

**PE1593/A**

**Minister for Community Safety and Legal Affairs**

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Your ref: PE1593

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Dear Michael

Thank you for your letter dated 13 January 2016 issued by Catherine Ferguson, Clerk to the Public Petitions Committee, regarding Petition PE1593 from the campaigning group Fans Against Criminalisation (FAC) requesting that the Scottish Parliament ask the Scottish Government to hold a further review of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 (the Act) with a view to having the Act repealed.

The Scottish Government's commitment to review the sections 1 and 6 of the Act after two full football seasons was set out in Section 11 of the Act. Section 11 (2) required Scottish Ministers to consult such persons as they consider appropriate.

To provide an external and independent evaluation of section 1 of the Act, the Scottish Ministers undertook a competitive procurement exercise to commission independent research to consider the impact of the Act from a range of perspectives, including the police, prosecutors, sheriffs, football clubs and authorities, and supporters. This research was designed and undertaken by a team of researchers from the University of Stirling, ScotCen Social Research and the University of Glasgow who were awarded the "An Evaluation of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012" contract. The evaluation of section 6 of the Act was undertaken by researchers in the Scottish Government's Justice Analytical Services team.

The reports from this work, with an accompanying response from the Government, formed the report to parliament and fulfilled the legislative requirement. On 12 June 2015 the Scottish Government therefore published the following documents:

[An Evaluation of the implementation and impact of section 1 of the Offensive Behaviour and Threatening Communications \(Scotland\) Act 2012](#)

[An Evaluation of the implementation and impact of section 1 of the Offensive Behaviour and Threatening Communications \(Scotland\) Act 2012 - Research Findings](#)

[An Evaluation of the implementation and impact of section 6 of the Offensive Behaviour and Threatening Communications \(Scotland\) Act 2012](#)

[An Evaluation of the implementation and impact of section 6 of the Offensive Behaviour and Threatening Communications \(Scotland\) Act 2012 - Research Findings](#)

[The Scottish Government's report on the operation of the offences under section 1\(1\) and section 6\(1\) of the Offensive Behaviour at Football and Threatening Communications \(Scotland\) Act 2012](#)

These were published at the same time as a YouGov poll showing that 80% of those surveyed directly supported the Act ([YouGov poll on offensive behaviour at football](#)) and an announcement that the Scottish Government had provided additional funding to roll out a national 'Diversion from Prosecution' education programme aimed at less serious and first time offenders who may fall foul of the Act to divert individuals from prosecution and instead to enrol them in a Sacro programme encouraging positive behaviour change in order to bring about a reduction in offending.

Throughout the period that the review was being undertaken Scottish Ministers and Scottish Government officials repeatedly advised correspondents that an independent evaluation of the offence covered by section 1 of the Act was being conducted by an independent research team with researchers from University of Stirling, Scotcen Social Research and the University of Glasgow, and an evaluation of the offence covered by section 6 of the Act was being conducted by analysts based in the Scottish Government's Justice Analytical Services Division. The evaluation designs included collecting views from football supporters and the researchers therefore approached supporters and supporters' groups to gather their evidence.

The University of Stirling researchers did invite representatives of FAC to provide evidence for the evaluation they were undertaking, however, while FAC did meet with the researchers, the data which FAC stated they had collected was not presented to the evaluation team. In addition, I met with FAC representatives on 4 June 2015 and invited them to submit the evidence they referred to at the meeting to me, this offer was repeated in my letter to them of 17 July 2015, however they have not done so to date and it still remains open to them to submit their evidence if they wish.

Looking at the background information to this petition there appears to be two key concerns which need to be addressed. The first is the assertion that the Act creates a law which discriminates against football fans, and the second is the assertion that the Act restricts freedom of speech through outlawing "offensiveness". I do not agree with either of these assertions and will discuss each further below. However, before doing so I feel that it is important to be clear that the aim of the Scottish Government is to build Scottish communities which are inclusive and respectful where everyone, regardless of background, can live in safety and security and raise their family in peace.

Promoting communities that are underpinned by respect and understanding as part of an increasingly multi-faith and multicultural Scotland is essential to ensuring that all of our diverse communities are fully integrated and able to play their part in civic life as modern Scots with multi-faceted identities. The contributions of all of our communities are vital to

building the Scotland that we all want to see and the need to protect communities, and individuals within those communities, from harm and abuse is an essential part of achieving truly inclusive communities.

