



The Scottish Parliament
Pàrlamaid na h-Alba

Official Report

JUSTICE COMMITTEE

Tuesday 13 September 2011

Session 4

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JUSTICE COMMITTEE
6th 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 ALSO PARTICIPATED:

Darryl Broadfoot (Scottish Football Association)

Chloe Clemmons (Church of Scotland)

Dr Bronwen Cohen (Children in Scotland)

John Deighan (Bishops Conference of Scotland)

Professor Tom Devine (University of Edinburgh)

Dr Kay Goodall (University of Stirling)

Tom Halpin (Sacro)

Superintendent David Marshall (British Transport Police)

Andy Niven (Scottish Football Association)

Chief Superintendent David O'Connor (Association of Scottish Police Superintendents)

CLERK TO THE COMMITTEE

Peter McGrath

LOCATION

Committee Room 1

Scottish Parliament

Justice Committee

Tuesday 13 September 2011

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

Offensive Behaviour at Football and Threatening Communications (Scotland) Bill

The Convener (Christine Grahame): Good morning and welcome to the sixth meeting of the Justice Committee in this session. I ask everyone to switch off mobile phones and other electronic devices—do not even have them on silent, because that still interferes with the broadcasting system. No apologies for absence have been received.

Item 1 is to continue our evidence taking on the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. Our overall aim is to report to Parliament next month. We will hear from three panels today. I told the committee before the meeting, in a schoolmarmly manner, that I would appreciate brief questions. I do not mean to be insulting to the panel when I say this, and I know that doing so is like teaching my granny to suck eggs, but if you agree with what someone else has said, just say that you agree—you do not have to develop your answer further. We have a lot to get through today.

I welcome our first panel of witnesses: Chief Superintendent David O'Connor, president of the Association of Scottish Police Superintendents; temporary Superintendent David Marshall, from protective services at British Transport Police; and Andy Niven, national teams administration, competitions and matches manager, and Darryl Broadfoot, head of communications, from the Scottish Football Association. Thank you very much for coming along. I particularly thank the SFA, because you were invited at pretty short notice, but you were fleet of foot—as you would expect from footballing people.

We will go straight to questions from members.

John Finnie (Highlands and Islands) (SNP): I have a question for Mr Broadfoot. Does the intervention of the Union of European Football Associations regarding sectarianism in Scotland not indicate a failure of Scotland's governing football authorities to address the problem?

The Convener: Your microphone will come on automatically, Mr Broadfoot. If anyone else wants to come in, just indicate that to me and I will call you.

Darryl Broadfoot (Scottish Football Association): First, you have to bear in mind that, in order for a club to participate in European competitions, it has to agree to a set of principles outlined by UEFA, which is European football's governing body. The current arrangement for Scottish football decrees that the SFA does not have jurisdiction over crowd misbehaviour and unacceptable conduct within football. If you are asking us whether that requires to be revisited, I would say that we are fully supportive of all that you are trying to do with the bill and that we must consider what is right for all parties. We need to work together.

The SFA has made progress in the past six months. We have adopted a new judicial panel and we have progressed from being an organisation that perhaps a year ago was not deemed to have been respected or trusted to lead. We have made huge strides in the past year and I think that the key for us to bringing back some jurisdiction is to speak to all parties and make sure that we work towards a new set of accepted and acceptable behaviours within Scottish football, notwithstanding the legislation that we are trying to push through.

John Finnie: Can I clarify that your position is that the SFA has no locus in crowd behavioural issues at Scottish football games?

Darryl Broadfoot: In our articles of association, which have been in place for 138 years, we have articles that permit a range of behaviours to be punishable. As it stands, we have reclaimed jurisdiction from the Scottish Football League and we are in open dialogue with all other partners, including the Scottish Premier League, to revisit jurisdiction, because I think that we all agree that more can be done by the Scottish football authorities, the clubs and the supporters in terms of self-policing. That debate is on-going and all parties have been receptive to it.

John Finnie: So you have reclaimed control or jurisdiction over crowd behaviour.

Darryl Broadfoot: Yes—for Scottish Football League matters, which basically means issues from leagues 1, 2 and 3. There is an on-going debate with the Scottish Premier League with regard to reclaiming jurisdiction. As they stand, articles 28.1 to 28.11 decree a list of sanctions that can be imposed for unacceptable behaviour in football grounds, ranging from warnings, fines, annulments and replays to closures of stadia. However, there is a caveat that states that that list does not apply to games under the jurisdiction of the Scottish Premier League.

The Convener: For clarification, we invited SPL representatives, and it is not really their fault that they have not been able to attend—it was done at

short notice. Frankly, because we are running out of time to call the SPL, I think that it would be a good idea simply to send it questions and ask for a response in writing before we write a report, because what Mr Broadfoot said about the jurisdictional limits is interesting.

Darryl Broadfoot: It is important to stress that we all want to improve matters and to see a redefining of the acceptable parameters of behaviour within stadia and Scottish football, notwithstanding the bill that will be passed. Rather than going off on an independent and isolated pursuit of a new set of agreements, we must work together on that. We have managed to make a huge amount of progress as an organisation by doing that within our council and with our fans in the past six months. The next step will be to engage with the SPL and other stakeholders to find a better way of dealing with such issues in Scottish football.

John Finnie: Can I clarify, then, whether you have authority in respect of the Scottish cup and the Scottish league cup.

Darryl Broadfoot: Correct.

John Finnie: Is it your view that there have been no issues of sectarianism among crowds at any such games that you felt it would be appropriate to intervene on?

Darryl Broadfoot: Well, you have first to bear in mind the legislation. We have to admit that more can be done. We have gone through the process of a fundamental review of all that the SFA does and stands for. Until six months ago, we had never had a strategic plan nor a set of visions, values or goals. We have to discuss matters with the SPL, our stakeholders and our council and come up with a better way of dealing with misbehaviour within football stadia.

John Finnie: There are league cup matches in a couple of weeks' time. Will the SFA take strong action if any club's supporters display sectarian behaviour?

Darryl Broadfoot: Well, it is hypothetical at the moment. We are here to give full support to the bill and to outline the current reality, which is that we are working towards a better set of proposals to ensure that whatever happens within the confines of a football stadium can be acted on more stringently. As you may be aware, a delegate system is in operation at SPL level and, to be blunt, being an SPL delegate is tantamount to being a referee in terms of the hassle, but with a fraction of the wages. We have to put in place an infrastructure and get agreement from all parties, including the clubs and the SFA council, to ensure that we have a better system in place.

The Convener: Does anybody else want to comment? We are directing questions specifically at the SFA, so I doubt whether anyone else wants to comment. I have a list of members who want to ask questions, but I need to know whether they are along the same tack or are supplementaries. Are your questions on the SFA?

Graeme Pearson (South Scotland) (Lab): Yes.

Colin Keir (Edinburgh Western) (SNP): Yes.

Humza Yousaf (Glasgow) (SNP): My question is different.

Roderick Campbell (North East Fife) (SNP): Mine is on the same tack.

Graeme Pearson: Mr Broadfoot, you have no doubt heard earlier evidence to the committee that indicated that there was a belief that the SFA had been cowardly in the way that it dealt with these matters. I have to say that I found the SFA's submission patronising and evasive in answering the very questions that we are dealing with today. Although you are in a difficult situation in explaining things on behalf of the SFA, I do not think that your responses to John Finnie were particularly adept in dealing with the issue.

The number of arrests at football matches across Scotland seems to have gone down over the past decade. Can you give us some indication of how the SFA should take control of these matters for the future, given that we have suffered what everybody describes as a game of shame and we are now considering legislation?

Darryl Broadfoot: As a former journalist, I spent enough time criticising authority for a perceived lack of action. In the time that I have been at the SFA I have seen a commitment to real, fundamental change. I defy anyone in the room to suggest that, under Stewart Regan as chief executive, the change has not been tangible to people on the outside. We cannot change historical decisions, nor will we apportion blame to people who are no longer part of our organisation or to other organisations. Members talk about a lack of clarity, and criticism of the bill, as it stands, concerns a lack of clarity. The police have asked the Government to help us provide a proscriptive list so that we can be empowered. We must take greater control, with the support of the Government and the police authorities, to deal with an issue that, in the past, was not addressed in the right way or as aggressively as people wished. Taking a lead from the Government and the bill when it is in force, we must come up with a set of unacceptable behaviours. We can argue about the clarity of the bill but what we must do is redefine the parameters of acceptable behaviour within football.

Currently, we have no heroes in Scotland. We have a dwindling supporter base and backpage headlines of headstones that read “Scottish football—RIP”. That is the reality and, as an association, we have taken, and are prepared to take, the lead on issues that affect Scottish football in the context of football stadia. We must engage on this and bring everybody with us; otherwise, it is doomed to fail. We must agree a single code of conduct between the authorities and the clubs that makes anything, whether it is sectarian—we have touched on the issue of sectarian phrases—or otherwise unacceptable behaviour, and we have consistently referred to sectarian, offensive or other forms of unacceptable behaviour. We cannot just define such behaviour as sectarianism—we must decide what is unacceptable in the 21st century inside football stadia. We must make sure that we work together and that we take the lead to reclaim jurisdiction on this matter, if it is prudent for us to do so, and put in place a single code of conduct to which people must adhere or face sanctions. I have listed the sanctions over which we have jurisdiction in the context of the Scottish cup and the Scottish Football League. We must take the lead and must deal with the issue soon.

The Convener: Before I let Graeme Pearson back in, I want to say that I share the SFA’s concerns about the generalities in the bill. We have waited for the Lord Advocate’s guidelines—we have asked for them and we have been given a stalling answer. With committee members’ leave, I propose writing a strongly worded letter to the Lord Advocate’s office to ask for the release of the guidelines. Once we have them, they will be made public and the SFA will see what we are talking about. We are in the dark. Do committee members agree that it is becoming imperative that we see the guidelines?

James Kelly (Rutherglen) (Lab): Absolutely, convener.

John Finnie: The guidelines presumably relate to the legislation.

The Convener: The guidelines are for the police.

John Finnie: Do you mean the existing guidelines?

The Convener: No.

Graeme Pearson: No, for the future.

The Convener: Sorry, but please go through the chair. I am talking about the guidelines that the Lord Advocate will issue to the police and everyone on the receiving end, including at the enforcement end. When we see them, we will have an idea whether the measures relate to songs with specific words. We have asked for the

guidelines and they were promised over the summer. We are not being too difficult in asking for them as an imperative.

James Kelly: On a point of information, my understanding is that the Lord Advocate advised us that he was keen to get the guidelines in place for the start of the season so that the police, the fans and the administrators were clear about them. It is important that we see the guidelines.

The Convener: We share Darryl Broadfoot’s concern. The point is now on record and, although the Lord Advocate is already aware of our request, we will write a letter.

I ask Graeme Pearson to ask shorter questions.

Graeme Pearson: I just wanted to set the context. Darryl Broadfoot mentioned the match delegates who attend various events and make reports about the background and any antisocial behaviour. Does the SFA receive those reports? If so, does it do anything with them?

10:15

Darryl Broadfoot: The delegates send their reports to the SPL, which employs them, but we need to review that. As I said, there is no point in apportioning blame to people who are no longer part of the organisations concerned: we must accept the current reality.

Graeme Pearson: Do you receive the reports, and do you do anything with them?

Darryl Broadfoot: The SPL receives the reports, and it acts.

Graeme Pearson: What about the SFA?

Darryl Broadfoot: My understanding is that the SFA does not receive the SPL delegates’ reports because they fall under the SPL’s jurisdiction.

Graeme Pearson: Has the SFA written to the police recently to raise issues around the proposed national football unit and the overall strategy that is being adopted?

Andy Niven (Scottish Football Association): Not to my knowledge. We are delighted with the steps that are being taken to develop the football co-ordination unit for Scotland—in fact, our security adviser Derek Kirkwood and I will meet members of FOCUS later this month to discuss its strategy. It is a development in the overall joint action group process that we very much support.

Graeme Pearson: So the SFA has not written any letter in that regard.

Andy Niven: Not to my knowledge.

Colin Keir: I will address Darryl Broadfoot’s previous answers relating to the SFA’s powers over football supporters; he can correct me if I am

wrong. A few years ago the terrible disaster at the Heysel stadium occurred, which effectively got a number of English clubs banned from European competition for several years.

