smoking because of it. If we want to use legislation to tackle sectarianism, we should aspire to that level of commitment from the population. We should seek to introduce legislation to prompt people in the communities that are experiencing the problems to say, "I understand that my society has a problem with this, and I'll think about that", and to say to their peers, "You shouldn't do that while I'm here".

If we want to have that level of ownership over the legislation, we need the communities that are affected by the issue to be in here, having this conversation. I am a professional policy officer, and I can drop everything at three days' notice to be here. However, I had very much hoped to be able to bring some representatives of local projects to come and discuss the ways in which the legislation would impact on their work, but that was not possible in such a short timeframe.

We are not in a position to answer questions such as, "Do you think this legislation will deter your client group?", and until those questions are answered, we do not know whether the legislation is the right thing. It may be the right thing, but maybe something different would be better, and we have not had the opportunity to have that discussion.

In its financial memorandum, the Government says that the legislation is a minimal change and that it is not seeking to prosecute new offences or to increase the number of prosecutions significantly. That very much suggests that this is a public relations statement to communities about what the Government wants them to do, but we are not asking those same communities to come

and be part of that process and make a collective statement. We need to slow the process down, and get more people involved in the conversation.

The Convener: Thank you. I have one correction: I exonerate the committee from having anything to do with the process. That was a matter for the Parliamentary Bureau, and we are with belt and braces trying to compensate for it.

We will move to questions.

John Finnie (Highlands and Islands) (SNP): Ms Clemmons, you talk about getting the population's commitment. What timeframe would you say should be applied to ensure that that happens?

Chloe Clemmons: The normal parliamentary process works very well, and it is understood well by a lot of organisations in our communities. The normal method of introducing the legislation and putting out a call for evidence with a three-month timeframe enables people to engage with it in their own groups and then to present their views in a clear and coherent fashion, and to see one another's views. Debate happens when you see more than one view and then take part in the evidence sessions.

The Convener: Mr Hopkins, please indicate if you want to come in. You mentioned that in your submission too, so you may wish to respond.

Tim Hopkins (Equality Network): Yes, that is right. I am grateful to be invited here today, but I have to say that I am unable to give the same level of consideration and evidence as I normally would when giving evidence to a parliamentary committee. We have not been able to consult lesbian, gay, bisexual and transgender people and groups throughout Scotland in the way that we usually would.

Chloe Clemmons is quite right: we would usually have a pre-legislative phase of consultation by the Government—the normal standard for that is a minimum of three months. That gives us time to go out quite widely and discuss the legislation with other LGBT people and groups, and other equality organisations. The legislation would then be introduced and there would be a lengthy stage 1 phase.

A lot of LGBT groups and equality organisations in Scotland have an interest in the legislation, because it is not just about sectarianism. As Alison McInnes said at yesterday's meeting, it is really a hate crime bill that covers racist, religious, homophobic, transphobic and disability-related hate crime. It was just by chance that I and my colleagues had time on Friday and Monday to spend several hours looking at it; a lot of organisations have not had that time given the very quick process that the bill is going through.

John Finnie: Are there instances when you think that a time imperative would apply? What factors would override that consideration?

Tim Hopkins: As I understand it, emergency bills have usually dealt with a sudden problem that has arisen with the law, often because of a court case such as the Cadder case. It is usually because the court has struck down a piece of legislation or has found a real problem that needs to be dealt with as an emergency.

We do not think that the bill needs to be dealt with as an emergency. Arguably, something needs to be put in place before the start of the football season, and section 1 of the bill relates to football; section 5, with which we have a big problem, does not directly relate to football matches, so the urgency is perhaps not there in that regard.

However, as other witnesses have said, it is rather unclear whether section 1 introduces new substantive criminal offences or whether it is about clearly restating the law. It is very valuable to be clear about the law, but if the bill is not introducing new crimes and if the sort of things that we are talking about are already offences, which generally they are, it could be argued that it is not really an emergency that requires the legislation to be brought in by whenever the season starts—by 29 July, I think.

The Convener: I seek clarification from the Church of Scotland. Was there no contact whatever from the ministerial team or the bill team at any stage with regard to the bill? I accept that we have not gone through the usual process, but was there no contact whatever? Were there any communications?

Chloe Clemmons: We have had briefings on the bill. I think that the first one was on 8 June. However, that was very much about the content of the bill. The briefings were helpful and I appreciate the minister taking the time to meet me individually; because I represent other churches, too, that meant that I was able to pass the information on. That was welcome. There was a further meeting last week with the Moderator of the General Assembly of the Church of Scotland, which was also welcome.

However, consultation with community groups takes more time than that. Even if we had been able to go out and consult the day after the briefing, we would not have had enough time, because people who are not policy staff have other things to do; they are not able to drop everything.

Tim Hopkins: We had heard nothing about the content of the bill until it was published last Friday morning, despite the fact that it covers sexual orientation and transgender identity specifically.

The Convener: Yes. I see that from your paper. Thank you very much.

John Finnie: Would it be possible to establish who were the recipients of advance briefings?

The Convener: We will ask—again, at breakneck speed. I think we are testing our clerks and they have proved themselves worthy so far.

Humza, is your question on consultation?

Humza Yousaf (Glasgow) (SNP): Very much so.

The Convener: Is yours a separate question, Colin?

Colin Keir (Edinburgh Western) (SNP): It is actually very similar to the previous one.

The Convener: Right. You can come in now; you were on my list first.

Colin Keir: Thank you, convener.

I know that the legislation that we are discussing is new, but if we are being honest, we can also say that it addresses a rather old problem that has come to a head. You have talked about consultations with different groups. Given that the general problem has been around for quite some time, what discussions have you had with the different church groups and other stakeholders, and what determinations have you come to? Do you think that any of the things that were discussed in the past—but which are not in the bill—would be a way of taking things forward?

Chloe Clemmons: The work that the Church of Scotland has done has been at local community level. A big piece of research and policy setting was done in 2002, at which point a number of recommendations were made. That was primarily for local churches. Particularly in the Glasgow area, there has been a lot of community-based work, primarily ecumenical. We have tried hard not to do such work just as the Church of Scotland.

It is about changing attitudes. There is work going on at the bridging the gap project in Glasgow, which is about going into schools—both non-denominational and Catholic—and getting mixed groups to work on the issues together. It is also about measuring the difference in attitudes that such work produces. The work has been very successful and there has been Scottish Government funding for quite a lot of it. We think that we should carry on with that approach. What we need is more funding for more work, because if you catch people before they have committed an offence, you will have fewer problems going forward.

Tim Hopkins: We and our colleagues at Stonewall have done work on homophobia in football. Stonewall has worked with the Football Association down south and the Scottish Football Association to start addressing that problem. The SFA and the clubs have started to address homophobia in football. We have worked with the police and procurators fiscal in some areas of Scotland to start addressing it, using the existing legislation. Some research work has been done by way of surveys of football fans and football professionals about the extent of homophobia in football. For example, such work has found that seven out of 10 fans and professionals said that they had experienced homophobic chants at football matches.

So, we know something about the extent of the problem, and moves to address it have started to be made. What we would like to do, however, is consult LGBT people about the specifics of the bill. That is what we have not had the opportunity to do.

12:30

Colin Keir: I am really interested to know what is happening through the churches in particular on this issue. As I said, this is a very old problem. Given the work that has been mentioned, which I think is sterling and certainly have no problem with, has anyone from your community of churches come up with any definitive legislative way forward that we are not getting in this bill?

Chloe Clemmons: I have not been party to any discussion on content but, then again, that would not necessarily be the first thought of a local church doing work in its community. That is why it is important to consult on the legislation. If we say to people, “This option is on the table”, they might say, “That’s a great idea” or, “It might be a great idea if you made this or that change”. That is exactly the question that I cannot answer.

Colin Keir: Do you know of any national view?

Chloe Clemmons: It has not been discussed recently, and certainly not in the time that I have been in post.

Humza Yousaf: I thank the Equality Network for its submission and I am sure that as we go on we will touch on some of the points that it raises. With regard to consultation, I know that you do not accept the premise that this is necessarily an emergency but what processes do both organisations have in place to consult stakeholders about emergency legislation or any proposals for emergency legislation that might be brought forward? I assume, of course, that you have such processes.

Tim Hopkins: We have a network that we talk to by e-mail and obviously we have Facebook pages and so on. In the past three days, we have been using those mechanisms with regard to this

legislation. By the time we had seen and digested the bill, it was about 5 pm on Friday night. We then e-mailed our network to ask for examples of homophobia in football and instances when homophobic hatred had been stirred up, which are two key points in the bill. However, only a small number of people were able to respond in the timescale. Such electronic mechanisms are really the only things that are available to us, but I have also had helpful e-mail conversations with my policy colleagues in the other national LGBT organisations—Stonewall Scotland and LGBT Youth Scotland—and, indeed, some of what I have to say is based on information that they have given me. Usually, however, we have meetings to discuss with people exactly what is being proposed and what the effect might be, which is a much more effective way of getting feedback than simply sending out a mass e-mail and hoping that people will reply.