In recent weeks we have seen more visible offensive singing, chanting and the use of pyrotechnics notably at the Rangers FC v Hibernian FC match on 28 December 2015; the Stranraer FC v Celtic FC match on 10 January 2016; and the Forfar Athletic FC v Linlithgow Rose FC match on 19 January 2016. The SPFL has confirmed it is investigating some of these incidents of unacceptable conduct as those at the Hearts FC v Dundee United FC match on 30 December 2015.

There is no doubt that behaviour such as the singing of derogatory and prejudicial sectarian songs and letting off flares (which can cause serious disfigurement and risk life) is unacceptable in any modern society. We cannot stand by passively while the small minority cause offence and disrupt matches at the expense and jeopardy of the vast majority of football fans who simply want to support their club. That is why tackling antisocial, bigoted and offensive behaviour remains a priority for us, and why we remain open to proposals on how these problems can be tackled. However, we should be in no doubt that it is not an option to simply take no action and hope for the best which, with the lack of any constructive or viable alternative proposals, appears to be position of those who continue to criticise the Act.

## **Football Fans**

The Act was introduced as the result of unprecedented levels of misconduct during the 2010-11 football season which saw unacceptable levels of sectarianism on social media and viable explosive devices being posted to a number of prominent supporters of Celtic FC – namely the former Presiding Officer of the Scottish Parliament, Trish Godman; then Celtic FC manager Neil Lennon; and the late Paul McBride QC. The behaviours demonstrated during that season made it clear that football-related disorder could not be allowed to continue unchallenged and that action was needed to ensure that there was a robust response to the unacceptable behaviour arising from some fan behaviour. The Act sends a very clear message to fans that they should not indulge in abusive, offensive and violent behaviour and if they avoid doing so they will not fall foul of the Act. Prior to the Act football fans were not being effectively challenged on behaviours that would not be tolerated in any other area of society with football authorities and clubs failing to successfully tackle this behaviour. The Act seeks to redress this disparity to ensure that behaviour which would not be tolerated outwith a football environment is not tolerated within it.

Under the provisions of section 1 of the Act, an offence is committed if any person engages in behaviour, in relation to a regulated football match, which is likely to incite public disorder or if their behaviour expresses hatred towards other people based upon their religious affiliations, colour, race, ethnic origin, nationality, sexual orientation, transgender identity or disability. Under section 6 of the Act, an offence is committed where any person communicates material which contains, or implies, a threat to carry out a seriously violent act against another person; if the material communicated would cause a reasonable person to suffer fear or alarm; or it is reckless as to whether it would cause a reasonable person to suffer fear or alarm. It is also an offence under this section of the Act to communicate material which is intended to stir up religiously motivated hatred; however the material communicated does not have to refer to football in any way for it to be considered an offence. It is absolutely right that we provide protection for vulnerable groups within society and ensure that no one becomes the victim of hatred, within and outwith football, because of any real or perceived characteristic.

What this means is that anyone, regardless of whether they are a football fan or not, can be charged with an offence under section 1 if the offence is linked to a regulated football match. For example, a non-football fan who is involved in abusive or violent behaviour towards football fans travelling to or from a regulated football match could be charged under the Act. Section 6 covers everyone and is not limited to football.

## **Offensiveness**

This is covered by [Section 1\(e\)](#) of the Act which stipulates that a person commits an offence, in relation to a regulated football match, if the behaviour is “other behaviour that a reasonable person would be likely to consider offensive”. To help clarify what is meant by “behaviour that is offensive to the reasonable person”, the Lord Advocate has issued guidelines on the Act. Pages 4 and 5 of this document state that other offensive behaviours include “flags, banners, songs or chants in support of terrorist organisations” and “flags, banners, songs and chants which glorify, celebrate or mock events involving the loss of life or serious injury”. The Act does not criminalise the singing of national anthems; making religious gestures; or general football banter (even if in bad taste) in the absence of any other aggravating, threatening or offensive behaviour. The guidelines can be found here:

[Lord Advocate’s Guidelines on the Offensive Behaviour at Football and Threatening Communications \(Scotland\) Act 2012](#)

Every year, the Scottish Government publishes an annual analysis of charges reported under the Act. Full details of charges reported under the Act for the year 2014-15 can be found here:

[Charges reported under the Offensive Behaviour at Football and Threatening Communications \(Scotland\) Act 2012 - from 1 April 2014 until 31 March 2015](#)

This analysis confirms that the most common type of charge was actually for threatening behaviour. This accounted for 118 out of 193 charges (61% of all charges) and includes engaging in fighting or challenging other supporters to fight. Hateful behaviour accounted for 58 charges (30% of all charges). Of those 58 charges, 50 related to religiously motivated hatred whilst the remaining 8 charges related to racially motivated hatred. There were 26 charges (13% of all charges) falling within the “otherwise offensive” category. All of these charges were either for supporting terrorist groups or celebrating the loss of life.