The SFA registers the tartan army, which is those who travel abroad—

Darryl Broadfoot: For clarification, we do not register the tartan army: it has a separate commercial identity. We have 35,000 Scotland supporters club members.

Colin Keir: I beg your pardon; I take on board what you are saying. You register the people who travel abroad with tickets.

Darryl Broadfoot: Correct.

Colin Keir: So you are, to a certain extent, controlling who is there.

Darryl Broadfoot: Within a points system and within our membership. There are certain games for which supply cannot meet demand, so we manage the fans in those cases.

Colin Keir: What I am trying to get at is that if you are managing those who support you—and you could take that as far down as local teams such as Celtic, Rangers, Hearts and so on—you hold a degree of responsibility for them. Should you not then take into consideration your articles of association, which refer to

“any recognised football body, club”

or

“official”?

Do you not have some degree of responsibility for those who are registered as official members of the supporters club in relation to ordinary clubs? I am trying to get at whether, in accordance with your articles of association, you have the right to take action against clubs whose SFA-registered supporters misbehave at any ground or at any of the games that teams are playing.

Darryl Broadfoot: You have perhaps not understood what I am trying to say. Our articles of association list a set of behaviours that we have deemed to be unacceptable, and we can impose suitable sanctions in that regard. However, there is a caveat in relation to domestic competition: although the SFL has handed back jurisdiction to us, we currently cannot impose sanctions in Scottish Premier League games.

We are keen to rectify that situation, and we will discuss it, because we accept—and the SPL accepts—that more can be done. We need to come up with a single code of conduct that, regardless of what is in the bill, outlines what is unacceptable in Scottish football.

The Convener: I am trying to understand the various structures. How far down the road are the SFA and the SPL in discussing and co-operating on that matter so that the SFA will have some type of jurisdiction and responsibility? When do you expect to reach a conclusion, given that we are discussing a bill that will, if it is passed in some form or other, sit alongside whatever comes out of that process?

Darryl Broadfoot: I will pass you on to Mr Niven in a second to put some meat on the bones.

The SFA and the SPL have never been closer in terms of discussions and moving forward. However, we must provide workable legislation and ensure that there is a will to become involved in addressing unacceptable behaviour.

On timeframe, we will need to see how quickly the bill is passed and what form it takes. We will also ensure that, whatever happens, the SFA and the SPL come up with a single code of conduct. We have committed to doing that, and I believe that everybody will be satisfied with the outcome.

The Convener: When you refer to legislation, do you mean changes to your articles of association?

Darryl Broadfoot: We have changed those; the legislation to which I referred is the bill.

The Convener: Mr Niven, do you want to comment?

Andy Niven: Yes, thank you, convener.

We have found the joint action group process to be helpful in examining the governance structure of football in the context in which we are meeting. I am pleased to say that we have had positive discussions with the Scottish Premier League and the Scottish Football League on a new governance model for the future.

As my colleague Mr Broadfoot mentioned, during the summer, we instituted a new judicial panel protocol. That protocol was agreed with the unanimous support of members and it is settling in just now. However, from discussions with the Scottish Premier League’s operations director, Iain Blair, and chief executive, Neil Doncaster, I get the impression that the SPL wants to gain confidence from the new protocol before it hands back powers that are currently delegated to it.

The association is optimistic that, within 12 months, all delegated powers will be returned back to us as football’s governing body.

The Convener: So those powers will be transferred from the SPL to you.

Andy Niven: Correct.

Colin Keir: I understand the delegation process, but we still have a national association that is supposed to be in overall charge. You appear to be abdicating responsibility. That is not new: we keep referring to the game of shame, and there is a long history of such problems in Scottish football, whether in relation to sectarianism or, if we go back to the 1970s, the problems with crowd disruption.

I am a little concerned that there appears to be an idea that, although you are the SFA, it is not really your fault—it is the SPL's fault or somebody else's fault. What information can you give the committee to make us happy that you intend to be more robust? You obviously cannot speak for the Scottish Premier League, but what line is the discussion taking? What actions are you talking about being able to take against clubs whose supporters misbehave?

Darryl Broadfoot: You continually refer to the game of shame, which I think is a hysterical tabloid headline on to which we have all latched.

Colin Keir: I did say that, but I agree that it goes beyond that.

Darryl Broadfoot: It is hugely ironic that all of us round the table are asking and demanding that the SFA take responsibility for its affairs again. If we rewound one year, we would find an SFA that had no public trust and did not have the trust of many of its members. In a short space of time, with the right strategic plan, we have now become—I believe—respected and are trusted to lead. If you want evidence of that, I can give you an entire new article of association that was pushed through by what you guys might refer to as blazers without the need for a single vote.

The Convener: You have lost me. What is a blazer?

Darryl Broadfoot: "Blazers" is the historical term for the SFA's council members. They were reluctant to change and were perceived to be set in their ways. However, within a year, we have managed to put through a new article of association and to push through an entirely new professional game board and a non-professional game board. I am sorry to be pedantic, but you asked what we could show the committee to convince it that we are changing. Internally, we have changed 138 years' worth of constitution within a year.

I repeat that we are committed to doing more to address unacceptable behaviour within the confines of football stadia. We cannot do that overnight, as we have all realised with the implementation of the bill. However, we can give a pledge that we will speak to the SPL and to the fans, and that we will come up with a single code of conduct that we will all sign up to. We need to

have in place a system whereby, if anyone falls foul of the code of conduct, clubs and supporters will be punished for behaviour that is not deemed to be acceptable inside a football stadium in the 21st century.

The Convener: That would be a system that you would operate rather than one under the bill—you would be able to do something independently.

Darryl Broadfoot: Yes—once we have had the necessary discussions with the SPL, which currently has jurisdiction.

The Convener: I think that we have nearly exhausted the subject, but I am sure that Roderick Campbell has a fresh line.

Roderick Campbell: I draw Mr Broadfoot's attention to the fact that it was as long ago as 2006 when the SFA's then chief executive suggested that UEFA sanctions should apply in Scottish domestic football as well, and that it was inappropriate to have one standard of behaviour for European games and one for domestic games.

The UEFA guidelines refer to insulting human dignity on the ground of religion, for which they propose a number of sanctions. Has the SFA been talking to UEFA over recent times about what it can do?

Darryl Broadfoot: We speak to UEFA regularly. Which chief executive were you referring to?

Roderick Campbell: I think that it was David Taylor.

Darryl Broadfoot: Okay. Around that time, we delegated power to deal with issues around football stadia to the SPL. That is an issue. We are fully aware of what needs to happen in Scottish football, but we cannot act independently without bringing people with us. You focused on the religious angle, but we need to ensure that the code of conduct deals not just with sectarianism, but with other forms of offensive, unacceptable and discriminatory behaviour.

The Convener: We will move on to the next set of questions.

Humza Yousaf: Thank you for taking the time to come along, especially at such short notice. As I have the mike, I will ask two questions.

The Convener: Just having the microphone does not give you any particular authority—in fact, your pre-emptive strike may backfire.

Humza Yousaf: I very much agree with what Mr Broadfoot said about not apportioning blame. In the past, politicians, along with the SFA and other bodies, have not taken the issue as seriously as they should have done. Unless I misheard, I notice that your list of sanctions for the SFL does not include a points deduction.

Darryl Broadfoot: It does include a points deduction.

Humza Yousaf: You therefore could envisage deducting points from clubs for misbehaviour, should the SPL give you the necessary control.

My second question is for the police officers—you guys have been given an easy ride so far. I welcome your submissions. Last week, when we heard from the supporters trusts of various football clubs, there was almost a collective denial of how bad the problem is. We kept being told that the police could do a lot more, given that they have breach of the peace powers. In your submissions, you suggest that there are gaps in the breach of the peace powers, which is why the bill is required. Will you elaborate on what gaps there are? Why is the bill needed?

Chief Superintendent David O'Connor (Association of Scottish Police Superintendents): Breach of the peace has been a catch-all common-law crime for some considerable time and has been used to cover public disorder, stalking, peeping Toms, sending offensive letters and the like but, over the last decade, in particular, there has been case law that has redefined what a breach of the peace is. It talks about public disorder and disturbance at the more serious end of the scale, and conduct and behaviour that a reasonable person would find offensive. Those terms are used in case law and come from previous decisions. The committee should be aware that we would still consider a breach of the peace to be a relevant and appropriate offence to use in certain circumstances. That is the common law of the land and, when appropriate, a breach of the peace charge may still be applied.

Humza Yousaf: In that respect, when an officer walks past a supporters pub and hears offensive chanting, what stops them going in there and making arrests? What will the bill provide that would allow them to do that?

10:30

Chief Superintendent O'Connor: As it stands, whether we are dealing with substantial crowd numbers in football stadiums or passing crowded pubs, we must always consider the element of risk in going in and dealing with such situations. If you are talking about a pub or club in a town or city, there would be an expectation on my members' part that officers would intervene and deal with the situation. However, in football stadia, where we could be dealing with tens of thousands of people, the issue becomes somewhat different and evidence gathering becomes different. Gathering the evidence is a significant challenge, because if we are to gather the evidence and report to the

appropriate authorities, we need to know exactly what was being said and being chanted to allow the appropriate authorities to make the decision.

Humza Yousaf: How does the bill help in that respect?

Chief Superintendent O'Connor: We hope that the bill will focus in on the particular types of religious hatred. As has been alluded to, we will also look for very clear guidance and guidelines from the Lord Advocate on how the act will be interpreted.

Our members are the match commanders across Scotland, who may well have to consider a multitude of pieces of legislation and common-law powers. Those men and women are very much in the hot seat. They have to deal with the situation dynamically and practically and they must have health and safety very much in mind. How the bill is taken forward and articulated will, hopefully, lead to it being another piece of law that we can use to tackle the problems that exist.

We have heard a lot about protocols, policies and action plans, but we are here to enforce the law. We want clear and consistent law that allows us to deal with the problem.

Humza Yousaf: The last point that I want to pick up on—

The Convener: You seem to have slipped in more than two questions. Your notion of two questions is interesting—were you no good at arithmetic at school, or are you just cunning?

Humza Yousaf: I was terrible at arithmetic, convener.

The Convener: We will add your questions up later.

Humza Yousaf: You mentioned the need for the legislation to be clear. I noticed a concept in the submission that I had not come across and on which you can perhaps elaborate: the need to distinguish between religious and political sectarianism. I was not aware of that, but it is an interesting concept. I know that the Police Service of Northern Ireland has made that distinction. Can you elaborate on what you mean by that distinction?

Chief Superintendent O'Connor: First, I must clarify that it was not the submission from the Association of Scottish Police Superintendents that included that comment. You are probably referring to the submission from the Association of Chief Police Officers in Scotland.

There needs to be clarification of what is religious and what is political. In the view of my members—the match commanders—the position is somewhat confusing. There are different ends of

the spectrum and different parts of the debate. We tend to focus on behaviour that is clearly offensive.

The Convener: I am advised that to some extent section 38 of the Criminal Justice and Licensing (Scotland) Act 2010 has displaced breach of the peace in terms of the public element that is required and that there have been a lot of prosecutions under that act. Are we not therefore in danger, because there is already common-law breach of the peace and the Criminal Justice and Licensing (Scotland) Act 2010, of cluttering the legislative landscape? You say that you need clarity but, if there are too many bits of legislation, you will wonder what on earth to do with them. You will have to juggle the balls.

Chief Superintendent O'Connor: There is the Criminal Justice and Licensing (Scotland) Act 2010, the Public Order Act 1986, the Crime and Disorder Act 1998, common-law powers and now the Offensive Behaviour at Football and Threatening Communications (Scotland) Bill. In that regard, we will seek clarity, to allow us to have a clear understanding of the situation. We accept that there are a number of pieces of legislation and different statutes that can be used. The focus has to be on where the issue is one of religious hatred and discrimination.

The Convener: You do not think that we would be cluttering the landscape by having another piece of legislation, subject to caveats about guidelines and so on.

Chief Superintendent O'Connor: No. The legislation could be applied to football or beyond football. We have to deal with a variety of legislation—the whole legislative framework must be taken into consideration. However, we are looking for something that will help us and that will be another string to the bow in dealing with the challenges of football.