Chloe Clemmons: We do not have any emergency process for consulting churches on policy matters. Churches are inherently relatively slow and bureaucratic organisations and, by and large, do not think of policy as an emergency matter. This is my first experience of needing an emergency consultation. Usually, we would identify people who we know work on particular matters. Most churches have reporting processes that show which churches are working in which fields, and we would approach them and often ask individual questions. It always takes weeks. I am not sure that we could do it faster because very often the people we talk to are volunteers and do a different job from policy work. My role is to be available and make consultation easy, but that does not necessarily mean that I can make it fast.

Humza Yousaf: Might there be a need to make it faster? You have said that it is difficult, but there must have been cases in the past in which, because of the will of the people or whatever, there has been a need to address an issue and push legislation forward in a particularly tight timeframe. Would that ever be a priority?

Chloe Clemmons: That is a very difficult question—I am trying to picture an example. We do what we can. In this situation, an urgent matter with a tight timescale emerged for consultation and the reality was that I was unable to carry out that consultation in four days. Even with an extra couple of weeks, I would have had a better outcome than I had in four days.

The Convener: I think that we have exhausted the issue of consultation but to give the Government some balance—which is new for me—I wonder whether you accept that the bill was trailed substantially before last week. In fairness to the Government, we knew that it was coming, even though we might not have thought that it would come this way.

Tim Hopkins: We knew that it was coming but I have to say that when we saw it on Friday morning it came as quite a surprise to us—it was quite different from what we were expecting. The inclusion of the offence of stirring up religious hatred, in particular, was not trailed at all—we had certainly heard nothing about it. The offence is actually quite substantive and, indeed, created a huge amount of debate down south when it was proposed. That is where we think the biggest problem lies.

The Convener: That is a fair response. We will now move on to a different topic.

James Kelly (Rutherglen) (Lab): I turn to section 1 of the bill, which deals with offensive behaviour at regulated football matches. At yesterday's committee meeting, there was quite a bit of discussion about the practical implementation of that section and how it will be used by the police and prosecutors. I do not want to rerun yesterday's discussion, but one of the difficulties would appear to be interpreting what acts and songs fall under section 1. What are your comments on that section? As drafted, is it fit for purpose?

Chloe Clemmons: I would struggle to respond to that level of detail. I understand the reason for not defining the offence, because behaviour evolves and you have to allow the professionals who are enforcing the legislation a level of discretion.

Tim Hopkins: The offence is similar to breach of the peace, so arguably it does not extend the law very much. Homophobic and sectarian behaviour at football matches can already be prosecuted as a breach of the peace aggravated by one of the statutory hate crime aggravations. It has been said that breach of the peace is too broad and the boundaries of the law are not clear. Because the offence is very much based on breach of the peace, and is about behaviour that is likely to incite public disorder, the same problems arise.

Whether the use of certain homophobic words would be an offence depends entirely on the context. The same word being used in two different contexts might or might not be a criminal offence. The same applies to sectarian behaviour. Perhaps that is a problem that cannot be solved.

We quite like section 1. It might not do much more than restate offences that are already crimes, but I agree with what the minister said yesterday, that it restates them in a concrete and specific way. There is a lot of value in that.

When the previous hate crime bill—now the Offences (Aggravation by Prejudice) (Scotland) Act 2009—was going through Parliament a couple of years ago, the same point was made. People said that the same could be achieved under the common law, but we and a lot of other people felt that, by setting out in statute what particular behaviour was unacceptable, we would clarify the law and make it more likely to be enforced—and enforced consistently—across the country, and that we would make it easier to record that the law had been enforced and to record convictions. Arguably, section 1 of the bill will do that, even if it does not extend the law beyond what is already covered by breach of the peace. That is a positive.

Obviously, we particularly like the inclusion of sections 1(2)(a), 1(2)(b) and 1(2)(c), and the fact that they cover expressions of hatred on all the grounds that are currently covered by hate crime law. There was a lot of debate in the predecessor of this committee, and the Equal Opportunities Committee took a lot of evidence on the last hate crime bill, and there was consensus that hate crime law should cover race, religion, sexual orientation, transgender identity and disability. That is exactly what section 1 covers—it defines those things in exactly the same way as they are defined in existing hate crime law, so we very much welcome that.

I would like to make one technical point about the definition and use of the word "hatred". The statutory hate crime aggravations in the existing legislation use "malice and ill-will" instead of "hatred". As a non-lawyer, I do not know whether "hatred" means exactly the same as "malice and ill-will". However, as a layperson, it seems to me that a group of supporters could chant a sectarian song that is malicious and expresses ill-will but which might not be said to express hatred. Perhaps "hatred" is a higher test than "malice and ill-will". We are concerned that, paradoxically, by using "hatred" rather than "malice and ill-will", which is the term used in the existing legislation, section 1 might make the law less effective, because it will catch fewer offences. It would be useful to have clarification from the Government of whether "hatred" means exactly the same as "malice and ill-will".

The Convener: That is now on the record. The debate is tomorrow afternoon, and I am sure that someone will raise that point.

James Kelly: You endorsed sections 1(2)(a), 1(2)(b) and 1(2)(c). Section 1(2)(e) refers to

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

Do you have any views on that provision?

Tim Hopkins: Obviously, it is very broad, but it is, of course, limited by section 1(1). The behaviour must be

"likely to incite public disorder",

which arguably would already be a breach of the peace. Therefore, the provision is not excessively broad. Arguably, section 1(2)(e) would allow offensive behaviour that is targeted at one of the groups that is not covered by current hate crime law to be included as well.

The Convener: Let us accept, for the sake of argument, that section 1 really rehearses breach of the peace. Yesterday, the police, I think—although it might not have been the police—put the argument to us that the bill is called the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill, and that somebody who was convicted of such an offence would have the specific offence of offensive behaviour on their conviction. If, for the sake of debate, we are looking at the bill as a deterrent in some respects, a stigma would attach to a person who was convicted under it, because they would not be able to say, for example, that they were convicted of breach of the peace when they fell down, kicked over some buckets and woke folk up. Let us set aside consultation and problems with the detail of the bill. Is there any merit in that argument?

Tim Hopkins: Yes, I think that there is. That is one of the points that we made about the previous hate crime legislation. A stigma is attached to having such a conviction, and there is evidence that people who were accused of crimes under the oldest hate crime legislation—the racially aggravated offences legislation—sought to have the aggravation element dropped from the charge because of the stigma that was attached to it. There is evidence that stigma is associated with a hate crime conviction and that there is therefore a deterrent effect, so I agree with that point.

Graeme Pearson (South Scotland) (Lab): Thank you for coming. I am grateful for the paper from the Equality Network that was supplied ahead of this meeting.

My question is largely for Mr Hopkins. What is your estimate of the challenge that your community faces from threats and fears that it faces in attending football matches? Is the answer to that question within your knowledge?

Tim Hopkins: We have not worked on that matter directly, but in September 2009 our colleagues at Stonewall conducted a survey of 2,000 fans and professional footballers throughout Britain. Seven out of 10 of those who were surveyed said that they had experienced homophobic chants at football matches, and more than half of them thought that the football

associations and clubs were not doing enough to address the problem. Staffordshire University conducted an online study of 2,000 fans from throughout Britain, and 93 per cent of them said that they disapproved of homophobic abuse, although how representative they were of football fans in general is slightly unclear, as the study was an online study.

It seems clear that homophobic abuse is widespread, but only a minority of fans engage in it. Perhaps one thing that indicates that the problem is significant is that, as far as I know, there are currently no openly gay professional footballers in England or Scotland. The only openly gay footballer to work in Scotland was Justin Fashanu, who eventually, as you know, committed suicide.

Graeme Pearson: You mentioned the view that was expressed that football clubs and associations were not responding sufficiently. From the data, was there any indication of what was expected of the clubs and authorities?

Tim Hopkins: Not that I have a record of. There are a couple of indications of what clubs and the SFA are already doing. When the work was being done, the SFA representative certainly said that tannoy announcers were saying at the beginning of matches that certain kinds of behaviour were unacceptable and that homophobic behaviour was mentioned, but I do not know how widespread that practice was. If the bill is passed and implemented, it will be important to make such announcements at the beginning of matches.

12:45

Graeme Pearson: This is a general question for both witnesses. You have talked about the consultation process and the difficulties that you perceive in responding. You will know the interests of both of your communities and how much discussion and response an issue such as the bill would create—if you do not, I am happy to accept that you cannot estimate it. Would the bill generate a great deal of discussion in your communities and a desire to feed back, or would there be a low-level response? Can you give any indication of that?

Chloe Clemmons: I think that people would like to be involved in the discussion. Sectarianism is often perceived as a religious issue more than it actually is a religious issue, and I think that Church of Scotland members would be interested in getting involved in further discussion.

