



The Scottish Parliament  
Pàrlamaid na h-Alba

## Official Report

### FINANCE COMMITTEE

Wednesday 14 September 2011



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**FINANCE COMMITTEE**

**3<sup>rd</sup> Meeting 2011, Session 4**

**CONVENER**

\*Kenneth Gibson (Cunninghame North) (SNP)

**DEPUTY CONVENER**

\*John Mason (Glasgow Shettleston) (SNP)

**COMMITTEE MEMBERS**

\*Alex Johnstone (North East Scotland) (Con)

\*Derek Mackay (Renfrewshire North and West) (SNP)

\*Margaret McCulloch (Central Scotland) (Lab)

John Pentland (Motherwell and Wishaw) (Lab)

\*Paul Wheelhouse (South Scotland) (SNP)

\*attended

**THE FOLLOWING ALSO PARTICIPATED:**

Peter Conlong (Scottish Government)

Mary Fee (West Scotland) (Lab) (Committee Substitute)

Richard Foggo (Scottish Government)

**CLERK TO THE COMMITTEE**

James Johnston

**LOCATION**

Committee Room 6



## Scottish Parliament

### Finance Committee

*Wednesday 14 September 2011*

[The Convener *opened the meeting at 10:04*]

### Decision on Taking Business in Private

**The Convener (Kenneth Gibson):** Good morning everyone, and welcome to the third meeting of the Finance Committee in this session. I am sorry that we are kicking off a few minutes late, but I understand that that is because of difficulties at visitor services and not because of difficulties to do with our guests.

I ask all members to turn off mobile phones, pagers and so on. I record apologies from John Pentland, who is being replaced today by Mary Fee, the substitute member for Labour. In accordance with section 3 of the code of conduct for members of the Scottish Parliament, I ask her to declare any interests that are relevant to the committee's remit. Any declaration should be brief, but sufficiently detailed to make clear to any listener the nature of the interest.

**Mary Fee (West Scotland) (Lab):** I have no declaration to make.

**The Convener:** Thank you very much.

Agenda item 1 is a decision on taking business in private. The committee is asked to agree to take items 3 and 4 in private. Item 3 is to consider the oral evidence from the Scottish Government officials on the financial memorandum to the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill and whether any issues arise from the session that we wish to highlight to the Justice Committee, which is the lead scrutiny committee on the bill. Any comments that we make to that committee will be published.

Item 4 is to consider the revised terms of the written agreements between the committee and the Scottish Government, the Scottish Parliamentary Corporate Body and the Scottish Commission for Public Audit. The revised agreements will be published on our website.

Are members content to take those two items in private?

**Members** *indicated agreement.*

## Offensive Behaviour at Football and Threatening Communications (Scotland) Bill: Financial Memorandum

10:05

**The Convener:** Under item 2 we will take evidence on the financial memorandum to the bill. I formally welcome two Scottish Government officials: Mr Richard Foggo, head of community safety policy; and Peter Conlong, senior economist in the prisons, community safety and law reform analytical unit.

**Richard Foggo (Scottish Government):** Convener, many thanks for the opportunity to be here to discuss the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. There is significant national interest in the bill, so it is critical that its provisions are subject to scrutiny that is as effective as possible. I am particularly gratified that scrutiny will come from more than one committee of the Parliament and I look forward to hearing members' views.

I am head of community safety policy for the Scottish Government, with responsibility not only for the bill and tackling football-related disorder, but more generally for policy on violence reduction and antisocial behaviour. My colleague Peter Conlong is senior economist in the justice analytical services division.

I will take a few minutes to outline the policy context of the bill and explain the critical elements of the bill's financial memorandum, which will be of central interest to the committee. I wrote to the clerk in advance of the meeting to provide an update on issues that I thought might be relevant to the discussion. I will pick up the issues covered in that letter in my introductory remarks.

First, on the policy context of the bill, the bill seeks to create two new criminal offences. The first is a public order offence that criminalises behaviour that is threatening, or hateful or otherwise offensive to a reasonable person and which is likely to cause public disorder at a regulated football match. The second offence seeks to criminalise the communication of material that either threatens serious harm or contains a threat likely to stir up religious hatred.

The most immediate motivation for introducing the bill was to tackle sectarian and other forms of offensive and hateful behaviour related to football, both at football matches and communicated on the internet and elsewhere. As the policy memorandum to the bill makes clear, the bombs, bullets and bigotry of last football season shamed

Scotland worldwide. We believed—and still do—that action was necessary and justified.