James Kelly: I would like to direct a couple of questions to Superintendent Marshall. The bill covers offences that are committed during travel to and from football matches, which come under the remit of British Transport Police. Does the bill give your officers extended powers that would be helpful in imposing public order on transport to and from football matches?

Superintendent David Marshall (British Transport Police): The policing of travelling football fans is core business for British Transport Police front-line officers—we do it week in, week out—and we do it without any additional funding from the SFA or elsewhere. Does the bill provide us with additional powers? Yes. Does it provide greater clarity around travel to and from a regulated football fixture? Yes. Does it provide us with additional legislation to which officers can refer? Absolutely. We currently work within the

confines of existing legislation to deal with travelling football supporters who commit offences when travelling to and from football fixtures. Like Chief Superintendent O'Connor, we use the substantive criminal law of breach of the peace and other legislation.

We welcome the bill. Breach of the peace, for example, is and has been repeatedly open to challenge. The bill not only puts into law offences that relate specifically to religious, racial and other forms of hate crime that are associated with football; it ensures that the legislation captures with no ambiguity whatever those who are travelling to and from the event. From that point of view, we welcome the bill.

James Kelly: Thanks. That was very clear.

I have one follow-up question. In its written submission, the Law Society of Scotland said that the bill is potentially open to interpretation and that other travellers could be caught under it. I am talking about people who are not necessarily going to the football match but who are on the train and get caught up with the supporters and start to behave in a manner that brings them into disrepute under the terms of the bill. Do you have any view on that, given that, as you say, it is your core business to police football fans who are travelling on public transport?

Superintendent Marshall: I fully take on board and respect the position of the Law Society, but our front-line officers deal with this week in, week out. It is apparent to officers who police these events and the trains that carry football supporters to and from the events and it is apparent to normal members of the public where that sort of offending behaviour takes place. I do not think that there can be any ambiguity about someone conducting themselves in that way. We work within the confines of the current law and, to date, that has never been an issue for us.

The Convener: Roderick Campbell has a question.

Roderick Campbell: Mr Marshall has largely answered the questions that I was going to ask.

The Convener: You say that you do not want ambiguity, but I am concerned about section 2(4), which states:

“(a) 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,

and

(b) a person's journey includes breaks (including overnight breaks).”

If somebody is sitting with a football scarf round their neck, they might be regarded as breaching the terms of the legislation even though they are

just away to have a week's holiday somewhere and are not even going to a match. Is that provision not too broad? Are you not concerned about it?

Superintendent Marshall: I do not have any real concerns about it. We have to concentrate on the behaviour of the individual or the group of people to whom we are referring. A decision might need to be made about that element of the bill. I would welcome further guidelines from the Lord Advocate on whether it should be left in its existing format or defined further. Like any new legislation, the bill will have to be tested through the judicial process. We would work closely with the Procurator Fiscal Service in line with the Lord Advocate's guidelines to libel the most appropriate charges. However, the bill will be an addition to and not a replacement for other substantive pieces of legislation.

Graeme Pearson: The police witnesses talk about clarity in dealing with these issues. The Law Society has indicated that it does not think that the bill will add to delivery. We also have a 14-page analysis of the current issues from Dr Kay Goodall.

On 11 May, a 35-year-old man on the platform at Coatbridge railway station talked about "200 Fenians" being alongside him when he was in conversation on his mobile phone. A report was made to British Transport Police, and the man was arrested and convicted of breach of the peace at Glasgow sheriff court. What more clarity do you need?

Superintendent Marshall: We need clarity on the sectarian or religious elements. We welcome the clarity that the bill provides in defining those who are travelling to and from an event.

The Convener: I remind you that the person does not have to be travelling to or from an event. The bill says

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

The provision is not as narrow as you are making it out to be.

Superintendent Marshall: No, I accept that and, as my colleague has said, we would certainly welcome much clearer guidance and clarity from the Lord Advocate on the interpretation of that element of the legislation.

Graeme Pearson: Does the example that I gave you not present a fairly clear set of circumstances? Whether the man was travelling to a football match or not, he evinced views on a mobile phone and was overheard by people who were going to a football match to be using tones that the court deemed to be unacceptable, and he was convicted.

Superintendent Marshall: I accept that and I accept the use of the breach of the peace charge in those circumstances. However, to go back to the original point, the breach of the peace charge has been and will continue to be subject to challenge in court. New legislation will provide us with a greater sense of clarity, although some areas could be further clarified by the Lord Advocate's guidelines. My nervousness about breach of the peace comes from the fact that it has been and, I am sure, will continue to be subject to challenge.

The Convener: Graeme Pearson has a comment—I mean a question; I do not want him to give evidence.

Graeme Pearson: Do you accept that the bill, if it is enacted, will still be liable to be challenged in the court? It is not beyond challenge.

Superintendent Marshall: I accept that entirely.

Graeme Pearson: You give the impression that it will not be challenged.

Superintendent Marshall: I certainly do not want to give that impression. Any legislation is subject to challenge.

Graeme Pearson: I am grateful.

Superintendent Marshall: New legislation in particular will always be subject to challenge.

10:45

Chief Superintendent O'Connor: We will always make sure that we continue to use all the powers that we have at our disposal at this time. Although the issue that we are discussing needs to be addressed, there is a huge issue with drunkenness and drunk and disorderly behaviour in football. Under the criminal law of Scotland, it is clearly an offence for people who are drunk to attempt to enter a stadium or to be travelling on public transport either two hours before or one hour after a game. With such powers at our disposal, we always try to ensure that our policing is as proactive as possible in dealing with problems as far away from the football ground as possible. After all, a stadium is a very difficult and challenging environment in which to try to deal with these matters. Although the bill's provisions will allow us to focus on certain types of criminal behaviour, we will always look at all the other powers that we have—and will continue to have—to get this house in order.

The Convener: The committee understands that the police, the Crown Office and Procurator Fiscal Service and anyone else who has to enforce the legislation will not be, as it were,

straitjacketed into one piece of legislation and will have a whole panoply of legislation to draw on.

As usual, Alison McInnes has been terribly patient. Alison, you need to get yourself to the top of my list next time.

Alison McInnes (North East Scotland) (LD): I should have done, convener, because you have already picked up the point that I wanted to explore about the possibility of people falling foul of the law even if they were not attending the match.

It might be helpful if Superintendent Marshall could put into context the scale of the problem that he has to deal with weekly. For example, how many arrests do you make at the moment and how many more arrests might you be able to make under this new law?

Superintendent Marshall: Unfortunately, I do not have those statistics to hand. In general terms, however, football-related disorder with a sectarian or religious connotation is a problem. As I said at the very start, this is core business for British Transport Police. It certainly happens every week; indeed, it seems to happen every other day. There is no such thing as the close season. If we are not policing football fans during the season, we are having to police European fixtures and pre-season friendlies. I make it very clear, though, that this is not just a Rangers and Celtic issue; we police Scotland's national railway network and this type of behaviour is manifested by football supporters of every single club in the country.

As for the scale of the problem, the fact that British Transport Police has the third highest record for successful applications for football banning orders might give the committee a flavour of our operational activity with regard to policing football supporters. As I have said, I do not have any hard-and-fast statistics with me, but I am happy to provide them to the committee.

Alison McInnes: That would be helpful.

Chief Superintendent O'Connor: We appreciate that this is not just a problem in the west of Scotland; it pervades communities across Scotland. In response to an earlier question, I should point out that we have experience of people who travel about the country with no intention of going to the football match. Many of these individuals who might travel to, say, Dundee, Inverness or Aberdeen do not have tickets, have no intention of going to the match and instead end up in the city centre pubs and clubs, at which point problems quickly manifest themselves. We have to deal with that kind of dynamic. In Inverness, for example, fans will sit in the pubs in the city centre rather than go down to the Caley stadium to watch the match, which means that the match commander has to deal with

not only the on-going match but problems in the city centre.

Alison McInnes: Convener, can I ask one more question?

The Convener: If Humza Yousaf can develop his two questions into multiple questions, you certainly can ask another question.

Alison McInnes: There are many good examples of preventative policing in which the police have decided to tackle a problem by dealing with it and changing things from the ground up. Has either of you worked on preventative programmes in this area, or do you feel that you are merely cleaning up after the fact?

Chief Superintendent O'Connor: Our primary business is enforcing the law. However, there are many good examples of the police working with SFA clubs and young people, using the clubs to build good role models, and introducing diversionary activities such as late night and midnight football. I have been involved in those activities, and they work well. There is no doubt that they are a longer-term investment in building young people's awareness of their responsibilities and ensuring that they are aware of their rights and, more important, the rules that society has on certain behaviour. There is an abundance of good work in communities in preventative initiatives.

John Lamont (Ettrick, Roxburgh and Berwickshire) (Con): My question relates to some of the evidence that we received last week, which suggested that the problem is wider than what happens in football matches. The bill focuses on offensive behaviour and sectarianism in relation to football matches. What evidence do you have about offensive behaviour or sectarianism taking place outwith the context of football matches? Does it happen, are you aware of it, and how do you deal with it?

Chief Superintendent O'Connor: I have been both a divisional commander and a match commander. There are potential issues before the match, with fans making their way on public transport or in cars through various towns to the city where the match is hosted. As I have mentioned, issues can develop during the match in pubs and clubs and domestic properties in the city, and problems for the match commander and divisional commander can continue well after the final whistle has gone. Resources are not stood down immediately after the final whistle; a significant police resource is kept on to deal with those issues.

John Lamont: I am talking not about football matches but about behaviour that is completely unconnected with a game. Is there any evidence of offensive behaviour or sectarianism? That is what the bill is intended to tackle, albeit that it

does not define the term. I am trying to drill down and get an understanding of whether there is a bigger problem. Do you have any evidence of such offensive behaviour taking place entirely outwith the context of a football match?

Chief Superintendent O'Connor: Most of that behaviour happens in and around football matches and football grounds, although, as I have said, problems will spill over into some domestic properties. A much bigger and more significant issue is the alcohol-related problem that goes with that behaviour. I understand that there has been previous evidence that alcohol is the problem and football is the excuse. On the days of football matches, the misuse of alcohol creates a whole range of challenges for police commanders across the country. On many occasions, those problems do not just occur within the town or city that is hosting the football match but go beyond them.

John Finnie: I want to build on Alison McInnes's comments about prevention and direct a question to Chief Superintendent O'Connor. On many occasions operationally you will have groups of fans separated by officers. Section 1(5) refers to situations in which "but for the fact" that officers have done that, public disorder would be likely to occur. We have heard from the other two staff associations that the bill is a boost to the range of powers available. Is that the case?

Chief Superintendent O'Connor: It is certainly a positive development in that respect. A range of measures are already put in place during football matches, such as the segregation of the different fans. That provision is another one that brings more clarity to the situation.

John Finnie: Thank you. Mr Marshall, do you want to comment on that?

Superintendent Marshall: I have made my position clear. The bill will be an additional piece of legislation that my officers who police football supporters and the consequences of football fixtures will find extremely useful. Again, I reaffirm the point that it is supplementary to other substantive pieces of legislation.

John Finnie: Chief Superintendent O'Connor, it will be your members who are the match commanders at SPL matches. In relation to the joint action group, point 15 states:

"The Match Commander protocol for briefing players, coaching staff and others be approved and implemented immediately, along with an associated warning poster."

Will you share with the committee the nature of such a briefing and say who the "others" would be? Also, I may have missed it, but where would I find a warning poster and what would it say?

Chief Superintendent O'Connor: I understand that the warning posters would be posted in and

around dressing rooms and that part of football stadiums. I understand from some of my members that such briefings have taken place. It is all about getting the message out about individual responsibilities and collective responsibility, and about the fact that behaviour breeds behaviour. Ultimately, there are certain types of behaviour by players and club officials that could be construed as criminal in certain circumstances. In terms of the fairness rule, it is important that these briefings are carried out and that, in addition to the expectations that are laid out for everyone, a clear reminder of what is expected is built in.

The Convener: I have a final question that no one has asked yet. Section 2(3) says:

"The references in subsection (2)(a) to (c) to a regulated football match include a reference to any place (other than domestic premises) at which such a match is televised".