Tim Hopkins: I agree. I do not know what proportion of LGBT people follow football, but I know that many LGBT people see football—and sport more widely—as one of the few areas in which homophobia is still acceptable and expressed. We have already had wide discussion with LGBT people on the offence of stirring up hatred, which is covered in section 5. That discussion has been going on for years, because for some time England has had an offence covering religious, racial and sexual orientation hatred, as have both parts of Ireland. We have been discussing the issue with people for many years, and there is a lot of interest in it.

Graeme Pearson: Thanks very much.

The Convener: Have you got a new line of questioning, John? If you have not got one, I have got one. We will have a supplementary question from John Finnie, and then John L—I must find another way of describing you—will start a fresh line of questioning.

John Finnie: Ms Clemmons, I noted all that you said about the timeframe. What efforts have you made to gauge your members' views?

Chloe Clemmons: I have spoken to a number of the projects that the church is involved with, and everybody has told me that they need time to think about how the provisions would apply to their work. I have made as many phone calls as I could reasonably make in a day.

John Finnie: Forgive me, but my understanding is that the church has various committees. Is there not an opportunity to get representative views via those?

The Convener: Let me stop this, if I may. We have dealt with consultation and I really want to move on to some specific issues that have been raised about the timescale. We have got only a short time and we have not touched on them, although we really need to get them on the record. Forgive me, John. John Lamont is next.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): My question is directed to Ms Clemmons. At the start of your evidence, you spoke about not having enough time to consider your views on the bill. We all share similar concerns. You also referred to the need for community buy-in and the fact that the bill will perhaps not achieve the objectives that it is designed to achieve. Do you share my concern that there is a wider problem beyond sectarianism at football matches—sectarianism works in different shapes and forms in different communities—yet the bill addresses only one aspect of it? Is that what you were alluding to? Can you flesh out your concerns a bit more clearly?

Chloe Clemmons: My concern relates to the fact that the process of buy-in is a process. You cannot say, "The Government has announced that the community now thinks this." The bill may be absolutely fine, but it is not about whether the bill

is the right or the wrong answer; it is about a process of ownership—its becoming our own—and that takes time. It may be that, at the end of the process, no changes will have been made, but people will be able to say, "I've been included, I've participated and I'll follow this now."

I can see why football-related offences are included in the bill—I am not arguing that they should not be. I also acknowledge that the Government has said that further work on sectarianism will continue and that community work may be part of that on-going work. I am challenging not so much the limited scope of the bill as the lack of capacity for engagement on it.

The Convener: That takes us back to the issue of consultation. If you do not mind, John, I will move on to Alison McInnes, who wants to ask about something completely different.

Alison McInnes (North East Scotland) (LD): Mr Hopkins, in the written submission from the Equality Network, you say that you have concerns about the broad nature of condition B in section 5 of the bill. You state:

"We think that the issue of freedom of speech needs further consideration."

I would be grateful if you elaborated on that.

Tim Hopkins: We have two concerns about the condition B offence. First, it is not broad enough, as it covers only religion and not sexual orientation as the equivalent offence in other parts of the UK does. Secondly, issues such as freedom of speech are not addressed explicitly in the bill, and we think that they need at least more discussion.

The English legislation that corresponds to section 5(5) is the Racial and Religious Hatred Act 2006, which was discussed at length at Westminster. It is very similar to section 5(5), except for the fact that, because of the discussions about freedom of speech that took place during the passage of the bill, Westminster decided that a rider stating that the legislation would not prevent certain things was required.

Section 29J of the Public Order Act 1986—which is quoted in the Scottish Parliament information centre briefing on the bill, so I will not read it out now—ensures that the rule on banning the stirring up of religious hatred does not impinge on proselytising—on trying to convert people from one religion to another—or on the ridiculing of religion, which is something that comedians do a lot. It even says that you can abuse religion, which is something that I do not think you should do, but which Westminster felt should not be a criminal offence.

Alison McInnes: Is it your view that by singling out religious hatred in condition B in section 5(5), the Government is—perhaps inadvertently—creating a sort of hierarchy of equality, and saying that something sits above all the other equalities?

Tim Hopkins: That is exactly what we think. I noticed that the Scottish Council of Jewish Communities used exactly that phrase—"a hierarchy of discrimination"—in its submission. It was important for us to go through the process of the hate crime legislation in the previous session of Parliament to ensure that all of the different kinds of hate crime—all of which are common, unfortunately—were covered by hate crime law.

Since I submitted our written submission on Monday, we have gathered from our colleagues in LGBT Youth Scotland some more examples of threatening behaviour on the internet, which is exactly the kind of behaviour that section 5 covers. The examples concern specifically homophobic threatening behaviour. For example, LGBT Youth Scotland does a lot of support work with young LGBT people in Scotland, and it has helped many people to deal with the alarm and fear that have been caused by threatening communications on the internet, such as Facebook groups called "Kill the gays" and threatening and homophobic e-mail messages.

Those things happen, just as they happen in the religious, sectarian and religious-hatred cases. We think that it sends entirely the wrong message not to deal with them at the same time. The simplest solution would be to amend section 5(5) so that it covers the same kinds of hate crime as are covered by section 1 and the rest of Scottish hate crime law.

The Convener: Chloe Clemmons said that the bill does not cover unrecorded speech, and Tim Hopkins also touched on that. Could you develop your points? Mr Hopkins asked:

"Should the proposed new offence therefore cover unrecorded speech"

and I would like to hear more about that. I had not noticed the issue until it was raised today.

Tim Hopkins: My understanding is that the offences in section 5 cover any form of communication except unrecorded speech. The English offences of stirring up racial, religious and homophobic hatred cover unrecorded speech, except where it happens on domestic premises. They do not catch hate speech happening in a house, but they catch hate speech happening in, for example, a public hall.

In our written submission, we gave the example of an event or rally at which a speaker was stirring up hatred before a like-minded audience. For example, a speaker might be stirring up Islamophobic hatred before an audience of members of an Islamophobic organisation—the same situation could arise with a racist or

homophobic speaker and a racist or homophobic organisation. Currently, it is not clear that that would be an offence in Scotland, although it is in England, because it is covered by the rule on stirring up hatred. The issue is that it might not be a breach of the peace in Scotland, as it might not incite public disorder, because the people hearing it are people of like mind with the speaker. Arguably, however, it should be an offence for someone to stand up at a meeting of people who belong to an extremist organisation and stir up religious, racist or homophobic hatred.

The Convener: Before we hear from Ms Clemmons, I am interested in the Equality Network's defence of free speech. This is a very difficult area. Suppressing views that—entirely rightly—you do not agree with might undermine democracy. I am not sure about the answer. It is difficult to judge someone's right to say something that you disapprove of totally.

Tim Hopkins: I completely agree that freedom of speech is an extremely important issue in the context of the offence in the bill, but I do not think that limiting the offence so that it does not cover unrecorded speech is the right approach to freedom of speech. That would leave us in the situation in which it would not be an offence to say a thing publicly, but it would be an offence if it were written down and reported on the blog of the person who said it, or if the organisation that the person was a member of reported it on its website, or if someone recorded it on a mobile phone and made a YouTube video out of it. That would not make sense.

Arguably, if something is within the scope of free speech when it is said just to a crowd of people, it should also be within the scope of free speech when it is shown as a YouTube video on the internet, so it seems to me that restricting the offence so that it does not cover unrecorded speech is not the right way to deal with freedom of speech. There needs to be more discussion of exactly where the boundary lies between acceptable free speech and the incitement of hatred by doing something that is threatening.

Chloe Clemmons: Given that we are talking about a bill to tackle sectarian behaviour, one of the things that we need to ask is how that behaviour manifests itself. I do not know the answer to that question, but it is one for people who have experienced such behaviour or who have been convicted of it. We need to know whether it was a matter of someone saying something to someone. Until we know the answer to that question, we will not know whether the bill will work without such a provision.

The Convener: As members have no other questions, I have a final question about an aspect of the Equality Network's submission. Am I correct in thinking that you are looking for section 5, on threatening communications, to be taken out of the bill altogether?

Tim Hopkins: For the reasons that we have discussed, we think that the big problem with the bill is the condition B offence in section 5, which relates to the stirring up of religious hatred. We think that there are a number of possible solutions. We are not suggesting that the whole of section 5 should be deleted, because the condition A offence is fine—it covers all sorts of crimes.

The Convener: Perhaps this is for the ears of committee members only, but I draw your attention to the fact that if an amendment sought to delete section 5, it would not be a competent amendment, as it would take away half the bill and would be seen as a wrecking amendment, given that the bill is described as

"An Act of the Scottish Parliament to create offences concerning offensive behaviour in relation to certain football matches, and concerning the communication of certain threatening material."

The bill has two parts, so an amendment that sought to take away one of those parts might not be competent, although members could take advice on that. It is up to members to decide whether they want to test that.

Graeme Pearson: If I understood your evidence correctly, it seems that you would be more comfortable with the retention of the condition B offence in section 5 if reference were made to section 1(4).