The bill seeks to supplement, complement and clarify the existing laws in these areas. We see no issue with the fact that the new offences cover ground that is already criminal. It is an entirely appropriate thing for the Parliament to do as it has done many times before and seek to single out in a new named offence specific behaviour already caught by general criminal laws such as breach of the peace. That will ensure that those guilty of that specific behaviour can be readily identified. That point is critical in understanding our basic proposition in the financial memorandum, which is that, as much of the behaviour is already criminal, there will not be a significant number of arrests that would not have otherwise taken place. If we had proposed to criminalise behaviour not already at risk of being criminal, our analysis would have been quite different.

Some people have suggested that the calculations and estimates that we provide are extremely low, given our ambition to eradicate sectarianism and other forms of offensive behaviour from football, the internet and elsewhere. That leads me to make two crucial points. First, the calculations and estimates in the financial memorandum cover only the net or additional cost of these new criminal offences; they do not cover the wider cost of policing and tackling sectarianism, even in football or on the internet. Such action by the police, prosecutors and others is already core business, so the bill does not create significant new burdens on agencies.

Secondly, it is crucial to recognise that the bill is not intended to be a sectarianism bill in the sense of a single solution to that deep problem. This is the first targeted action in a long-term commitment to tackle the issues. The Minister for Community Safety and Legal Affairs will make clear the nature and scope of the longer-term work and the committee may take an interest in what the minister says on the subject. It is likely to be in the longer-term work that we see the full expression of how we plan to prevent rather than react to the issues.

Evidence provided to the Justice Committee questioned whether the balance of resources was sufficiently focused on prevention. Preventative spend is a focus for this committee. The bill is not the single solution to sectarianism; that will require longer-term work, including a focus on prevention. There are clear preventative aspects to the implementation of the measures in the bill, such as the smarter and more effective use of police resources to support early and effective intervention and deterrence.

I will comment more specifically on questions raised about the capacity of the current system to deal with the impact of the new offences. June seems a long time ago and it may be that the time to reflect over the summer has caused us to rethink our calculations and estimates. The financial memorandum provides unit costs and estimates of the upper and lower limits of additional cases in the criminal justice system. Since the financial memorandum was prepared in June, we have continued to assess whether the estimates hold and I can confirm that we believe that they do. We will not seek to amend the financial memorandum.

That is testimony to the quality of the work done in June by Peter Conlong and his colleagues, with the support of all relevant partner agencies. Since June, we have convened a strategic implementation group consisting of the Association of Chief Police Officers in Scotland, the Crown Office, the Scottish Court Service, the Scottish Prison Service, and local government representatives covering community justice authorities. I confirm that the group has indicated its continued endorsement of the calculations and estimates made in June and set out in the financial memorandum.

My letter to the committee set out two further developments which, while not essential to the implementation of the bill, will contribute to the efficient and effective targeting of existing resources to tackling the issues. That is the basic approach set out in the financial memorandum. The first development is the new national policing co-ordination unit in which the Scottish Government will invest £1.8 million over the next two years. The second is the three new football liaison prosecutors appointed by the Lord Advocate from within the Crown Office, and therefore without needing additional resources. Both measures put us in an even better place in terms of confidence that we can introduce the new offences without a disproportionate impact on already hard-pressed public services.

**The Convener:** Thank you for that robust defence of the financial memorandum. Does Mr Conlong want to add anything before we take questions?

**Peter Conlong (Scottish Government):** Not at this stage.

**The Convener:** I will kick off—no pun intended—with a few questions. Mr. Foggo has talked about the cost of the bill. In oral evidence to the Justice Committee on 21 June, Les Gray of the Scottish Police Federation said:

“I do not think that either £0.5 million or £0.7 million will scratch the surface of what is required. ... Over the past two years, in particular, the police service has been actively removing police officers from football grounds in order to

reduce costs. In order to enforce this legislation properly, we will have to reverse that trend and bring in more officers to police these games before, during and after matches and, for example, check out public houses.”—[*Official Report, Justice Committee*, 21 June 2011; c 38-9.]

You said that there would not be a significant number of arrests and prosecutions but, were prosecutions to take place, section 5(7) of the bill specifies

“that the maximum penalty is 5 years imprisonment and a fine not exceeding the statutory maximum.”

I do not imagine that many people will get the maximum penalty, but that would have significant costs. Given that we are talking about additional court time, additional prison time, community payback orders and more officers, will you reiterate how you come to the sum that has been quoted as the cost of the implementation of the bill?

10:15

**Richard Foggo:** I will ask Peter Conlong to explain the methodology of the calculations and estimates in a moment.

When Mr Gray gave evidence to the Justice Committee in June, he did so alongside Assistant Chief Constable Campbell Corrigan, who provided a clear explanation of a slightly different view of how the bill will work. Mr Gray takes the view that, as he put it at the committee, the issue needs to be hammered and resources need to be poured in at football grounds and public houses to tackle it.