I am thinking of supporters clubs, supporters rooms and pubs that are frequented by supporters of a particular club and that club alone. If you feel that that subsection should apply to the policing of such premises, how do you envisage it operating?

Chief Superintendent O'Connor: We already cover that in all the pre-match checks that are carried out with licensed premises. It goes back to what I said about the need to be proactive in our policing. We need to try to stop the problems getting into the football stadium. Police will carry out checks of licensed premises—

The Convener: But the point that I am making is that if it is just people supporting a particular club, including the staff serving behind the bar, who is being offended? Where is the incitement?

Chief Superintendent O'Connor: Are you talking about a specific football supporters club?

The Convener: I am just imagining a place where supporters are. It is not a domestic premises and the people behind the bar are supporters. People are watching a match and shouting stuff. Where is a breach of the peace taking place? Under the terms of the bill, where is the incitement or offensive behaviour when there is no one to offend?

Chief Superintendent O'Connor: A licensed public premises will always permit people in who may not necessarily be purely watching the game, and I would imagine that there will always be people within the premises who might well be offended.

The Convener: That is not my point. I am saying that the provision refers to a place where a match is televised, other than domestic premises. It could be a clubroom for example. Would the legislation apply there? If people who have the same views all get together and there is no one to offend or incite, can the bill be applied?

Chief Superintendent O'Connor: Yes, well, there will be an interpretation to be made there. It is back to the reasonable person test that is often applied to these types of circumstances. It may well be that someone in those premises or in that club is offended by the behaviour of an individual or a group of individuals in these circumstances.

The Convener: John Lamont is mumbling at me—I am not sure whether he wants to ask a question.

I shall stop on the mumbling. I bring the evidence session to a close. I thank you all for giving evidence. It has been very helpful. If you feel, having left the meeting, that there is anything further you wish to add, perhaps even having read what you said in the *Official Report*, please feel free to write to me as convener to share the information with the rest of the committee. We will put some of the issues to the SPL that the SFA has raised.

10:59

Meeting suspended.

11:06

On resuming—

The Convener: We will get back to business. I welcome our second panel of witnesses: John Deighan is parliamentary officer at the Catholic church's parliamentary office, Chloe Clemmons is from the Scottish churches parliamentary office, representing the Church of Scotland, and Professor Tom Devine is a senior research professor in history at the University of Edinburgh. We will go straight to questions from members.

James Kelly: One of the questions that has run through the debate around the bill is this: what is offensive behaviour at a football match? Last week we heard different views, particularly about the songs that are sung at football matches. We heard some of the football representatives say that the songs are not really offensive and that they are all part of the football experience, but we heard others say specifically that it is unacceptable to sing anti-papal songs or that it is, in the context of a football match, unacceptable to sing chants or songs in support of the Irish Republican Army. How do you feel about that? Do you think that the bill is helpful in tackling some of the issues that have arisen?

The Convener: Panel members should just indicate that they want to speak and the microphone will come on.

John Deighan (Bishops Conference of Scotland): The Catholic church would not claim to be an expert in the exact songs and chants. We

realise that Government or state authorities have a legitimate task to perform in ensuring that public events such as football matches are conducted in an orderly way. It is a question of balancing the different principles. We can only offer guidance on what those principles are, but we believe that wide latitude should be given in relation to freedom of expression, which must be upheld, and that any intervention should be necessary. We believe that the football clubs themselves have tried to eradicate particular chants and songs—the stuff that is likely to stir up the trouble and hatred—in order to change the culture and take the heat out of the situation.

Professor Tom Devine (University of Edinburgh): I find it difficult to respond to that question because I certainly cannot define what is offensive. Offensiveness is in the eye of the beholder. Let me give you an exemplar of what I am talking about. I may be one of the few people in this room who has actually attended a sectarianism-aggravated breach of the peace case. I did so at Perth sheriff court last March, when I was asked to give so-called expert evidence in the trial of two individuals who were accused not only of breach of the peace but of sectarianism-aggravated breach. That case was based, of course, on the existing law, which is section 74 of the Criminal Justice (Scotland) Act 2003. It was a summary proceeding, so there was no jury.

In my view, the sheriff performed sensibly and effectively. To be specific, he began by saying—unlike the procurator fiscal—that a song such as “The Fields of Athenry”, which is a well-known song at certain matches, is an Irish folk song and therefore should not be considered seriously in the trial. He then went on to consider whether references in the streets of Perth in the early morning to the Irish Republican Army, whether it be the so-called old IRA or the Provisional Irish Republican Army, amounted to a sectarianism-aggravated breach in terms of the 2003 amendment to criminal justice legislation. He decided that, since that organisation was not primarily based on religious hatred of another group, the case was unproven. He found the two individuals guilty of breach but not of sectarianism-aggravated breach. In my view, that crystallises a very important point, which is that law enforcement officers, sheriffs and juries are going to be faced by the difficulty of defining the term “offensive behaviour”.

This whole issue developed out of what is sometimes referred to as “sectarian hatred”, which I can define for you, if you wish. However, in my view, the original 2003 act is perfectly adequate in relation to some of the issues that confront the committee. The only inadequacies are in relation to the lack of enforcement by police officers at

certain football matches in the past, when people got away with brazen murder in terms of what they were allowed to sing, and there is the important new section in the bill that certainly could be rationally argued for and accepted—namely, the reference to unacceptable communications. I have not read in detail what the bill proposes in that regard, but the sense that I have of it is that its focus is very much on religious hatred and not on the blanket term “offensive behaviour”.

James Kelly: I will follow up on what Mr Deighan said. You spoke about your support for freedom of expression. Do you feel that there is a danger that the way the bill has been formatted could undermine freedom of expression?

John Deighan: We were alerted to the lack of a freedom of expression provision; concern about that is shared by many groups, but particularly Christian groups. The trouble is that free and frank discussion of certain matters that for some people could be offensive, may be caught by the bill. To tackle that would perhaps involve looking at how it has been done in England and ensuring explicitly that people are allowed to express their views freely, especially in terms of religion or belief. It is important to have that safeguard rather than to rely on what is deemed to be reasonable, which can change radically according to the different environments in which people may speak. So, our suggestion is to ensure that there is recognised human rights protection in that regard—for example, how rights are qualified by articles 9 and 10 of the European convention on human rights. Those are the sort of qualifications that we should be looking for in the bill to ensure that the rights that citizens should have are protected to the maximum and not curtailed.

11:15

James Kelly: How would you categorise freedom of expression in the context of a football match?

John Deighan: Football matches are not an area of specific expertise of the church—we would not claim that they are—but the situation is like any expression at any public event. In terms of the church’s social teaching, we would look at the principles that lie behind particular pieces of legislation rather than at the technical details. If the Government thinks that there is a problem in a particular context—at football matches, for example—it has a right to take the action that is necessary to maintain public order. That principle can be argued and, in discussing the matter with the Catholic church, the Government has made a good case that it thinks that there is a problem, and cited examples from last season when there was trouble at football matches. The Government has a duty and a right to act, but that right must be

balanced with the rights of individuals in society; we say that the bill will omit to ensure that that balance can be achieved properly if there is not an explicit freedom-of-expression provision. We think that “reasonableness” is not quite sufficient, especially when that can be subjective.

James Kelly: What would you give as an example of somebody’s right to freedom of expression at a football match that might be compromised by the bill?

John Deighan: That would not just be at football matches; it would be extensive. For example, preachers standing in a street may decide that they want to go to a football match and may want to give out religious tracts. Someone at the football match may say that they find that offensive and that it is stirring up hatred. That sort of thing could be caught if there is no explicit protection for people in such that situations. I do not think that people would chant doctrinal chants in a football stadium—I have certainly not come across that—but I am concerned about the wider environment. The bill is very wide in terms of whom it could encompass. I heard some of the earlier evidence, which said that the bill covers locations outside the football match and could cover people travelling on the same train as football supporters or sitting in the same pub or club as football supporters. We must ensure that their freedoms are protected, as well.

James Kelly: So, your freedom-of-expression concerns are more about what happens beyond the football match than they are about what happens in the football stadium itself.

John Deighan: Yes. The Catholic church is pleased to offer what help it can. The issue has drawn us in, to some extent, because there is recognition that an anti-Catholic element is part of sectarianism. We are happy to contribute what we can, but we are certainly not claiming to be experts on how to run orderly football matches.

The Convener: Can you expand on freedom of expression as it pertains to the second part of the bill, on threatening communications? Professor Devine has referred to two different kinds of offence. The first is a violent act against a person of a particular description—so it relates not just to religious matters—and the second, which is a condition B, so the two are separate, is that

“(a) the material is threatening, and

(b) the person communicating it intends by doing so to stir up religious hatred.”

What about freedom of expression on the internet? That is another part of the bill, and I would like you to talk about that, as well.

John Deighan: Do you want me to answer that, as well?

The Convener: Yes please, if you wish. Do not feel compelled.

John Deighan: We have stated clearly that threats of violence are unacceptable. We are all in favour of stamping them out. The other condition that you mentioned could catch broader communications. An example that has been brought to our attention is religious debate that could occur and which people might see as being open criticism—the Catholic church is subject to open criticism as well—and stirring up hatred against the church.

Similarly, debates between Christians and Muslims could point to fears that Christians have about Sharia law or particular elements of the Koran. Of course people should always try to be tactful but, in certain situations where people are speaking frankly, someone might not express themselves as well as they might and could be caught by the bill. As a result, one might argue that we must ensure that that sort of frank, open and robust debate around religious debates is allowed to take place in society without people fearing being prosecuted and getting heavy penalties.

The Convener: Does anyone else wish to comment on the internet issue? I note that Colin Keir wishes to ask a supplementary. Is it about freedom of expression?

Colin Keir: Yes.

The Convener: I am sorry—Ms Clemmons was going to respond. I will take Colin Keir's question in a moment.

Chloe Clemmons (Church of Scotland): I agree with John Deighan that the bill has two completely separate functions. Indeed, we in the Church of Scotland have had a very similar conversation. We feel that the provisions could be really useful for football matches. There is a lot of support for making it clear that, normally, people would not behave in that particular manner. Many people at football matches behave in a way that they would not behave in the rest of their professional lives, so we thought that there might be a big advantage in naming the offence, pushing it quite hard and saying, "We expect you to exercise some self-control here". That said, we think that there are issues with the width of the drafting in the threatening communications part of the bill, but we see the two issues as being quite separate.

Colin Keir: With regard to freedom of speech, the European convention on human rights has already been mentioned. Football's European governing body, UEFA, appears to have a problem with some of the stuff that is being chanted or sung in European stadiums; indeed, as we know, Rangers was cited the last time. That

suggests that UEFA's people have considered the European elements of the matter.

Does all this relate to a second issue—which has just been raised by Ms Clemmons—about the standards that are acceptable within and outwith football stadia? Are we in a situation in which we cannot afford to do anything with this? Where do we go with it? What would you like us to do with the bill? Surely the European governing body's not liking what is happening puts us in a bit of an awkward place.

Professor Devine: We have to remember what the so-called European governing body, UEFA, specifically reacted to. The songs that it condemned and which it fined a football club for would have been found to have been wrong and punishable under existing Scots law. Those fines were levied because of manifestations of religious hatred and had nothing at all to do with the catch-all nature of the bill. In the light of the academic evidence that was given to UEFA—especially on the first occasion—on a song that many people around the table will know and which is crassly sectarian and anti-Catholic, the judges had no difficulty in reaching their conclusion. The case was clear cut. However, the issue of offensive behaviour is by no means clear cut. Throughout the process, members have continually asked witnesses to define such terms and, in my personal view, the answers have been intellectually unconvincing.

The Convener: I guess that we cannot ask whether the guidelines will be useful, given that we have not yet seen them, but should the guidelines that will be produced by the Lord Advocate be more than that? Guidelines, after all, are a persuasive mechanism for police and courts, but should they be put on a more statutory footing? Would that make the bill less of a broad, catch-all provision?

Professor Devine: The problem that I have is that, intellectually, and from the point of view of any empirical evidence that I have seen, I am opposed to the bill, except for the second part of it, which deals with electronic communications. That is a new development in our society, and it is an area that is certainly well worth looking at and producing robust law on.