Tim Hopkins: That is absolutely right. Just to clarify, we support the condition A offence in section 5, so we are not suggesting that the whole of section 5 should go; we are suggesting that just section 5(5) should go. Another solution would be to amend it by extending it to cover sexual orientation, transgender identity and disability so that it matches section 1(4).

Graeme Pearson: If the list of things that are referred to in section 1(4) were included under condition B, would you be more comfortable?

Tim Hopkins: That would remove our main objection.

Graeme Pearson: I am not saying that it would satisfy you completely, but it would make you more comfortable.

Tim Hopkins: Yes, it would.

The Convener: If neither of the witnesses has anything to add, I bring the session to a conclusion. Thank you very much for dealing with the issues at break neck speed. We have found your evidence extremely useful. It will, we hope, be available in print form tomorrow, certainly in time for the debate on the bill.

12:59

Meeting suspended.

13:06

On resuming—

The Convener: I welcome our second panel. We are delighted to have representatives from Celtic, who have managed to come at very late notice—that is very useful. We also welcome the Lord Advocate and Michelle Macleod.

I will go through who we have in front of us. Neil Doncaster is chief executive of the Scottish Premier League; Ronnie Hawthorn is head of safety, security and operations for Celtic Football Club, and Robert Howat is company secretary at Celtic; David Martin is head of security and operations with Rangers Football Club; Stewart Regan is the chief executive of the SFA; Frank Mulholland QC is the Lord Advocate, and Michelle Macleod is head of the policy division of the Crown Office and Procurator Fiscal Service.

Before we move to questions, I should say that we are all very grateful for your accelerating yourselves along here today. I appreciate that some people have to be away by 2 o'clock. I see that it is Mr Regan who has to go by 2 pm. Others could stay if necessary, could they? In some respects, I wish I had not said that, as you will all think that you can take as much time as you like. Anyway, we will try to speed along to 2 pm, although we have a little latitude.

James Kelly and Humza Yousaf will ask the first questions.

James Kelly: Good afternoon, gentlemen.

The Convener: And lady.

James Kelly: Thank you, convener—apologies, Michelle.

For the purposes of clarity, I ask the football representatives whether the clubs requested the new legislation, and whether they requested that its provisions be put in place by the start of the forthcoming season, or did the Government approach the clubs and propose that the new legislation be put in place by the start of the season?

David Martin (Rangers Football Club): The first that Rangers heard was when the First Minister announced that he planned to rush some legislation through before the start of the next football season—notwithstanding that we are all members of the joint action group that was set up after the summit. I have to say that Rangers was somewhat surprised about it.

Robert Howat (Celtic Football Club): Although, like Rangers, we had been involved with the joint action group working parties, the actual introduction of the legislation came fairly late on in the process, with details of the bill coming towards the very end. As regards the detail that was announced last week, we did not see anything any earlier than anyone else.

James Kelly: To be clear, you did not approach the Government asking for legislation; it was the Government that brought forward the legislation.

Robert Howat: There are elements of the bill, particularly on threatening communications, on which we had been keen for some form of different approach to be taken, given the particular situation with our manager, but the way in which the bill has been rolled out was not something that we called for at the time.

Stewart Regan (Scottish Football Association): The police, the Government, the football authorities and the clubs have been part of what is termed the joint action group since early March. All parties were asked to go away and consider steps that they might take to improve the situation and to consider the issues that came out of the joint action group. The Government was part of that process, and clearly it has come back with its ideas. The legislation is something that the Government has brought to the table as part of the joint action group.

The Convener: No other witness wants to comment on that point.

Humza Yousaf: My question is related to James Kelly's question. Even though the clubs, the SPL and others might not have called for the legislation, is it important to have the legislation in place by the start of the football season rather than introduce it halfway through the season? The police suggested at yesterday's meeting that, logistically, they would welcome the legislation being in place before the start of the football season. Would it be more difficult to implement the legislation halfway or three quarters of the way through the season? Is it therefore probably imperative to have it in place for the start of the season? Do you have a different view?

Neil Doncaster (Scottish Premier League): It was helpful to have a briefing this morning on some of the gaps in existing legislation that create a need for better clarity going forward. I think that we would all welcome clarity as soon as is reasonably practicable. Alongside that, we would welcome guidelines as to how the legislation will work in practice, and there are assurances that such guidelines will be forthcoming. We hope that that will mean more clarity as soon as possible, and before the beginning of the season.

Stewart Regan: The start of the season is a natural time to put in place a series of measures to try to address some of the issues that we faced

last season. All parties have considered measures that could be put in place, and all have a series of initiatives. To introduce something new part of the way through the season would be challenging—it would lose its impact. I therefore welcome the new legislation. If we can put elements of it in place, with a practical understanding of how they will be managed—the Lord Advocate's comments this morning at the pre-meeting were helpful in that regard—we should be able to take positive steps.

The Convener: You have just heralded the Lord Advocate, who might be prepared to share with us some thoughts and guidance that might assist.

The Lord Advocate (Frank Mulholland): Yes, convener. I will start with the need for the legislation. I have read that some people have said that legislation is already in place that covers the conduct that caused lots of problems last season. I will deal first with offensive behaviour.

Over the past few years, the common-law crime of breach of the peace has been developing as a result of the European convention on human rights, which requires that a citizen knows what is criminal and what is not. The argument is that breach of the peace is ill defined and that the limits of the crime are not well enough defined for a citizen to know whether certain conduct is criminal or not. For example, recently—that is, in the past couple of years—it has been held that for breach of the peace to apply there must be a public element to it. For example, conduct in a private dwelling house can no longer be a breach of the peace, although it was treated as such in various cases in the early 1960s.

Further, the definition of breach of the peace requires the conduct to be

"severe enough to cause alarm to ordinary people and threaten serious disturbance to the community"

and

"genuinely alarming and disturbing, in its context, to any reasonable person".

Under that definition of breach of the peace, there have been cases—I do not want to name names, but I am quoting from case reports—in which a sheriff has ruled that supporters shouting racist abuse at a black player, or another supporter grunting in an ape-like fashion and shouting racist abuse at a black player, did not amount to breach of the peace. The view was taken that

"the conduct was over very quickly,"

that it was not "flagrant", that it took place

"in the midst of the cauldron of sound which emanates from any large sports crowd",

and that it could not

"be interpreted as ... conduct which would be alarming or seriously disturbing to any reasonable person in the particular circumstances of the football match."

13:15

In cases involving conduct at football matches, defences have been run that no fear or alarm is caused by offensive chanting and singing and that at the end of the match it was clear that no public disorder resulted.

The bill seeks to define offensive behaviour so that the police and the courts can apply that definition to the conduct itself. Breach of the peace could still develop, because breach of the peace is a common-law crime, as a result of further cases and further jurisprudence. That deals with the current law and breach of the peace.

The problem with threatening communications is that the issue is covered by the Communications Act 2003. As a result of case law, particularly down south, doubt has been expressed about the definition of sending a communication—because that is what is criminalised—and whether sending includes posting, blogging or using or accessing Twitter. The second part of the bill seeks to put an end to that doubt.

Furthermore, offences under the Communications Act 2003 are prosecutable only summarily. I do not want to get into the specific circumstances, as that would not be appropriate in this forum, but I have seen some of the vilest postings on the internet—postings that glorify someone's murder or contain threats to kill someone, with details of what that would involve. Although it is a matter for the courts, you may say that such communications may be worth prosecution on indictment. Even if a prosecutor takes that view, we cannot currently prosecute on indictment, because such offences are prosecutable only summarily. The bill therefore seeks to extend the penalty and, as I said, put an end to any doubt about the definition of sending.

As I alluded to at this morning's meeting of the joint action group, and as you would expect, the Lord Advocate will give guidance to chief constables on what the offences are intended to cover, and I am anxious to share the draft guidance with the committee. It will remain draft guidance unless and until the act comes into force, but we hope to be in a position to share it with the committee. I have spoken to Michelle Macleod and we think that that can be done by Friday of this week, so you will have it for the debate in the Parliament and for perusal by the committee.

The guidance makes it clear that, as with breach of the peace, everything is determined on facts, circumstances and, most important, context. It also makes it clear that the offence—that is, the

offensive behaviour—is not intended to cover peaceful preaching or to restrict freedom of speech, including the right to criticise or comment on religious or non-religious beliefs, even in harsh or derogatory terms. It is not intended to criminalise jokes or satire about religious or non-religious beliefs. It is not intended to criminalise the singing of national anthems in the absence of any other aggravating behaviour. It is not intended to criminalise the making of religious gestures while national anthems are being sung in the absence of any aggravating behaviour.

It is very important that the courts have a set of facts and circumstances and the context in which the behaviour took place, to determine whether something is criminal—that is what the courts are there to determine. I will give an extreme example. If I take a banana from a bowl of fruit, unpeel it, eat it and throw the skin into a bin, that is clearly not criminal. However, in the context of a regulated football match, if someone unpeels a banana and throws the skin towards a black player, the context in which the behaviour occurs criminalises behaviour that, in a different context, would of course be non-criminal. That is the point that must be grasped. We are not intending to proscribe this behaviour or that behaviour; it all depends on the facts, the circumstances and the context.