We simply take a different view, based on advice from Assistant Chief Constable Campbell Corrigan, who is the head of football policing at the Association of Chief Police Officers in Scotland. He has made it clear that policing today is based more on intelligence-led, focused and targeted approaches and that the idea of significant numbers of police constables raiding pubs and wading into large crowds at football matches no longer represents the contemporary policing of football. Although Mr Gray believes that a particular policing approach is required, Campbell Corrigan has assured us that that does not necessarily represent the best approach to policing licensed premises and football stadia, and we are comfortable with that.

There has been considerable criticism that the new offences cover behaviour that is already criminal, but it is actually positive that we are not seeking to criminalise behaviour that is not already criminal, because that means that the behaviour is already part of core business for the police and others further on in the justice system. That behaviour already has to be dealt with in the policing of licensed premises and football stadia and in the reaction of the courts.

Before I ask Peter Conlong to talk about the methodology and calculations, I point out that we are talking purely about the net or additional costs beyond the costs of the already substantial number of arrests and prosecutions that relate to football, the internet and other situations.

**Peter Conlong:** In reaching the net figures that Richard Foggo talks about, we distinguished between solemn cases, which are particularly expensive in terms of the court process and the disposals that they result in, and summary cases. We estimate that there will be seven to 15 additional solemn cases and about 70 to 150 additional summary cases. Based on those ranges for the potential number of additional cases, we went on to estimate the legal aid, prosecution and court costs. As I say, solemn cases are significantly more expensive than summary ones. Paragraph 56 in the financial memorandum summarises the unit costs that we used.

Moving beyond the court costs, there are the costs of disposals. We based the likely disposals on typical disposals for existing religiously aggravated offences. That led to our estimates that about 10 per cent of summary cases will result in custodial disposals, about 15 per cent will result in community payback orders, and the majority—75 per cent—will result in fines. When we went on to estimate the costs of the custodial disposals, we assumed that, in summary cases, on average the sentence would be about six months. It could be up to a year, but experience of existing religiously aggravated offences suggests that, on average, it is a bit lower than that. For solemn cases, the sentence could be up to five years, but we assumed that it will typically be about three years. Moving down from that, the actual sentences that are served will be one and a half years for solemn cases and about three months for summary cases. Multiplying all that gives us the estimates that appear in the financial memorandum.

I should also mention the costs for community payback orders. Those have not been around for very long, so we do not have direct data on them. However, we have taken what we know about the costs of the disposals that CPOs have replaced, which include supervised attendance orders, community service orders and probation orders, and come up with a weighted average to work out what the cost of a basic CPO would be. On top of that, we have added in the costs of requirements that are meant to be additional to a CPO. Those might include rehabilitative programmes, which could be significantly more expensive.

I emphasise that all those unit costs are based on existing experience and that, if anything, they probably tend towards the conservative end of the

spectrum. That gives you the estimates that are in the financial memorandum.

**Alex Johnstone (North East Scotland) (Con):**

I accept the general thrust of your answers, and you made clear in your opening statement that you do not expect the bill to throw up enormous additional costs over and above what is currently spent on policing and legal costs. However, I am slightly concerned that this particular area has, over the years, occasionally thrown up individual high-profile cases that have caught the public imagination and certainly been taxing on the legal system.

Given the figures of between £0.7 million and £1.5 million per annum that you have presented today, my concern is whether the bill could occasionally—perhaps exceptionally—throw up individual cases that could break the bank.

**Richard Foggo:** I am not sure that I would use the phrase “break the bank”; I think the criminal justice system is robust. It is clear that the figures are estimates. In introducing any new criminal offence, or indeed any law, we must use the good offices of Peter Conlong and his colleagues to make estimates, and we have to build into that a risk-based approach that looks at average figures. It is possible that there could be significant cases that would place a particular burden on the criminal justice system, but we have tried to average that out and manage the risk.

It would be difficult for us to estimate the costs for that, given that, as you said, such cases would be unexpected and could not be predicted—how many would we be talking about?—so we accept that our figures are estimates. We accept that there is a range and that the criminal justice system would have to be sufficiently robust and flexible to be able to ensure that it could accommodate such cases.

Having spoken to the Scottish Court Service, the Scottish Prison Service and the Scottish police service, I am confident that we are constantly challenging our own figures. It does us no good for those figures not to stack up. Since June, those conversations have been relentless, and at each point we have asked similar questions and received the answer that the system can cope.

The strategic implementation group was asked whether the system can cope with spikes. That might be the closest in our language to the example that you are giving. We have assurances that the integrity of all those systems would cope with occasional spikes that would average out across a trend, leading to the sort of figures that we are talking about.