I note the petitioner uses the Scottish Government’s statistics on conviction rates to claim the Act is not working by stating in the background information that conviction rates are as low as 22%. Each year the Scottish Government publishes its annual analysis on charges reported under the Act with the most recent analysis covering the period from 1 April 2014 to 31 March 2015. During this period, there were 193 charges reported by the police to the Crown Office. It is impossible for cases that have not been proceeded or concluded to result in a conviction or any other court outcome, so the most accurate way to calculate the conviction rates is to compare the concluded cases with the cases resulting in conviction. Information about convictions was presented in the report: “Charges reported under the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012 in 2014-15”<sup>1</sup>, published in June 2015, and this showed that although many cases were on-going at 31 March 2015 (the end date covered by the report) and information was subject to

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<sup>1</sup> <http://www.gov.scot/Resource/0047/00479042.pdf>

change as more charges were dealt with in the systems, of the 168 charges for which court proceedings had commenced, 42 had concluded and there were 38 convictions (90%).

## Review

As I have already stated, I am satisfied that the Scottish Government has fully met the commitment to carry out a full evaluation of the Act and there are no plans to carry out a further evaluation at this time. In considering the evaluation it is important to remember that both evaluations sought the views of a wide range of stakeholders associated with football. For the evaluation of the offence covered by Section 1 the University of Stirling, Scotcen, and University of Glasgow research team conducted two online supporters' surveys during the summers of 2013 and 2014 with surveys being sent to all members registered on the Supporters Direct Scotland's database. The evaluation covered the responses from 2,185 supporters representing all 42 SPFL clubs. Most responses were received from Celtic supporters, who accounted for 19% of all responses received, followed by Hearts and Rangers supporters, who each accounted for 11% of all responses received.

In addition to those online supporters' surveys, the research team also held interviews with representatives from Police Scotland, including match commanders, football intelligence officers and members of the Football Co-ordination Unit for Scotland; criminal justice personnel – including procurators fiscal, sheriffs and a defence solicitor. The researchers also interviewed football club personnel, including club security officers, a stand safety manager, and a fan liaison officer and held focus groups with supporters of various clubs, including Rangers FC and Celtic FC, as well as the meeting with representatives of FAC mentioned above.

With regard to the evaluation of Section 6 of the Act analysts in the Scottish Government's Justice Analytical Services Division also sought the views of a wide range of stakeholders. Their evaluation included face-to-face interviews with front-line police officers; members of the Football Co-ordination Unit for Scotland and 2 Football Liaison Prosecutors. The analysts also carried out online and telephone interviews with forum administrators of two Scottish football supporters' websites and a forum administrator from a national newspaper's website.

Through the evaluations it was found that 85% of respondents to our supporters' survey thought it is offensive to sing or chant about people's religious background or beliefs at football matches; 82% of respondents thought it is offensive to sing songs in support of terrorist organisations at football matches; and 60% of respondents thought it is offensive to make political gestures at football matches.

In addition to the evaluations we published results of a poll, which was independently commissioned through YouGov on behalf of the Scottish Government, also mentioned above, and this surveyed a random sample of 1,044 Scottish adults during June 2015. The results of this poll showed 82% of respondents agreed sectarian singing and chanting at football matches is offensive; 82% of respondents agreed offensive behaviour at and around football matches is harmful; 83% of respondents supported laws to tackle offensive behaviour at and around football matches; and 80% of respondents supported the Act. Looking at this information collectively the findings clearly show that there is a strong level of support for the Act and there is no compelling case for its repeal.

Going forward, we are continuing to publish an annual analysis of the offences under the Act and will also continue to consider ways to improve the application of the Act based on evidence and to monitor the effectiveness of the diversion from prosecution operated by Sacro with funding from the Scottish Government. I hope the information contained in this reply is helpful in explaining why the Scottish Government does not consider that a further review of the Act is necessary at this time.

Kind regards

**Paul Wheelhouse**