We will make the draft guidance available to the committee, for parliamentarians to debate next week, and if the Parliament passes the bill—whenever that might be—we will finalise the draft guidance for chief constables. I hope that my preliminary remarks have been of assistance.

The Convener: They were of a great deal of assistance. In particular it will assist us to have the draft guidance before we proceed. By the way, I must correct myself. I think that the stage 1 debate will take place tomorrow morning—it is just as well that I realised that, or I would not have been there.

I am sure that members have lots of questions.

Alison McInnes: Lord Advocate, you said that a citizen needs to know what is criminal and what is not. That is absolutely right; good law must make that clear. However, the bill contains at least three areas that seem to me to be unclear. First, it suggests that behaviour is sometimes criminal in public places and sometimes not. Surely it is not good law to say that someone may chant or sing songs in a public place but may not do so in a football ground. Secondly, there is disquiet about the wording on travel to and from a match even if the person does not intend to go to the match, which seems vague. Will you deal with those points?

The Lord Advocate: On your first point, if you read the bill you will see that it criminalises behaviour at a regulated football match that is likely to incite public disorder. Behaviour is then defined as

"expressing hatred of, or stirring up hatred against, a group of persons based on their membership (or presumed membership) of—

(i) a religious group,

(ii) a social or cultural group with a perceived religious affiliation,"

or a group that is defined by colour, race, nationality, ethnicity, sexual orientation or disability. The definition also includes

"behaviour that is threatening, or ... that a reasonable person would be likely to consider offensive."

I would be reasonably comfortable that the legislation would survive a challenge under ECHR that it was inspecific and not sufficiently defined.

I hope that it will help the committee if I add that four years ago a prosecution was raised in Edinburgh sheriff court—again, I do not want to name the case—on a charge of breach of the peace, after a person chanted homophobic remarks at a football player in an Edinburgh derby. The decision of the sheriff, which we all respect, was that the behaviour did not amount to a breach of the peace. Such behaviour would be covered by the provisions of the bill, because it stirs up hatred against a person or persons, based on their membership of a group that is defined by sexual orientation. I wanted to make that point—I certainly have not read any comment in the media about it.

You had a second point—

The Convener: It was about travelling without intending to go to the match.

The Lord Advocate: The definition in the bill about travelling to or from a match or watching a match being televised is taken from the football banning order legislation that is in place. I will give examples of that—

The Convener: Sorry to interrupt, but when you talk about someone intending to watch a match being televised, I presume that you are talking about people travelling to a pub to watch it or going to watch it in a public area on a big screen. Is that correct? Is that what football banning orders cover?

The Lord Advocate: Yes, with football banning orders, the definition of a regulated football match covers that. Section 2 of the bill includes behaviour that occurs

"while the person is entering or leaving (or trying to enter or leave)"

a stadium, or

"on a journey to or from the regulated football match",

and in

"any place (other than domestic premises) at which such a match is televised".

You might ask why we need that in legislation. Well, what if, for example, a match is being televised in a pub and disorder breaks out involving the type of behaviour that is covered under the bill, because people are delivering sectarian abuse at a former old firm player? That is why the bill goes beyond a regulated football match and includes

"any place (other than domestic premises) at which such a match is televised".

Alison McInnes: My point was about the phrase

"whether or not the person attended or intended to attend the match".

That seems to me to be a strange provision.

The Lord Advocate: Somebody might intend to go to a match, but not get there for a particular reason. That might be because they engage in the type of offensive behaviour that is covered by the bill. The bill is wide enough to cover that.

Alison McInnes: If I might, convener, can I ask a follow-up question?

The Convener: I just want to ask the Lord Advocate for clarification. Are you telling us that we must read section 2(4)(a) alongside section 2(3), because the term "regulated football match" includes a place at which a match is televised? So when the bill talks about

"whether or not the person ... intended to attend the match",

that means a regulated match or, in other words, one that is being televised. That constrains the provision—it is not just at large.

The Lord Advocate: Section 2 is entitled:

"Regulated football match: definition and meaning of behaviour 'in relation to' match".

Section 2(2) states:

"For the purposes of section 1(1), a person's behaviour is in relation to a regulated football match if it occurs ... in the ground where the regulated football match is being held"—

which is common sense—

"on the day on which it is being held",

or

"while the person is entering or leaving (or trying to enter or leave) the ground where the match is being held, or ... on a journey to or from the regulated football match."

The Convener: I am talking about the next bit, which states:

"references in subsection (2)(a) to (c) to a regulated football match include"

circumstances in which a match is televised. Is that right?

The Lord Advocate: The bill states:

"references ... to a regulated football match include a reference to any place (other than domestic premises) at which such a match is televised".

So that includes attending a pub to watch a match.

The Convener: Yes, and therefore, where the bill states in section 2(4)(a) that

"a person may be regarded as having been on a journey to or from a regulated football match whether or not the person attended or intended to attend the match",

it means a journey to where the match is actually happening or to where it is being televised.

The Lord Advocate: Yes.

The Convener: So the bill is narrower than I read it originally.

The Lord Advocate: That is the way that I read it.

The Convener: Okay—I think I understand.

The Lord Advocate: Of course, ultimately, it is a matter for the courts.

Alison McInnes: The Lord Advocate has made great play of the fact that the Government has lifted wording from the football banning order legislation. We heard yesterday from Dr McArdle about a concern that the orders have not been as effective as it was hoped they would be and that he has carried out research for the Government on that. It would be useful to have that research published as soon as possible. I understand that it is finished and is with the Government. Can you comment on that?

13:30

The Lord Advocate: No. I know of the research, but I cannot comment on the date of publication.

On the wider question of the number of football banning orders, the assistant chief constable of Strathclyde Police said this morning that there were round about 120-ish in Scotland.

We have what we call a designated football procurator fiscal depute, who deals with cases arising from disorder relating to football matches, who is well aware of the power of the courts to impose football banning orders, and who will regularly remind the courts of that power on conviction. Ultimately, it is a matter for the courts which, when sentencing, must determine whether it is appropriate to impose a football banning order—having regard to the precise terms of the offence for which the person has been convicted.

The Convener: Do any of the representatives of football organisations wish to comment on any points that have been raised on football banning orders, or on whether a person is intending to go to a match when they are intending to watch it on a screen that is not on domestic premises? I think that we have resolved the latter issue.

I see that no one wishes to comment further.

Humza Yousaf: I have one question on the same lines, and one on—

The Convener: You are not allowed to ask the second one, because there is a queue.

Humza Yousaf: My question is not on football banning orders, but on unintended travel issues. I wonder whether the Lord Advocate could offer a little more clarification. I want to consider the case of a group of fans from X football club who are travelling to a match by train. I know that we should not use hypothetical examples, and that it is very bad of me to do so—and that this is the second day in a row. The fans are singing songs that would be an offence under the bill. Someone hops on the train halfway through the journey, who did not intend to go to a public screening, to a public house, or to the match, but intended to go to the town for their shopping. If that person joined in the chanting, would there be grounds for prosecution?

The Lord Advocate: Everything depends on facts, circumstances and context. We would need to consider the person's intention, what they were doing, and what evidence there was.

Humza Yousaf: What if the person had no intention of going to the football match, or of watching the match at a public screening, but was going somewhere completely separate?

The Lord Advocate: Again, it would all depend on facts and circumstances. For example, if there was disorder among persons who had no intention of attending a football match but who were travelling to the surrounding area with the intention of causing disorder, that would certainly be covered.

The Convener: I think I have got more muddled. I thought I had sorted it out in my head, but now I realise that I have not. We will just have to read it all and think very hard.

John Lamont: I have a supplementary question to the one that was asked by Alison McInnes on the need for clarity. The Lord Advocate spoke earlier about guidance and about the singing of national anthems, and you said that everything would depend on circumstances. I want to suggest some scenarios. Can you imagine a situation in which an individual is at a football stadium or somewhere else among a crowd of Celtic fans—a similar situation could apply the other way round—and he or she decides to sing the national anthem, "God Save the Queen", or a situation in which an individual among a group of English supporters decides to sing "Flower of Scotland"? Are those the kinds of circumstances in which the person could be prosecuted under section 1?

The Lord Advocate: I do not think that it would be right for me to answer that question, because it is about a hypothetical situation. It is necessary to consider the facts, the circumstances and the context. Let me answer your question by giving an extreme example. If someone at an old firm match were to leave, say, the Rangers end, run across the pitch and, in front of the Celtic fans, sing the national anthem, the context could, arguably, make that act criminal because the intention was to cause public disorder. On the other hand, if a rugby player, for example, were to sing the national anthem before a match, that would not be a problem. That is what the guidance makes clear. I do not want to be drawn into considering this or that situation; as I have said, guidance will be given to chief constables.