I am sorry if that sounds very civil service—perhaps I should just have said, “Yes, we will

cope”—but it is a fuller answer, if that is helpful to the committee.

**The Convener:** Paragraph 60 of the financial memorandum states:

“On average, an Old Firm game costs £328k to police, with Sunday fixtures costing £346k and weekday fixtures costing £282k.”

It goes on to state that, on average, 478 officers are deployed for each fixture. Could the cost to the public purse be minimised by imposing a higher cost on clubs for policing fixtures where there are expected to be problems?

**Richard Foggo:** My understanding is that the terms of charging for the policing of football matches are set out in the Police (Scotland) Act 1967. You will understand that that act is about to receive considerable attention in relation to the creation of a single national police force. That will entail some review of the current charging regime.

The figures that we have presented are a reflection of what it is currently lawful for the police to charge, although the actual rates are subject to negotiation locally. Any change would have to come through primary legislation, which is not something that we are looking at in relation to the bill. We note the figures and impact on both the police and clubs, but we have not actively looked at the charging regime for the policing of football games.

**John Mason (Glasgow Shettleston) (SNP):** I will ask about a couple of issues. First, I want to go back to the fundamental assumption that there will not be any additional prosecutions once the bill is passed. In a sense, I find that disappointing because clearly a lot of behaviour at the moment is not acceptable and the police or whoever feel that the current legislation on breach of the peace is not sufficient to bring prosecutions. It seems to me, therefore, that it is obvious that there should be a lot more prosecutions under the bill. I know that when we introduced the anti-smoking legislation it was largely self-policing, but it is incredibly optimistic to think that this legislation will be self-policing.

**Richard Foggo:** There are two things to say. First, we do not say that there will be no additional prosecutions. As we state in the financial memorandum and as Peter Conlong has made clear, our upper estimate is that there will be more than 160 additional prosecutions at solemn and summary level. That is on top of the fixed penalty notices that the bill allows for. Secondly, we are clear that our figures come from a detailed discussion with the agencies involved.

I will get to your fundamental point. You might describe as disappointing the idea that there will be no additional prosecutions, but we would describe it as hopeful and the result of a whole



range of measures being brought together. We agree fully with Assistant Chief Constable Campbell Corrigan that we will not police our way out of the issue.

Let us take an example. We are often asked why the police do not go mob-handed into very busy away and home supports at football games and make mass arrests. We know that there are practical reasons for that linked to destabilising a crowd and causing problems that go beyond that, but much more critical is the use of smart policing to ensure that we do not need to do that. We need to look at the leaders and those most guilty of the offences, and we need to look at targeted interventions that send out a strong signal.

We hope that the legislation will have a strong deterrent effect. You gave the example of the smoking ban, and we have proven examples that we do not have to arrest and prosecute absolutely everyone who falls in the ambit of offences. If we make high-profile arrests and prosecutions, we can send out a strong signal. Over time, that will have a deterrent effect, which will become a preventative effect, and ultimately we will see a reduction in offences.

Let me be clear that we do not say that there will be no additional prosecutions. There will be a substantial number of additional prosecutions—there will be an initial spike in the number. Our hope is that, over time, that number will reduce. The smoking ban is a good model. There will have to be a cultural shift so that people in Scotland understand that certain behaviour is simply intolerable. We suggest that, at the moment, people are not as clear as they should be about whether the behaviour that we are talking about should be tolerated. We hear time and again that it is simply banter or what happens at football. We are saying that our evidence tells us that most Scots disagree.

Fundamentally, we hope that this is a tipping point. With a push, over a year or two and with a number of additional prosecutions, we will send out a strong signal and achieve a longer-term social effect.

**John Mason:** I will follow on from that with my second question. You said that we would not raid pubs, for example. I have pubs in my constituency on both sides of the divide. The whole population of the pub sing songs—that is already on Facebook, so we can all see it and we have the intelligence. You seem to suggest that we will sort out the problems if we have more intelligence. How do we sort out a pub?

**Richard Foggo:** I admit that, as always, those of us working on the issue in the civil service are amateurs. We are not police officers, so we have to depend on the best expert advice. We spoke at

great length to the police about how licensed premises are policed. Similar to the situation with mass crowds at football games, it is a sign of failure to go mob-handed into a licensed premises. Quiet work is done in advance with the licence holder, and all the sophisticated proactive work is done to set the environment to minimise the opportunity for such behaviour. In that regard, dealing with mass sectarian chanting is no different from dealing with other already criminal behaviour in licensed premises.