I have a major problem with the first part of the bill because, in my view, the very tightly written act from 2003 covers most of the issues at football matches on which there is no ambiguity. I will give an illustration of the problems that we might get into. If Celtic supporters go down to watch their team play Manchester United and sing songs that they think deal with Irish freedom or oppression by the British state, is that offensive or is it a statement of political belief? That is the difficult intellectual territory that the bill has entered, and it

is in danger of bringing Scots law in that area into disrepute.

Roderick Campbell: You touched on an issue that I had intended to explore further. I was interested in your reference to what happened in the case at Perth sheriff court and to what we are developing. In their submissions, one or two other people have distinguished between political sectarianism and religious sectarianism. From what you are saying, although you oppose the bill generally, you would caution members against passing legislation that clearly did not allow people to make statements of political belief.

Professor Devine: I think that the phrase “political sectarianism” is a contradiction in terms. Sectarianism is defined as the evincing of religious hatred or hatred towards an individual or a group, either in writing or in another form of communication such as singing, because of that individual or group’s religious belief. It is a dead easy definition. That is why, in the case at Perth sheriff court, the sheriff had no difficulty in coming to a determination.

One of the police witnesses said that, in his experience, most of the offences in question took place in and around football grounds. Some members of the committee may be aware of the fact that a research project, albeit a minimalist one—I think it covered a six-month period from 2003, when existing legislation was reformed—was carried out on the cases in which people were found guilty of, or were arraigned by procurators fiscal for, sectarianism-related breaches of the peace. As you probably know, Frank Mulholland, the Lord Advocate—who was previously the Solicitor General for Scotland—has a team looking at such data for the entire period from 2003 to the present, the findings from which could be extraordinarily interesting and potentially explosive.

My point is that it was, in the research, possible to identify that the incident related specifically to football or to the support of a particular team in only 14 per cent of the cases that were examined. In other words, according to the data from that project—which is one of the few collections of hard data that we have on such offences—a very small minority of cases related to the context of the bill. That is far from consistent with the assertion that the police officer made earlier. There is a caveat: it could well be that, because of the size of the crowds that were present at those events, the police felt impotent to intervene, which is why the public sectarian breach went on.

11:30

Chloe Clemmons: Colin Keir asked about where to go with the bill, given the European

position. A case can be made for keeping the focus slightly wider to encompass religious hatred rather than narrowing it to sectarianism. We live in a multi-religious society and some of the conversations that I have had about Church of Scotland work concerns interfaith work. The tensions people see in communities are not all between different Christian groups. We would lose a lot if we were to focus too much on that and not accept that other issues may be relevant.

Professor Devine: What distinguishes the Scottish experience from that in other jurisdictions is that it is well known that the problem is rooted in Irish Catholic and Irish Protestant migration in the 19th and early 20th centuries. However, of all the jurisdictions where Irish people of each faith tradition settled, Scotland is the only one with anti-sectarian legislation on its statute book. That suggests that Scotland has a distinctive and special problem regarding the original issue that caused the McConnell Government to move into this area. My fear is that if we spread and dilute, we will lose the focus on what I refer to as “the Scottish problem”, rather than as “Scotland’s shame”. The situation must be tackled not only by legislation—which can help—but by a variety of means. This bill almost moves into umbrella territory and is in danger of losing that specific focus on the particular Scottish problem.

The Convener: Does anyone on the panel wish to contribute before I return to committee members?

John Deighan: We take a similar position to Professor Devine. If the legislation is responding to a particular problem, that problem should be the focus of the legislation. We live in a time when people are very sensitive about not offending anyone and there seems to be a reluctance to focus on and to define the issue in sectarianism. It is understandable and good intentions lie behind it. However, taking a broad umbrella approach and tackling every possible prejudice in this bill moves it away from what we believe the bill was created for, which was to deal with bigotry that arises at football matches.

Professor Devine: From what I have heard from Frank Mulholland’s office, my sense is that we must consider the release and analysis of the data to which I referred, dealing with occupation, territory and religious affiliation of victims and offenders. Suppose the analysis of that material finds that victims overwhelmingly come from a certain religious background, and aggressors from a different religious background: that will present the Government and Parliament with a particular problem. We lack hard data on those areas.

In my definition of sectarianism, structural sectarianism and labour-market discrimination, which affected people’s life chances, have gone.

However, attitudinal sectarianism and sometimes bigotry—as defined—remain. That is unpleasant and can sometimes lead to violence—it is still with us in certain parts of Scotland, pace the truly incredible evidence of a sociologist from a university in Dundee. I was not present but I saw it on my computer. He denied that attitudinal sectarianism is an issue in this country.

The Convener: Professor Devine is referring to Dr Stuart Waiton. Let us park the information technology part of the bill and focus on offensive behaviour at football matches. Before I invite Humza Yousaf to speak, do members of the panel believe that if it is enacted, the legislation will be provocative and therefore counterproductive?

Professor Devine: I will make two brief points and then let my colleagues in. One is that there is a danger—in fact, it is possibly an inevitability—that you will make criminal certain behaviour that was not criminal under the 2003 act. Certain people who do not regard themselves as behaving in a criminal way might react to that in a particular way. The second aspect, which is equally important, is that even if the legislation is not inflammatory, it will be incredibly controversial.

The Convener: We will move on, because nobody else has indicated that they want to come in on that issue. I have a queue of members who want to ask questions. I call Humza Yousaf, to be followed by John Finnie and Graeme Pearson.

Humza Yousaf: I thank the witnesses for coming along to this evidence session. My question is to do with the legislation, too. Ms Clemmons's organisation's submission seemed quite critical of the fact that legislation is being drawn up in the first place, which kind of reflected what we heard last week from the supporters trusts. The submission states:

"The Bill will do nothing to reduce sectarianism unless it is part of wider work."

I agree, but I think that wider work is going on. It also states:

"conviction of a sectarian offence could be seen as a badge of honour."

I understand that in saying that you are just reflecting the consultation that you had with others. The same point was often made about anti-racism measures in legislation, but it was thought imperative to introduce them.

The submission from Dr Kay Goodall, from whom we will hear later on, states:

"research also suggests that law can influence people to reduce overt prejudice, and can even change attitudes through changing their behaviour."

I think that there is an understanding that there has been a collective failure among politicians, Governments, football clubs and even civic

organisations in confronting this issue. Given that, is there not a need for some kind of legislation?

Chloe Clemmons: We think that there is a need for legislation and we absolutely agree that the behaviour is unacceptable and something needs to be done about it. The problem is that legislation will apply equally to everybody. Some people perceive legislation as something that is a positive part of their lives and they would seek to be law abiding and to engage with legislation, but others do not perceive legislation in that way. So, the effect that you would have on some people would be different from the effect that you would have on others.

The experience of a number of people working in communities was that the identity of people in that community was very much bound up in the relationship with another community, which could be a negative relationship, and that it was seen as a good thing to attack members of the other community because that showed greater strength of your identity. That is exactly why we think that the bill and the wider work need to be related to each other. If you want to stop the behaviour happening, you need to have something alongside the legislation on day one to address the issues of how communities relate to one another, relationship building and actively challenging barriers. We are afraid that if the legislation and wider work are not put in place simultaneously, the legislation will just move the problem. Some people will be deterred by it and they will change their behaviour but other people will not, so the problem will be of the same scale—it will just sit somewhere else. We absolutely need to take action to fix the problem. Legislation can help with that, but only if it and wider work are introduced as a package.

Humza Yousaf: Okay. Thank you.

Professor Devine said that the legislation will at least be controversial. I do not doubt that at all. Given the subject, it would always be controversial. I note that the Catholic church's submission has a particular issue with the widening out of the scope of the bill. Under section 1(4), the bill will cover colour, race, nationality and so on. Given what your submission states, the chances are that you have an issue with only a couple of the categories that are mentioned in that section, rather than all seven. However—if I have got this right—the Church of Scotland's submission welcomes the fact that the bill could be extended. Does that present a difficulty in drawing up the legislation? Do we not just have to accept that some people will want it drawn more narrowly and some people will want it drawn more broadly? Does there not need to be an acceptance that that is just part of the legislative process?

Chloe Clemmons: That is why we emphasised consultation the first time that we had this conversation with the committee. We should seek balance and find out who is welcoming things and why, and whether those things are a good or bad idea.

Humza Yousaf: Have I got it right? Do you think that the bill should be widened out further?

Chloe Clemmons: Yes. In our discussion we said that other things happen at football games and that if you are going to legislate, you should include those things, too.

Humza Yousaf: Mr Deighan, what do you think?

John Deighan: The legislation should be necessary—the problem that is bringing the bill into existence should be identified. Our problem is not only the widening of categories but the introduction of categories with which, to be honest, we did not understand there to be a problem.

We are accused of offending people as a result of our views on this, but one of those categories follows an understanding of human nature that we do not agree with. A belief that human nature is not defined as male and female is being brought into a bill to deal with bigotry. We thought that that was out of place, because those issues have been dealt with in the Equality Act 2010.

The Convener: The bill is not a bigotry bill; it concerns

“offensive behaviour in relation to certain football matches”, so it is not a bill about sectarianism, although that has been the main focus.

John Deighan: Yes, but that is our understanding of why the bill came to be.

Humza Yousaf: I do not know whether you have had the chance to see the submission from Tim Hopkins of the Equality Network. I assume—correct me if I am wrong—that the categories with which you take issue are sexual orientation and transgender identity. At football matches, Mr Hopkins has heard expressions from the crowd—I think that the word “faggot” is used in his submission. I do not imagine that that would apply to members of the Catholic church.

In your submission, you make the point that the bill uses an

“understanding of human sexuality which is rejected by the Catholic Church and which is contrary to natural law.”

It could be argued that that is a tactful way of putting it, but I imagine that you would condemn the use of inflammatory language.

John Deighan: We object to mistreatment and disorder whatever the grounds for them are. The

reason that we raise that concern is that, when the bill was introduced, the minister explained to us that it was intended to deal with sectarianism at football matches. I realise from the name of the bill and from what it deals with that it is much wider than that. It takes us into a much broader area.

Do we understand why we are taking it into that broader area? Do we understand why there are five different forms of transgender identity? That is all that we are saying. That needs to be explored in quite some detail. There is a philosophy behind it. Have we explored whether five forms of transgender identity need to be defined in the bill as protected characteristics? Perhaps there is evidence to show that they do, but we were not made aware of that. We were told that the bill was introduced because of sectarianism—which we understand as bigotry—at football matches, which was causing disorder.

Humza Yousaf: The point in your submission about including a provision in line with article 9 of the ECHR was well made.

John Deighan: Thank you.

John Finnie: Humza Yousaf has covered 90 per cent of the questions that I was going to direct to you, Mr Deighan. It is right to say that some people will have found the section in which you speak about the “Wide ambit of the provisions” to be deeply offensive. We must accept that that is the case.

In the second paragraph on page 2, you use an unusual phrase. You say:

“We are unclear as to the source of such categories”—that is okay—

“and are unaware of individuals who may define themselves under such a category having been specifically targeted for mistreatment”.

If we could give you specific examples of mistreatment of people within either of those categories—transgender identity and transexualism—would you condemn that?

John Deighan: Yes, of course we would condemn people being mistreated for those reasons.

John Finnie: We also had a submission from the *Scottish Catholic Observer*. Can you speak to that?

John Deighan: I can try, if you want, but I do not speak on behalf of the *Scottish Catholic Observer*.

John Finnie: It is a submission from the editor, which takes the form of a brief preamble followed by an article. The article talks about a

“deliberate distortion of the truth”.

Have you seen that submission?

John Deighan: I am sorry, but I have not.

John Finnie: It would be unfair to ask you about it, then.

The Convener: It would be. As I have said to previous witnesses, if Mr Deighan wishes to add anything later or if he wishes to comment on other evidence, whether he submitted it himself or not, he should feel free to write to the committee.

11:45

Graeme Pearson: Earlier, Professor Devine expressed his view about lack of enforcement and prosecution of the current legislation. On what evidence do you base that view?

Professor Devine: Do you listen to football matches on the television? Did you see the recent Scottish league cup final or some game involving the two opposite members of the old firm? At that match, 25,000 to 30,000 people were committing a collective and brazen act of sectarian breach of the peace because of the song that they were singing. That song was condemned by UEFA and one of those two football clubs was punished and humiliated before Europe. That is just one example, but there are many others.