It is not about criminalising people in the example that John Lamont gave; it is all about the context in which the behaviour takes place. I therefore do not think that it is helpful in this debate to say, "I'll give you another example. Would that be criminal?" or, "I'll give you another example. That wouldn't be criminal." What I am saying is that we will look at the facts, the circumstances and the context. We will look at the provisions in the bill, and we will make a judgment on the evidence as to whether behaviour meets the definition in the legislation. If it does and there is credible and reliable evidence, it is ultimately a matter for the courts, and that is what the courts are there to judge.

The Convener: Humza Yousaf has a supplementary on the same issue. Please make it short, as I have a long list of members with questions.

Humza Yousaf: It is a minor point. Most of us would agree that some of the headlines this morning have been incredibly unhelpful, but I want to touch on the process. My question is probably directed to Michelle Macleod. In the circumstances that have been described, it is not just a split-second decision by the police officer, because the Crown would be involved, as would the procurator fiscal, and essentially it would be up to the courts. Will you talk us through what the process might be and how it would work?

Michelle Macleod (Crown Office and Procurator Fiscal Service): The process for any offences under the new legislation will be exactly the same as the process under any other legislation. If the police think that the conduct is sufficient to justify reporting a case under one of

the provisions, it would go to the relevant procurator fiscal in the jurisdiction where the offence occurred. The fiscal would then apply the guidance that the Lord Advocate mentioned. Guidance will be given to the chief constables but, in addition, prosecutors will have their own guidance. They will apply the facts and circumstances to see whether there is sufficient evidence for the offences. If there is, proceedings will be initiated and thereafter, as the Lord Advocate suggested, it will be entirely a matter for the court to determine whether there is sufficient evidence, beyond reasonable doubt, for a conviction. A different procedure will not apply to this offence compared with any other offence.

The Lord Advocate: I will just add to that point. In addition to guidance for chief constables on reporting of the offences, there will be prosecutorial guidance for our procurators fiscal. We do not make such guidance public, but I assure you that the approach is routine for any new offence. For existing offences, we have a detailed set of guidance for prosecutors as to when it is appropriate to prosecute and when it is not.

The Convener: I am sorry, but I am still struggling with section 2(4)(a). It states:

"a person may be regarded as having been on a journey to or from a regulated football match whether or not the person attended or intended to attend the match".

How can a person be on a journey to or from somewhere if they have no intention of going there? How can they be on a journey to or from a regulated football match if they have no intention of going to it?

The Lord Advocate: That provision is to cover the situation in which among a group of supporters—the vast majority of whom have tickets for a football match and intend to go to it—there are a couple of persons who do not have tickets and who have no intention of going to it, obviously because they do not have tickets. They are part of a group—it is an example; we are dealing with a hypothetical situation—that might be involved in such disorderly behaviour. The argument, or the policy, is about whether that behaviour should be criminalised. As the bill makes clear, if people engage in the type of offensive behaviour that is set out in section 1, the behaviour should be criminalised.

The Convener: Right. I am going to leave it there and chew that over. We will move on. Maybe it has just been a long day.

John Finnie has a different line of questioning. After him I will call Graeme Pearson and James Kelly.

John Finnie: Thank you all for coming along today. My question is for the Lord Advocate. It is about section 1(5). If I understood correctly a number of representations that we have heard—I accept that I might have misinterpreted them—we have been told that that section is already covered by the law on breach of the peace. My understanding is that it is to cover a situation where there is a single group or faction and the conduct is deemed unreasonable. Will you comment on that? Would that constitute a breach of the peace? Is this a refinement or is it something new?

The Lord Advocate: Is that section 1(4)?

John Finnie: It is section 1(5).

The Lord Advocate: The definition of breach of the peace is conduct that is

"severe enough to cause alarm to ordinary people and threaten serious disturbance to the community".

As I have said, in a number of cases the defence has been run that no fear or alarm was caused by sectarian chanting because everyone surrounding the person was doing the same thing. The argument has been run that one could not say that the conduct would be likely to incite public disorder because no public disorder resulted—for example, the stadium may have been three-quarters empty.

Section 1(5) is intended to deal with that type of defence, which we see from time to time in football-related breaches of the peace, because it provides that

"For the purposes of subsection (1)(b)(ii), behaviour would be likely to incite public disorder if public disorder would be likely to occur but for the fact that—

(a) measures are in place to prevent public disorder"

—in other words, there are a lot of police there who have stopped public disorder—

"or

(b) persons likely to be incited to public disorder are not present or are not present in sufficient numbers."

John Finnie: Thank you, Lord Advocate. We heard yesterday from the Association of Chief Police Officers in Scotland and from the Scottish Police Federation that they welcome the legislation. In layman's terms, would you understand that welcome to be because paragraph (b) of section 1(5) will fill a gap in the existing provision?

The Lord Advocate: I was gratified to hear from the assistant chief constable of Strathclyde Police, Campbell Corrigan, who attended the joint action group this morning. He assented when I set out the position in relation to the existing legislation as opposed to what the bill covers. On the point about filling the gap, that is, as I understand it, welcomed by the police.

James Kelly: I will take the Lord Advocate back to his earlier explanation of the reason for section 1 and why it has been drafted in that way.

You spoke about how the current breach of the peace laws are inadequate in some ways, particularly in relation to private dwellings. You also cited some case law, which I do not think—you can correct me if I am wrong—related to the matches at the end of last season.

The Lord Advocate: No.

James Kelly: Can you explain the need for section 1 to be in statute for the start of the new football season?

The Lord Advocate: There are two elements to your question. There is a need to make clear what the offence covers and to define it. While breach of the peace is developing in ECHR terms and seems to be contracting, we need to have an offence which specifically covers the type of behaviour that we have seen all too often last season and in previous seasons. That is certainly welcome, and I welcome it as a prosecutor. It will make the job of the police and prosecutors easier and—more important—it will let citizens of this country know what is criminal and what is not. Section 1 defines the limits of the offence itself.

You asked why section 1 needs to be in place before the football season. It does not necessarily have to be in place before then; it is for the Parliament to consider the matter. Personally, I would like to see it in place before the beginning of the football season so that there is a clean break between the events of last season and, looking forward, the next season's events. It will let the public, spectators, police, prosecutors and defence lawyers know what the law is as we move forward.

I do not think that it is helpful to look back; we should look forward. The bill will certainly be a tool in the box for police and prosecutors. However, to give due respect to the Parliament, it is for the Parliament to decide whether the bill should be passed within the timeline that the Government has sought.

13:45

James Kelly: I have one brief point, convener. I accept that it is the job of Parliament to give a strong signal, as we did with the Domestic Abuse (Scotland) Act 2011, but it is important to get the legislation right. We took some time to consider the Domestic Abuse (Scotland) Bill. You said recently that it is the job of Parliament to pass laws and that we should just get on and do it. Do you not think that we would have been able to produce better definitions and more competent legislation if we had taken a bit more time, rather than rushing the bill through in time for the start of the football season?

The Lord Advocate: It is a short bill that will create two criminal offences. As you know, it is for Parliament to consider whether there is a need for it. In my view, there is a need for it and there is a need for it to be in place before the beginning of the football season. That is my judgment, but ultimately the decision rests with you, as parliamentarians. I would certainly like to see the legislation in force before the beginning of the football season—I say that on the public record—but I fully respect that that is a matter for you.

Graeme Pearson: First, I apologise to Mr Regan. I am sure that he has a lot to do. We do have questions for the football authorities and the clubs, but we are following a particular line of questioning at this time.

The Convener: On that basis, and especially considering that Mr Regan has to leave, if members have questions to put to the clubs, please put them now—you have 13 minutes.

Graeme Pearson: I want to follow the logic of what we are dealing with just now.

The Convener: Okay, as long as we have time. I want Mr Regan to have the opportunity to answer questions.

Graeme Pearson: Of course.

Thank you for coming, Lord Advocate. I would be a fool to try to cross swords with you on legal matters, but there are a number of issues that need to be put to you. You said that the bill is short, with only a few sections, but you would also admit that it is a huge issue for Scotland.

The Lord Advocate: Of course.

Graeme Pearson: It is one that needs some clarity. We received evidence only today about the importance of taking the public with us and giving them the opportunity to understand fully the issues that are involved and to be included in the outcomes that we in the Parliament seek to achieve. The fact that we have had such a long discussion with you indicates the difficulties that accrue in such circumstances; the timescales have made things very difficult.

We received significant evidence in a number of submissions, including from Dr Sarah Christie, Dr McArdle and the Law Society of Scotland, which expressed a view that is different from your own about the current environment and the legislation that is available to us, both common law and statute. There is a strong lobby indicating that there is the ability to enforce—

The Convener: May I press you to get to a question? I am sorry. I am sure the Lord Advocate

is aware of all that. I am aware of the need to get questions for Mr Regan.

Graeme Pearson: I want the Lord Advocate to know the context of my question.

The Convener: Yes, but still—

Graeme Pearson: You mentioned football banning orders. There was an indication, in particular from Dr McArdle, that perhaps there is not the energy and commitment to the current legislation that might have brought about many changes that we have sought in the past few years, both in enforcement and the involvement of the courts and prosecutors. How do you feel about that view, which was expressed to the committee yesterday?