It is not as if all behaviour in licensed premises is tolerated. There are sophisticated regimes to deal with criminal behaviour by the clientele of pubs and clubs. The management of the offences in the bill would be no different from that of other offences that take place in pubs. Smart policing, smart licence holders, well-trained staff and well-trained door staff will all have a significant impact and will mean that we do not have to arrest our way out of the problem.

10:30

**Margaret McCulloch (Central Scotland) (Lab):** I have a couple of questions. You say that you do not expect to spend more money than you have estimated, but surely you have set aside contingencies for spending more. Where would the money to cover extra costs come from?

**Richard Foggo:** As I said to Mr Johnstone, the figures are our best estimates, which the experts on the subject have confirmed. We understand that the world could intervene and that the situation could take a turn for the worse, which would cause us to revise our estimates.

The strategic implementation group to which I referred in my introduction is a standing committee. When Assistant Chief Constable Campbell Corrigan said at the Justice Committee meeting in June with Les Gray that he wanted on-going review of our policing cost estimates, we made a commitment to that. The group will monitor and adjust any expectations.

The limits that we have set go to a maximum of not much more than £1.5 million a year. The directorate for justice's budget is considerably more than £1 billion a year. We do not think that the amounts could not be accommodated comfortably in the contingencies in the justice budget. Increasingly, budgets are under pressure and every penny counts, so we will not increase our estimates without absolutely the best evidence. However, as the strategic implementation group's chair, I assure the committee that we will not look to hide if people tell us that we need to do more.

The First Minister has said that he wants the problem to be eradicated. That claim is big and it

means that we need to ensure that public authorities have the funding to back that political commitment. I assure the committee that the strategic implementation group will—if necessary—adjust upwards the estimates that are required to back the two new criminal offences.

**Margaret McCulloch:** Do you guarantee that, if you need extra money that exceeds the budgets that you have set, you will not take it from other sources, so that other areas will not suffer as a result?

**Richard Foggo:** We will not be able to print new money—money will always have to come from somewhere. However, a clear, risk-based, open and robust discussion will take place to ensure that, if we must prioritise the work more, we will look for the necessary funding from areas that we can afford to deprioritise. To be clear, I say that, as always when we have allocated budgets from the Parliament, if we must increase one budget, another budget must decrease. I make no bones about that. That requires us to do what anyone else who manages a budget must do—to reprioritise in-year or at the end of the year. We would calculate robustly where we could afford to find the money to resource this very high priority.

**Margaret McCulloch:** You agree more with Campbell Corrigan and you disregard what Les Gray said. You seem to take one side of the discussion and not to have a balanced view. To achieve a balanced view, would it be better to speak to another expert, so that you have three experts' input rather than one person's point of view against another's?

**Richard Foggo:** I thank you for picking me up on that. I have also spoken to Les Gray about the issue. I choose Campbell Corrigan's view not because it is more convenient, but because we understand that a range of partners disagree with Mr Gray and agree more with Mr Corrigan. I was not expressing a personal preference.

I should also say that we are now in a position in which there are record levels of funding for front-line policing in Scotland. There is a continued commitment to having at least 1,000 extra officers on the street. I think that the public would ask whether we really need more police officers than are provided for by that very substantial commitment to police an issue that is already core business for the Scottish police service. I think that the public would expect us to challenge Mr Gray and anyone else who might for that purpose alone be looking for additional police officers on top of those extra 1,000 officers. I assure you that we have challenged everyone in the system, and that no one—other than, perhaps, Mr Gray—tells us that additional police constables will be required. We have listened to Mr Gray, and we will continue to do so. If he or others can convince us that more

police officers will be required and can provide us with evidence, we will listen and take that on board.

**Paul Wheelhouse (South Scotland) (SNP):** I have two questions, the first of which relates to the on-going assessment of risk. At this stage, have you made any assessment of the probability that the figures will exceed the range that you have suggested? Will you expand on that?

**Richard Foggo:** The strategic implementation group brings a little more structure to the robust calculations that were made in June. I admit that June was a busy period for us, given that we introduced the bill as emergency legislation. We are very proud of the fact that those assessments still stand up to scrutiny in the cold light of day.

The strategic implementation group met two weeks ago. The primary question for that group, the expert members of which we are entirely dependent on, is whether our estimates and our assessment of risk are still valid. Every agency confirmed that they are comfortable that the financial memorandum continues to set out the most plausible picture of the current risk around the issues in question.

**Paul Wheelhouse:** My second question relates to the assumptions in the model. I am not disputing the analysis that you provided—I just want to ensure that I understand it. Do your cost estimates take account of the cost of unsuccessful prosecutions and potential appeals against prosecution?