Graeme Pearson: Do you identify that issue because of the sheer size of the problem that is presented by dealing with a crowd of that size? Has the problem been going on for years and been ignored?

Professor Devine: There has been a culture of toleration: that is just the way things are. We now have different expectations, partly because the attention of the world is on us. CNN was in the country two days ago, and it might well have interviewed members of this committee. Its report will go out in 200 countries during the next couple of weeks. The bill process is still going on, so the world is still very interested. The international factor has been relevant.

Modern communications systems, such as closed-circuit television and other methods, are more interesting to me. Obviously, the police cannot imprison half of the fan base at a major football match but they can at least make exemplars of some of them, which might have the desired effect. In my view, the heart of the committee's operation should be to ensure that the forces of law and order implement the existing legislation; I know that that is almost irrelevant to the committee's deliberations.

John Deighan is absolutely right—and it follows as night follows day—to say that this process was triggered by concerns about sectarianism, not by concerns about racism: there is legislation to deal

with that already. The process was not triggered by concerns about people insulting individuals because of their disability.

From the historian's point of view, one of the questions that we would love to ask the former Lord Advocate and the present Lord Advocate, who was the previous Solicitor General, is why they widened the canvas in such an analytical way? If the problem has been universally specified as being rooted in the sectarian issue, why has the bill been expanded to the extent that it has been in a way that will cause enormous problems in legal enforcement?

The Convener: I am certain that the committee will ask that. We are not doing a formal stage 1 report, because that was done when the bill was going to be treated as emergency legislation, which we disapproved of collectively. However, we will be making a quasi-stage 1 report to Parliament, so those issues will be put. I assure Professor Devine that one of the questions that the committee will ask is whether the legislation is necessary. We have already examined other means of enforcement through existing legislation or protocols.

Professor Devine: I plead with the committee to take up the issue that the convener has just identified. It is tremendous that the process is ongoing, because it would have been a disaster if the legislation had been implemented immediately in the short timeframe that was originally envisaged. In my view, you must tackle the issue head on and not necessarily simply go through the sections of the bill. Is the bill really necessary? Could it be counterproductive? What is the coverage, if you like, of the existing legislation, specifically in relation to the problem that was identified in 2003?

The Convener: Those are certainly legitimate questions that the committee would ask of the minister and the Lord Advocate. Excellent as your appearance here today has been, Professor Devine—even prior to it—those questions were already in the air.

Professor Devine: I am certain that they must have been, because they are at the heart of the issue.

The Convener: We have another 11 minutes, so I am keeping to the timetable. I will take John Lamont first, because he has not been in yet. Does Alison McInnes want to come in? I am looking after her: there are only two women on the committee, so we need some positive discrimination. There are too many men on this committee.

Alison McInnes: No, I am all right.

John Lamont: My question is for Professor Devine. To rewind slightly, you referred to the fact

that only 14 per cent of offences that were committed under the 2003 act were aggravated by sectarian behaviour. Is that correct?

Professor Devine: No, I am sorry—I communicated that wrongly. I said that only 14 per cent of the cases that were assessed and evaluated related to events at or outside football matches. I was trying to refute the police officer's assertion—so much of this process has been based on assertion rather than on argument, or on statements with evidence—that the issue is overwhelmingly a public order problem or is related to football matches. Some of the very few pieces of hard evidence from that snapshot of 2003 to early 2004 refute that analysis.

John Lamont: Do you have any information about the circumstances in the other 86 per cent of cases that were assessed?

Professor Devine: I can give you some of the major conclusions. Most of those cases—54 per cent—were in the Glasgow area; 22 per cent were in Lanarkshire; and a substantial minority were in West Lothian. I can consider the reasons why that should be the case if you are interested, because they are historical.

Alcohol featured in the majority of cases, and in 49 per cent of cases, the police report revealed that the accused was under the influence at the time of the offence. Twice as many Catholic victims as Protestant victims were examined, and 1 per cent of cases showed Muslims to be the target. Fifteen per cent of cases arose in the context of marches.

We need the big database from 2003 to 2011 in order to be confident, and it will appear in the public domain in due course. The snapshot so far tells us that such incidents do not necessarily occur when or where one would think that they would—for example, in the marching season or at football matches. They are part of the fabric of certain areas of Scotia, which reflects the fact that the problem is societal.

John Lamont: Can we ask for that information?

The Convener: I am coming to that. Perhaps the witnesses can provide us with the source so that the clerks—

John Deighan: The paper that I am holding up is the source.

Professor Devine: I can read it out to you.

The Convener: Sorry—I will take one at a time.

Professor Devine: It is a document called, "Investigation and Reporting of Sectarian/Religiously Aggravated Crime: An Analysis of the First 6 Months", which was produced by the Scottish Government.

The Convener: You also referred to the Lord Advocate's analysis, which is a separate matter.

Professor Devine: Yes. That will build on the snapshot, but importantly it will examine all the data between 2003 and the present. Academics, scholars, historians, anthropologists and sociologists have wanted to see that information for some time. It will not necessarily tell the entire truth, but it is hard, quantitative information from which we can learn a lot. It will be interesting to find out, when you next speak to Frank Mulholland, when that information will be released in the public domain.

The Convener: Again, that is a pre-emptive strike. It is going through my head that we will, when we are writing to the Lord Advocate for the guidelines, ask when that information is to be published.

Professor Devine: It is supposed to be published in the autumn.

The Convener: Is it to be published, or is it an internal matter?

Professor Devine: I think that there will be something of a controversial response if it is not published.

The Convener: We will ask if and when it will be published.

Professor Devine: It is not only to be published, but to be analysed.

The Convener: That is all on the record, so we know what to write to the Lord Advocate about before he comes to the committee in a week's time.

Professor Devine: Good luck with that.

The Convener: This committee is fairly robust.

Professor Devine: I was simply being facetious.

The Convener: I hope so—we gave you a scone, and scones are not given away willy-nilly on this committee.

John Lamont: Professor Devine, you referred to a case in which you gave expert evidence in Perth sheriff court. Did that relate to football?

Professor Devine: No, it was an incident that took place at 2 o'clock two days after Christmas last year in small-town Scotland—or is Perth a city? I do not know. One of the defendants was an off-duty policeman, and one of the accusers was also an off-duty policeman, so it was a very interesting case. It had nothing whatsoever to do with being present at a football match.

The behaviour was unambiguously a breach of the peace, but the more interesting and, if you like,

nice question was: was it sectarian aggravated? The assistant procurator fiscal argued strongly that it was—so strongly indeed that the sheriff started to lose patience with her. The case was that the Irish Republican Army is a sectarian, anti-Protestant organisation, so singing about it is sectarian aggravated under section 74 of the 2003 act. Historically, that statement cannot be proven. That is not to say that that organisation has not killed Protestants—of course it has—but it has also killed Catholics. It is a politically motivated terrorist organisation.

The Convener: I am just checking with one of the members whether Perth is a city.

Roderick Campbell: No, although there is a campaign for it to be a city.

The Convener: I have allowed you to say that—you are part of the campaign. I just wanted to clarify the point, as Perth people could be offended.

Alison McInnes: Professor Devine, do you think that it would be folly to go ahead with the legislation without seeing the evidence and analysis that you are talking about?

Professor Devine: Correct. Let us create the theoretical hypothetical. I am not saying that this will necessarily come out, but some of the analysis done by, I think, the Roman Catholic Church has suggested that the 2003 data show that Catholics are six times more likely to be targeted than non-Catholics. It may not have produced that evidence on the basis of social scientific rigorous inquiry—I do not know how it came to that figure—but let us suppose, for the sake of the hypothetical, that we find that that figure is replicated in the massive database from 2003 to the present. If that is the case, we have a huge issue to deal with in this society. We may well have to consider whether Keith O'Brien, Cardinal Archbishop of St Andrews and Edinburgh, was right when he asserted that there is not a sectarian problem but blatant anti-Catholicism. We do not have the evidence, which he may have, to support that assertion, but we will know a lot more when the entrails of the data are considered and explored.

Humza Yousaf: I want to follow on from that point. It is often said, including in the submission from the Harps community project, that anti-Catholic and anti-Irish bigotry are sometimes lost in the framework of sectarianism, and I can agree with that to an extent. Is it not therefore imperative that we avoid categorising sectarianism and important that we have the categories—of colour, race and nationality in particular—in the bill?

Professor Devine: I profoundly disagree with you.

Humza Yousaf: For what reason?

Professor Devine: The *casus belli*—the reason for war that produced this process—were the incidents relating to perceived sectarian behaviour during the last football season. What is the logical reason, therefore, for spreading the legislation? One of the toughest and most robust areas of offensive behaviour legislation is anti-racism legislation. We have that already. I go back to the intellectual conundrum: why do the legal officers wish to extend that into other areas? They are perhaps areas of legitimate concern, but they are particularly controversial and ambiguous and ones in which the legal process could perhaps even end up looking like an ass.

Humza Yousaf: The bill deals with incitement to public disorder and behaviour that is likely to incite public disorder. When it comes to sectarianism and anti-Irish behaviour, many people believe that their Irishness is part of their race rather than their nationality.

Professor Devine: It is part of their identity.

Humza Yousaf: Yes. The police were robust in saying that they do not feel that the current measures are able to deal with behaviour in relation to that. Do you think that the police are being too lazy?

Professor Devine: What explanation did they give for that statement?

Humza Yousaf: For—

Professor Devine: For stating that the current measures are inadequate.

12:00

Humza Yousaf: They thought that the test for breach of the peace—that something has caused fear and alarm—was not addressed. If they go into a supporters club or a pub, for example, where no one has caused fear or alarm, they cannot go in on the basis of breach of the peace.

Professor Devine: That is your analysis.

Humza Yousaf: No. That was the police's analysis.

Professor Devine: You have reported their analysis. My analysis is different. Mine is that moving the goalposts into political and ethnic provocation and so on moves us away from the case that is relatively easy to prove—because of statements made, messages sent and songs sung—which is religious hatred.

The Convener: For clarification, regarding the analysis of the statistics that we have requested concerning the 2003 act, is it the case that Celtic fans sing songs that are pro-IRA, which could be deemed political, whereas Rangers fans sing songs that could be seen as sectarian? That might

skew the statistics, in that it might make it difficult to prosecute Celtic supporters under the 2003 act because it deals with offences aggravated by religious prejudice.

Professor Devine: You are absolutely right. The act could not be used for that purpose—that is why the case was thrown out in Perth. The sheriff decided that the statements made were statements of political or racial loyalty.

The Convener: Indeed. Therefore, statistics based on that act, which you say is sufficient—and that we therefore do not need the first part of the bill—along with other existing law, whether in statute or in common law, will not prove your point about sectarianism going both ways, because the act does not tackle sectarianism in terms of what Celtic fans are doing.

Professor Devine: No. It is relevant to the issue in terms of the single criterion of religious hatred.

To return to your statement about songs being sung by Rangers supporters, although the overwhelming majority of those songs are not relevant to the 2003 act, there are some that are. If you wish to see the list, I am sure that UEFA could provide it. Only a small minority would be capable of being arraigned before the 2003 act.

My concern is to try to deal with the problem that we have in Scotland, or at least to approach dealing with the problem, through this legal process. We all agree that it will take a large number of other influences to produce a result over time. My sense is that what is being proposed moves away from the key problem. That is only a point of view.

The Convener: Yes, I know; I accept that.

Do you therefore accept my premise that prosecutions under the 2003 act will be more successful in relation to Rangers supporters singing—notwithstanding the point that the songs are not all sectarian—than Celtic supporters singing, behaving in a certain way or chanting, because that would not be deemed sectarian and would be more likely to be deemed political?

Professor Devine: I do not understand your point—

The Convener: My point is that it is not even.

Professor Devine: It might not be even in terms of the proposed legislation, but it is even in terms of the 2003 act, which deals only with religious hatred. You cannot honestly consider the statistical evidence to be dealing with anything other than the processes of law involved in the interpretation of that act.