The Lord Advocate: I disagree with it. There is a huge commitment to tackling hate crime. We have a robust prosecution policy in relation to all aspects of hate crime—crime that is religiously or racially aggravated. If there is sufficient credible and reliable evidence, there is the strongest of presumptions that we will take proceedings. While I remain Lord Advocate, that will continue. We have a real focus on hate crime, so I do not agree that we are lacklustre in dealing with it.

Graeme Pearson: I mean in particular in connection with football matches and football events.

The Lord Advocate: We have a football-dedicated depute in Glasgow. That sends the message that we are determined to use expertise and to take a consistent approach. That is what we aim to do and are doing. So no, I do not agree with any suggestion that the Crown is lacklustre in relation to criminal behaviour at or in relation to football matches; that is certainly not the case.

Graeme Pearson: Can I maybe—

The Convener: No. I want to be fair. You can come back—

Graeme Pearson: I was saying that I want to stop there. I might come back in later.

The Convener: I will think about it, but your questions should be short.

Graeme Pearson: Thank you.

The Convener: We have Mr Regan and other football representatives here, so can we focus on that so that everyone can have the opportunity to deal with them, and they do not feel that we have missed anything? Mr Regan, perhaps you would like to tell us something that we have not asked about.

Stewart Regan: We were called here to give evidence and we are here to listen to any questions and points of clarification. We had a productive meeting this morning with the joint action group. It answered a lot of questions and gave clarity on how the legislation will be implemented and how the practical concerns that we have expressed before today will be addressed.

The Convener: It would be useful if you told us your practical concerns that have been addressed. That is a good place to start.

Stewart Regan: There was a perception that the bill was about sectarian chanting, which was the one thing that was hitting the headlines. This morning we covered the fact that we are talking about unacceptable behaviour—in particular, threatening and offensive behaviour. The Lord Advocate has given some very helpful examples of where the new legislation will fill existing gaps. We are starting to see how, in working with the police and our colleagues in the leagues, we will be able to address some of the unacceptable behaviour that we want to stamp out.

The Convener: I am going to ask members to come in now, but if anyone on the panel wants to expand a point, it would be helpful to the committee. Along with the police, you are at the coalface on this matter, and difficulties must be presented by having to enforce legislation among 20,000 people—I am afraid that I am never at a football match; perhaps I should have said that sotto voce—and ensuring that that enforcement does not become provocative, which it might do. I am interested to hear about those practicalities. I know that the clubs do a lot themselves. Let us move on along that line.

John Finnie: My question is to Mr Hawthorn and Mr Martin, as representatives of their clubs. Gentlemen, both your clubs are commercial organisations and terminology such as “customer” is used. Have you surveyed your customers for their views on the proposed legislation?

Ronnie Hawthorn (Celtic Football Club): I can answer for Celtic. No, we have not had the opportunity to do that. In fact, we have had quite a short time to consider the bill in detail. We all welcome the principle of the bill. There is no question but that Celtic Football Club in particular has always been open to all and we stand strongly against religious sectarianism, whether it be at football or elsewhere in society.

The timescale has been a little tight for us to meaningfully consult internally, let alone widely among our fans.

David Martin: In a similar vein, last week there was a meeting of Rangers supporters clubs at the stadium, but unfortunately it was prior to publication of the bill. As you can imagine, there was plenty of speculation.

We were kindly provided with a link to the bill by members of the Scottish Executive's support team, and we circulated that to key supporter groups to give them an opportunity to contribute to the debate in writing if they have any comments to make before the Friday deadline.

John Finnie: There is on occasion a quick turnaround for ticket sales for matches, and clubs all have their databases. Will you take the opportunity to consult widely on this? However the bill comes out in the end, customer buy-in—to use that cliché—is important. Will you comment on further consultation and on the level of buy-in that you expect from your customers?

Robert Howat: As part of the joint action group work in the lead-up to the bill, we were asked by the Scottish Government to arrange some meetings with our supporters groups this week. We had intended to hold a meeting yesterday and, to that extent, we were in touch with the main representatives of the three key supporter organisations. Unfortunately, partly because of the time of year, partly because of the speed of all this and partly because these evidence sessions were taking place, we were unable to have that meeting, whose aim would have been to discuss with our supporters issues such as this, and other issues related to joint action group activities.

From our point of view, consultation with supporters is critical because, at the end of the day, they are the group that will mainly be affected by the bill. However, the speed of the bill has been such that it is difficult to get people together and go through the issues as meaningfully as we might want to in normal circumstances.

As Ronnie Hawthorn said, we have not had an awful lot of time to consider the bill. Even the dialogue today makes it clear that there are a lot of questions from the committee, as I am sure there will be from supporters. Guidelines will be issued that will undoubtedly inform that. However, as a club, we want to ensure that there is adequate opportunity to engage with those who will be affected so that our role in it all can be clear. The general view is that we all want to ensure that we get it right, because these are fairly significant issues. Rushing the legislation would be a concern for us as a club.

The Convener: I pause there. Mr Regan, thank you for your attendance, which has been extremely useful. Thank you for coming along at such short notice—you are an extremely busy gentleman.

I will take Colin Keir next, because he has not been in for a bit.

Colin Keir: It is a shame it was not a few seconds ago, because Mr Regan might have been able to answer my question. However, Mr Doncaster might give his perspective.

My question is about ultimate sanctions by the Scottish Football Association and the Scottish Premier League. You would probably not consider this due to the fact that the clubs seem co-operative, but what are the ultimate sanctions that could be brought to bear on clubs that do not control their supporters' actions and indeed the actions of their senior officials?

Neil Doncaster: That is a good question. Our rules on unacceptable conduct are unlimited in terms of their application to how clubs can be punished, but that is in terms of clubs' behaviour and issues under their control, which might include the actions of their officials.

It is important to draw a distinction between what is within a club's control and what it can do to make instances of unacceptable behaviour by supporters as unlikely as possible. On the other hand, things outwith their control might include the actions of an individual or groups that are intent on misbehaving in some fashion. That is a difficult thing to police. The Union of European Football Associations has a stance on it, which it believes is right for its competitions. We have a different stance on it. We believe that it is right to deal with clubs for things that are within their control but that those things that are outwith their control ultimately may be a police issue, which is the way in which the bill is framed.

Colin Keir: I am not up to speed on the differences between UEFA's articles of association and your own. Could you clarify them?

14:00

Neil Doncaster: Under the UEFA regime, clubs are held responsible for their supporters' conduct, even if the clubs have little or no ability to influence that behaviour. I find that an unattractive approach for a league body. It is important that we work with clubs; indeed, the clubs and the league carry out an awful lot of positive and proactive work to deal with behaviours in society that we might not want but which are attached to football. However, holding clubs responsible for things that they have not done is a worrying prospect.

The Convener: John, is your question strictly a supplementary one?

John Lamont: Absolutely.

The Convener: The test will be in the question.

John Lamont: Indeed.

Clearly, we would prefer not to be bringing the bill to Parliament this week. Are the football clubs able to reassure us that they have done everything possible to address this problem and these

concerns? Are you able to say that, with regard to your fans' conduct, you have done everything possible to address this issue?

Neil Doncaster: I am not of that view. Football as a whole can do more. Indeed, one of the very beneficial aspects of the joint action group process is that all involved have turned their minds to that question and a number of positive outcomes from that process will ensure that more is done. I am certainly not of the view that, to date, football has done everything that could have been done, but I am hopeful that we are moving in the right direction.

The Convener: I do not want any fisticuffs at the table, but do you wish to answer the question, David?

David Martin: I tend to agree with Neil Doncaster. As with any walk of life, business or interest, you can always do more. However, I still remember the bad old days of the 1970s when alcohol was such a huge factor and football-related violence was the main problem for police in the wider community when any big games were played.

We constantly refer to the game on 2 March as the "game of shame", but that was actually the 1980 cup final, when fans clubbed each other with beer bottles and fought en masse on the pitch at Hampden. We should give the fans some credit and acknowledge that we have come a long way in 30 years. There are very few instances of fan-on-fan violence, including at old firm games, and we have some of the safest stadia and match-day operations in Europe. In fact, we are widely admired throughout Europe for delivering safe events at football stadia. We have, up to a point, lost sight of that.

I have had only one season with Rangers. In that year, we have featured very prominently in the press for all sorts of different reasons, some positive, some negative, but I have been hugely impressed by the amount of work that the club is doing to tackle the types of behaviour that the bill is endeavouring to address. I make the offer here and now to everyone around the table to come to Ibrox and see the tremendous work that we have done over the past 10 or 15 years. Of course, there is still work to be done; otherwise we would not be sitting around this table. The club accepts that and welcomes any new legislation that is designed to tackle the behaviours that we are trying to stamp out. My one concern, which Mr Pearson will have already raised if he has looked at previous or existing legislation, is that we need to commit resources to enforcing this legislation. That is where we have come unstuck—we have not enforced existing legislation as far or as consistently as we could and should have. We have done it well up to a point in Glasgow but, once you leave that city, the sectarian issue largely passes the rest of Scotland by. They do not understand or recognise it and hence they do not deal with it.