**Peter Conlong:** In practice, most prosecutions are successful. In effect, I addressed the point that you raise by building conservatism into the unit cost estimates, so everything is shaded on the high side. Let us take the example of prison costs. The figure that we used in the financial memorandum was £40,000 per annum, but the latest figure from the Scottish Prison Service is £38,500. Everywhere I have built in what, as an economist, I would call optimism bias. I have ensured that the margin of error is on the conservative side.

You are right that there will be costs associated with unsuccessful prosecutions but, in the big scheme of things, they are likely to be negligible in comparison with prison costs, for example. I take your point, but such matters have been accounted for elsewhere through optimism bias.

**The Convener:** The questions that Mary Fee was going to ask have already been answered, so we will move on to Derek Mackay.

**Derek Mackay (Renfrewshire North and West) (SNP):** My question is about current costs. You have already touched on the contribution that some football clubs make to policing costs. I

accept your argument that the bill will not change drastically the level of policing by virtue of the nature of policing, but you have said that changing the component of contributions to costs would require a change in primary legislation. Do you not think that, given that there is a greater focus on behaviour at football matches and that we are having to create an offence that relates specifically to football matches, there should be a greater focus on who pays for what in terms of policing? How would the contribution to the cost of policing football matches that football clubs make compare with the costs that other commercial organisations—airports, large shopping centres or organisers of large events—have to pay for policing their businesses?

**Richard Foggo:** I cannot do much more than repeat what I said earlier: we have not looked at the charging regime.

I am also the secretary to the joint action group that brought together the football authorities, the police, and Celtic and Rangers, which the First Minister set up in March following a particular old firm game. The figures in the financial memorandum to which you refer were exposed as part of that discussion.

However, there will still be debate at local level. Although the primary legislation would have to be changed to adjust the overall regime, it is still up to local decision making by the clubs and police to establish broad parameters, particularly the definition of what is called the footprint. I should explain, without getting technical, that you can charge for policing costs in order to cover a wider area beyond the stadium; however, that wider area is relatively limited and, as members might remember from the debate in March, criminal behaviour including domestic abuse was happening hundreds of miles from stadia. That is a very considerable and on-going debate.

I know that in evidence to the Justice Committee people have disputed the way in which we might seek to charge for, say, a husband 100 miles from a football stadium deciding to abuse his wife simply because the opposing team has scored a goal or a match has gone the wrong way. We have avoided that very significant and quite deep debate. The charging regime is not a necessary part of financing and implementing these provisions alone; it is simply a general fact about policing of football. Discussions about that are on-going but—thankfully, given the difficulty of the issue—it has not been among the many things on which the bill team has had to concentrate. As I have said, we are aware of the issue, but having a new, revised or refreshed charging regime for the policing of football is not critical to this bill.

**Derek Mackay:** You said that this was the first targeted action on sectarianism with more to

follow. Might what you are talking about be a consideration in the more that is going to follow?

**Richard Foggo:** My understanding is that the charging regime is based on the Police (Scotland) Act 1967, which I am led to believe will come under considerable scrutiny with the introduction of a single police force in Scotland. I have no information as to whether that part of the 1967 act will be considered; all I am saying is that if the act is under consideration, the sections in it that cover charging are at least likely to be looked at.

**The Convener:** The bill's title refers not only to offensive behaviour at football but to threatening communications, so I want to ask a question about communications. Paragraph 32 of the explanatory notes says:

"Subsection (2) provides that 'communicates' means communicates by any means other than by unrecorded speech alone. As such it includes communications made by post, on the internet through websites, email, blogs, podcasts etc, by printed media, et cetera."

What are the estimates for the costs of policing such communications and how have they been arrived at?

**Richard Foggo:** That is a good question. In our discussions, we quite often spend the vast majority of our time talking about the football aspect of the bill. Indeed, six months ago, I would not have believed that I would know as much about football as I now do. Given that we get distracted by football, I am grateful that you have asked about the threatening communications offence, because it raises a number of critical issues. As with our approach to offensive behaviour, we have got right into the heart of contemporary policing and prosecution of internet offences, which is growing core business for the police service in Scotland. This offence does not relate only to or seek to regulate the internet, but unfortunately the fact is that the internet is a very common means through which people behave in the way that we are seeking to capture.

The issue has given rise to a lot of questions: whether we fuddy-duddy civil servants actually understand the nature of social media, whether we know how young people are involved or express themselves in such media, and whether we have any sense whatever of what young people in Scotland today are doing on Twitter and all the rest. We have, therefore, felt an absolute obligation to get right to the heart of how internet offences are policed and prosecuted. All I can do is repeat the assurance that we have received from the agencies involved—the Crown Office, with its sophisticated technical investigation and evidence-gathering mechanisms, and the police—that practice in this area was already expanding. The offence did not need to be introduced to

ensure that the agencies saw increasing their focus on the internet as being critical.