The Convener: I am sorry—I am not explaining myself clearly. I want to forget all the other categories in the bill and go back to the 2003 act

and its provisions related to offences aggravated by religious prejudice. I seek your views on the proposition that Rangers supporters might be more likely to be prosecuted because their behaviour, their singing and so on might be deemed sectarian while Celtic supporters' singing and chanting about the IRA would be more likely to be deemed political and therefore would not fall within the ambit of section 74 of the 2003 act.

Professor Devine: Only a small minority of the cases that I cited took place in or around football matches. The rest of them took place in the street and in many instances drink had been taken. The issue with regard to the background of victims and assailants has nothing to do with the legislation or the data stemming from it or a person's football affiliation; it is about their religion. With regard to the religious evidence, the Crown Office concluded from the cases that it examined that there were twice as many Catholic as Protestant victims. In 1 per cent of cases, Muslims were the target. For reasons that I am not absolutely certain of, the Catholic Bishop of Motherwell concluded in an article that was published six months after these data appeared that Catholics were six times as likely to be victims. I do not know what he based that on. All I am saying is that very interesting information is coming down the track and, as a committee member has already suggested, it would be quite useful if the committee could consider those results before the bill goes very much further.

The Convener: I regret to say that we are not masters of the parliamentary timetable, but we are doing our very best and might have some room for manoeuvre. I will check with the clerks.

I believe that Mr Deighan wishes to comment and then I will leave the matter there.

John Deighan: I acknowledge your point, convener, and we must recognise that in some cases you will have to show that something that might fall within a political category and which might be described as a football allegiance has been a proxy for religion. Indeed, the Scottish Trades Union Congress identified that very issue when it examined sectarianism in the workplace for a report that it published in August 2008.

We achieved the figures that Bishop Devine might have used by taking the approach that statisticians might take. They would take the number of Catholics per thousand population and look at the likelihood—

Professor Devine: They are 16 per cent of the Scottish population.

John Deighan: So Catholics were twice as likely to be victims. There were actually two reviews, the first after six months and the other after 18 months, and it was found that 15 per cent

of sectarian—or anti-Catholic or anti-Protestant—incidents were football related; the other 85 per cent were not. The issue is wider than that. It is a difficult social and religious issue but, according to the two reviews of the situation under the 2003 legislation, twice as many victims were Catholics. If you set that against the percentage of Catholics in the population, you might conclude that Catholics are six times more likely to be the victims of such behaviour.

The Convener: I should not say this—every time I do someone puts their hand up—but I do not think that we have any more questions. I am looking straight ahead—I see no one. I therefore conclude this session by thanking the witnesses for their evidence.

I suspend the meeting for five minutes. We are doing very well on time.

12:08

Meeting suspended.

12:15

On resuming—

The Convener: I welcome our third panel of witnesses. Dr Bronwen Cohen is the chief executive of Children in Scotland, Tom Halpin is the chief executive of Sacro, and Dr Kay Goodall is from the school of law at the University of Stirling. I thank you for making yourselves available this afternoon.

John Finnie: I have a question about Mr Halpin's written submission. The second paragraph says:

"if the Bill were enacted in its current form, it could lead to individuals being brought into contact with the criminal justice system inappropriately."

Could you expand on that please?

Tom Halpin (Sacro): We were referring to what exactly the bill intends to achieve and what is the catch-all that it sets down. We wanted to emphasise that we want clear guidance about what offences will be prosecuted under the bill.

John Finnie: With respect, I do not think that that answers my question. The statement is very clear:

"it could lead to individuals being brought into contact with the criminal justice system inappropriately."

Do you have an example of how such inappropriate contact could take place?

Tom Halpin: Sacro works with a wide range of clients—young people and adults—who come into formal contact with the criminal justice system when it would, quite frankly, be better to deal with the root causes of their behaviours. If the

definitions in the bill are enforced in their broadest sense, beyond the current good intentions of the committee, young people who are engaging in what should be a positive cultural community activity, such as going to a sporting event, could be caught up with peer group activity and end up, all of sudden, in the criminal justice system, rather than the underlying bigotry being dealt with.

John Finnie: Is that not just life? Is it not just the reality that we encourage and educate people to conduct themselves appropriately and, if they do not, there is appropriate intervention?

Tom Halpin: It would be unfortunate if that was just life.

John Finnie: I did not mean that to sound glib. I meant that intervention and education should be appropriate.

Tom Halpin: I take the point, and many people are just dealt an unlucky hand in life.

John Finnie: Yes, indeed.

Humza Yousaf: On John Finnie's point, I still do not understand Tom Halpin's basis for the assertion that such people would be dealt with inappropriately, especially as he has not seen the Lord Advocate's guidelines. It would be interesting to hear about that.

My point, however, is for Dr Goodall. I appreciated your detailed submission, Dr Goodall, and I was glad to have my wife, who has a master's degree in law, beside me while I was reading it.

The Convener: I am sure that you were glad to have your wife beside you for other reasons. I will put that on the record, I think.

Humza Yousaf: Absolutely. Thank you for doing that.

In paragraph 9 of your written submission, Dr Goodall, you say:

"research also suggests that law can influence people to reduce overt prejudice, and can even change attitudes through changing their behaviour."

You have expressed concerns about some aspects of the legislation. Do you still think that it is important that legislation be used to tackle the problem of sectarianism? During last week's evidence session, it was suggested that there is no need to bring in any new legislation and that it is all fine. One sociologist even suggested that if we ignored the problem, it would go away.

Dr Kay Goodall (University of Stirling): I strongly support legislating, for several reasons. Governments must be seen to respond. Lawyers may feel that there are very few gaps that need to be filled, but it is important to have named offences that the public can recognise. That shows

that Governments have responded and it enables the kind of valuable debate that we had over the summer simply because the bill was introduced, and which has helped to clarify the issues and raise public confidence.

Named offences are also easier to measure and monitor. At the moment, such offences are being lost among the huge number of events in the lower courts, which makes it difficult to know which ones might be captured under the legislation. Moreover, the public is looking for transparency on the issue and will support the bill. There are pragmatic as well as legal reasons for supporting the bill.

Humza Yousaf: I know that you go through this in your submission, but do you think that some of the bill's definitions could be tightened up? You think that

"likely to consider offensive"

is too broad a term and bordering on hate-speech legislation. You broadly support something being done, but think that it perhaps has too much ambiguity in its current state. Where do you see the ambiguity?

Dr Goodall: There are several points. I support the bill, but I am particularly concerned about the fact that it has offences that are not attached to a normal, known offence in Scots law. For instance, for a racially aggravated offence someone must first commit a breach of the peace or an assault, but the bill is in effect creating new areas in that regard. Other jurisdictions have dealt with speech offences. In the debates in the United Kingdom Parliament on the English legislation on incitement to religious hatred, huge concern was expressed by people whom we might think would be most in favour of the legislation. For instance, Lord Lester, who is the great architect of race relations legislation, tabled particularly narrow amendments, which were accepted. It is generally considered that legislation that moves towards an offence that someone has not yet committed must be defined as precisely as possible. It cannot be watertight, but it should be as precise as possible.

Alison McInnes: I am very interested in Children in Scotland's submission, which states that you regard law enforcement on this issue as necessary but not sufficient. We heard at last week's meeting that the bill would probably disproportionately target a group of young working-class males. Can you reflect on the impact that that might have in relation to the role of fathers in tackling the problem?

Dr Bronwen Cohen (Children in Scotland): Our particular concern is the rather valuable paragraph 57 of the policy memorandum, which says explicitly that more needs to be done to address the causes.

On the point about how broadly the legislation is drawn, I listened carefully to Professor Devine's evidence and I take the point about not losing what he described as the Scottish problem; nevertheless, from the perspective of children and young people, it is also important not to lose their sense of not having artificial distinctions between various categories of hate crime. One of the merits of the bill being broadly drawn is that it is easier for young people to understand than if you go down too much of an esoteric, narrow road.

We drew out the role of fathers in our submission, as well as the importance for prevention generally of focusing on the early years. In Scotland, we often talk about lifelong learning as being post-16, but the strongest lifelong learning comes from what children learn when they are very young, such as songs. There is interesting research that shows that older people who may not remember things can still remember the nursery rhymes that they learned. That is the clue to the fact that who children mix with in the early years and their understanding of difference at that stage is incredibly important in terms of prevention. We are concerned that the Scottish Government's legislative programme last week postponed for two years consideration of strengthening children's services, particularly in respect of early years. Given the committee's task, the focus on early years is incredibly important.

The issue of fathers is not just an early years issue. There is significant research that shows the extent to which fatherhood can be a wake-up call for some hugely disadvantaged young men. In other words, becoming a father might predispose someone to reflect on what they are doing and help them to understand the world in different ways. When that happens, we are interested in the services to which those young men have access, as the services can cause them to reflect on the attitudes that they have shown.

Alison McInnes: The bill proposes a severe punishment of up to five years in prison. I am concerned about the impact of that on families. Do you think that there might be a more appropriate punishment that would perhaps help people to tackle their behaviour in a different way and thereby help to address the problem in society?

Dr Cohen: That is an area that I hope that the committee will examine long and hard. We have listened to the evidence that you have heard about whether the legislation is necessary and whether we could use existing legislation to do the job. We accept the view that there is a symbolism around legislating and focusing on a particular issue that is understood as such by children and young people, but one needs to think carefully about what happens as a result of that and whether the bill will bring in too many children and young

people, which might be the case if there is a lack of clarity on their part about what it is that they are being held responsible for.

The Convener: Would you agree that judicial discretion could play a part in that, rather than changing the penalties? The sheriff could take into account all manner of things—social inquiry reports, background reports, commitments and so on—when determining what kind of sentence to give.

Dr Cohen: I agree. I have not examined that aspect in the same detail as others on the panel have, but that would be an important point. As you know, we have a general concern about putting too many young people behind bars.

The Convener: Are there any other comments on that point?

Tom Halpin: The bench clearly has the best information to make the decision about what the sentence should look like, but Sacro would point out that the vast majority of the cases in the consultation involve direct measures—fines and other such measures—and only a small proportion of cases involve community payback orders and custodial sentences.

It is important to state that the resources that are available have to include room for diversion from prosecution, where appropriate, in order to allow the behavioural issues and the attitudinal issues to be addressed. It might be possible to use the powers that exist in relation to the community payback order to supervise people to ensure that they are excluded from football grounds or are compelled to take part in some other reparation to communities that have been harmed by sectarianism. I would emphasise that area.

The Convener: I have just discussed with the clerk the issue of diversions from prosecution and the discretion of the Crown Office and Procurator Fiscal Service. We will ask the Scottish Parliament information centre to clarify the situation. In relation to any legislation, the Procurator Fiscal Service has discretion to divert from prosecution.

Tom Halpin: It might not be appropriate to divert someone from prosecution but, within direct measures, it might well be that some other activities that deal with attitudes and behaviours might be appropriate.

The Convener: I think that those measures exist in relation to community service orders and various directions that are given by sheriffs. However, we would like to clarify that there would be that flexibility in relation to diversions from prosecution in appropriate circumstances. There probably would be, but we should make sure that that is the case.

John Finnie, do you have a supplementary question?

12:30

John Finnie: It is a supplementary to the point that Alison McInnes raised earlier, and it is for Dr Cohen. It is about a phrase in your submission that I find deeply depressing: “learned prejudice”. Can you give us a timeframe within which that happens and what steps can be taken? Presumably a child can visit an institution and be coached but will still have to return to a house in which prejudice might be the norm.

Dr Cohen: Some research was done in Northern Ireland that looked at early years services and the extent to which children in them absorb some of the prejudices that are around. In the Northern Ireland research, that was shown to be not so significant at the early years stage but it emerged significantly when the children entered primary school. There is research that shows the power of services as they are provided in mediating between children’s entry to and understanding of the public world that they are entering, and the other communities that make up that world.

Research certainly suggests that we should start early to develop in young children the understanding of difference. As I said earlier, young children do not see things in the categories that we use, such as religion or disability; they just see difference. We had quite a powerful example of that in a programme that we run with Scottish Borders Council that was conceived of as being about physical access to services. To the children, the programme is child-led and, from their perspective, they look at all sorts of other aspects of the issue, not just the physical access. They take a truly inclusive approach to what they are doing.