The Lord Advocate: Could I—

The Convener: Before we move on, I should let Celtic say something on the same basis.

Ronnie Hawthorn: Having listened to David Martin and others—

The Convener: I notice that you and Mr Martin are both heads of security and operations. What exactly does that post entail?

Ronnie Hawthorn: Our main task involves safety; security is a close second. If we have 50,000 or 60,000 people coming to a stadium, we want to ensure that they watch the game and go home safely. That is a fairly complicated issue on a match day.

With regard to security, the aspects that are involved in that speak for themselves. We are involved with the security of our fans when they travel, of our staff and of our players. In that regard, we are like any other big organisation. The operations part tends to concern the logistics of dealing with matches in the United Kingdom and in Europe. We need to plan for those events and ensure that safety is given the proper priority. In among all that is the need to try to enforce club policies in relation to behaviour.

To answer the first question, I point out that Celtic, Rangers and many other clubs have policies that are continually reviewed and education programmes and initiatives that are continually refreshed. There is partnership working between Rangers and Celtic and with other clubs. There is also enforcement, which is the aspect that today's meeting is about. That is a difficult area that we have to face up to. The bottom line is that there is no room for complacency.

The Convener: Lord Advocate, I believe that you wanted to respond as well.

The Lord Advocate: There is a point about the linkage with alcohol. A study was conducted between 1 January 2004 and 13 June 2005 that examined aggravation by religious prejudice in criminal conduct convictions. It concluded that 45 per cent of the people who were convicted of that crime in that period were significantly under the influence of alcohol, which I think is quite an important statistic.

The study also examined the place of residence of the people who were convicted of that crime. Some 57 per cent were from Glasgow and 23 per cent were from Lanarkshire. Interestingly, 30 per cent of those convicted lived outside Glasgow and Lanarkshire.

The Convener: That is helpful.

I should inform everyone that I aim to close the meeting at about 20 past 2. We will allow Roderick Campbell and Alison McInnes to ask questions next. Graeme Pearson and Humza Yousaf, you have had good kicks of the ball today—to use parlance that is suitable to the day—so I will see whether we can fit you in after that.

Roderick Campbell (North East Fife) (SNP): Mr Martin, you said that resources must be available. I take it from that that there is no specific problem with the timescale for the passage of the bill, before the start of the season.

David Martin: Sorry, I did not mean club resources. I meant that the club will, obviously, sign up to whatever legislation is passed and will endeavour to promulgate that among the fans groups. I was specifically referring to police resources. This is all taking place against a backdrop of the police having been trying to reduce their numbers at football matches over the past two and a half years. That approach has been taken for all the right reasons, but it will make it more difficult to enforce the legislation if they are there in fewer numbers.

Alison McInnes: Mr Martin, you said that the "game of shame" was in 1980. Did the Government introduce emergency legislation after that match?

David Martin: My memory is good, but it is not as good as that—

The Convener: You were just a wee lad then.

David Martin: I know that the Government brought in the Criminal Justice (Scotland) Act 1980.

Alison McInnes: But that act was not brought in under emergency procedure, in a week.

David Martin: I do not think so.

Alison McInnes: I suspect not.

I want to explore the extent to which football clubs think that they are responsible for the good behaviour of their fans. We are not considering a bill that addresses offensive behaviour at sports matches; the bill is about offensive behaviour at football matches. Why is that?

David Martin: The bill is not about offensive behaviour at public processions either, is it? It is specifically about football. You will find as many instances of sectarian chanting and singing in the streets of Glasgow, Lanarkshire and Ayrshire over the coming months as you will ever find at a football match.

Alison McInnes: That is a fair point. Do you mean that people will ask why there is confusion?

David Martin: I do not know that people will be confused by the bill. Football fans are football fans—they are the same across the country. The vast majority of fans will recognise that there is a need for something and support the bill. However, the Parliament needs to take the fans with it. There must be buy-in from the fans; they need to understand the bill. I have no doubt that the vast majority of Rangers fans and football fans across the country will have no difficulty with the bill.

The Convener: The committee accepts that. We should move on, because time is pressing.

Graeme Pearson: I will make my question brief. First, I acknowledge the great work that has been done over the past two decades in football, particularly by security in various clubs. Given the Government's intent in introducing the bill and moving at a swift pace to change the landscape in which you operate from the start of the new season, what changes, if any, can we expect from the authorities and the clubs from today forward? Do you plan to make changes that will action a positive response?

Neil Doncaster: A range of different measures will be taken, which will come out of the JAG process. Rather than try to summarise many pages of fairly dense text of recommendations that have come out of the process, I refer you to the process. There is certainly no suggestion that anyone who is involved in the game is sitting on their hands. I think that everyone has engaged in the process fully and we will end up with a series of recommendations that have been drawn from the clubs, the authorities and the police, which will address the issues that the Government is keen for us to address.

The Convener: By "the process", do you mean the joint action group?

Neil Doncaster: Yes.

The Convener: Will something be published at the end of the process?

Neil Doncaster: I believe so.

The Lord Advocate: I am not involved in the joint action group, other than when I addressed it this morning, but I understand that a report will be published in July. I might be wrong about that.

David Martin: I understand that the last meeting will be on 11 July and that the group will publish after that.

The Convener: That is the answer to the question, then.

Graeme Pearson: Will the clubs take steps?

Neil Doncaster: The clubs are part of that.

The Convener: You have intimated that there will be detailed recommendations, so we will find out more when the joint action group's plan comes out.

Humza Yousaf: Before hearing from this panel of witnesses, we heard from a representative of the Equality Network. The network said in its written submission and reiterated in oral evidence that this is not, in its view, an emergency. Will Mr Doncaster and the clubs tell us whether the events of last year were destabilising and, if so, what effect they had on individual clubs? Mr Regan is no longer here, but perhaps Mr Doncaster can say what effect the events had on Scotland's reputation as a footballing nation, be it internally, nationally or internationally.

Neil Doncaster: That is another good question. When I came to Scotland two years ago, I was struck—and I remain struck—by how much negativity there seems to be in this country about its game. The reputation of Scottish football outside these shores is very high and I think that the rest of Europe looks to Scotland on numerous occasions. Scotland has a good reputation in the European Professional Football Leagues association, so I do not recognise the view of Scottish football that is described to me by many people on these shores. I think that we beat ourselves up a lot about things that, in most instances, we should be very proud of. The reputation of Scottish football abroad is extremely high. It is not necessary to search too far and wide on the internet to find instances of real disorder around Europe that make what happened here last season look totally immaterial—that is not to diminish how seriously we should take last season's events. The response by the football authorities, along with the police, demonstrates that we are taking them seriously, but many things are going on elsewhere in international football that are staggering.

14:15

Roderick Campbell: I have a very short question for the Lord Advocate. Can I take it that the draft guidance for chief constables will include guidance on section 5, on threatening communications?

The Lord Advocate: Yes.

The Convener: I have a final, brief question for the Lord Advocate about the "but for the fact" provision in section 1(5)(b), which relates to circumstances in which

"persons likely to be incited to public disorder are not present or are not present in sufficient numbers."

Would that cover a public house where there were lots of supporters who all supported the same club or a supporters club? Would it be a defence that someone was in such a place?

The Lord Advocate: I would hate to rush into giving you an answer.

The Convener: Would that possibility exist?

The Lord Advocate: If it is all right with you, I will take time to reflect on that point and will write to the committee as soon as I can.

The Convener: It would be useful to find out about the situation involving supporters clubs or pubs where there were supporters of one team who were not offending anyone on the premises.

Graeme Pearson: In evidence that we took earlier, the comment was made that condition B in section 5(5) would be improved if, instead of referring only to religious hatred, it also referred to the various hate crimes that are listed in section 1(4). Do you have a view on whether the inclusion of that list in section 5(5) would improve condition B?

The Lord Advocate: I would like to take time to consider the issue. I am aware that there is UK legislation that covers offensive comments such as racist comments that are made on the internet, and I would need to look at it to find out whether that is already covered, or whether the bill would be improved by inserting in section 5(5) the list that is provided in section 1(4).

Graeme Pearson: Would you respond to the convener, if you have a chance?

The Lord Advocate: Yes.

The Convener: As I am about to bring the session to an end, I say to all the witnesses that, if you feel that there is anything that we have not touched on or which, on reflection, you wish that you had brought to our attention, please feel free to put it in writing to me, as convener, and it will be disseminated to the rest of the committee. It would be extremely useful to receive any such additional comments before the final stages of the bill, which are to be held next week.

I thank all the witnesses very much for attending; I also thank committee members, who were beginning to think that they were nailed to their chairs, and the official report, for getting the reports out. It is beginning to sound like an Oscars speech, so I will close the meeting there.

Meeting closed at 14:18.

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