I point to the recent riots down south and the healthy debate on the back of a very painful subject. If the committee does not mind, I will step out of my bill role into my broader role or day job—which is head of community safety policy—which I have almost forgotten, given the focus on the bill.

10:45

Over the next five to 10 years, community safety policy will focus primarily on the internet and other non-traditional forms of communication, while not forgetting knife crime, gang violence and antisocial behaviour. We have included that in our estimates of volume and unit costs, which include up to a maximum of 55 additional new cases every year in relation to threatening communications. In addition, we have started a longer-term and wider policy debate about the roles of the internet and social media in relation to community safety. We will use that debate to make sure that we review and reconsider any of our estimates for introduction of the new offence. The issue is critical, and not just in relation to the bill.

**The Convener:** You talk about an estimated 55 additional prosecutions, but what will it cost to look at all those websites? It takes time to look at blogs, e-mails, podcasts and so on. Has the additional cost to the police of spending time looking at and for those communications been included in the estimates?

**Richard Foggo:** In relation to the offensive behaviour at football matches provision, we have included the option of a fixed penalty notice. We have not done that for threatening communications. That is part of our demonstrating that we believe that the threatening communications offence is likely to be prosecuted for more serious cases only. Some examples have used existing legislation in the past few weeks, such as the small outbreak of social media use and blogging during the rioting, and the hate sites about leading figures in Scottish football.

We understand the difficulties with gathering evidence, and we make it clear that we need to take a targeted and intelligence-led approach. All I can say is that, having visited and spoken to people who do that—Parliament might want to take evidence from them—it is a fascinating and difficult area. We do not underestimate the challenges.

I am sorry to repeat myself, but all the experts have contributed to our estimated figures, so there is no hidden cost. We understand exactly how difficult it is to police the internet. I take some encouragement from those who are already doing that with some recent high-profile cases. There

seems to be a myth that people are immune and anonymous on the internet, but I am encouraged to see how sophisticated the police and prosecutors' evidence gathering is. Just the other day, I heard—as did the Cabinet Secretary for Justice and other ministers—the head of the new football unit say that he wants the public to understand that there is no anonymity on social media. I am comforted that, long before the bill's provisions will be enacted, the police are already, as core business, responding and reacting to the internet. By the time the offence is introduced, there will be a sophisticated policing and prosecutorial response to the internet. It is not the introduction of the proposed offence that will place a financial burden on the criminal justice system.

**The Convener:** Thank you. Before I allow colleagues to raise any final additional questions, I have one to raise myself. Nil by Mouth talks about the

“disparity of central spending between the £1.8 million provided to the National Football Policing Unit...and the £527,250 awarded for anti-sectarian educational and prevention projects...”.

The committee is of the view that preventative spending is going to be increasingly important, particularly because of declining budgets. Do you have a comment on that particular issue?

**Richard Foggo:** I will just repeat something that I said during my introductory remarks. We are mindful of the committee's and others' justified and correct focus on preventative spend, not only as an economic and efficiency measure but because it is often the right thing to do.

In my day job, I have been for the past five or six years the chief government sponsor of the national violence reduction unit, and I have worked very closely with Detective Chief Superintendent John Carnochan. Anyone who has worked with him will know that the importance of prevention is built into any discussions. I will remark on something that John Carnochan says to me regularly. In focusing on prevention, we must never forget to contain and manage the problem. Preventative action can take a long time to take effect, and communities must have confidence that, until that preventative work takes effect, safety and security in communities will be maintained. I repeat that this is the first of a range of measures that will, no doubt, be further focused on social preventative action. This first step is—to use John Carnochan's phrase—about “stabilising the patient”.

Scotland was massively badly affected by last season's football, and its reputation was besmirched around the world. We believe that we need to contain and manage the problem in order to allow ourselves to focus on the real prize, which is tackling attitudinal sectarianism and other

expressions of hatred. That will come only through education, right from the early years. I would like to make it clear that this is not a sectarianism bill—this is not “the sectarianism bill”, or the Government’s prospectus on sectarianism. This is a first action that has been taken effectively to stabilise the patient and to give comfort to our communities that the most serious problems are being dealt with. It will clear some space and create capacity to allow agencies beyond the police and others to undertake the long-term attitudinal and societal work that will ultimately deliver.

As the chief sponsor of the bill, I hope that, within five years, the bill is never being used and never has to be used. That would be a sign of success. I will take no pleasure from there being an increasing number of prosecutions under my offence. If, in five years’ time, I am back before the committee or the Justice Committee and being asked why on earth, after five years, the provisions are not being used, I hope that it will be recognised as a sign of tremendous success. Prevention will be the focus of the overall sectarianism agenda, but this is a first and critical step in giving communities confidence that we are containing and managing the problem—or, to use John Carnochan’s phrase, we are stabilising the patient.