I strongly believe that paragraph 57 of the policy memorandum and the preventative aspect of the bill means that one needs to take a broad view of how one works with children. It is not sufficient to say that they should understand the Scottish problem; they need to be introduced to it in a way that recognises all examples of difference, so that they can learn to value that difference and diversity.

The Convener: I am smiling slightly because two of the committee members, John Lamont and I, represent Borders constituencies and our ears pricked up when you complimented Scottish Borders Council. We will be looking for that in the *Official Report* because the reference went past me and I suspect that it went past John.

Graeme Pearson: My first question is for Dr Cohen, and then I have one for Dr Goodall.

Dr Cohen, your submission mentions the bill overlooking

“the opportunity to enact legislation that would increase positive attitudes”.

Could you play out what you had in mind in that comment?

Dr Cohen: Again, we were thinking of paragraph 57 of the policy memorandum. We think that if we are focusing attention and resources on the whole issue of the manifestations of intolerance and bigotry of this kind, we should ensure that we pay as much if not more attention to preventing it. That is what we had in mind when we made that comment.

Graeme Pearson: Is there any specific legislation that you would like to be introduced or is it about service support and other caring elements?

Dr Cohen: Yes, the submission is slightly loosely worded. We had more in mind the programmes that need to be put in place.

However, to add to my earlier points, in looking at prevention and what should be done, and taking paragraph 57 very seriously, as we do, we require more information to know what we are doing. We do not know enough about the extent to which young children and children of school age are mixing with others and getting opportunities to pursue activities together.

We sent the committee a copy of an article by Michael Rosie, another sociologist from the University of Edinburgh, who points to the extent to which children are in a lot of organised activities from pre-school, through school and outside school. We need to know more about the extent to which those activities facilitate cross-community activity as well as other forms of mingling. We do not know enough about that.

We have a school building programme. Canteens are shared in some schools but not in others. Do we know how many canteens are shared and what other activities take place?

Graeme Pearson: Dr Goodall, your submission was challenging and went into great detail. You mention on page 1 that the proposed use of official guidance would not only be illiberal but place a burden on enforcers and you criticise the notion of a sunset clause. Given the challenge that we face, is there a way of writing the bill with clarity that would enable fair and just enforcement?

Dr Goodall: The question is certainly difficult. I do not want to pre-empt the work of the specialist drafters, who have the most difficult task.

We can take measures without reinventing the wheel, such as taking elements from other legislation. For instance, the legislation on

incitement to racial hatred, which covers us, defines the difference between public and private places. We could have such a definition to clarify the bill, without adding much work to the drafters' job. We cannot wholly define such terms as sectarianism, but we can do things such as defining behaviours that contribute to sectarianism.

Roderick Campbell: I have several questions for Dr Goodall. To kick off, will you amplify your comment

“that teasing out the hatred from the banter will be a lot harder than it looks”?

Dr Goodall: As everyone is aware, sectarianism in Scotland—particularly in the context of football matches—is subtle and constantly evolving. Teams' supporters constantly develop arcane references that they recognise but which are difficult for law to recognise.

The difficulty in comparing Scotland and Northern Ireland is that we do not have extremist organisations of any size that have explicit manifestos, whereas Northern Ireland has parties with particular loyalties. The Northern Ireland Assembly almost agreed on a definition of sectarianism that referred to religious or political affiliation, but we cannot apply that, so we must look for individual problems such as anti-Irish racism and religious antipathy.

Football rivalry seems to be innocent or just banter, but it need not be either/or—it can be fun and involve passion but also have a damaging effect on wider groups in society. We must simply capture the elements that are or should be unlawful at the same time as we recognise that people can be having fun.

Will you repeat your question? I think that I have gone slightly off the point.

Roderick Campbell: I asked you to expand on the borderline between banter and hatred, which you have touched on.

Do you agree with the Law Society of Scotland's view that section 1 of the bill does not improve on common-law breach of the peace or section 38 of the 2010 act? Does the 2010 act provide sufficient protection?

Dr Goodall: In many ways, the comment is correct: section 1 does not necessarily change the law enormously. As I said, what helps and is important is naming the offence, not just for lawyers but for the public. My greater concern is about where section 1 goes beyond existing law. I have no problem with replicating existing law, but we must not unintentionally extend the law without good reason.

Roderick Campbell: That brings me to my next point. Intention is part of section 38 of the 2010 act, whereas you have made considerable play of the absence of intention from large chunks of section 1 of the bill. Will you expand on why that concerns you?

Dr Goodall: It concerns me because, as I mentioned, the offence has an element of incitement to hatred, but there is also the element of expressing hatred. The term “expressing hatred” is particularly wide. Earlier, the committee heard an example about a man talking on his mobile phone at Coatbridge and saying, “I’m surrounded by hundreds of Fenians.” That is clearly offensive behaviour, but it is not in itself recognised as an offence without more behaviour—perhaps some breach of the peace. If, as I fear, we are to create a law that extends to that, we will have to be careful about how we define it. That is the kind of consideration that we need to take into account.

Roderick Campbell: I have one final question. In general terms, what can we learn from the amendments on religious hatred that were inserted into the Public Order Act 1986 during the passage of the Racial and Religious Hatred Act 2006 in England?

Dr Goodall: We can learn a great deal from them, as they were helpful. The debate on them in the House of Lords was excellent, with a number of senior lawyers taking part. We can simply lift a good deal of the excellent content of that legislation and use it in the bill. In particular, there is a definition of how we protect freedom of expression, or of what is not included in an incitement offence. As I have said elsewhere, that is not strictly legally necessary, but it deals in part with the chilling effect that could arise because people are fearful of what the law says and what might be covered. We could bring elements of that legislation into the bill, such as the distinction between a public and a private place and the definition of the protection of freedom of expression. The definition of incitement to hatred in that statute is considerably longer than that in the bill, but we need all that extra content, and it would not be a great deal of work to introduce it. I recommend doing that.

The issue caused an enormous outbreak of concern in England. Groups that would not normally work together did so and were deeply worried by the proposals. We must take account of that full debate.

James Kelly: I have a question for Mr Halpin and Dr Cohen, although it relates to Dr Goodall’s submission. She points out that a positive aspect of legislation such as that proposed in the bill is that it is not just about convicting people of offences, but about the message that it sends out

to society about offensive and threatening behaviour being unacceptable. Mr Halpin and Dr Cohen, you raise concerns about the bill, but do you accept that, if we get it right, it has a role in sending out a strong message about the type of behaviour that is unacceptable in Scotland?

Tom Halpin: I would like to be clear on that point. Sacro welcomes the fact that proposed legislation has been introduced; our concern is about whether the definition is so wide that it will include people who should not be included. That point has been made in other discussions. It is absolutely necessary that we have a platform for saying clearly that certain behaviour is not acceptable. However, we want to see more action. The issue is not just about sending a message or about being punitive and setting the boundary that people cannot go beyond; it is about considering the underlying issues and how we enable and facilitate people to access services that can deal with those issues. There are many good examples of cognitive behavioural programmes in which people are challenged constructively and their attitudes are changed.

Dr Cohen: I broadly agree with Tom Halpin. We believe that it is important to focus on the issue, which has struck us all as being in many ways bizarre in this century. However, it is equally important that we send out a message that we are considering the preventative aspects, the causes of the problem and some of the wider ways of approaching it. I mentioned Northern Ireland, which is important, and I know that the committee will look there.

Channel 4 and an early years organisation combined to produce an interesting programme that focused on messages that came through the media. They worked not just with children, but with their families, looking at some of those messages. It is an area in which we cannot hope to resolve the problem by just being clear about how offensive something is; we must take a preventative approach.

12:45

Humza Yousaf: My question is for Dr Goodall—the number of questions that you are getting is directly related to the detail of your written submission. Several groups—supporters trusts, in particular—say that they want clarity in the bill about which songs, chants and actions should be proscribed. In your submission, you say that that probably is not the right way to go. Where are the dangers in proscribing specific songs or actions in legislation?

Dr Goodall: That is a good question. There are several dangers. The first is that such lists go out of date and the law looks foolish because it is not

keeping up with the latest developments, particularly in an area such as football. Could you repeat your question, please?

Humza Yousaf: What are the dangers of proscribing specific actions and songs in legislation? You have said that one reason is that the lists go out of date. Are there other reasons why we should avoid proscribing, which certain groups and organisations have asked for?

Dr Goodall: Another reason is that I am quite happy to leave it to the football clubs to define which songs are unacceptable. There is a presumption that football fans are not bright enough to work out what is and is not an acceptable song, but I do not think that that is necessarily true.

The general principle is not to create law that is too specific, which will go out of date—that has been the view of the drafters. They want to create a piece of legislation that will last and will not need to be revisited constantly. Even if you used secondary legislation, which would allow you to change a list, it would still have to go through Parliament.

I do not think that it is an area in which we need a list to provide clarity; what we need is clarity around the general behaviours that we are trying to capture. It is somewhat mischievous to suggest—I am not saying that you have said this—that we need a list, which people will know how to get around. The clubs themselves can define what is unacceptable.

The Convener: I have a final question for Dr Cohen on the second part of the bill, regarding the internet. Children are far better than I am at accessing the internet, Facebook, Twitter and all that stuff. I am sad—or glad—to say that it is foreign to me at the moment. My brother has forbidden me to use it, for reasons that I am not going to tell you. In any event, it seems that the bill might impact on children and young people innocently exchanging communications that fall within the ambit of the bill. Would you care to comment on the threatening communications part of the bill with regard to children and young people?

Dr Cohen: We looked at that area quite hard. It will be important for there to be clear definitions, and the bill's drafting will be important in that regard. Scotland's Commissioner for Children and Young People has been focusing on and discussing the issue as well, and it is important that that is taken account of.

I go back to the point that I made at the beginning of my evidence about needing to look at the issue through the eyes of children and young people. It is about clarity, and making slightly narrow distinctions all the time about what is

offensive and what we are not going to say anything about would make it harder to ensure that the bill did not disproportionately affect young people who had not reflected on that. I would like to think that we can do this before we have to address it, but we can ensure that we are offering enough opportunities for all young people to reflect on and be clear about what is and is not offensive. To put it more positively, they must understand and value diversity and difference, which we need to make meaningful.

We have various policy frameworks in our schools. There is the curriculum for excellence, which is relevant, and I am sure that, as part of their consideration of the policy memorandum, members will look at how it can be made real. There are also the equality strategies and the duties on local authorities, which our organisation thinks need to be made more meaningful to take matters forward. There are various strands, all of which will be required if we are to ensure that the proposals do not catch young people in particular. We need to ensure that the necessary but difficult area of law on offensive communications does not disproportionately affect young people.

That was a slightly lengthy answer.

The Convener: The area is difficult, and there are cultural differences between young people and other generations. What might be offensive to older generations might not be offensive to younger people, and the language might mean different things to them. I wanted to put that on the record for when we come to consider implementation.

I want to conclude this evidence session. If, having reflected and read the evidence of previous witnesses, the witnesses think that they want to add something, they should feel free to do so. Next week's evidence session will be our last. We will confront—I think that that is the appropriate word—the Lord Advocate and the minister, so we will need the material by then.

The committee is so powerful that we now have the draft guidelines, which came—I am going to be wicked—around an hour after we sat down. Obviously, elves somewhere in the deep recesses of the Lord Advocate's office are listening to us, which is good to know. The draft guidelines will be made public this afternoon for everyone who requires to know them. That means that, with the committee's leave, my letter to the Lord Advocate will deal simply with information about the analysis of the implementation of the 2003 act. I will also thank him for the guidelines. In addition, I need the committee's authority for a letter to go to the SPL on its interaction with the SFA and the protocols, which it would be appropriate to copy to the SFA. Are members content with that approach?

Members *indicated agreement.*

John Finnie: Can we ask the SPL what happens to match delegates' reports, who has access to them, and what action is taken as a result?

The Convener: Certainly. If members remember anything else that they want to be put in the letter, they should e-mail the clerks by close of play today, which is 5.30—I am just checking with the clerk that he does not work too much overtime. We will put anything additional in the letters and get them off as soon as possible.

Next week, we will have in front of us the Scottish Human Rights Commission, Professor Bill Buchanan, who is an IT whizz, the Lord Advocate and the minister.

I thank the committee and witnesses for their attendance.

Meeting closed at 12:53.

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