**John Mason:** My question is on a slightly different issue. Before the summer, there were suggestions that there might be legal challenges to the bill. Two of the areas in question were freedom of speech and whether we can get involved in telecommunications, which is generally a reserved matter. I presume that, if there were legal challenges, there would be costs involved. Are we fairly sure that there will not be legal challenges and costs?

**Richard Foggo:** Anyone in Scotland is entitled to seek legal redress on any issue if they feel that they have just cause. I could not possibly tell you who might want to challenge the bill or on what grounds. What I can tell you—without referring to the petition that is before the Court of Session—is that from our legal advisers right up to the Lord Advocate and the Advocate General, people are comfortable with the bill’s competence. The bill would not have been accepted by the Presiding Officer and would not have been passed by the Lord Advocate if it was felt that there was any basis for challenging its competence, whether in relation to the provision in the Scotland Act 1998 regarding telecommunications, or in relation to the European convention on human rights. Our primary duty in drafting legislation is that we must act within the law, and we remain absolutely confident that, although anyone in Scotland may want to challenge our view, we have clear legal

opinion that there is no problem with competence, nor with any breach of any article of the ECHR.

**Margaret McCulloch:** The bill is really good at looking at and trying to tackle the sectarianism problem, but I wonder whether there are not already laws that cover that problem. If there are, could not the £1.8 million that we intend to spend on the bill and the on-going costs over the next few years be moved into preventative spend on educating young people in schools and going into clubs? Could it not be used to enable the police to go into areas where we think there will be examples of people being offensive? I am also concerned that you feel that, in five years’ time, nobody will be criminalised for the offensive behaviour. Will the money that we are putting into the bill not be completely wasted? Could it not be diverted to other areas, from which we could see more positive results?

**Richard Foggo:** I will clarify my proposition: in five years’ time, I might be before the committee celebrating because there have been no prosecutions—not because the offences would have become moribund and would not be being used, but because they would not be needed. That is an entirely different point.

Parliament has on many occasions since it was created seen fit to introduce a statutory offence that covers behaviour that was already criminal. The Emergency Workers (Scotland) Act 2005, the legislation on genocide, slavery and servitude and the legislation on stalking all introduced offences that were already clearly criminal under Scots criminal law. The Parliament, in its wisdom and under a range of Administrations, decided that there were good reasons to introduce those offences. There was an understanding in the Parliament that public outrage about particular behaviour demanded a response.

I note Dr Kay Goodall’s excellent evidence to the Justice Committee. I recommend it to the committee not because it supports our position, but because it is fundamentally good-quality thinking that challenges us in the bill team. I have no hesitation in recommending to you evidence that challenges some of our positions. In her evidence to the Justice Committee yesterday, Dr Goodall made the point that duplication may be a concern for lawyers and jurists but, although that is one consideration, it is a legitimate response for a democratic Parliament to name behaviour that it finds outrageous and considers to be beyond the pale. If a Parliament wishes to do that, it is crucial that it does so. I offered you some examples of the Parliament doing that in the past, across all political persuasions. Those exist to be referred to.

In our evidence gathering, we asked football fans what would be most effective in changing their behaviour. Two things came out top on that

list. The first was a football banning order. Football fans are precious about going to see football and will go to any lengths not to be stopped from doing so. However, our evidence also told us that what they feared beyond not seeing football was, crucially, a criminal record.

If somebody has a conviction for a general common-law offence such as breach of the peace, there is no way for an employer or anyone else to identify the sort of behaviour in which the person engaged. However, the introduction of a named offence that specifically identifies already criminal behaviour will make it clear. Employers in Scotland will be able to identify with absolute clarity people who work for them or who seek employment from them who have engaged in the behaviour on which we are legislating. It will not be a general conviction for breach of the peace or assault; rather, the person will have been found guilty of offensive behaviour at football, with all that that entails, or of communicating threatening material.

That is an entirely legitimate measure for us to take, so duplication is not a concern for us at all. Rather, it is a long-understood tradition that Parliaments name particular behaviour that is already criminal.

**The Convener:** There being no further questions, I thank Mr Conlong and Mr Foggo for not only answering our questions, but doing so in such detail and with such passion. In the future, they should not describe themselves as “fuddy-duddy civil servants”—I have seen no evidence of that today.

We will now go into private session to discuss the evidence that we have just heard and to consider what themes we might wish to forward to the Justice Committee, which is the lead committee for the bill.

10:59

*Meeting continued in private until 11:43.*

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